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Washington, DC 20002

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1219

[Document Number AMS–FV–10–0007]

Hass Avocado Promotion, Research, and Information Order; Section 610 Review

AGENCY: Agricultural Marketing Service.

ACTION: Confirmation of regulations.

SUMMARY: This document summarizes the results of an Agricultural Marketing Service (AMS) review of the Hass Avocado Promotion, Research, and Information Order (Order) under criteria contained in section 610 of the Regulatory Flexibility Act (RFA).

ADDRESSES: Interested persons may obtain a copy of the review on the Internet at: *http://www.regulations.gov* or request copies from the Docket Clerk, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Room 0632–S, Stop 0244, Washington, DC 20250–0244; facsimile: (202) 205–2800 or electronic mail: *Maureen.Pello@ams.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Marketing Specialist, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 831, Beavercreek, Oregon 97004; telephone: (503) 632–8848; facsimile (503) 632–8852; or electronic mail: *Maureen.Pello@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: The Order (7 CFR part 1219) is authorized under the Hass Avocado Promotion, Research and Information Act of 2000 (Act) (7 U.S.C. 7801–7813).

The Order became effective on September 9, 2002. The Order is administered by the Hass Avocado Board (Board) with oversight by AMS. The program is funded by assessments on fresh domestic and imported Hass avocados. Domestic producers and importers pay the assessments. The producer assessment is remitted by first handlers, and the importer assessment is remitted by the U.S. Customs and Border Protection. Exports of domestic Hass avocados are exempt from assessments. The purpose of the program is to increase consumption of Hass avocados in the United States.

Under the Order, a State association of avocado producers receives 85 percent of the assessments paid by domestic producers, and certified importer associations receive 85 percent of the assessments paid by their members. The State and importer associations use these funds to conduct State-of-origin and country-of-origin promotions, respectively.

The Board is composed of 12 members, 7 who are producers and 5 who are importers. Each member has an alternate. The members and alternates are appointed to the Board by the Secretary of Agriculture (Secretary) and serve a term of 3 years.

Currently, there are approximately 6,000 producers of Hass avocados in the United States, approximately 115 importers, and approximately 100 first handlers subject to the provisions of the Order. The majority of domestic producers and importers of Hass avocados may be classified as small entities, while most first handlers would not.

AMS published in the **Federal Register** on March 24, 2006 (71 FR 14827), its plan to review certain regulations, including the Order, under criteria contained in section 610 of the RFA (5 U.S.C. 601–612). Because many AMS regulations impact small entities, AMS decided, as a matter of policy, to review certain regulations which, although they may not meet the threshold requirement under section 610 of the RFA, warrant review.

AMS published a notice of review and request for written comments in the **Federal Register** on February 23, 2010 (75 FR 7986) on its plan to review certain regulations, including the Order. The comment period ended on April 26, 2010. Three comments were received in response to the notice and are discussed later in this document.

The purpose of the review was to determine whether the Order should be continued without change, amended, or rescinded (consistent with the objectives of the Act) to minimize the impact on small entities. AMS considered the following factors: (1) The continued need for the Order; (2) the nature of complaints or comments received from the public concerning the Order; (3) the complexity of the Order; (4) the extent to which the Order overlaps, duplicates, or conflicts with other Federal rules, and, to the extent feasible, with State and local regulations; and (5) the length of time since the Order has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the Order.

Based upon its review, USDA has concluded that there is a continued need for the Order. The total volume of Hass avocados produced domestically and imported into the United States has grown significantly since the inception of the Order. From 2003 through 2005, Hass avocado domestic production and imports averaged about 712 million pounds annually. From 2007 through 2009, Hass avocado domestic production and imports averaged about 1 billion pounds annually. Through the efforts of the Board and State and importer associations which receive assessments funds from the Board, the industry has worked together to successfully grow the demand for Hass avocados. Between 1998 and 2007, the average annual growth for U.S. consumption for avocados was 13.2 percent with producer prices remaining fairly constant.[1] The Board and State and importer association promotion programs have significantly helped to increase demand and maintain orderly marketing since the Order's inception.

Regarding the nature of complaints or comments received from the public concerning the Order, as previously mentioned, three comments were received. They are discussed in the following paragraphs.

One comment supported the marketing efforts under the program, but expressed concern with the rising costs that California growers are experiencing, especially costs for water. The comment suggested that the Order be revised to provide for a sliding scale for assessments so that avocados up to a

[1] Carmen, C., L. Li, R. Sexton, An Economic Evaluation of the Hass Avocado Promotion Order's First Five Years, p. 72.

certain threshold amount would be assessed at a lower rate than avocados over the threshold. However, the Act authorizes only uniform assessment rates.

Two comments expressed concern with the Board's composition. They stated that, on the 12 member Board, 7 seats are for domestic producers and a maximum of 5 seats are for importers, regardless of shifts in the volume of Hass avocados produced domestically or imported into the United States. They also expressed concern that foreign producers and packers are not represented on the Board as in some other research and promotion programs.

The composition of the Board is set forth in the provisions of the Act and Order which provide that the Board shall consist of seven members who are domestic producers of Hass avocados who are subject to assessment under the Order and two members who represent importers of Hass avocados who are subject to assessment under the Order. The Board shall also consist of three members who are either domestic producers or importers to reflect the proportion of domestic production and imports supplying the United States market, depending on the average volume of domestic production of Hass avocados proportionate to the average volume of imports of Hass avocados in the United States over the previous 3 years. While the initial Board consisted of eight domestic producer members and four importer members, the current Board's membership consists of seven members who are domestic producers and five members who are importers, the maximum number of seats authorized for importers.

Two comments expressed concern that the importer associations under the Order cannot use assessment funds to pay administrative expenses incurred by the associations while the Board can spend up to 10 percent of the projected level of assessments and other income received by the Board for a fiscal period to pay administrative expenses. The commenters argue this is unfair and that other Federal promotion boards can use assessment funds to pay administrative expenses. However, the Act and Order specify that assessment funds shall not be used by importer associations to pay administrative expenses for such associations, which is also consistent with the provision for the domestic State association.

Two comments expressed concern that the existing State association under the Order receives the full 85 percent of the assessments paid by domestic producers while the importer associations receive 85 percent of the assessments paid by their respective association members.

The Act and Order specify that a State organization of avocado producers established pursuant to State law shall receive an amount equal to the product obtained by multiplying the aggregate amount of assessments attributable to the pounds of Hass avocados produced in such State by 85 percent. The State organization (association) under the Order is authorized under the California Food and Agricultural Code.

The Act and Order also specify that an association of Hass avocado importers established or certified under the Order shall receive an amount of assessment funds equal to 85 percent of the assessments paid on Hass avocados imported by its members. However, not all Hass avocado importers have joined or are affiliated with an importers association. Additionally, the Order's promulgation rulemaking record indicated that requiring all importers to join an association is not authorized under the Act. USDA believes that additional dialogue with the industry may be appropriate to consider possible solutions that would be consistent with the Act in order to address this issue.

One comment expressed concern that the Board is required to enter into a contract with the State association under the Order to manage its promotional program that is funded primarily by assessments from importers.

The Act and Order specify that the Board, with approval of the Secretary, shall enter into a contract or an agreement with an avocado organization established by State statute in a State with the majority of Hass avocado production in the United States, for the implementation of a plan or project for promotion, industry information, consumer information, or related research with respect to Hass avocados, and/or the payment of the costs of the contract or agreement with funds received by the Board under the Order.

One comment expressed concern with the referendum criteria specified in the Act and Order. The comment argues that, although a majority of the assessments are paid by importers of Hass avocados, the referendum procedures were designed to give domestic producers a permanent majority in a referendum. Further, the comment contends that, even if a referendum were held to address some of their concerns, no relief would be provided to importers.

The Act and Order specify that the Order, or an amendment thereto, must be approved by a simple majority of all votes cast in a referendum. Changing the referendum criteria is not authorized under the Act.

One commenter expressed concern that the Board's composition violates the North American Free Trade Agreement (NAFTA), and that the 85 percent provision violates the NAFTA and the General Agreement on Tariff and Trade. USDA continues to view these provisions as consistent with applicable trade obligations.

In considering the complexity of the Order, USDA also continues to believe the Order is not unduly complex. It provides authority for the Board to collect assessments from Hass avocado domestic producers and importers to fund programs to help increase the consumption of Hass avocados in the United States.

Regarding whether the Order overlaps, duplicates, or conflicts with other Federal rules and State and local regulations, there is a Federal marketing order for avocados grown in south Florida (7 CFR part 915). According to the National Agricultural Statistics Service, there is little or no production of Hass avocados in Florida. Since California is the source for more than 95 percent of avocados produced in the United States and Florida does not produce Hass avocados, there is no duplication between this Order and the Federal marketing order.

As previously mentioned, there is also a State avocado program in California, which is administered by the State association. The chief objective of the program is to increase consumer awareness of and demand for avocados on behalf of the State's 6,000 producers. Under the program, producers pay a percentage-of-revenue fee to fund a variety of market development programs. The State assessment may not exceed 6.5 percent of the gross dollar value of the year's sales of avocados by all producers to handlers, or which are sold by handlers on behalf of producers. The assessments are collected from the producers by handlers, who remit the money to the association. Section 1212(c) of the Act states that nothing may be construed to preempt or supersede any other program relating to Hass avocado promotion, research, industry information, and consumer information organized and operated under the laws of the United States or of a state. The Federal program compliments the State program but does not overlap, duplicate or conflict with it.

Regarding evaluations of the Order or the degree to which technology, economic conditions, or other factors have changed in the area affected by the Order, section 1205(c)(7) of the Act and

§ 1219.38(k) of the Order require the Board to evaluate on-going and completed programs, plans, and projects for Hass avocado promotion, industry information, consumer information, or related research and to comply with the independent evaluation provisions of the Federal Agricultural Improvement and Reform Act of 1996 (FAIR). The Board routinely evaluates its programs to ensure their effectiveness, and a formal evaluation was conducted under the FAIR in 2009.

Accordingly, USDA has determined that the Hass avocado Order should be continued. The Order was established to help increase the consumption of domestic and imported Hass avocados in the United States. Concerns raised in the comments received were to a great extent changes that would require congressional action. AMS will continue to work with the Hass avocado industry in maintaining an effective program.

Dated: October 1, 2010.

Rayne Pegg,

Administrator.

[FR Doc. 2010–25130 Filed 10–5–10; 8:45 am]

BILLING CODE 3410–02–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AF70

Small Business Size Standards; Other Services.

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: The United States Small Business Administration (SBA) is increasing the small business size standards for 18 industries in North American Industry Classification System (NAICS) Sector 81, Other Services, and retaining the current standards for the remaining 30 industries in the Sector. As part of its ongoing initiative to review all size standards, SBA has evaluated every industry in NAICS Sector 81 to determine whether the existing size standards should be retained or revised.

DATES: This rule is effective November 5, 2010.

FOR FURTHER INFORMATION CONTACT: Carl Jordan, Program Analyst, Office of Size Standards, (202) 205–6618 or *sizestandards@sba.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

To determine eligibility for Federal small business assistance programs, SBA establishes small business size definitions (referred to as size standards) for private sector industries in the United States. SBA's existing size standards use two primary measures of business size—receipts and number of employees. Financial assets, electric output and refining capacity are used as size measures for a few specialized industries. In addition, SBA's Small Business Investment Company (SBIC) and the Certified Development Company (CDC) Programs determine small business eligibility using either the industry based size standards or net worth and net income size standards. Currently, SBA's size standards consist of 45 different size levels, covering 1,141 NAICS industries and 17 sub-industry activities. Of these size levels, 32 are based on average annual receipts, eight are based on number of employees, and five are based on other measures. In addition, SBA has established 11 other size standards for its financial and procurement programs.

Over the years, SBA has received comments that its size standards have not kept up with changes in the economy and, in particular, that they do not reflect changes in the Federal contracting marketplace. The last overall review of size standards occurred during the late 1970s and early 1980s. Since then, most reviews of size standards have been limited to in-depth analyses of specific industries in response to requests from the public and Federal agencies. SBA also makes periodic inflation adjustments to its monetary based size standards. The latest inflation adjustment to size standards was published in the **Federal Register** on July 18, 2008 (73 FR 41237).

SBA recognizes that changes in industry structure and the Federal marketplace over time have rendered existing size standards for some industries no longer supportable by current data. Accordingly, SBA has begun a comprehensive review of its size standards to determine whether existing size standards have supportable bases relative to the current data, and, where necessary, to make revisions to current size standards. Rather than review all size standards at one time, SBA has taken a more manageable approach to reviewing a group of related industries within an NAICS Sector in phases. SBA expects to complete its review of all NAICS Sectors in two years.

As part of its ongoing effort to review all small business size standards, SBA evaluated every industry in NAICS Sector 81, Other Services, to determine whether the existing size standards should be retained or revised, and published a proposed rule for public comment in the October 21, 2009 issue of **Federal Register** (74 FR 53941) to increase the standards for 18 industries in that Sector. The proposed rule was one of a series of proposals that will examine industries grouped by an NAICS Sector. SBA also published concurrently in the same October 21, 2009 issue of the **Federal Register** proposed rules to increase 47 small business size standards in NAICS Sector 44–45, Retail Trade, (74 FR 53924) and five standards in NAICS Sector 72, Accommodation and Food Services (74 FR 53913). Similarly, SBA is publishing final rules on NAICS Sector 44–45 and NAICS Sector 72 elsewhere in this issue of the **Federal Register**.

In addition, SBA established its "Size Standards Methodology" for reviewing small business size standards and modifying them, where necessary. SBA published in the October 21, 2009 issue of the **Federal Register** (74 FR 53940) a notice of its availability, for public comments, on SBA's Web site at *http://www.sba.gov/contractingopportunities/officials/size/index.html.* In addition, SBA has placed a copy of its "Size Standards Methodology" in the electronic docket of this rule on *http://www.regulations.gov* and is available there as well.

In evaluating an industry's size standard, SBA examines the industry's characteristics (such as average firm size, startup costs, industry competition and distribution of firms by size), Federal government contracting trends, impact on SBA financial assistance programs, and dominance in field of operations. SBA analyzed the characteristics of each industry in NAICS Sector 81 mostly using a special tabulation obtained from the U.S. Bureau of the Census from its 2002 Economic Census (the latest available). SBA evaluated Federal contracting trends in that Sector using the data from the Federal Procurement Data System—Next Generation (FPDS–NG) for fiscal years 2006–2008. To evaluate the impact of changes to size standards on its loan programs, SBA analyzed internal data on its guaranteed loan programs for fiscal years 2006–2008.

SBA's "Size Standards Methodology" provides a detailed description of analyses of various industry and program factors and data sources and derivation of size standards using the results. In the proposed rule itself, SBA detailed how it applied its "Size

Standards Methodology" to review, and to modify where necessary, the existing standards for the Sector and Industries under analysis.

SBA sought comments from the public on a number of issues about its "Size Standards Methodology," such as whether there are alternative methodologies that SBA should consider; whether there are alternative or additional factors or data sources that SBA should evaluate; whether SBA's approach to establishing small business size standards makes sense in the current economic environment; whether SBA's definitions of anchor size standards are appropriate in the current economy; whether there are gaps in SBA's methodology because of the lack of comprehensive data; and whether there are other facts or issues that SBA should consider in its methodology.

SBA did not receive any comments on its "Size Standards Methodology." SBA continues to welcome comments from interested parties.

In the proposed rule, based on its analyses of the latest industry and relevant data SBA proposed to increase 18 of the 48 size standards in NAICS Sector 81. SBA's analyses supported retaining the existing size standards for nine industries. As noted in the proposed rule, SBA's analyses would support reducing size standards for the remaining 20 industries in the Sector. However, as the proposed rule pointed out, SBA believes that lowering size standards and thereby reducing the number of firms eligible to participate in Federal small business assistance programs would run counter to what the Agency is doing to help small businesses. Therefore, SBA proposed to retain the existing size standards for those 20 industries. Because of similarities between NAICS 811212, Computer and Office Machine Repair and Maintenance, and several computer services related industries in NAICS Sector 54, Professional, Technical and Scientific Services, SBA decided to review the size standard for that Industry when it reviews size standards for computer related services in NAICS Sector 54. SBA proposed to retain the current $25 million standard for that industry until it reviews that Sector.

Summary of Comments

The proposed rule sought comments from the public on SBA's proposal to increase size standards for the 18 industries in NAICS Sector 81, Other Services, and retain the size standards for remaining 30 industries in that Sector. SBA also requested comments on whether it should simplify size standards by reducing them to eight fixed levels. SBA received three comments, one of which supported the proposed standards and two did not. Each of these comments is discussed below.

One commenter supported using Federal contracting as one of the factors SBA considers when determining size standard because it is "consistent with the statutory guidance that encourages an industry-by-industry analysis." The commenter was referring to the Small Business Act (Act) which states in § 3(a)(3) that "the [SBA] Administrator shall ensure that the size standard varies from industry to industry to the extent necessary to reflect the differing characteristics of the various industries and consider other factors deemed to be relevant by the Administrator." (15 U.S.C. 632(a)(3))

The commenter suggested that SBA establish "a separate size standard for Federal procurement within each industry category or specific NAICS code." SBA does not concur with this comment for several reasons. First, SBA believes that having separate size standards for each industry for Federal procurement and other programs would create confusion and unnecessary complexity, and it would run counter to SBA's ongoing effort to simplify its size standards. Second, SBA's current methodology examines the Federal procurement market as one of the five primary factors in setting size standards for most industries. Third, SBA has established separate size standards for Federal procurement purposes within certain NAICS Sectors and Industries. For example, for the Retail Trade and Wholesale Trade Sectors, the 500 employee nonmanufacturer size standard applies for procurements of manufactured products, and industry standards in those sectors are generally used for SBA financial assistance programs. In addition, for those industries where there is a need for significantly different size standards for Federal procurement, they already exist. SBA has in the past recognized the need for standards that apply only to Federal procurement in certain industries, because the existing standards, while appropriate for other Federal programs, were not suitable for procurement purposes. Currently there are 18 "exceptions" in the Agency's table of size standards that relate directly to Federal procurement opportunities for small businesses. Fourth, establishing separate size standards within each industry for businesses that participate in Federal procurement and those that participate in other programs is almost impractical due to lack of necessary data. For example, the Economic Census data that SBA uses to evaluate industry characteristics are limited to the six-digit NAICS level. Similarly, the Federal procurement data from the FPDS–NG are limited to identifying each contracting firm as "small" or "other than small" only, with no information on its specific firm size (*i.e.,* the number of employees and average annual revenues) that would be needed to establish a separate size standard for Federal procurement purposes.

The commenter also addressed the size standards for NAICS code 811213, Communication Equipment Repair and Maintenance, and NAICS code 811212, Computer and Office Repair Maintenance. SBA had proposed to increase the standard for NAICS 811213 from $7 million to $10 million in average annual receipts but did not propose to modify the standard for NAICS 811212. There are similarities among NAICS 811212 and several computer services related industries in Sector 54 (NAICS 541211, NAICS 541212, NAICS 541213 and NAICS 541219), as SBA detailed in the proposed rule. Based on those similarities those four Sector 54 industries and NAICS 811212 have shared a $25 million size standard since SBA last reviewed the computer related services industries. SBA will review the size standard for NAICS 811212 when it next reviews computer related services in NAICS Sector 54. Therefore, SBA proposed to retain the current $25 million standard for NAICS 811212 until it reviews Sector 54.

The commenter supported the current $25 million common size standard for NAICS 811212, but requested SBA to apply the same $25 million size standard to NAICS 811213 and defer changing the current $7 million size standard for that industry as well until the Agency analyzes and reviews size standards for the information technology industries in Sector 54. SBA is adopting the proposed $10 million for NAICS 811213 because it believes it should not defer its increase on the basis of what it might determine is appropriate for industries in another Sector that it has not yet analyzed. Furthermore, for Federal government procurement purposes, the size standard applicable to a contracting opportunity is determined by the principal purpose of the procurement. *See* 13 CFR 121.402. It is not unusual for companies to perform contracts in different NAICS codes that have different size standards. The Central Contractor Registration database shows that many companies can be small for some NAICS codes and not small for others.

NAICS is a production oriented system and classifies companies by their economic activity, that is, by how they produce their products and provide their services. Therefore, economic activities of businesses classified in NAICS 811213 are more closely akin to businesses classified in NAICS Sector 81 than they are to businesses classified in other Sectors. Larger companies can and do perform contracts under NAICS codes in different Sectors and Industries with various size standards—some higher, some lower than others. However, SBA believes it cannot logically conclude that the lower size standards ought to be increased. The same reasoning might lead to lowering the higher size standards.

Based on the analysis according to its "Size Standards Methodology," SBA has determined that $10 million is the appropriate size standard for NAICS 811213. SBA believes that, at this level, there exists a sufficient population of small firms that can compete among themselves for opportunities that provide benefits for small businesses. Much larger companies can and do provide some of the same services as smaller companies, but SBA believes that raising the size standard to include much larger firms would not be equitable for those small businesses that the Agency seeks to support and protect.

Based on its analyses of relevant industry and Federal contracting data, SBA has determined that the proposed $10 million size standard is appropriate for NAICS 811213. Moreover, a size standard higher than the $10 million level would create substantial competitive disadvantages for small businesses below that level in bidding for Federal procurement opportunities. Therefore, SBA is adopting as final its proposed $10 million size standard for NAICS 811213.

Another commenter stated that SBA should not raise size standards to enable Federal agencies to meet their small business contracting goals. However, whether Federal agencies meet their goals or not is not a factor SBA considers in its analysis. Once SBA has established small business size standards, it is the various agencies' responsibility to structure and monitor their contracting activities to meet their small business contracting goals. SBA's objective is to assure that there are an adequate number of small businesses to maintain suitable competition among them. At the same time, SBA wants to make certain that the pool is not too large so that there would be an inordinate number of apparently small businesses. The commenter stated further that a company with $7 million in receipts or one that has 500 employees is not a small business and such levels might not suggest smallness for many people. SBA draws the line of demarcation between small and other than small where it will provide adequate procurement opportunities for businesses below that level.

In the proposed rule, SBA requested comments on whether simplification of size standards by reducing them to eight fixed levels was appropriate. SBA also requested comments on whether it should, as a policy, limit the amount of increase or decrease to a size standard, and whether SBA should, as a policy, establish certain minimum or maximum values for size standards.

One commenter suggested that there should be only one maximum revenue based standard and one maximum employee based size standard, regardless of NAICS industry. While this would simplify size standards even more than what SBA had proposed, the Act, as noted above, states in § 3(a)(3) that "the [SBA] Administrator shall ensure that the size standard varies from industry to industry to the extent necessary to reflect the differing characteristics of the various industries and consider other factors deemed to be relevant by the Administrator." (15 U.S.C. 632(a)(3)). The relevant data show significant differences among industries within each NAICS Sector, including Sector 81, and SBA believes that varying the size standard by industry not only complies with the Act, but it also serves the best interests of small businesses in that Sector. Therefore, SBA does not presently plan to reduce the number of receipts based size standard levels below eight as detailed in the proposed rule.

SBA did not receive any comments on whether it should lower the size standards for the 20 industries in NAICS Sector 81 for which SBA's analyses supported reducing the existing size standards. SBA also did not receive any comments on nine industries for which SBA's analyses supported retaining the existing size standards and on NAICS 811212 for which SBA had proposed retaining the current standard until it reviews NAICS Sector 54. Therefore, SBA is retaining the existing size standards for 28 of the 48 Industries in NAICS Sector 81. All comments to the proposed rule are available for public review at *http://www.regulations.gov.*

Conclusion

Based on the analyses of relevant industry and program data and public comments it received on the proposed rule, SBA has decided to increase the small business size standards for the 18 industries in NAICS Sector 81 to the levels it proposed. The revised size standards are shown in the following table.

SUMMARY OF REVISED SIZE STANDARDS IN NAICS SECTOR 81

NAICS	Current size standard ($ million)	Revised size standard ($ million)
811122—Automotive Glass Replacement Shops	$7.0	$10.0
811213—Communication Equipment Repair and Maintenance	7.0	10.0
811219—Other Electronic and Precision Equipment Repair and Maintenance	7.0	19.0
811412—Appliance Repair and Maintenance	7.0	14.0
812191—Diet and Weight Reducing Centers	7.0	19.0
812220—Cemeteries and Crematories	7.0	19.0
812320—Dry-cleaning and Laundry Services (except Coin-Operated)	4.5	5.0
812331—Linen Supply	14.0	30.0
812332—Industrial Launderers	14.0	35.5
812921—Photo Finishing Laboratories (except One-Hour)	7.0	19.0
812922—One-Hour Photo Finishing	7.0	14.0
812930—Parking Lots and Garages	7.0	35.5
813211—Grantmaking Foundations	7.0	30.0
813212—Voluntary Health Organizations	7.0	25.5
813219—Other Grant Making and Giving Services	7.0	35.5
813311—Human Rights Organizations	7.0	25.5

SUMMARY OF REVISED SIZE STANDARDS IN NAICS SECTOR 81—Continued

NAICS	Current size standard ($ million)	Revised size standard ($ million)
813312—Environment, Conservation and Wildlife Organizations	7.0	14.0
813920—Professional Organizations	7.0	14.0

Although there were two comments opposing the proposed increases, SBA believes that its analyses warrants the increases, for the reasons it gave in the October 21, 2009 proposed rule. SBA's proposed rule indicated that its analysis might justify proposing reductions to size standards for 20 industries in this Sector. However, SBA has opted not to reduce the size standards for these industries for the reasons given in the proposed rule. Lowering small business size standards would be inconsistent with its ongoing effort to promote small business assistance under the Recovery Act.

Compliance With Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C., Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this final rule is a "significant" regulatory action for purposes of Executive Order 12866. Accordingly, the next section contains SBA's Regulatory Impact Analysis. This is not a major rule, however, under the Congressional Review Act, 5 U.S.C. 800.

Regulatory Impact Analysis

Is there a need for the regulatory action?

SBA believes that the adopted adjustments to certain size standards in Sector 81, Other Services, better reflect the changes in economic characteristics of small businesses in those industries. SBA provides aid and assistance to small businesses through a variety of financial, procurement, business development and advocacy programs. To assist the intended beneficiaries of these programs effectively, SBA establishes distinct definitions to determine which businesses are deemed small businesses. The Small Business Act (15 U.S.C. 632(a)) delegates to SBA's Administrator responsibility for establishing small business definitions. The Act also requires that small business definitions vary to reflect industry differences. The supplementary information section of the proposed rule and this rule explained in detail SBA's methodology for analyzing a size standard for a particular industry.

What are the potential benefits and costs of this regulatory action?

The most significant benefit to businesses obtaining small business status as a result of this rule is eligibility for Federal small business assistance programs, including SBA's financial assistance programs, economic injury disaster loans and Federal procurement opportunities reserved for small businesses. Federal procurement provides opportunities for small businesses under SBA's business development programs, such as 8(a) participantes, small businesses located in Historically Underutilized Business Zones (HUBZone), women owned small businesses and service disabled veteran owned small businesses (SDVOSB). Other Federal agencies also may use SBA size standards for a variety of regulatory and program purposes. Through the assistance of these programs, small businesses become more knowledgeable, stable and competitive.

Of 18 industries in Sector 81 for which SBA has increased their size standards, 12 are for-profit industries and six are non-profits. In the 12 for-profit industries for which SBA has increased size standards, the Agency estimates that about 325 additional firms will obtain small business status and become eligible for these programs. That represents 0.6 percent of total firms and 5.6 percent of total sales in those industries. In the six non-profit industries for which size standards have been increased, SBA estimates that about 1,175 additional firms, representing 4.2 percent of total firms and 16.9 percent of total sales in those industries, will qualify as small organizations (a non-profit entity cannot qualify as a small business concern). 13 CFR 121.105 In the 20 industries (including non-profits) for which SBA's analyses indicated a lower size standard is appropriate, about 1,850 firms, representing 0.6 percent of total firms and 5.1 percent of total sales in those industries, might have lost their small business status, had SBA lowered their size standards. Thus, the net impact for the Sector as a whole is about 1,400 additional firms gaining and none losing small business status under this final rule. This will increase the small business share of total industry receipts for the Sector from 59.0 percent under the current size standards to 63.5 percent under the revised standards.

The benefits of increasing size standards to a more appropriate level will accrue to three groups: (1) Businesses that are above the current size standards will benefit by gaining small business status under the higher size standards, thereby being able to participate in Federal small business assistance programs; (2) growing small businesses that are close to exceeding the current size standards will be able to retain their small business status under the higher size standards, thereby being able to continue their participation in the programs; and (3) Federal agencies that award contracts under procurement programs that require small business status.

More than 40 percent of total Federal contracting dollars received by industries in Sector 81 (excluding NAICS 811212 and those in Subsector 813) during fiscal years 2006–2008 were accounted for by two of the 18 industries for which SBA is increasing size standards in this final rule, namely NAICS 811213 and NAICS 811219. SBA estimates that additional firms gaining small business status in those two and other industries in Subsectors 811 and 812 under the proposed size standards could potentially obtain Federal contracts totaling up to between $25 million and $30 million per year under the small business set-aside program, the 8(a), HUBZone, and SDVOSB Programs, or unrestricted procurements. The added competition for many of these procurements also could likely result in lower prices to the Government for procurements reserved for small businesses, but SBA cannot quantify this benefit.

Under SBA's 7(a) Guaranteed Loan Program and CDC Program, SBA estimates that approximately 10 additional loans totaling between $4 million and $5 million in new Federal loan guarantees will be made to newly defined small businesses. Because of the size of the loan guarantees, however, most loans are made to small businesses

well below the size standard. SBA has also applied its CDC alternative size standard to its 7(a) Business Loan Program, and more capital is therefore available to small businesses. Thus, increasing the size standards will likely result in an increase in small business guaranteed loans to small businesses in these industries, but it would be impractical to try to estimate the extent of their number and the total amount loaned.

The newly defined small businesses will also benefit from SBA's Economic Injury Disaster Loan (EIDL) Program. Since this program is contingent on the occurrence and severity of disasters, no meaningful estimate of benefits can be projected.

To the extent that 325 additional firms in Subsectors 811 and 812 that become small under the revised size standards could become active in Federal procurement programs, this may entail some additional administrative costs to the Federal Government. Additional firms will likely participate in Federal procurement opportunities reserved for small businesses, seek SBA guaranteed loans and SBA guaranteed surety bonds in connection with Federal projects, register in the Central Contractor Registration, be listed in the Dynamic Small Business Search databases, and seek certification as 8(a) or HUBZone firms. Among businesses in this group seeking SBA assistance, there could be additional costs associated with compliance and verification of small business status and protests of businesses that claim small business standing. These additional costs are likely to be minimal because mechanisms are already in place to handle these administrative requirements.

The costs to the Federal Government may be higher on some Federal contracts. With a greater number of businesses defined as small, Federal agencies may choose to set aside more contracts for competition among small businesses rather than using full and open competition. The movement from unrestricted to set-aside contracting will likely result in competition among fewer bidders. In addition, higher costs may result when additional full and open contracts are awarded to HUBZone businesses because of a price evaluation preference. The additional costs associated with fewer bidders, however, will likely be minor since, as a matter of law, procurements may be set aside for small businesses or reserved for the 8(a) or HUBZone Programs only if awards are expected to be made at fair and reasonable prices.

The adopted size standards may have some distributional effects among large and small businesses. Although the actual outcome of the gains and losses among small and large businesses cannot be estimated with certainty, several likely impacts can be identified. There will likely be a transfer of some Federal contracts from large businesses to small businesses. Large businesses may have fewer Federal contract opportunities as Federal agencies decide to set aside more Federal contracts for small businesses. Also, some Federal contracts may be awarded to HUBZone concerns instead of large businesses since HUBZone concerns may be eligible for an evaluation adjustment for contracts competed on a full and open basis. Similarly, currently defined small businesses may obtain fewer Federal contracts due to the increased competition from more businesses defined as small under the revised size standards. This transfer may be offset by a greater number of Federal procurements set aside for all small businesses. The number of newly defined and expanding small businesses that are willing and able to sell to the Federal Government will limit the potential transfer of contracts away from large and currently defined small businesses. The potential distributional impacts of these transfers may not be estimated with any degree of precision because the currently available data on the size of business receiving a Federal contract are limited to identifying small or other than small businesses, without regard to the exact size of the business.

The revisions to the existing size standards for Other Services industries are consistent with SBA's statutory mandate to assist small business. This regulatory action promotes the Administration's objectives. One of SBA's goals in support of the Administration's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit, Government contracts, and management and technical assistance. Reviewing and modifying size standards, when appropriate, ensures that intended beneficiaries have access to small business programs designed to assist them.

Executive Order 12988: For purposes of Executive Order 12988, Civil Justice Reform, SBA has determined that this rule is crafted, to the extent practicable, in accordance with the standards set forth in §§ 3(a) and 3(b)(2), to minimize litigation, eliminate ambiguity and reduce burden.

Executive Order 13132: For purposes of Executive Order 13132, SBA has determined that this rule has no federalism implications warranting preparation of a federalism assessment.

Paperwork Reduction Act: This interim final rule does not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 USC Chapter 35.

Final Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this rule may have a significant impact on a substantial number of small entities in NAICS Sector 81, Other Services. As described above, this rule may affect small entities seeking Federal contracts, SBA (7a) and 504 Guaranteed Loan Programs, SBA Economic Injury Disaster Loans, and other Federal small business programs.

Immediately below, SBA sets forth a final regulatory flexibility analysis of this final rule addressing the following questions: (1) What is the need for and objective of the rule? (2) what is SBA's description and estimate of the number of small entities to which the rule will apply? (3) what are the projected reporting, record keeping, and other compliance requirements of the rule? (4) what are the relevant Federal rules which may duplicate, overlap or conflict with the rule? and (5) what alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

(1) What is the need for and objective of the rule?

Most of SBA's size standards for the Other Services industries have not been reviewed since the early 1980s, and many have not been changed since the 1960s, except for periodic adjustments for inflation. Technology, productivity growth, international competition, mergers and acquisitions, and updated industry definitions may have changed the structure of many industries. Such changes can be sufficient to support a revision to size standards for some industries. Based on an analysis of the latest data available to the Agency, SBA believes that the revised standards in this final rule more appropriately reflect the size of businesses in those industries that need Federal assistance.

(2) What is SBA's description and estimate of the number of small entities to which the rule will apply?

In this final rule, SBA estimates that approximately 1,400 additional firms will become small because of increases in size standards in the 18 industries within Sector 81. That represents about 1.8 percent of approximately 75,500 total firms in those industries. This will

result in an increase in the small business share of total industry receipts for that Sector from 59.0 percent under the current size standards to 63.5 percent under the revised standards.

(3) What are the projected reporting, recordkeeping, and other compliance requirements of the rule and an estimate of the classes of small entities which will be subject to the requirements?

A new size standard does not impose any additional reporting or recordkeeping requirements on small entities. However, qualifying for Federal procurement and a number of other programs requires that entities register in the Central Contractor Registration (CCR) database and certify at least annually that they are small in the Online Representations and Certifications Application (ORCA). Therefore, businesses opting to participate in those programs must comply with CCR and ORCA requirements. There are no costs associated with either CCR registration or ORCA certification. Revising size standards alters the access to SBA programs that assist small businesses, but does not impose a regulatory burden as they neither regulate nor control business behavior.

(4) What are the relevant Federal rules which may duplicate, overlap or conflict with the rule?

This rule overlaps with other Federal rules that use SBA's size standards to define a small business. Under § 3(a)(2)(C) of the Small Business Act, 15 U.S.C. 632(a)(2)(C), Federal agencies must use SBA's size standards to define a small business, unless specifically authorized by statute. In 1995, SBA published in the **Federal Register** a list of statutory and regulatory size standards that identified the application of SBA's size standards as well as other size standards used by Federal agencies (60 FR 57988, dated November 24, 1995). SBA is not aware of any Federal rule that would duplicate or conflict with establishing size standards.

However, the Small Business Act and SBA's regulations allow Federal agencies to develop different size standards if they believe that SBA's size standards are not appropriate for their programs, with the approval of SBA's Administrator (13 CFR 121.903). The Regulatory Flexibility Act authorizes an Agency to establish an alternative small business definition, after consultation with the Office of Advocacy of the U.S. Small Business Administration (5 U.S.C. 601(3)). Thus, there may be instances where this rule conflicts with other rules.

(5) What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

By law, SBA is required to develop numerical size standards for establishing eligibility for Federal small business assistance programs. Other than varying size standards by industry and changing the size measures, no alternative exists to the systems of numerical size standards.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

■ For reasons set forth in the preamble, SBA amends 13 CFR part 121 as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

Subpart A—Size Eligibility Provisions and Standards

■ 1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 636(b), 637(a), 644, 657(a), 657(f), and 662(5); and Pub. L. 105–135, Sec. 401, et seq., 111 Stat, 2592.

■ 2. In § 121.201, in the table, revise the entries for "811122", "811213", "811219", "811412", "812191", "812220", "812320", "812331", "812332", "812921", "812922", "812930", "813211", "813212", "813219", "813311", "813312", and "813920" to read as follows:

§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?

* * * * *

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
*	* * * * *	*	*
811122	Automotive Glass Replacement Shops	$10.0	
*	* * * * *	*	*
811213	Communication Equipment Repair and Maintenance	10.0	
811219	Other Electronic and Precision Equipment Repair and Maintenance	19.0	
*	* * * * *	*	*
811412	Appliance Repair and Maintenance	14.0	
*	* * * * *	*	*
812191	Diet and Weight Reducing Centers	19.0	
*	* * * * *	*	*
812220	Cemeteries and Crematories	19.0	
*	* * * * *	*	*
812320	Dry-cleaning and Laundry Services (except Coin-Operated)	5.0	
812331	Linen Supply	30.0	
812332	Industrial Launderers	35.5	
*	* * * * *	*	*
812921	Photo Finishing Laboratories (except One-Hour)	19.0	

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
812922	One-Hour Photo Finishing	$14.0	
812930	Parking Lots and Garages	35.5	
*	*	*	*
813211	Grantmaking Foundations	30.0	
813212	Voluntary Health Organizations	25.5	
813219	Other Grant Making and Giving Services	35.5	
813311	Human Rights Organizations	25.5	
813312	Environment, Conservation and Wildlife Organizations	14.0	
*	*	*	*
813920	Professional Organizations	14.0	
*	*	*	*

Dated: September 10, 2010.

Marie C. Johns,

Deputy Administrator.

[FR Doc. 2010–24860 Filed 10–5–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AF69

Small Business Size Standards: Retail Trade

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: The United States Small Business Administration (SBA) is modifying 47 small business size standards for industries in North American Industry Classification System (NAICS) Sector 44–45, Retail Trade, and retaining the current standards for the remaining industries in the Sector. In this final rule, SBA is increasing 46 of the size standards and converting the measure of size for one industry (NAICS 441110, New Car Dealers) from annual receipts to number of employees. As part of its ongoing initiative to review all size standards, SBA has evaluated every industry in NAICS Sector 44–45 to determine whether the existing size standards should be retained or revised. This rule also modifies SBA's Small Business Size Regulations to clarify that an NAICS code that represents a Wholesale Trade (NAICS Sector 42) or Retail Trade (NAICS Sector 44–45) Industry shall not be used for the Federal government's procurement of supplies.

DATES: This rule is effective November 5, 2010.

FOR FURTHER INFORMATION CONTACT: Carl Jordan, Program Analyst, Office of Size Standards, (202) 205–6618 or *sizestandards@sba.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

To determine eligibility for Federal small business assistance programs, SBA establishes small business size definitions (referred to as size standards) for private sector industries in the United States. SBA's existing size standards use two primary measures of business size—annual receipts and number of employees. Financial assets, electric output and refining capacity are used as size measures for a few specialized industries. In addition, SBA's Small Business Investment Company (SBIC) and the Certified Development Company (CDC) Programs determine small business eligibility using either the industry based size standards or net worth and net income based size standards. Currently, SBA's size standards consist of 45 different size levels, covering 1,141 NAICS industries and 17 sub-industry activities. Of these size levels, 32 are based on average annual receipts, eight are based on number of employees, and five are based on other measures. In addition, SBA has established 11 other size standards for its financial and procurement programs.

Over the years, SBA has received comments that its size standards have not kept up with changes in the economy and, in particular, that they do not reflect changes in the Federal contracting marketplace. The last overall review of size standards occurred during the late 1970s and early 1980s. Since then, most reviews of size standards have been limited to in-depth analyses of specific industries in response to requests from the public and Federal agencies. SBA also makes periodic inflation adjustments to its monetary based size standards. The latest inflation adjustment to size standards was published in the **Federal Register** on July 18, 2008 (73 FR 41237).

SBA recognizes that changes in industry structure and the Federal marketplace over time have rendered existing size standards for some industries no longer supportable by current data. Accordingly, SBA has begun a comprehensive review of its size standards to determine whether existing size standards have supportable bases relative to the current data and, where necessary, to make revisions to existing size standards. Rather than review all size standards at one time, SBA has taken a more manageable approach to reviewing a group of related industries within an NAICS Sector. SBA expects to complete its review of all NAICS Sectors in two years.

As part of its ongoing effort to review all small business size standards, SBA evaluated every industry in NAICS Sector 44–45, Retail Trade, to determine whether the existing size standards should be retained or revised, and published a proposed rule for public comment in the October 21, 2009 issue of the **Federal Register** (74 FR 53924) to increase the size standards for 47 industries in that Sector. The proposed rule was one of a series of proposals that will examine industries grouped by an NAICS Sector. SBA also published concurrently in the same October 21, 2009 issue of the **Federal Register** proposed rules to increase small business size standards for five industries in NAICS Sector 72, Accommodation and Food Services (74 FR 53913) and for 18 industries in NAICS Sector 81, Other Services (74 FR

53941). Similarly, SBA is publishing final rules on NAICS Sector 72 and NAICS Sector 81 elsewhere in this issue of the **Federal Register**.

In addition, SBA established its "Size Standards Methodology" for reviewing small business size standards and modifying them, where necessary. SBA published in the October 21, 2009 issue of the **Federal Register** (74 FR 53940) a notice of its availability, for public comments, on its Web site at *http://www.sba.gov/contractingopportunities/officials/size/index.html.* In addition, SBA has placed a copy of its "Size Standards Methodology" in the electronic docket of the proposed rule and is available there as well.

In evaluating an industry's size standard, SBA examines the industry's characteristics (such as average firm size, startup costs, industry competition and distribution of firms by size), Federal Government contracting trends, impact on SBA financial assistance programs, and dominance in field of operations. SBA analyzed the characteristics of each industry in NAICS Sector 44–45 mostly using a special tabulation obtained from the U.S. Bureau of the Census from its 2002 Economic Census (the latest available). SBA also evaluated Federal contracting trends using the data from the Federal Procurement Data System—Next Generation (FPDS–NG) for fiscal years 2006–2008. Although FPDS–NG contains data representing Federal procurement activity in Sector 44–45 and SBA reviewed it, the procurement data are not relevant to SBA's action in this final rule because retail trade size standards do not apply to Federal contracting. Rather, the 500 employee nonmanufacturer rule applies to the Federal government's procurement of goods and supplies. (13 CFR 121.406(b)). Therefore, procurement data do not form a basis on which to establish, evaluate or modify small business size standards in this Sector.

To evaluate the impact of changes to size standards on its loan programs, SBA analyzed internal data on its guaranteed loan programs for fiscal years 2006–2008.

SBA's "Size Standards Methodology" provides a detailed description of analyses of various industry and program factors and data sources and derivation of size standards using the results. In the proposed rule itself, SBA detailed how it applied "Size Standards Methodology" to review, and to modify where necessary, the existing standards for the Sector and Industries under analysis.

SBA sought comments from the public on a number of issues about its "Size Standards Methodology," such as whether there are alternative methodologies that SBA should consider; whether there are alternative or additional factors or data sources that SBA should evaluate; whether SBA's approach to establishing small business size standards makes sense in the current economic environment; whether SBA's definitions of anchor size standards are appropriate in the current economy; whether there are gaps in SBA's methodology because of the lack of comprehensive data; and whether there are other facts or issues that SBA should consider in its methodology.

SBA did not receive any comments on "Size Standards Methodology." SBA continues to welcome comments from interested parties.

In the proposed rule, based on its analyses of current industry and other relevant data, SBA proposed to increase 47 of the 76 size standards in NAICS Sector 44–45. SBA's analyses supported retaining the existing size standards for five industries. As noted in the proposed rule, SBA's analyses would support reducing size standards for the remaining 23 industries in the Sector. However, as the proposed rule pointed out, SBA believes that lowering size standards and thereby reducing the number of firms eligible to participate in Federal small business assistance programs would run counter to what the Agency is doing to help small businesses. Therefore, SBA proposed to retain the existing size standards for those 23 industries.

SBA also proposed to revise the language in 13 CFR 121.402(b) to be consistent with the revised Sector headings in the table of size standards by deleting the last sentence and replacing it with "Acquisitions for supplies must be classified under the appropriate manufacturing NAICS code, not under a wholesale trade or retail trade NAICS code. A concern that submits an offer or quote for a contract or subcontract where the NAICS code assigned to the contract or subcontract is one for supplies, and furnishes a product it did not itself manufacture or produce, is categorized as a nonmanufacturer and deemed small if it has 500 or fewer employees and meets the requirements of 13 CFR 121.406."

Summary of Comments

The proposed rule sought comments from the public on SBA's proposal to increase 47 industry size standards in NAICS Sector 44–45, Retail Trade, and retain the remaining 29. SBA also requested comments on whether it should simplify size standards by reducing them to eight fixed levels. SBA received five comments, each of which is discussed below.

One commenter strongly supported the proposed increases to size standards and requested SBA to expedite its review of another NAICS Sector in which the commenter's company was active. SBA intends to review all size standards in each NAICS Sector in a timely manner.

Another commenter suggested that there should be only one maximum revenue based and one maximum employee based size standard, regardless of NAICS industry. While this would simplify size standards even more than what SBA had proposed, the Small Business Act states that "the [SBA] Administrator shall ensure that the size standard varies from industry to industry to the extent necessary to reflect the differing characteristics of the various industries and consider other factors deemed to be relevant by the Administrator." (15 U.S.C. 632(a)(3)). The relevant data show significant differences among industries within each NAICS Sector, including Sector 44–45, and SBA believes that varying the size standard by industry not only complies with the Act, but it also serves the best interests of small businesses in that Sector. Therefore, SBA does not presently plan to reduce the number of receipts based size standard levels below eight.

A commenter stated that there exist "major economic disadvantages between a small business designated to have 500 employees and those that have 10 or less." Specifically, the commenter was concerned with the effects the various size standards have on competition for contract bidding. However, because small business size standards for industries in NAICS Sector 44–45 do not apply to Federal government contracting SBA's proposed standards would have little competitive implications for government contracting. For the Federal government's procurement of manufactured products the 500 employee nonmanufacturer rule applies in lieu of the individual standards for industries in NAICS Sector 44–45, Retail Trade. (13 CFR 121.406(b)). The commenter also suggested SBA designate a separate sub-group of truly small businesses and give them special preference for competing for smaller government contracts. While this would give truly small businesses an economic advantage over their larger counterparts, the Small Business Act authorizes the SBA Administrator to establish only one definition of small business for an industry.

An association representing new automobile dealers stated that it could not support SBA's proposed increase in the size standard for NAICS 441110, New Car Dealers, from $29 million to $30 million in average annual receipts and that it would be unlikely to support one even at $35.5 million. The association also indicated that, because of the high values and sale prices of new cars, a receipts based size standard is no longer practical or appropriate for New Car Dealers. In the proposed rule, SBA had considered 100 employees as an alternative to the proposed $30 million receipts based standard and had sought comments on whether an employee based size standard would be more appropriate for that industry. The association acknowledged that 100 employees would cover about 80 percent of single location dealerships and thus would be consistent with SBA's historical objectives. However, it was concerned that a 100 employee standard would not cover, under SBA's affiliation rule, larger dealers with two or more stores. The association, therefore, recommended 200 employees as the more appropriate size standard for New Car Dealers. The association further noted that the U.S. Department of Transportation (DOT) has adopted 200 employees as a size standard for car rental agencies at the Nation's airports under its concessionaire program. 72 FR 15614 (April 2, 2007).

Size standards for industries in NAICS Sector 44–45 primarily apply to SBA's loan and other financing programs. SBA has recently broadened and enhanced its 7(a) Business Loan Guarantee Program making its financing terms more favorable for small businesses, including New Car Dealers. As part of that effort, SBA extended, as a pilot program, its 7(a) Business Loan Guarantee Program to Dealer Floor Plan Financing. Therefore, in this final rule, SBA is adopting 200 employees as the size standard for NAICS 441110, New Car Dealers. This will enable more car dealers to participate in SBA's financing programs than under the proposed $30 million receipts based size standard. This is consistent with the Agency's ongoing efforts to assist more small businesses, including New Car Dealers. SBA's decision to establish a 200 employee standard for NAICS 441110, New Car Dealers, is consistent with DOT's adoption of 200 employees as a standard for its program.

An association representing marine manufacturers commented on SBA's proposed size standards for NAICS 441221, Motorcycle, ATV and Personal Watercraft Dealers (proposed increase from $7 million to $14 million), NAICS 441222, Boat Dealers (proposed increase from $7 million to $14 million) and NAICS 441210, Recreational Vehicle Dealers (proposed increase from $7 million to $30 million). The association expressed concern about the size standard for boat dealers as it affects their access to SBA's business and Dealer Floor Plan loans. When dealers cannot obtain financing it affects manufacturers and their ability to provide them with products. In its comment, the association stated that there are many similarities among the three industries cited above and suggested that SBA establish a common size standard for all three. Many vendors do not limit their sale to only one product. Rather, they carry and sell products that might otherwise be categorized in one of the other two NAICS codes. Adopting a common size standard for these three retail industries could be compared to SBA's having established a common size standard for four Information Technology industries in NAICS Sector 54, Professional, Scientific and Technical Services, because of the similarities among those industries. It is customary in those industries for businesses to have capabilities to provide multiple services. SBA concurs that these three retail industries are sufficiently alike and would likely be better served with a common size standard. Therefore, in this final rule, SBA is adopting $30 million as the common size standard for NAICS 441221, Motorcycle, ATV and Personal Watercraft Dealers, NAICS 441222, Boat Dealers, and NAICS 441210, Recreational Vehicle Dealers.

SBA did not receive any comments on whether it should lower the size standards for the 23 industries in NAICS Sector 44–45 for which SBA's analyses supported reducing the existing size standards. SBA also did not receive any comments on five industries for which SBA's analyses supported retaining the existing size standards. Therefore, SBA is retaining the existing size standards for 28 of the 76 Industries in NAICS Sector 44–45. SBA is also adopting the language as proposed to amend 13 CFR 121.402.

All comments to the proposed rule are available for public review at *http://www.regulations.gov.*

Conclusion

Based on its analyses of relevant industry and program data and public comments it received on the proposed rule, SBA has decided to increase 46 small business size standards and to convert the receipt based size standard to the employee based size standard for one industry as shown in the following table.

SUMMARY OF PROPOSED AND ADOPTED SIZE STANDARD REVISIONS IN NAICS SECTOR 44–45

[All dollar values in the table are in millions]

NAICS	Current size standard	Proposed size standard	Adopted size standard
441110—New Car Dealers	$29.0	$30.0	200 employees
441210—Recreational Vehicle Dealers	7.0	30.0	$30.0
441221—Motorcycle, ATV, and Personal Watercraft Dealers	7.0	14.0	$30.0
441222—Boat Dealers	7.0	14.0	$30.0
441229—Except, Aircraft Dealers, Retail	10.0	25.5	$25.5
441310—Automotive Parts and Accessories Stores	7.0	14.0	$14.0
441320—Tire Dealers	7.0	14.0	$14.0
442110—Furniture Stores	7.0	19.0	$19.0
442299—All Other Home Furnishings Stores	7.0	19.0	$19.0
443111—Household Appliance Stores	9.0	10.0	$10.0
443112—Radio, Television and Other Electronics Stores	9.0	25.5	$25.5
443120—Computer and Software Stores	9.0	25.5	$25.5
443130—Camera and Photographic Supplies Stores	7.0	19.0	$19.0
444110—Home Centers	7.0	35.5	$35.5
444120—Paint and Wallpaper Stores	7.0	25.5	$25.5
444190—Other Building Material Dealers	7.0	19.0	$19.0
444220—Nursery and Garden Centers	7.0	10.0	$10.0

SUMMARY OF PROPOSED AND ADOPTED SIZE STANDARD REVISIONS IN NAICS SECTOR 44–45—Continued

[All dollar values in the table are in millions]

NAICS	Current size standard	Proposed size standard	Adopted size standard
445110—Supermarkets and Other Grocery (except Convenience) Stores	27.0	30.0	$30.0
446110—Pharmacies and Drug Stores	7.0	25.5	$25.5
446120—Cosmetics, Beauty Supplies and Perfume Stores	7.0	25.5	$25.5
446130—Optical Goods Stores	7.0	19.0	$19.0
446191—Food (Health) Supplement Stores	7.0	14.0	$14.0
447190—Other Gasoline Stations	9.0	14.0	$14.0
448110—Men's Clothing Stores	9.0	10.0	$10.0
448120—Women's Clothing Stores	9.0	25.5	$25.5
448130—Children's and Infants' Clothing Stores	7.0	30.0	$30.0
448140—Family Clothing Stores	9.0	35.5	$35.5
448150—Clothing Accessories Stores	7.0	14.0	$14.0
448190—Other Clothing Stores	7.0	19.0	$19.0
448210—Shoe Stores	9.0	25.5	$25.5
448310—Jewelry Stores	7.0	14.0	$14.0
448320—Luggage and Leather Goods Stores	7.0	25.5	$25.5
451110—Sporting Goods Stores	7.0	14.0	$14.0
451120—Hobby, Toy and Game Stores	7.0	25.5	$25.5
451130—Sewing, Needlework and Piece Goods Stores	7.0	25.5	$25.5
451140—Musical Instrument and Supplies Stores	7.0	10.0	$10.0
451211—Book Stores	7.0	25.5	$25.5
451220—Prerecorded Tape, Compact Disc and Record Stores	7.0	30.0	$30.0
452111—Department Stores (except Discount Department Stores)	27.0	30.0	$30.0
452990—All Other General Merchandise Stores	11.0	30.0	$30.0
453210—Office Supplies and Stationery Stores	7.0	30.0	$30.0
453910—Pet and Pet Supplies Stores	7.0	19.0	$19.0
453930—Manufactured (Mobile) Home Dealers	13.0	14.0	$14.0
454111—Electronic Shopping	25.0	30.0	$30.0
454112—Electronic Auctions	25.0	35.5	$35.5
454113—Mail Order Houses	25.0	35.5	$35.5
454210—Vending Machine Operators	7.0	10.0	$10.0

SBA's proposed rule indicated that its analysis might justify proposing reductions to size standards for 23 industries in this Sector. However, SBA has opted not to reduce the size standards for these industries for the reasons given in the proposed rule and above in this rule. Lowering small business size standards would be inconsistent with its ongoing effort to promote small business assistance under the Recovery Act.

Compliance With Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C., Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this final rule is a "significant" regulatory action for purposes of Executive Order 12866. Accordingly, the next section contains SBA's Regulatory Impact Analysis. This is not a major rule, however, under the Congressional Review Act, 5 U.S.C. 800.

Regulatory Impact Analysis

Is there a need for the regulatory action?

SBA believes that adjustments to certain size standards in NAICS Sector 44–45, Retail Trade, are needed to better reflect the changes in economic characteristics of small businesses in those industries. SBA provides aid and assistance to small businesses through a variety of financial, procurement, business development and advocacy programs. To assist the intended beneficiaries of these programs effectively, SBA must establish distinct definitions to determine which businesses are deemed small businesses. The Small Business Act (15 U.S.C. 632(a)) delegates to the SBA's Administrator the responsibility for establishing small business definitions. The Act also requires that small business definitions vary to reflect industry differences. The supplementary information section of the proposed rule explained in detail SBA's methodology for analyzing a size standard for a particular industry.

What are the potential benefits and costs of this regulatory action?

The most significant benefit to businesses obtaining small business status as a result of this rule is eligibility for Federal small business assistance programs, including SBA's financial assistance programs. Since NAICS codes in Sector 44–45, Retail Trade, may not be used for Federal government procurement programs, the size standard changes adopted in this final rule will not provide benefits to companies when they participate in these programs, and there will not be any additional costs to the Federal government's procurement programs resulting from these changes. Other Federal agencies also may use SBA size standards for a variety of regulatory and program purposes. Through the assistance of these programs, small businesses become more knowledgeable, stable and competitive.

In the 46 industries (including one sub-industry) in NAICS Sector 44–45 for which SBA is increasing size standards, SBA estimates that about 8,700 additional firms will obtain small business status and become eligible for Federal small business assistance programs. Similarly, in one industry, namely New Car Dealers, for which SBA is changing the size standard from $29 million in average annual receipts to 200 employees, the Agency estimates that about 5,700 additional businesses will gain small business eligibility for these programs. In the 23 industries for which SBA's analyses supported reducing the existing size standards, about 5,900 firms might have lost their

small business designation had SBA decided to reduce them. Thus, the net impact for the Sector as a whole is about 14,400 additional firms gaining and none losing small business status under this rule. SBA estimates that this will increase the small business share of total industry receipts for the Sector from 27 percent under the current size standards to 38 percent under the revised standards.

The benefits of increasing size standards to a more appropriate level will accrue to two groups: (1) Businesses that are above the current size standards will benefit by gaining small business status under the higher size standards, thereby being able to participate in Federal small business assistance programs; and (2) growing small businesses that are close to exceeding the current size standards will be able to retain their small business status under the higher size standards, thereby being able to continue their participation in the programs.

Nearly 72 percent of Federal contracting dollars spent in NAICS Sector 44–45 during fiscal years 2006–2008 was accounted for by six of the 47 industries for which size standards have been modified in this rule. If NAICS codes in Sector 44–45 could be used for Federal contracting, SBA estimates that additional firms gaining small business status in those six industries under the proposed size standards could obtain Federal contracts totaling up to between $80 million and $100 million per year. This represents nearly 2.0 percent of the $4.7 billion in average Federal contracts awarded to the Retail Trade Sector during fiscal years 2006–2008. The added competition for many of these procurements also would likely result in a lower price to the Government for procurements reserved for small businesses, but SBA is not able to quantify this benefit. However, as stated above, NAICS codes in this Sector may not be used for Federal Government procurement. SBA anticipates that the contracting amounts identified in this Sector will be redistributed in the future to contracts identified by their correct NAICS codes in NAICS Sector 31–33, Manufacturing. (13 CFR 121.402(b)).

Under SBA's 7(a) Guaranteed Loan Program and Certified Development Company (CDC) Program, SBA estimates that approximately 75 to 100 additional loans totaling between $35 million and $50 million in new Federal loan guarantees could be made to these newly defined small businesses under the revised size standards. Because of the size of the loan guarantees, however, most loans are made to small businesses well below the size standard. SBA has also applied its CDC alternative size standard to its 7(a) Business Loan Program, and as a result small businesses have greater access to capital. Thus, increasing the size standards will likely result in an increase in small business guaranteed loans to businesses in these industries, but it would be impractical to try to estimate the extent of their number and the total amount of loans.

The newly defined small businesses under the revised standards will also benefit from SBA's Economic Injury Disaster Loan (EIDL) Program. Since this program is contingent on the occurrence and severity of a disaster, no meaningful estimate of benefits can be projected for future disasters.

To the extent these 14,400 additional firms that will become small under the revised size standards would like to apply for SBA loans, there may be some additional administrative costs to the Federal Government associated with SBA's guaranteed lending programs. With an increase in the number of businesses seeking SBA assistance, there could be some additional costs associated with compliance and verification of small business status. These additional costs are likely to be minimal because necessary mechanisms are already in place to handle these additional administrative requirements.

The adopted size standards may have some distributional effects between large and small businesses, but SBA cannot quantify such effects, mainly because data on Federal procurement for NAICS Sector 44–45 are not accurate due to their being misclassified. Procurements for supplies coded in Sector 44–45, Retail Trade, should have been coded in NAICS Sector 31–33, Manufacturing.

The revisions to the existing size standards for Retail Trade industries that SBA is adopting in this rule are consistent with SBA's statutory mandate to assist small business. This regulatory action promotes the Administration's objectives. One of SBA's goals in support of the Administration's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit, Government contracts, and management and technical assistance. Reviewing and modifying size standards, when appropriate, ensures that intended beneficiaries have access to small business programs designed to assist them.

Executive Order 12988: For purposes of Executive Order 12988, Civil Justice Reform, SBA has determined that this rule is drafted, to the extent practicable, in accordance with the standards set forth in §§ 3(a) and 3(b)(2), to minimize litigation, eliminate ambiguity and reduce burden.

Executive Order 13132: For purposes of Executive Order 13132, SBA has determined that this rule has no federalism implications warranting preparation of a federalism assessment.

Paperwork Reduction Act: For purposes of the Paperwork Reduction Act, 44 USC Chapter 35, SBA has determined that this final rule does not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act.

Final Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this rule may have a significant impact on a substantial number of small entities in Sector 44–45, Retail Trade. As described above, this rule may affect small entities seeking SBA 7(a) and 504 Guaranteed Loan Programs, SBA Economic Injury Disaster Loans, and other Federal small business programs.

Immediately below, SBA sets forth a final regulatory flexibility analysis of this final rule addressing the following questions: (1) What is the need for and objective of the rule? (2) What is SBA's description and estimate of the number of small entities to which the rule will apply? (3) What are the projected reporting, record keeping, and other compliance requirements of the rule? (4) What are the relevant Federal rules which may duplicate, overlap or conflict with the rule? and (5) What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

(1) What is the need for and objective of the rule?

Most of SBA's size standards for the Retail Trade industries have not been reviewed since the early 1980s, and many have not been changed since the 1960s, except for periodic adjustments for inflation. Technology, productivity growth, international competition, mergers and acquisitions, and updated industry definitions may have changed the structure of many industries. Such changes can be sufficient to support a revision to size standards for some industries. Based on its analysis of the latest data available to the Agency, SBA believes that the revised standards in this final rule more appropriately reflect the size of businesses in those industries that need Federal assistance.

(2) What is SBA's description and estimate of the number of small entities to which the rule will apply?

In this final rule, as detailed in the regulatory impact analysis above, SBA estimates that approximately 14,400 additional firms will become small within NAICS Sector 44–45 because of increases in 46 small size standards and a change in one size standard from annual receipts to the number of employees. That represents about 3.5 percent of approximately 415,000 total firms in all industries in that Sector. This will result in an increase in the small business share of total industry receipts for that Sector from about 27 percent under the current size standards to about 38 percent under the revised size standards.

(3) What are the projected reporting, recordkeeping, and other compliance requirements of the rule and an estimate of the classes of small entities which will be subject to the requirements?

A new size standard does not impose any additional reporting or recordkeeping requirements on small entities. However, qualifying for Federal procurement and a number of other programs requires that entities register in the Central Contractor Registration (CCR) database and certify at least annually that they are small in the Online Representations and Certifications Application (ORCA). Although NAICS codes from Sector 44–45, Retail Trade, do not apply to Federal Government procurement programs, business entities in this Sector might choose to participate in other Federal programs for which CCR registration might be required. Therefore, businesses opting to participate in those programs must comply with CCR and ORCA requirements. There are no costs associated with either CCR registration or ORCA certification. Revising size standards alters the access to SBA programs that assist small businesses, but does not impose a regulatory burden as they neither regulate nor control business behavior.

(4) What are the relevant Federal rules which may duplicate, overlap or conflict with the rule?

This rule overlaps with other Federal rules that use SBA's size standards to define a small business. Under 3(a)(2)(C) of the Small Business Act, 15 U.S.C. 632(a)(2)(C), Federal agencies must use SBA's size standards to define a small business, unless specifically authorized by statute. In 1995, SBA published in the **Federal Register** a list of statutory and regulatory size standards that identified the application of SBA's size standards as well as other size standards used by Federal agencies (60 FR 57988, November 24, 1995). SBA is not aware of any Federal rule that would duplicate or conflict with establishing size standards.

However, the Small Business Act and SBA's regulations allow Federal agencies to develop different size standards if they believe that SBA's size standards are not appropriate for their programs, with the approval of SBA's Administrator (13 CFR 121.903). The Regulatory Flexibility Act authorizes an Agency to establish an alternative small business definition, after consultation with the Office of Advocacy of the U.S. Small Business Administration (5 U.S.C. 601(3)). Thus, there may be instances where this rule conflicts with other rules.

(5) What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

By law, SBA is required to develop numerical size standards for establishing eligibility for Federal small business assistance programs. Other than varying size standards by industry and changing the size measures, no alternative exists to the system of numerical size standards. SBA considered a 100 employee size standard for NAICS 441110, New Car Dealers, as an alternative to its historical receipts based size standard. Although SBA proposed an increase to the receipts based standard for the industry, it did ask for comments on whether it should adopt one based on number of employees. Based on the comments SBA received, in this final rule SBA has adopted 200 employees as the standard for this industry.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

■ For reasons set forth in the preamble, SBA amends 13 CFR part 121 as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

Subpart A—Size Eligibility Provisions and Standards

■ 1. The authority citation for 13 CFR part 121 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 636(b), 637(a), 644, 657(a), 657(f), and 662(5); and Pub. L. 105–135, Sec. 401, et seq., 111 Stat, 2592.

■ 2. Amend 121.201 in the table by revising the entries for:

■ a. Sector 42—Wholesale Trade;

■ b. Sector 44–45—Retail Trade; and

■ c. "441110", "441210", "441221", "441222", "441229 Except", "441310", "441320", "442110", "442299", "443111", "443112", "443120", "443130", "444110", "444120", "444190", "444220", "445110", "446110", "446120", "446130", "446191", "447190", "448110", "448120", "448130", "448140", "448150", "448190", "448210", "448310", "448320", "451110", "451120", "451130", "451140", "451211", "451220", "452111", "452990", "453210", "453910", "453930", "454111", "454112", "454113", and "454210".

The revisions read as follows:

121.201 What size standards has SBA identified by North American Industry Classification System codes?

* * * * *

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
*	* * * * *	*	*
	Sector 42—Wholesale Trade		
(These NAICS codes shall not be used to classify Government acquisitions for supplies. They also shall not be used by Federal Government contractors when subcontracting for the acquisition for supplies. The applicable manufacturing NAICS code shall be used to classify acquisitions for supplies. A Wholesale Trade or Retail Trade business concern submitting an offer or a quote on a supply acquisition is categorized as a nonmanufacturer and deemed small if it has 500 or fewer employees and meets the requirements of 13 CFR 121.406.)			

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
*	*	*	*
	Sector 44–45—Retail Trade		
(These NAICS codes shall not be used to classify Government acquisitions for supplies. They also shall not be used by Federal Government contractors when subcontracting for the acquisition for supplies. The applicable manufacturing NAICS code shall be used to classify acquisitions for supplies. A Wholesale Trade or Retail Trade business concern submitting an offer or a quote on a supply acquisition is categorized as a nonmanufacturer and deemed small if it has 500 or fewer employees and meets the requirements of 13 CFR 121.406.)			
*	*	*	*
441110	New Car Dealers		200
*	*	*	*
441210	Recreational Vehicle Dealers	$30.0	
441221	Motorcycle, ATV, and Personal Watercraft Dealers	30.0	
441222	Boat Dealers	30.0	
441229	Aircraft Dealers, Retail	25.5	
Except,			
441310	Automotive Parts and Accessories Stores	14.0	
441320	Tire Dealers	14.0	
*	*	*	*
442110	Furniture Stores	19.0	
*	*	*	*
442299	All Other Home Furnishings Stores	19.0	
*	*	*	*
443111	Household Appliance Stores	10.0	
443112	Radio, Television and Other Electronics Stores	25.5	
443120	Computer and Software Stores	25.5	
443130	Camera and Photographic Supplies Stores	19.0	
*	*	*	*
444110	Home Centers	35.5	
444120	Paint and Wallpaper Stores	25.5	
*	*	*	*
444190	Other Building Material Dealers	19.0	
*	*	*	*
444220	Nursery and Garden Centers	10.0	
*	*	*	*
445110	Supermarkets and Other Grocery (except Convenience) Stores	30.0	
*	*	*	*
446110	Pharmacies and Drug Stores	25.5	
446120	Cosmetics, Beauty Supplies and Perfume Stores	25.5	
446130	Optical Goods Stores	19.0	
446191	Food (Health) Supplement Stores	14.0	
*	*	*	*
447190	Other Gasoline Stations	14.0	
*	*	*	*
448110	Men's Clothing Stores	10.0	
448120	Women's Clothing Stores	25.5	
448130	Children's and Infants' Clothing Stores	30.0	
448140	Family Clothing Stores	35.5	
448150	Clothing Accessories Stores	14.0	
448190	Other Clothing Stores	19.0	
448210	Shoe Stores	25.5	
448310	Jewelry Stores	14.0	
448320	Luggage and Leather Goods Stores	25.5	
*	*	*	*
451110	Sporting Goods Stores	14.0	

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
451120	Hobby, Toy and Game Stores	25.5	
451130	Sewing, Needlework and Piece Goods Stores	25.5	
451140	Musical Instrument and Supplies Stores	10.0	
451211	Book Stores	25.5	
*	* * * * *	*	*
451220	Prerecorded Tape, Compact Disc and Record Stores	30.0	
*	* * * * *	*	*
452111	Department Stores (except Discount Department Stores)	30.0	
*	* * * * *	*	*
452990	All Other General Merchandise Stores	30.0	
*	* * * * *	*	*
453210	Office Supplies and Stationary Stores	30.0	
*	* * * * *	*	*
453910	Pet and Pet Supplies Stores	19.0	
*	* * * * *	*	*
453930	Manufactured (Mobile) Home Dealers	14.0	
*	* * * * *	*	*
454111	Electronic Shopping	30.0	
454112	Electronic Auctions	35.5	
454113	Mail Order Houses	35.5	
454210	Vending Machine Operators	10.0	
*	* * * * *	*	*

■ 3. In § 121.402 (b), remove the last sentence and add two new sentences to the end of the paragraph to read as follows:

§ 121.402 What size standards are applicable to Federal Government Contracting programs?

* * * * *

(b) * * *Acquisitions for supplies must be classified under the appropriate manufacturing NAICS code, not under a Wholesale Trade or Retail Trade NAICS code. A concern that submits an offer or quote for a contract or subcontract where the NAICS code assigned to the contract or subcontract is one for supplies, and furnishes a product it did not itself manufacture or produce, is categorized as a nonmanufacturer and deemed small if it has 500 or fewer employees and meets the requirements of 13 CFR 121.406.

* * * * *

Dated: September 10, 2010.

Marie C. Johns,

Deputy Administrator.

[FR Doc. 2010–24855 Filed 10–5–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN: 3245–AF71

Small Business Size Standards; Accommodation and Food Services Industries

AGENCY: Small Business Administration (SBA).

ACTION: Final rule.

SUMMARY: The United States Small Business Administration (SBA) is increasing small business size standards for five industries in North American Industry Classification System (NAICS) Sector 72, Accommodation and Food Services—namely NAICS 721110, Hotels and Motels, from $7.0 million to $30 million; NAICS 721120, Casino Hotels, from $7.0 million to $30 million; NAICS 722211, Limited Service Restaurants, from $7.0 million to $10 million; NAICS 722212, Cafeterias, from $7.0 million to $25.5 million; and NAICS 722310, Food Service Contractors, from $20.5 million to $35.5 million. As part of its ongoing initiative to review all size standards, SBA has evaluated every industry in Sector 72 to determine whether the existing size standards should be retained or revised.

DATES: This rule is effective November 5, 2010.

FOR FURTHER INFORMATION CONTACT: Carl Jordan, Program Analyst, Office of Size Standards, (202) 205–6618 or *sizestandards@sba.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

To determine eligibility for Federal small business assistance programs, SBA establishes small business size definitions (referred to as size standards) for private sector industries in the United States. SBA's existing size standards use two primary measures of business size—annual receipts and number of employees. Financial assets, electric output and refining capacity are used as size measures for a few specialized industries. In addition, SBA's Small Business Investment Company (SBIC) and the Certified Development Company (CDC) Programs determine small business eligibility using either the industry based size standards or net worth and net income based size standards. Currently, SBA's size standards consist of 45 different size levels, covering 1,141 NAICS industries and 17 sub-industry activities. Of these size levels, 32 are based on average annual receipts, eight

are based on number of employees, and five are based on other measures. In addition, SBA has established 11 other size standards for its financial and procurement programs.

Over the years, SBA has received comments that its size standards have not kept up with changes in the economy and, in particular, that they do not reflect changes in the Federal contracting marketplace. The last overall review of size standards occurred during the late 1970s and early 1980s. Since then, most reviews of size standards have been limited to in-depth analyses of specific industries in response to requests from the public and Federal agencies. SBA also makes periodic inflation adjustments to its monetary based size standards. The latest inflation adjustment to size standards was published in the **Federal Register** on July 18, 2008 (73 FR 41237).

SBA recognizes that changes in industry structure and Federal marketplace over time have rendered existing size standards for some industries no longer supportable by current data. Accordingly, SBA has begun a comprehensive review of its size standards to determine whether existing size standards have supportable bases relative to the current data and, where necessary, to make revisions to existing size standards. Rather than review all size standards at one time, SBA has taken a more manageable approach to reviewing a group of related industries within an NAICS Sector. SBA expects to complete its review of all NAICS Sectors in two years.

As part of its ongoing effort to review all small business size standards, SBA evaluated every industry in NAICS Sector 72, Accommodation and Food Services, to determine whether the existing size standards should be retained or revised, and published a proposed rule for public comment in the October 21, 2009 issue of the **Federal Register** (74 FR 53913) to increase the size standards for five industries in that Sector. The proposed rule was one of a series of proposals that will examine industries grouped by an NAICS Sector. SBA also published concurrently in the same October 21, 2009 issue of the **Federal Register** proposed rules to increase small business size standards for 47 industries in NAICS Sector 44–45, Retail Trade (74 FR 53924) and for 18 industries in NAICS Sector 81, Other Services (74 FR 53941). Similarly, SBA is publishing final rules on NAICS Sector 44–45 and NAICS Sector 81 elsewhere in this issue of the **Federal Register**.

In addition, SBA established its "Size Standards Methodology" for reviewing small business size standards and modifying them, where necessary. SBA published in the October 21, 2009 issue of the **Federal Register** (74 FR 53940) a notice of its availability, for public comments, on its Web site at *http://www.sba.gov/contractingopportunities/officials/size/index.html.* In addition, SBA has placed a copy of its "Size Standards Methodology" in the electronic docket of the proposed rule and is available there as well.

In evaluating an industry's size standard, SBA examines the industry's characteristics (such as average firm size, startup costs, industry competition and distribution of firms by size), Federal government contracting trends, impact on SBA financial assistance programs, and dominance in field of operations. SBA analyzed the characteristics of each industry in NAICS Sector 72 mostly using a special tabulation obtained from the U. S. Bureau of the Census from its 2002 Economic Census (the latest available). SBA also evaluated Federal contracting trends using the data from the Federal Procurement Data System—Next Generation (FPDS—NG) for fiscal years 2006–2008.

To evaluate the impact of changes to size standards on its loan programs, SBA analyzed internal data on its guaranteed loan programs for fiscal years 2006–2008.

SBA's "Size Standards Methodology" provides a detailed description of analyses of various industry and program factors and data sources and derivation of size standards using the results. In the proposed rule itself, SBA detailed how it applied its "Size Standards Methodology" to review, and to modify where necessary, the existing standards for the Sector and Industries under analysis.

SBA sought comments from the public on a number of issues about its "Size Standards Methodology," such as whether there are alternative methodologies that SBA should consider; whether there are alternative or additional factors or data sources that SBA should evaluate; whether SBA's approach to establishing small business size standards makes sense in the current economic environment; whether SBA's definitions of anchor size standards are appropriate in the current economy; whether there are gaps in SBA's methodology because of the lack of comprehensive data; and whether there are other facts or issues that SBA should consider in its methodology.

SBA did not receive any comments on "Size Standards Methodology." SBA continues to welcome comments from interested parties.

In the proposed rule, based on its analyses of current industry and other relevant data, SBA proposed to increase five of the 15 size standards in NAICS Sector 72. SBA's analyses supported retaining the existing size standards for three industries. As noted in the proposed rule, SBA's analyses would support reducing size standards for the seven of the remaining industries in the Sector. However, as the proposed rule pointed out, SBA believes that lowering size standards and thereby reducing the number of firms eligible to participate in Federal small business assistance programs would run counter to what the Agency is doing to help small businesses. Therefore, SBA proposed to retain the existing size standards for those seven industries.

Summary of Comments

The proposed rule sought comments from the public on SBA's proposal to increase size standards for five Industries in NAICS Sector 72. SBA received six comments; four strongly supported the proposed increases in size standards and two did not. The four supporting comments stated that the proposed increases will help more small hotels participate in Federal procurement opportunities reserved for small businesses. It will also help the Federal government meet its hotel and conference accommodation needs. The commenters stated that there are too few conference hotels under the current size standards with little competition for federal business.

Another commenter suggested that there should be only one maximum revenue based and one maximum employee based size standard, regardless of NAICS industry. While this would simplify size standards even more than what SBA had proposed, the Small Business Act states that "the [SBA] Administrator shall ensure that the size standard varies from industry to industry to the extent necessary to reflect the differing characteristics of the various industries and consider other factors deemed to be relevant by the Administrator." (15 U.S.C. 632(a)(3)) The relevant data show significant differences among industries within each NAICS Sector, including Sector 72, and SBA believes that varying the size standard by industry not only complies with the Act, but it also serves the best interests of small businesses in that Sector. Therefore, SBA does not presently plan to reduce the number of receipts based size standard levels below eight.

Another commenter stated that an increase from $7 million to $30 million was "too drastic," but provided no

specifics to support this opinion. SBA agrees that such an increase might appear so, but based on its analysis of the industries in Sector 72, fully explained in the proposed rule (*q.v.*), SBA believes that the increases are appropriate.

SBA did not receive any comments on whether it should lower size standards for the seven industries in NAICS Sector 72 for which SBA's analyses supported reducing the existing size standards. SBA also did not receive any comments on three industries for which SBA's analyses supported retaining the existing size standards. Therefore, SBA is retaining the existing size standards for 10 of the 15 Industries in NAICS Sector 72.

All comments to the proposed rule are available for public review at *http://www.regulations.gov.*

Conclusion

Based on its analyses of relevant industry and program data and public comments it received on the proposed rule, SBA has decided to increase five small business size standards in NAICS Sector 72, as shown in the following table.

SUMMARY OF REVISED SMALL BUSINESS SIZE STANDARDS FOR NAICS SECTOR 72

NAICS	Current size standard ($ million)	Revised size standard ($ million)
721110—Hotels (except Casino Hotels) & Motels	$7.0	$30.0
721120—Casino Hotels	7.0	30.0
722211—Limited Service Restaurants	7.0	10.0
722212—Cafeterias	7.0	25.5
722310—Food Service Contractors	20.5	35.5

Compliance With Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C., Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601–612) Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is a "significant" regulatory action for purposes of Executive Order 12866. Accordingly, the next section contains SBA's Regulatory Impact Analysis. This is not a major rule, however, under the Congressional Review Act, 5 U.S.C. 800.

Regulatory Impact Analysis

1. Is there a need for the regulatory action?

SBA believes that adjustments to certain size standards in Sector 72, Accommodation and Food Services, are needed to better reflect the economic characteristics of small businesses in those industries. SBA provides aid and assistance to small businesses through a variety of financial, procurement, business development and advocacy programs. To assist effectively the intended beneficiaries of these programs, SBA must establish distinct definitions of which businesses are deemed small businesses. The Small Business Act (15 U.S.C. 632(a)) delegates to SBA's Administrator the responsibility for establishing small business definitions. The Act also requires that small business definitions vary to reflect industry differences. The supplementary information section of this rule explains SBA's methodology for analyzing a size standard for a particular industry.

2. What are the potential benefits and costs of this regulatory action?

The most significant benefit to businesses obtaining small business status as a result of this rule is eligibility for Federal small business assistance programs, including SBA's financial assistance programs, economic injury disaster loans, and Federal procurement preference programs for small businesses. Federal procurement regulations provide opportunities for small businesses under SBA's business development programs, such as 8(a), Small Disadvantaged Businesses (SDB), small businesses located in Historically Underutilized Business Zones (HUBZone), women owned small businesses and service disabled veteran owned small businesses (SDVOSB). Other Federal agencies also may use SBA size standards for a variety of regulatory and program purposes. Through the assistance of these programs, small businesses become more knowledgeable, stable and competitive businesses. In five industries under Sector 72 for which SBA had proposed to increase size standards, about 2,050 additional firms are estimated to obtain small business status and become eligible for these programs.

In the seven industries for which SBA's analyses indicated a lower size standard as appropriate, there are about 450 firms that might have lost their small business status, had SBA proposed lowering them. That number is less than 0.6 percent of the total number of firms in those industries defined as small under the current standards. Thus, the net impact for the Sector as whole is about 2,050 additional firms gaining and none losing small business status under this rule. This will increase the small business share of total industry receipts for the Sector from about 46 percent under the current size standards to nearly 50 percent under the revised standards.

The benefits of increasing certain size standards to a more appropriate level would accrue to three groups: (1) Businesses that benefit by gaining small business status from the higher size standard that also use small business assistance programs; (2) growing small businesses that may exceed the current size standards in the near future and that will retain their small business status from the higher size standards; and (3) Federal agencies that award contracts under procurement programs that require small business status.

Nearly 90 percent of Federal contracting dollars spent in Sector 72 during fiscal years 2006–2008 was accounted for by two of five industries for which size standards have been increased in this rule. SBA estimates that additional firms gaining small business status in those two industries under the new size standards could potentially obtain Federal contracts totaling up to $75 million per year under the small business set-aside program, the 8(a), HUBZone, and SDVOSB Programs, or unrestricted procurements. This represents about 5.5 percent of the $1.13 billion in average Federal contract dollars awarded in the Accommodation and Food Services Sector during fiscal years 2006–2008. The added competition for many of these procurements will also likely result in a lower price to the Government for procurements reserved

for small businesses, but SBA is not able to quantify this benefit.

Under SBA's 7(a) Guaranteed Loan Program and 504 Certified Development Company (CDC) Program, SBA estimates only a few additional loans totaling $1 million to $2 million in Federal loan guarantees could be made to these newly defined small businesses. Because of the size of the loan guarantees, however, most loans are made to small businesses well below the size standard. Moreover, under the Recovery Act, effective February 17, 2009, SBA temporarily raised guarantees on its SBA's 7(a) loan program and also temporarily eliminated fees for borrowers on SBA 7(a) loans and for both borrowers and lenders on 504 CDC loans, through calendar year 2009, or until the funds are exhausted. The fee elimination is retroactive to February 17, 2009, the day the Recovery Act was signed. In addition, since SBA has applied its CDC alternative size standard to its 7(a) Business Loan Program, more capital is available to small businesses. Thus, increasing the size standards will likely result in an increase in guaranteed loans to businesses in these industries, but it would be impractical to try to estimate the extent of their number and the total amount loaned.

The newly defined small businesses will also benefit from SBA's Economic Injury Disaster Loan (EIDL) Program. Since this program is contingent on the occurrence and severity disasters, no meaningful estimate of benefits can be projected for future disasters.

To the extent that 2,050 additional firms could become active in Federal procurement programs, this may entail some additional administrative costs to the Federal Government associated with additional bidders for Federal small business procurement opportunities, additional firms seeking SBA guaranteed lending programs, additional firms eligible for enrollment in the Central Contractor Registration's Dynamic Small Business Search database and additional firms seeking certification as 8(a) or HUBZone firms or qualifying for SDB status. Among businesses in this group seeking SBA assistance, there could be some additional costs associated with compliance and verification of small business status and protests of small business status. These additional costs are likely to be minimal because mechanisms are already in place to handle these additional administrative requirements.

The costs to the Federal Government may be higher on some Federal contracts. With a greater number of businesses defined as small, Federal agencies may choose to set aside more contracts for competition among small businesses rather than using full and open competition. The movement from unrestricted to set-aside contracting is likely to result in competition among fewer bidders. In addition, higher costs may result from additional full and open contracts awarded to HUBZone and SDB businesses because of price evaluation preferences. The additional costs associated with fewer bidders, however, are likely to be minor since, as a matter of law, procurements may be set aside for small businesses or reserved for the 8(a), SDB or HUBZone Programs only if awards are expected to be made at fair and reasonable prices.

The increased size standards may have distributional effects among large and small businesses. Although the actual outcome of the gains and losses among small and large businesses cannot be estimated with certainty, several likely impacts can be identified. There will likely be a transfer of some Federal contracts to small businesses from large businesses. Large businesses may have fewer Federal contract opportunities as Federal agencies decide to set aside more Federal contracts for small businesses. Also, some Federal contracts may be awarded to HUBZone or SDB concerns instead of large businesses since those two categories of small businesses may be eligible for an evaluation adjustment for contracts competed on a full and open basis. Similarly, currently defined small businesses may obtain fewer Federal contracts due to the increased competition from more businesses defined as small. This transfer may be offset by a greater number of Federal procurements set aside for all small businesses. The number of newly defined and expanding small businesses that are willing and able to sell to the Federal Government will limit the potential transfer of contracts away from large and currently defined small businesses. The potential distributional impacts of these transfers may not be estimated with any degree of precision because the data on the size of business receiving a Federal contract are limited to identifying small or other than small businesses, without regard to the exact size of the business.

The revisions to the existing size standards for Accommodation and Food Services industries is consistent with SBA's statutory mandate to assist small business. This regulatory action promotes the Administration's objectives. One of SBA's goals in support of the Administration's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit, Government contracts, and management and technical assistance. Reviewing and modifying size standards, when appropriate, ensures that intended beneficiaries have access to small business programs designed to assist them.

Executive Order 12988

For purposes of Executive Order 12988, SBA has determined that this rule is drafted, to the extent practicable, in accordance with the standards set forth in that Order.

Executive Order 13132

For purposes of Executive Order 13132, SBA has determined that this rule does not have any Federalism implications warranting the preparation of a federalism assessment.

Paperwork Reduction Act

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this rule would not impose new reporting or recordkeeping requirements, other than those required of SBA.

Final Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this rule may have a significant impact on a substantial number of small entities in Sector 72, Accommodation and Food Services. As described above, this rule may affect small entities seeking Federal contracts, SBA 7(a) and 504 Guaranteed Loan Programs, SBA Economic Injury Disaster Loans, and other Federal small business programs.

Immediately below, SBA sets forth a final regulatory flexibility analysis of this proposed rule addressing the following questions: (1) What is the need for and objective of the rule? (2) what is SBA's description and estimate of the number of small entities to which the rule will apply? (3) what are the projected reporting, record keeping, and other compliance requirements of the rule? (4) what are the relevant Federal rules which may duplicate, overlap or conflict with the rule? and (5) what alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

(1) What is the need for and objective of the rule?

Most of SBA's size standards for Accommodation and Food Services industries have not been reviewed since the early 1980s. Technology, productivity growth, international competition, mergers and acquisitions,

and updated industry definitions may have changed the structure of many industries. Such changes can be sufficient to support a revision to size standards for some industries. Based on an analysis of the latest data available to the Agency, SBA believes that the revised standards in this proposed rule more appropriately reflect the size of businesses in those industries that need Federal assistance.

(2) What is SBA's description and estimate of the number of small entities to which the rule will apply?

SBA estimates that approximately 2,050 additional firms will become small because of increases in size standard in five industries. That represents 1.1 percent of total firms in those industries. This will result in an increase in the small business share of total industry receipts for this Sector from about 46 percent under the current size standard to nearly 50 percent under the revised standards.

(3) What are the projected reporting, recordkeeping, and other compliance requirements of the rule and an estimate of the classes of small entities which will be subject to the requirements?

A new size standard does not impose any additional reporting or recordkeeping requirements on small entities. However, qualifying for Federal procurement and a number of other programs requires that entities register in the Central Contractor Registration (CCR) database and certify at least annually that they are small in the Online Representations and Certifications Application (ORCA). Therefore, businesses opting to participate in those programs must comply with CCR and ORCA requirements. There are no costs associated with either CCR registration or ORCA certification. Revising size standards alters the access to SBA programs that assist small businesses, but does not impose a regulatory burden as they neither regulate nor control business behavior.

(4) What are the relevant Federal rules which may duplicate, overlap or conflict with the rule?

This rule overlaps with other Federal rules that use SBA's size standards to define a small business. Under § 3(a)(2)(C) of the Small Business Act, 15 USC 632(a)(2)(C), Federal agencies must use SBA's size standards to define a small business, unless specifically authorized by statute. In 1995, SBA published in the **Federal Register** a list of statutory and regulatory size standards that identified the application of SBA's size standards as well as other size standards used by Federal agencies (60 FR 57988, November 24, 1995). SBA is not aware of any Federal rule that would duplicate or conflict with establishing size standards.

However, the Small Business Act and SBA's regulations allow Federal agencies to develop different size standards if they believe that SBA's size standards are not appropriate for their programs, with the approval of SBA's Administrator (13 CFR 121.903). The Regulatory Flexibility Act authorizes an Agency to establish an alternative small business definition, after consultation with the Office of Advocacy of the U.S. Small Business Administration (5 U.S.C. 601(3)). Thus, there may be instances where this rule conflicts with other rules.

(5) What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

SBA is required to develop numerical size standards for identifying businesses eligible for Federal small business programs. Other than varying the size standards, no alternative exists to the systems of numerical size standards.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

■ For reasons set forth in the preamble, SBA amends 13 CFR part 121 as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

■ 1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 636(b), 637(a), 644, 657(a), 657(f), and 662(5); and Pub. L. 105–135, Sec. 401, et seq., 111 Stat, 2592.

Subpart A—Size Eligibility Provisions and Standards

■ 2. In § 121.201, in the table, revise the entries for "721110", "721120", "722211","722212", and "722310" to read as follows:

§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?

* * * * *

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
*	* * * * *	*	*
721110	Hotels (except Casino Hotels) and Motels	$30.0	
721120	Casino Hotels	30.0	
*	* * * * *	*	*
722211	Limited-Service Restaurants	10.0	
722212	Cafeterias, Grill Buffets, and Buffets	25.5	
*	* * * * *	*	*
722310	Food Service Contractors	35.5	
*	* * * * *	*	*

Dated: September 10, 2010.

Marie C. Johns,

Deputy Administrator.

[FR Doc. 2010–24857 Filed 10–5–10; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–1136; Airspace Docket No. 09–ANM–26]

Establishment and Modification of Class E Airspace; Deer Park, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will establish and amend existing Class E airspace at Deer Park, WA, to accommodate aircraft using the existing Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) at Deer Park, WA. This will improve the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Effective date, 0901 UTC, January 13, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

On July 19, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend controlled airspace at Deer Park, WA (75 FR 41774). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6002 and 6005, respectively, of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E surface airspace, and adding additional Class E airspace extending upward from 700 feet above the surface, at Deer Park Airport, to accommodate IFR aircraft executing new RNAV (GPS) SIAPs at the airport. This action is necessary for the safety and management of IFR operations.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR Part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR Part 71.1 of the Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010 is amended as follows:

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

ANM WA E2 Deer Park, WA [New]

Deer Park Airport, WA

(Lat. 47°58′01″ N., long. 117°25′43″ W.)

Within a 4.1-mile radius of Deer Park Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

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

* * * * *

ANM WA, E5 Deer Park, WA [Modified]

Deer Park Airport, WA

(Lat. 47°58′01″ N., long. 117°25′43″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Deer Park Airport, excluding the Spokane, WA, Class E airspace area.

Issued in Seattle, Washington, on *September 23, 2010.*

Lori Andriesen,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2010–24804 Filed 10–5–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0616; Airspace Docket No. 10–ANM–6]

Modification of Class E Airspace; Pendleton, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will amend Class E airspace at Pendleton, OR. Decommissioning of the Foris Non-Directional Radio Beacon (NDB) at Eastern Oregon Regional Airport at Pendleton has made this necessary for the safety and management of Instrument Flight Rules (IFR) operations

at the airport. This action also reflects the new name of the airport.

DATES: Effective date, 0901 UTC, January 13, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

On July 20, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend controlled airspace at Pendleton, OR (75 FR 42012). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class E airspace, extending upward from 700 feet above the surface, at Eastern Oregon Regional Airport at Pendleton, Pendleton OR. Decommissioning of the Foris NDB at Eastern Oregon Regional Airport at Pendleton has made this action necessary for the safety and management of IFR operations at the airport. This action will also change the name of the airport from Pendleton Municipal Airport to Eastern Oregon Regional Airport at Pendleton.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR Part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR Part 71.1 of the Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010 is amended as follows:

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

* * * * *

ANM OR E5 Pendleton, OR [Modified]

Eastern Oregon Regional Airport at Pendleton, OR
(Lat. 45°41′42″ N., long. 118°50′29″ W.)
Pendleton VORTAC
(Lat. 45°41′54″ N., long. 118°56′19″ W.)
Hermiston, Hermiston Municipal Airport
(Lat. 45°49′42″ N., long. 119°15′33″ W.)

That airspace extending upward from 700 feet above the surface within a 10.5-mile radius of lat. 45°41′30″ N., long. 118°47′24″ W., and within 4 miles each side of the Pendleton VORTAC 254° radial extending from the 10.5-mile radius to 10.9 miles west of the VORTAC, and within 8.3 miles north and 4.3 miles south of the 090° bearing from the Eastern Oregon Regional Airport at Pendleton extending from the 10.5-mile radius to 20.7 miles east of the Eastern Oregon Regional Airport at Pendleton, and within a 4.3-mile radius of the Hermiston Municipal Airport, and within 2.2 miles each side of the Pendleton VORTAC 300° radial extending from the 4.3-mile radius to the Pendleton VORTAC; that airspace extending upward from 1,200 feet above the surface within 9.6 miles northeast and 6.1 miles southwest of the Pendleton VORTAC 137° radial extending from the 10.5-mile radius to 43.5 miles southeast of the VORTAC, and within 8.7 miles south and 6.1 miles north of the Pendleton 254° radial extending from the 10.5-mile radius to 28.8 miles west of the VORTAC, and within 8.3 miles north and 4.3 miles south of the Pendleton 273° radial extending from the 10.5-mile radius to 16.1 miles west of the VORTAC, and within 5.3 miles southwest and 7.9 miles northeast of the Pendleton 310° radial extending from the 10.5-mile radius to 26.1 miles northwest of the VORTAC, and within 4.3 miles northwest of the 025° radial and 4.3 miles southeast of the 049° radial extending from the 10.5-mile radius to the 30.5-mile radius of the Pendleton VORTAC, and that airspace within the 27.9-mile radius of the Pendleton VORTAC extending clockwise from the southeast edge of V–536 to the northeast edge of V–298.

Issued in Seattle, Washington, on *September 23, 2010.*

Lori Andriesen,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2010–24792 Filed 10–5–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0615; Airspace Docket No. 10–ANM–5]

Modification of Class E Airspace; Arco, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will amend Class E airspace at Arco, ID. Decommissioning of the Arco-Butte County Non-Directional Beacon (NDB) at Arco-Butte County Airport has made this action necessary for the safety and management of Instrument Flight Rules (IFR) operations at the airport. This action also would adjust the geographic coordinates of the airport.

DATES: Effective date, 0901 UTC, January 13, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

On July 19, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend controlled airspace at Arco, ID (75 FR 41773). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Subsequent to publication, the FAA found the geographic coordinates of the airport needed to be adjusted. This action makes the adjustment. With the exception of editorial changes, and the changes described above, this rule is the same as that proposed in the NPRM.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class E extending upward from 700 feet above the surface, at Arco-Butte County Airport, Arco, ID. Decommissioning of the Arco-Butte County NDB has made this action necessary for the safety and management of IFR operations at the airport. The geographic coordinates of the airport also will be adjusted to coincide with the FAA's National Aeronautical Navigation Services.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR Part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR Part 71.1 of the Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010 is amended as follows:

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

* * * * *

ANM ID E5 Arco, ID [Amended]

Arco-Butte County Airport, Arco, ID
(Lat. 43°36′13″ N., long. 113°20′03″ W.)
Pocatello VORTAC
(Lat. 42°52′13″ N., long. 112°39′08″ W.)
DuBois VORTAC
(Lat. 44°05′20″ N., long. 112°12′34″ W.)
Burley VOR/DME
(Lat. 42°34′49″ N., long. 113°51′57″ W.)

That airspace extending from 700 feet above the surface within a 7-mile radius of the Arco-Butte County Airport; that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at 68.5 miles northwest of the Pocatello VORTAC on V–269, thence southeast along V–269 to 53 miles northwest of the Pocatello VORTAC on V–269, thence to 29 miles south of the DuBois VORTAC on V–257, thence south along V–257 to V–365, thence southeast along V–365 to the Burley VOR/DME, thence northwest along V–231 to 29 miles northwest of the Burley VOR/DME on V–231, to the point of beginning.

Issued in Seattle, Washington, on *September 23, 2010.*

Lori Andriesen,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2010–24801 Filed 10–5–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0619; Airspace Docket No. 10–AWP–11]

Modification of Class E Airspace; San Clemente, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will amend Class E airspace at San Clemente, CA. Decommissioning of the San Clemente Island Non-Directional Radio Beacon (NDB) at San Clemente Island NALF (Frederick Sherman Field) has made this action necessary for the safety and management of Instrument Flight Rules (IFR) operations at the airport. This action also makes a minor adjustment to the geographic coordinates of the airport.

DATES: Effective date, 0901 UTC, January 13, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

On July 20, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend

controlled airspace at San Clemente, CA (75 FR 42014). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Subsequent to publication, the FAA found the geographic coordinates of the airport needed to be adjusted. This action makes the adjustment. With the exception of editorial changes, and the changes described above, this rule is the same as that proposed in the NPRM.

Class E airspace designations are published in paragraph 6004, of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class E airspace designated as an extension to a Class D surface area, at San Clemente Island NALF (Fredrick Sherman Field), San Clemente, CA. The San Clemente Island NDB has been decommissioned, and the NDB approach canceled. This action will also update the geographic coordinates of the airport to coincide with the FAA's National Aeronautical Navigation Services. This action is necessary for the safety and management of IFR operations.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR Part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR Part 71.1 of the Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010 is amended as follows:

Paragraph 6004 Class E airspace Designated as an Extension to a Class D Surface Area.

* * * * *

AWP CA E4 San Clemente, CA [Modified]

San Clemente Island NALF (Fredrick Sherman Field), CA
(Lat. 33°01′22″ N., long. 118°35′19″ W.)
San Clemente Island TACAN
(Lat. 33°01′37″ N., long. 118°34′46″ W.)

That airspace extending upward from the surface within 2.6 miles each side of the San Clemente Island TACAN 334° radial extending from the 4.3-mile radius of San Clemente Island NALF (Fredrick Sherman Field) to Control 1177L, and within 1.8 miles each side of the 064° bearing from San Clemente Island NALF (Fredrick Sherman Field) extending from the 4.3-mile radius to 9 miles northeast. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in Seattle, Washington, on *September 23, 2010.*

Lori Andriesen,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2010–24799 Filed 10–5–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA–2010–0995; Amendment No. 91–319]

Airports/Locations: Special Operating Restrictions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: The FAA is amending its airports and locations special operating restrictions regulation to clarify a minor discrepancy in terminology. This amendment standardizes the language used to describe the altitude at which aircraft operating within 30 nautical miles of the listed airports are required to be equipped with an altitude encoding transponder. This action is not making any substantive changes to the regulation.

DATES: Effective: October 6, 2010.

FOR FURTHER INFORMATION CONTACT: Ellen Crum, Air Traffic Systems Operations, Airspace and Rules Group, 800 Independence Ave. SW., Washington, DC 20591; telephone (202) 267–8783; e-mail *ellen.crum@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On November 30, 1999 (64 FR 66768), the FAA published a final rule that revised 14 CFR part 91. In the final rule, § 91.215(b)(2) states "* * *from the surface upward to 10,000 MSL* * *" The corresponding text in section 1 of Appendix D should be consistent in describing the altitude as "MSL" but inadvertently was changed from MSL to "above the surface." Therefore, this action will correct this inconsistency and change the phrase from "above the surface" to "MSL" in section 1 of Appendix D.

As this rule simply corrects an inconsistency in the terminology used to describe altitudes, good cause exists for adopting this amendment without public notice or comment as provided under 5 U.S.C. 553(b). Furthermore, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making

this rule effective within less than 30 days.

List of Subjects in 14 CFR Part 91

Air traffic control, Aircraft, Airmen, Airports, Aviation safety.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends Chapter I of Title 14, Code of Federal Regulations, as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180).

■ 2. Amend Appendix D to Part 91 by revising section 1 introductory text to read as follows:

Appendix D to Part 91—Airports/Locations: Special Operating Restrictions

Section 1. Locations at which the requirements of § 91.215(b)(2) and § 91.225(d)(2) apply. The requirements of §§ 91.215(b)(2) and 91.225(d)(2) apply below 10,000 feet MSL within a 30-nautical-mile radius of each location in the following list.

* * * * *

Issued in Washington, DC, on October 1, 2010.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

[FR Doc. 2010–25102 Filed 10–5–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1306

[Docket No. DEA–339S]

Role of Authorized Agents in Communicating Controlled Substance Prescriptions to Pharmacies

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Statement of policy.

SUMMARY: The Drug Enforcement Administration (DEA) is issuing this statement of policy to provide guidance under existing law regarding the proper role of a duly authorized agent of a DEA-registered individual practitioner in connection with the communication of a controlled substance prescription to a pharmacy.

FOR FURTHER INFORMATION CONTACT: Mark W. Caverly, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152; telephone (202) 307–7297.

SUPPLEMENTARY INFORMATION:

Legal Authority

DEA implements and enforces Titles II and III of the Comprehensive Drug Abuse Prevention and Control Act of 1970, often referred to as the Controlled Substances Act (CSA) and the Controlled Substances Import and Export Act (CSIEA) (21 U.S.C. 801–971), as amended. DEA publishes the implementing regulations for these statutes in title 21 of the Code of Federal Regulations (CFR), parts 1300 through 1321. These regulations are designed to ensure that there is a sufficient supply of controlled substances for legitimate medical, scientific, research, and industrial purposes and to deter the diversion of controlled substances to illegal purposes. Controlled substances are drugs that have a potential for abuse and dependence; these include substances classified as opioids, stimulants, depressants, hallucinogens, anabolic steroids, and drugs that are immediate precursors of these classes of substances. The CSA mandates that DEA establish a closed system of control for manufacturing, distributing, and dispensing controlled substances. Any person who manufactures, distributes, dispenses, imports, exports, or conducts research or chemical analysis with controlled substances must register with DEA (unless exempt) and comply with the applicable requirements for the activity.

Background

Under longstanding Federal law, controlled substances are strictly regulated to ensure a sufficient supply for legitimate medical, scientific, research, and industrial purposes and to deter diversion of controlled substances to illegal purposes. The substances are regulated because of their potential for abuse and likelihood to cause dependence when abused and because of their serious and potentially unsafe nature if not used under proper circumstances. To minimize the likelihood that pharmaceutical controlled substances would be diverted into illicit channels, Congress established under the CSA a closed system of drug distribution for legitimate handlers of controlled substances. The foundation of this system is the concept of registration. The only persons who may lawfully manufacture, distribute and dispense controlled substances under the CSA are those who have obtained a DEA registration authorizing them to do so. 21 U.S.C. 822. Thus, the prescribing of controlled substances may be carried out only by those practitioners who have obtained a DEA registration authorizing such activity.

To be eligible for a DEA registration as a practitioner under the CSA, one must be a physician, dentist, veterinarian, hospital, or other person licensed, registered, or otherwise permitted by the United States or the State in which he or she practices to dispense controlled substances in the course of professional practice. 21 U.S.C. 802(21), 823(f). Thus, State licensure to prescribe controlled substances is generally a prerequisite to obtaining a DEA registration to do so. The term "individual practitioner" excludes institutions such as hospitals, which are themselves DEA registrants and are permitted to administer and dispense, but not prescribe, controlled substances under their registration. 21 CFR 1300.01(b)(17).

By longstanding statutory requirement, a valid prescription issued by a DEA-registered practitioner is required for dispensing a controlled substance. To be effective (*i.e.,* valid), a prescription for a controlled substance must be issued for a legitimate medical purpose by a practitioner acting in the usual course of professional practice. *United States* v. *Moore,* 423 U.S. 122 (1975); 21 CFR 1306.04(a). Thus, the practitioner must determine that a prescription for a controlled substance is for a legitimate medical purpose. While the core responsibilities pertaining to prescribing controlled substances may not be delegated to anyone else, an individual practitioner may authorize an agent to perform a limited role in communicating such prescriptions to a pharmacy in order to make the prescription process more efficient. Nonetheless, it is important to understand that any agency relationship must also preserve the requirement that medical determinations to prescribe controlled substances be made by a practitioner only, not by an agent. Accordingly, this statement of policy outlines DEA's existing statutory and regulatory requirements as to the proper role of duly authorized agents of individual practitioners. DEA anticipates the utilization of electronic prescribing by practitioners for

controlled substance prescriptions will reduce the role of agents over time.

Medical Determination of Need for a Controlled Substance Prescription Cannot Be Delegated

DEA regulations state: "A prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription." 21 CFR 1306.04(a). Accordingly, the practitioner must determine that a prescription for a controlled substance is for a legitimate medical purpose. This determination is the sole responsibility of the practitioner and may not be delegated.

Elements of a Valid Prescription Must be Specified by the Practitioner and Cannot be Delegated

Controlled substance prescriptions are orders for medication to be dispensed to an ultimate user and are required to contain specific information including: Patient name, address, drug name and strength, quantity prescribed, directions for use, and the name, address and DEA number of the issuing practitioner. 21 CFR 1306.05(a). All prescriptions for controlled substances must be dated as of, and signed on, the day when issued. Paper prescriptions must be manually signed by the issuing practitioner in the same manner that the practitioner would sign a check or other legal document (21 CFR 1306.05(d)); electronic prescriptions for controlled substances must be signed in accordance with DEA regulations (21 CFR 1306.05(e), 21 CFR 1311.140).

The regulations provide that "[a] prescription may be prepared by the secretary or agent for the signature of a practitioner, but the prescribing practitioner is responsible in case the prescription does not conform in all essential respects to the law and regulations." 21 CFR 1306.05(f). Accordingly, an authorized agent may prepare a controlled substance prescription only based on the instructions of the prescribing practitioner as to the required elements of a valid prescription and then provide the prescription to the practitioner to review. The authorized agent does not have the authority to make medical determinations. The practitioner must personally sign the prescription, whether manually or electronically. The prescribing practitioner cannot delegate his or her signature authority.

Role of Agent Under the CSA

As discussed above, the CSA does not permit a prescribing practitioner to delegate to an agent or any other person the practitioner's authority to issue a prescription for a controlled substance. A practitioner acting in the usual course of his or her professional practice must determine that there is a legitimate medical purpose for a controlled substance prescription; an agent may not make this determination. Even though the CSA established a closed system in which all persons in the distribution chain are required to be registered and are held accountable for every controlled substance transaction, Congress recognized a role for agents under the Act. The CSA exempts agents of registrants, including practitioners, from the requirement of registration. 21 U.S.C. 822(c)(1). The statute defines an "agent" as "an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. * * *." 21 U.S.C. 802(3). Likewise, DEA regulations implementing the CSA specifically permit a practitioner to use an authorized agent to perform certain ministerial acts in connection with communicating prescription information to a pharmacy. The common means to communicate a prescription to a pharmacy include hand delivery, facsimile, phone call, or an electronic transmission. As explained below, the proper role of an agent depends upon the schedule of the controlled substance prescribed, the circumstances of the ultimate user, and the method of communication.

Communication by Facsimile or Oral Communication of a Valid Prescription for a Schedule III, IV, or V Controlled Substance May be Delegated to an Authorized Agent

The CSA provides that a pharmacy may dispense Schedule III and IV controlled substances pursuant to a "written or oral prescription." 21 U.S.C. 829(b). DEA regulations further specify that a pharmacist may dispense a Schedule III, IV, or V controlled substance pursuant to "either a paper prescription signed by a practitioner [or] a facsimile of a signed paper prescription transmitted by the practitioner or the practitioner's agent to the pharmacy, * * *." 21 CFR 1306.21(a). Accordingly, an authorized agent may transmit such a practitioner-signed paper prescription via facsimile to the pharmacy on behalf of the practitioner.

Controlled substances in Schedules III, IV and V may also be dispensed by a pharmacy pursuant to "an oral prescription made by an individual practitioner and promptly reduced to writing by the pharmacist containing all information required [for a valid prescription], except for the signature of the practitioner." 21 CFR 1306.21(a). Under DEA regulations, an authorized agent may orally communicate such a prescription to a pharmacist. 21 CFR 1306.03(b). Where the pharmacist has reason to believe that a prescription has been communicated by an agent, the pharmacist, in accordance with his or her responsibility for proper dispensing of controlled substances, may have a duty to inquire into the legitimacy of the prescription. The particular circumstances will dictate the appropriate level of inquiry by the pharmacist. As noted above, the practitioner remains responsible for ensuring that the prescription conforms to the law and regulations, and the practitioner cannot delegate to an agent the authority to make a medical determination of need for a controlled substance prescription.

Generally, a Valid Schedule II Controlled Substance Prescription May Not be Communicated by Facsimile

Because Schedule II controlled substances have the highest potential for abuse and the greatest likelihood of dependence among the pharmaceutical controlled substances (those in Schedules II–V), the CSA controls on Schedule II drugs are the most restrictive. The CSA requires that a Schedule II controlled substance be dispensed by a pharmacy only pursuant to a written prescription, except in emergency situations, and prohibits Schedule II prescriptions from being refilled. 21 U.S.C. 829(a). Thus, in most cases, a pharmacist must receive the original, manually signed paper prescription or an electronic prescription prior to dispensing a Schedule II controlled substance. 21 CFR 1306.11(a).

A Valid Schedule II Controlled Substance Prescription For a Person in a Hospice or Long Term Care Facility (LTCF) May be Communicated by Facsimile and That Communication May be Delegated to an Authorized Agent

DEA regulations specify two exceptions whereby a Schedule II controlled substance prescription sent by facsimile may serve as the original written prescription. A practitioner or a practitioner's authorized agent may transmit a valid Schedule II controlled

substance prescription to a pharmacy via facsimile for: (1) Patients enrolled in a hospice care program certified and/or paid for by Medicare under Title XVIII or hospice programs which are licensed by the State (21 CFR 1306.11(g)); and (2) residents of LTCFs (21 CFR 1306.11(f)). The facsimile serves as the original written prescription and must be maintained by the pharmacy as such. An authorized agent of the prescribing practitioner may transmit the practitioner-signed prescription by facsimile on behalf of the practitioner.

Emergency Oral Communication of a Valid Schedule II Controlled Substance Prescription May Not be Delegated to an Authorized Agent

The CSA contains an exception that allows a practitioner to issue oral prescriptions for Schedule II controlled substances in an emergency. 21 U.S.C. 829(a). An emergency for this purpose is defined by the Food and Drug Administration in 21 CFR 290.10. DEA regulations limit such an emergency oral prescription to the quantity necessary to treat the patient during the emergency period and require that it be followed up within 7 days by a practitioner-signed, written prescription to the dispensing pharmacy. 21 CFR 1306.11(d). Moreover, oral emergency prescriptions must immediately be reduced to writing by the pharmacist and must contain all the information ordinarily required in a prescription, except for the signature of the prescribing individual practitioner. If the prescribing individual practitioner is not known to the pharmacist, the pharmacist must make a reasonable effort to determine that the oral authorization came from a registered individual practitioner, which may include a call back to the prescribing individual practitioner and/or other good faith efforts to ensure the practitioner's identity. 21 CFR 1306.11(d). Because the more specific requirement that the emergency Schedule II oral authorization must be from a registered individual practitioner (21 CFR 1306.11(d)) supersedes the general rule that an employee or agent of the individual practitioner may communicate prescriptions to a pharmacist (21 CFR 1306.03(b)), the prescribing individual practitioner must personally communicate the emergency oral prescription to the pharmacist. An agent may not call in an oral prescription for a Schedule II controlled substance on behalf of a practitioner even in an emergency circumstance.

Pharmacist Dispensing a Controlled Substance Prescription Has a Duty To Fill Only Valid Prescriptions

Regardless of the method of transmission of a controlled substance prescription—by hand delivery, facsimile, phone call or electronically—DEA regulations make it clear that the legal responsibility for issuing a valid prescription that "conform[s] in all essential respects to the law and regulations" rests upon the prescribing practitioner. As noted, however, a pharmacist has a corresponding responsibility for the proper prescribing and dispensing of controlled substances. 21 CFR 1306.04(a). Further, "A corresponding liability rests upon the pharmacist, including a pharmacist employed by a central fill pharmacy, who fills a prescription not prepared in the form prescribed by DEA regulations." 21 CFR 1306.05(f). A pharmacist must carefully review all purported controlled substance prescriptions to ensure that the prescription meets all of the legal requirements for a valid prescription. The pharmacist has a duty to inquire further as to any question surrounding the satisfaction of any or all of the legal requirements for a valid prescription depending upon the particular circumstances, including the requirement that the prescription be issued for a legitimate medical purpose by a practitioner acting in the usual course of professional practice. The pharmacist must be satisfied that the prescription is consistent with the CSA and DEA regulations before dispensing a controlled substance to the ultimate user.

Summary of the Acts That an Agent May Take in Connection With Controlled Substance Prescriptions

1. An authorized agent of an individual practitioner may prepare a written prescription for the signature of the practitioner, provided that the practitioner, in the usual course of professional practice, has determined that there is a legitimate medical purpose for the prescription and has specified to the agent the required elements of the prescription. 21 CFR 1306.04(a); 1306.05(a), (f).

2. Where a DEA-registered individual practitioner has made a valid oral prescription for a controlled substance in Schedules III–V by conveying all the required prescription information to the practitioner's authorized agent, that agent may telephone the pharmacy and convey that prescription information to the pharmacist. 21 CFR 1306.03(b), 1306.21(a).

3. In those situations in which an individual practitioner has issued a valid written prescription for a controlled substance, and the regulations permit the prescription to be transmitted by facsimile to a pharmacy (as set forth in 21 CFR 1306.11(a), 1306.11(f), 1306.11(g), and 1306.21(a)), the practitioner's agent may transmit the practitioner-signed prescription to the pharmacy by facsimile.

Who Is an Agent of an Individual Practitioner for the Purpose of Communicating a Prescription for a Controlled Substance

The CSA defines an "agent" as "an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. * * *" 21 U.S.C. 802(3). Under the CSA, the term "dispense" includes "prescribing." 21 U.S.C. 802(10). Establishment of an agency relationship, consistent with the CSA, is guided by general precepts of the common law of agency. For the purposes of explaining the law of agency as it relates to the CSA, it is appropriate to refer to and consider as generally applicable the Restatement of Agency (Restatement) which provides:

> Agency is the fiduciary relationship that arises when one person (a "principal") manifests assent to another person (an "agent") that the agent shall act on the principal's behalf and subject to the principal's control, and the agent manifests assent or otherwise consents so to act.
> Restatement (Third) of Agency § 1.01 (2006).

The Restatement is useful in evaluating whether, for CSA purposes, a valid agency relationship exists between a prescribing practitioner and another person for the purpose of communicating a prescription for a controlled substance to a pharmacy. The Restatement requires that the principal (in this context, the DEA-registered individual practitioner) "manifests assent" for a certain person to act on his or her behalf. This is consistent with the CSA and its registration-based system of accountability. Where non-DEA registrants communicate a prescription for a controlled substance on behalf of a registrant, it is important that such persons be clearly identified and their activities be subject to evaluation to ensure they do not exceed the bounds of the agency relationship and the legal limits of an agent's role under the CSA. Because the individual practitioner remains responsible for ensuring that all prescriptions issued pursuant to his or her DEA registration comply in all respects with the CSA and DEA regulations, it is important that the practitioner decide who may act as his

or her agent. This is also consistent with the CSA definition that an agent is "an authorized person who acts on behalf of or at the direction of" the prescribing individual practitioner. 21 U.S.C. 802(3).

In addition to requiring that the principal (*i.e.,* individual prescribing practitioner) "manifests assent" to having a particular person act as his or her agent, and that the agent reciprocate by manifesting assent to serve as such, the Restatement also requires that the agent acts "subject to the principal's control." In an employment situation, an individual practitioner may establish the duties of his or her employees and is responsible for monitoring their activities. Absent an employer-employee relationship, a practitioner will generally have less control over other persons that he or she may designate as his or her agent(s). Prior to designating an agent, a practitioner may wish to consider the degree of control that the registrant may exercise over the proposed agent, the proposed agent's licensure, level of training and experience, and other such factors to determine whether the person would be an appropriate agent and to ensure that the agent will not engage in activities that exceed the scope of the agency relationship. Absent affirmative actions by the practitioner and the proposed agent, a valid agency relationship generally will not exist outside an employer-employee relationship.

By requiring that an agency relationship is created when (1) the principal manifests assent that a particular person shall act (i) on his or her behalf and (ii) subject to his or her control, and (2) the agent manifests assent so to act, the Restatement definition of "agency" is consistent with the CSA's definition of "agent" as "an authorized person who acts on behalf of or at the direction of" the prescribing practitioner. 21 U.S.C. 802(3). An agent may not legally perform duties that must be personally performed by the individual practitioner. The practitioner may assign only those duties which may be carried out by an agent.

DEA notes that in a 2001 notice and solicitation of information on the potential use of automated dispensing systems to prevent the accumulation of surplus controlled substances at LTCFs, DEA briefly discussed the role of nurses in the narrow setting of LTCFs outside of an employer-employee relationship and where no affirmative actions established an agency relationship between the individual practitioner and the LTCF nurse. 66 FR 20833, 20834 (April 25, 2001). This incidental example and other informal discussions have resulted in the need for this published articulation of what existing law allows and what affirmative actions may be required to establish a valid agency relationship for purposes of an authorized agent to communicate controlled substance prescriptions to pharmacies, particularly in settings where there is no employer-employee relationship. DEA regulations on the role of authorized agents in communicating controlled substance prescriptions to pharmacies generally have not changed.

This policy statement outlines the proper role of agents in those situations where an individual practitioner and an individual agent (including but not limited to an LTCF nurse) have taken affirmative steps to establish a valid agency relationship for those aspects of the CSA that may be appropriately executed by an authorized agent under Federal law. As such, DEA is hereby outlining a suggested mechanism to establish a valid agency relationship as well as explaining the appropriate roles an authorized agent may play regardless of the setting. This statement of policy is intended to provide general guidance on establishment of a valid agency relationship between an individual practitioner and an identified individual. DEA wishes to emphasize that, regardless of the setting, it is the practitioner's sole decision as to whether or not to designate an agent to act on his or her behalf and subject to his or her control. To be consistent with the purpose of the CSA to implement a "closed system" of distribution and for DEA to enforce this framework, an agency relationship between a registered individual practitioner and an identified agent for the purposes of communicating controlled substance prescriptions must be explicit and transparent. DEA believes its existing regulations are adequate in addressing the role of an authorized agent but will analyze whether additional federal rulemaking or guidance is needed beyond this statement to establish the necessary explicit and transparent nature of an authorized agency relationship, particularly when outside an employer-employee relationship.

Written Authorization of an Agent Recommended—Sample Agency Agreement

Due to the legal responsibilities of practitioners and pharmacists under the CSA and the potential harm to the public from inappropriate and unlawful prescribing and dispensing of controlled substances, violations of the law are subject to criminal, civil, and administrative sanctions. DEA believes it is in the best interests of the practitioner, the agent, and the dispensing pharmacist that the designation of those persons authorized to act on behalf of the practitioner and the scope of any such authorization be reduced to writing.

DEA provides below an example of a written agreement that would properly confer authority to an agent to act on behalf of an individual practitioner with regard to controlled substance prescriptions. Individual practitioners may choose to designate and authorize one or more persons at one or more locations within or outside their practice to act as their agent. Likewise, an individual may act as an authorized agent for multiple individual practitioners depending upon the circumstances. A practitioner may or may not wish to delegate all of these types of authorized communications to a particular agent and may tailor the agreement accordingly. The agreement should be clear that the agent may not further delegate the outlined responsibilities.

Designating Agent of Practitioner For Communicating Controlled Substance Prescriptions to Pharmacies

_____

(Name of registered individual practitioner)

_____

(Address as it appears on certificate of registration) _____

_____

(DEA registration number)

I, _____ (name of registrant), the undersigned, who is authorized to dispense (including prescribe) controlled substances in Schedules II, III, IV, and V under the Controlled Substances Act, hereby authorize_____ (name of agent), to act as my agent only for the following limited purposes:

1. To prepare, for my signature, written prescriptions for controlled substances in those instances where I have expressly directed the agent to do so and where I have specified to the agent the required elements of the prescription (set forth in 21 CFR 1306.05).

2. To convey to a pharmacist by telephone oral prescriptions for controlled substances in Schedules III, IV, and V in those instances where I have expressly directed the agent to do so and where I have specified to the agent the required elements of the prescription (set forth in 21 CFR 1306.05).

3. To transmit by facsimile to a pharmacy prescriptions for controlled

substances in those instances where I have expressly directed the agent to do so and where I have specified to the agent the required elements of the prescription (set forth in 21 CFR 1306.05) and I have signed the prescription.

This authorization is not subject to further delegation to other persons. Both the undersigned DEA-registered individual practitioner and the undersigned agent understand and agree that the practitioner is solely responsible for making all medical determinations relating to prescriptions for controlled substances communicated by the agent pursuant to this agreement, and for ensuring that all such prescriptions conform in all other essential respects to the law and regulations.

The undersigned agent understands he or she does not have authority to make any medical determinations. The undersigned DEA-registered prescribing practitioner further understands that the prescribing practitioner must personally communicate all Schedule II emergency oral prescriptions to the pharmacist. Both the undersigned practitioner and agent understand that the agent may not call in an emergency oral prescription for a Schedule II controlled substance on behalf of the practitioner.

This agency agreement shall be terminated immediately if and when any of the following occur:

1. The undersigned practitioner no longer possesses the active DEA registration specified in this agreement.
2. The undersigned agent is no longer employed in the manner described in this agreement.
3. The practitioner or the agent revokes this agency agreement by completing the revocation section at the end of this document or by executing a written document that is substantially similar to the revocation section at the end of this document.

_____
(Signature of practitioner)

I, _____ (name of agent), hereby affirm that I am the person named herein as agent and that the signature affixed hereto is my signature. I further affirm that I am a _____ (title), licensed in the State of _____, (where applicable) and (if applicable) am employed by/under contract with _____ (name of employer or contracting entity). I agree to abide by all the terms of this agreement and to comply with all applicable laws and regulations relating to controlled substances.

_____
(Signature of agent)

_____
(State license number of agent where applicable)

_____
(Name of employer/contracting entity where applicable)

_____
(Address of employer/contracting entity where applicable)

Witnesses:

1._____
2._____

Signed and dated on the _____ day of _____ (month) _____, (year), at _____.

Revocation

The foregoing agency agreement is hereby revoked by the undersigned. The agent is no longer authorized to communicate Schedule II, III, IV and V controlled substance prescriptions to a pharmacy on my behalf. A copy of this revocation has been given to the agent this same day.

_____
(Signature of registered practitioner revoking power)

Witnesses:

1. _____
2. _____

Signed and dated on the _____day of _____(month)_____, (year), at _____.

DEA recommends that the original signed agency agreement be kept by the practitioner during the term of the agency relationship and for a reasonable period after termination or revocation. DEA requires that inventory and other records be kept for at least two years (21 U.S.C. 827(b), 21 U.S.C. 828(c), 21 CFR 1304.04). This is simply a suggested time period for retention of agency agreements and is not required by DEA. A signed copy should also be provided to the practitioner's designated agent, the agent's employer (if other than the practitioner), and any pharmacies that regularly receive communications from the agent pursuant to the agreement. Providing a copy to pharmacies likely to receive prescriptions from the agent on the practitioner's behalf may assist those pharmacies with their corresponding responsibility regarding the dispensing of controlled substances. It is important to reiterate that a pharmacist always has a corresponding responsibility to ensure that a controlled substance prescription conforms with the law and regulations, including the requirement that the prescription be issued for a legitimate medical purpose by a practitioner acting in the usual course of professional practice, and a corresponding liability if a prescription is not prepared or dispensed in a manner consistent with the CSA or DEA regulations. Even where the pharmacist has a copy of an agency agreement, the pharmacist may also have a duty to inquire further depending upon the particular circumstances. Because the agency agreement may be revoked at any time by the practitioner or by the agent, the party terminating the agreement should notify the other party immediately upon termination. The practitioner should notify those pharmacies that were originally made aware of the agency agreement of the termination of that agreement. In most circumstances where an agent changes employment, the agreement should be revoked.

Dated: October 1, 2010.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 2010–25136 Filed 10–5–10; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 323

[Docket ID DOD–2010–OS–0139]

Privacy Act of 1974; Implementation

AGENCY: Defense Logistics Agency; DoD.

ACTION: Final rule; request for comments.

SUMMARY: The Defense Logistics Agency is revising two exemption rules. The exemption rule for S100.10 entitled "Whistleblower Complaint and Investigative Files" is being deleted in its entirety and the exemption rule system identifier for the "Incident Investigation/Police Inquiry Files" system of records is being revised.

DATES: The rule will be effective on December 6, 2010, unless comments are received that would result in a contrary determination.

Comments will be accepted on or before December 6, 2010.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Room 3C843, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy

for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Jody Sinkler at (703) 767–5045.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, "Regulatory Planning and Review"

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. Chapter 6)

It has been determined that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been determined that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104–4, "Unfunded Mandates Reform Act"

It has been determined that Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, "Federalism"

It has been determined that Privacy Act rules for the Department of Defense do not have federalism implications. The rules do 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.

List of Subjects in 32 CFR Part 323 Privacy.

■ Accordingly, 32 CFR part 323 is amended as follows:

PART 323—DEFENSE OGISTICS AGENCY PRIVACY PROGRAM

■ 1. The authority citation for 32 CFR part 323 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

■ 2. In Appendix H to part 323:

■ a. Paragraph "d." is removed and reserved.

■ b. Paragraph "f." introductory text is revised to read as follows:

Appendix H to Part 323—DLA Exemption Rules

f. ID S500.30 (Specific exemption)

Dated: October 1, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–25139 Filed 10–5–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 701

[Docket ID USN–2010–0036]

Privacy Act of 1974; Implementation

AGENCY: Department of the Navy, DoD.

ACTION: Final rule; request for comments.

SUMMARY: The Department of the Navy is revising an exemption rule. More specifically, the exemption rule for N03834–1 entitled "Special Intelligence Personnel Access File" is being deleted in its entirety.

DATES: The rule will be effective on December 6, 2010, unless comments are received that would result in a contrary determination.

Comments will be accepted on or before December 6, 2010.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Room 3C843, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mrs. Miriam Brown-Lam at (202) 685–6545.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, "Regulatory Planning and Review"

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. Chapter 6)

It has been determined that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been determined that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within

the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104–4, "Unfunded Mandates Reform Act"

It has been determined that Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, "Federalism"

It has been determined that Privacy Act rules for the Department of Defense do not have federalism implications. The rules do 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.

List of Subjects in 32 CFR Part 701

Privacy.

■ Accordingly, 32 CFR part 701 is amended as follows:

PART 701—AVAILABILITY OF DEPARTMENT OF THE NAVY RECORDS AND PUBLICATION OF DEPARTMENT OF THE NAVY DOCUMENTS AFFECTING THE PUBLIC

■ 1. The authority citation for 32 CFR part 701 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

§ 701.128 [Amended]

■ 2. In § 701.128, paragraph (f) is removed and reserved.

Dated: October 1, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–25140 Filed 10–5–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0509]

RIN 1625–AA00

Safety Zone; IJSBA World Finals, Lower Colorado River, Lake Havasu, AZ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of Lake Havasu on the lower Colorado River in Arizona in support of the International Jet Sports Boating Association (IJSBA) World Finals. This temporary safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other vessels and users of the waterway. Persons and vessels will be prohibited from entering into, transiting through, or anchoring within this temporary safety zone unless authorized by the Captain of the Port San Diego or his designated representative.

DATES: This rule is effective in the CFR on October 6, 2010 through October 10, 2010. This rule is effective with actual notice for purposes of enforcement on October 3, 2010. This rule will remain in effect until October 10, 2010.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2010–0509 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0509 in the "Keyword" box, and then clicking "Search." This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Petty Officer Shane Jackson, Waterways Management, U.S. Coast Guard Sector San Diego Coast Guard; telephone 619–278–7267, e-mail *Shane.E.Jackson@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On July 6, 2010, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone; IJSBA World Finals in the **Federal Register** (75 FR 38754). We received no comments on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The boat races will begin on October 3, 2010, and a safety zone is necessary to protect the participants and spectators. Therefore it would be impracticable to delay the effective date of the final rule.

Basis and Purpose

The International Jet Sports Boating Association (IJSBA) is sponsoring the IJSBA World Finals. The event will consist of 300 to 750 personal watercrafts racing in a circular course. The race will be broken down into heats of one to 20. The sponsor will provide five course marshals and rescue vessels, as well as four perimeter safety boats for the duration of this event. This safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other vessels and users of the waterway.

Discussion of Comments and Changes

The Coast Guard published an NPRM on July 6, 2010, proposing to establish a temporary safety zone on Lake Havasu from October 3 through October 10, 2010. We received no comments, and therefore we are establishing the safety zone as proposed in the NPRM.

Regulatory Analyses

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

Regulatory Planning and Review

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. This determination is based on the size and location of the

safety zone. This safety zone will be in effect for only one week, and will only be enforced during certain hours each day. Furthermore, vessels can transit safely around the safety zone.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

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

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the lower Colorado River at Lake Havasu from October 3, 2010 through October 10, 2010.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. Vessel traffic can pass safely around the zone. Before the effective period, the Coast Guard will publish a local notice to mariners (LNM).

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves the establishment of a safety zone.

An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add a new temporary § 165.T11–182 to read as follows:

§ 165.T11–182 Safety Zone; IJSBA World Finals; Lower Colorado River, Lake Havasu, AZ.

(a) *Location.* The following area is a safety zone: All waters of Lake Havasu, from surface to bottom, encompassed by lines connecting the following points: Beginning at 34°28.49′ N, 114°21.33′ W; thence to 34°28.55′ N, 114°21.56′ W; thence to 34°28.43′ N, 114°21.81′ W; thence to 34°28.32′ N, 114°21.71′ W; thence along the shoreline returning to 34°28.49′ N, 114°21.33′ W.

These coordinates are based upon NAD 83.

(b) *Enforcement Period.* This section will be enforced from sunrise to sunset on October 3, 2010 through October 10, 2010. If the International Jet Sports Boating Association World Finals concludes prior to the scheduled termination of the effective period, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Definitions.* The following definition applies to this section: *Designated representative* means any Commissioned, Warrant, or Petty Officers of the Coast Guard or Coast Guard Auxiliary, and local, state, and federal law enforcement officers who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations.* (1) Under the general regulations in § 165.23, entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port San Diego or his designated representative.

(2) Mariners desiring to enter or operate in the safety zone may request authorization to do so from the Patrol Commander (PATCOM). The PATCOM may be contacted on VHF–FM Channel 16.

(3) All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port or his designated representative.

(4) Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel must proceed as directed.

(5) The Coast Guard may be assisted by other federal, state, or local agencies.

Dated: September 17, 2010.

P.J. Hill,

Commander, U.S. Coast Guard, Acting Captain of the Port San Diego.

[FR Doc. 2010–25193 Filed 10–5–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AN15

Charges Billed to Third Parties for Prescription Drugs Furnished by VA to a Veteran for a Nonservice-Connected Disability

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the medical regulations of the Department of Veterans Affairs (VA) concerning "reasonable charges" for medical care or services provided or furnished by VA to a veteran for a nonservice-connected disability. More specifically, VA amends the regulations regarding charges billed for prescription drugs not administered during treatment by changing the billing formula to reflect VA's actual drug costs for each drug rather than using a national average drug cost for all prescriptions dispensed. The revised formula for calculating reasonable charges for prescription drug costs will also continue to include an average administrative cost for each prescription. The purpose is to provide VA with a more accurate billing methodology for prescription drugs.

DATES: *Effective Date:* This final rule is effective on March 18, 2011.

Applicability Date: The final rule will apply to prescriptions filled on or after March 18, 2011.

FOR FURTHER INFORMATION CONTACT: Romona Greene, Manager of Rates and Charges, VHA Chief Business Office (168), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–1595. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Under 38 U.S.C. 1729, VA has the right to recover or collect reasonable charges for medical care or services (including the provision of prescription drugs) from a third party to the extent that the veteran or the provider of the care or services would be eligible to receive payment from the third party for:

- A nonservice-connected disability for which the veteran is entitled to care (or the payment of expenses of care) under a health plan contract, 38 U.S.C. 1729(a)(2)(D), 38 CFR 17.101(a)(1)(i);
- A nonservice-connected disability incurred incident to the veteran's employment and covered under a worker's compensation law or plan that provides reimbursement or indemnification for such care and services, 38 U.S.C. 1729(a)(2)(A), 38 CFR 17.101(a)(1)(ii); or
- A nonservice-connected disability incurred as a result of a motor vehicle accident in a State that requires automobile accident reparations (no-fault) insurance, 38 U.S.C. 1729(a)(2)(B), 38 CFR 17.101(a)(1)(iii).

However, under current 38 CFR 17.101(a)(4), which implements 38 U.S.C. 1729(c)(2)(B), a third-party payer liable for such medical care and services under a health plan contract has the option of paying, to the extent of its coverage, either the billed charges or the amount the third-party payer demonstrates it would pay for care or services furnished by providers other than entities of the United States for the same care or services in the same geographic area.

Prior to the effective date of this document, VA billed for prescription drugs not administered during treatment based on the sum of two components: (1) The national average of VA's drug costs for all prescriptions, and (2) the national average of VA's administrative costs associated with furnishing prescription drugs. Further, in accordance with § 17.102(h), prior to the effective date of this document, VA billed $51 for each prescription filled (*see* 70 FR 66866, Nov. 3, 2005).

In a document published in the **Federal Register** on July 9, 2009 (74 FR 32819), we proposed to change the billing methodology for prescription drugs not administered during treatment. With respect to the portion of the billing concerning VA's cost for such prescription drugs, we proposed to bill based on the actual cost to VA of each prescription drug rather than the national average of drug costs for all prescriptions. In this regard, we proposed to bill the total of:

• The actual cost to VA for prescription drugs (*i.e.,* the cost to the facility that purchased the drugs); and

• The average national administrative cost associated with dispensing the drugs for each prescription.

We provided a 30-day comment period that ended on August 10, 2009. We received comments from three commenters and the issues they raised are discussed below. Based on the rationale set forth in the proposed rule and this document, we are adopting the proposed rule with the nonsubstantive changes discussed below.

Two commenters indicated that the final rule should ensure that insurance companies pay VA in response to VA billing, and thereby reduce or eliminate the veterans' copayment. We agree that the payment practices of third-party payers need to be addressed. However, those practices are not within the scope of this rulemaking. This rulemaking concerns VA's methodology for determining reasonable charges for prescription drugs. We did not propose to amend other VA regulations regarding third-party payment procedures or to promulgate new regulations regarding such procedures. However, we intend to separately publish a proposed rule to address issues regarding requirements for third-party payers making payments to VA.

Another commenter raised a number of issues. All of these issues are discussed below.

The commenter indicated that the VA acquisition cost for prescription drugs could be more than the third-party payer cost for the same prescription drugs and seemed to suggest that the billing amount for the cost of the drugs should not be more than the amount that the third-party payer would be required to pay for the same prescription drugs. The commenter also indicated that the VA administrative fee of $11.17 is more than the average private dispensing fee and that private industry has been successful in negotiating such fees in the range of $1.50 to $2.00. We clarified what is meant by administrative costs but made no other changes based on these comments.

Under the provisions of 38 U.S.C. 1729, VA has authority to bill third-party payers in an amount constituting "reasonable charges." We believe that the billing formula is warranted under the statute. Moreover, VA has taken steps to keep costs at a minimum.

In most cases VA purchases drugs in bulk at discounted prices. Also, insofar as possible, VA prescribes generic drugs.

Further, the $1.50 to $2.00 amounts quoted by the commenter were represented as negotiated fees and not represented as covering the actual administrative costs. We question whether these negotiated fees include all of the actual administrative costs. The VA administrative costs include general overhead costs, such as costs of buildings and maintenance, utilities, billing, and collections, and includes dispensing costs, such as costs of the labor of the pharmacy department, packaging, and mailing.

Even so, in some cases, a third party payor may be allowed to pay less than the VA billed amount. In this regard, under section 1729 a third party payor has the option of paying, to the extent of its coverage, either the billed charges or the amount the third-party payor would pay for the prescription drugs to private sector providers in the same geographic area. Accordingly, this alternative will continue to be available to third party payors in accordance with the statutory mandate (*see* 38 CFR 17.101(a)(4)).

The commenter questioned how VA will determine the price point within the drug file and how this information will be communicated to health plan payers. We made no changes based on this comment. The proposed rule stated that the prescription cost will be obtained from the Outpatient Pharmacy Prescription file or the Drug file at each VA facility (74 FR 32820). The product cost of the prescription will be calculated using the most recent purchase price of the product used by VA to fill the prescription. VA's bill will reflect the cost of the drugs, taking into consideration the quantity dispensed and VA's national administrative cost. The total prescription cost will be transmitted on a bill to a third-party payer.

In addition, the commenter also questioned what billing claim field VA will use for submitting cost information. We made no changes based on this comment. VA will combine the drug costs plus administrative costs and provide the total prescription cost in the appropriate field in the form submitted, *e.g.,* National Council for Prescription Drug Programs electronic format, UB04; Centers for Medicare and Medicaid Services (CMS) 1500.

The commenter also suggested that VA have a graduated or phased implementation so that third-party payers will have time to absorb the increased cost of payments. We do not believe that a graduated or phased implementation is necessary. Although payments made to VA by third party payors will represent an increase in the amount of collections, we believe that the overall impact on third party payors will be minimal. In 2009, U.S sales of prescription drugs totaled approximately $300.3 billion. In contrast, VA spent an estimated 4.9 billion on prescription drugs in 2009 (less than 2 per cent of the total sales). A large portion of the prescription drugs distributed in the U.S. are covered by third party payors. However, with or without the changes made by this rule, VA would have collected less than $200 million in 2009 from third party payors.

Not only do we believe that the overall impact to third party payors will be minimal because of VA's minimal share, but as noted above, in some cases a third party payor may be allowed to pay less than the VA billed amount based on the provisions in section 1729 which provide that a third party payor has the option of paying, to the extent of its coverage, either the billed charges or the amount the third-party payor would pay for the prescription drugs to private sector providers in the same geographic area.

The commenter suggested that the final rule become effective only prospectively, questioned when the changes will become effective, and expressed concerns regarding when VA will make system changes necessary to implement the final rule. We agree with the commenter that the new billing methodology should not be applied retrospectively. This final rule is effective March 18, 2011. The system changes are scheduled to be in place on that date. For further clarification, we have added in the **DATES** section of this document a statement indicating that the final rule will apply to prescriptions filled on or after the effective date of this final rule. This will also provide some lead time for third party payors to prepare for compliance with the amended regulations.

We also added a clarifying change in paragraph (m). We inserted "regarding VA charges" after "Notwithstanding other provisions of this section" to emphasize that paragraph (m) does not concern other aspects of § 17.101, such as the provisions of 38 CFR 17.101(a)(4), which explain that a third-party payer's liability is limited, to the extent of its coverage, to the lesser of the billed charges or the amount that the third-party payer would pay to a provider other than VA.

As required by 38 U.S.C. 1729(c)(2)(A), we consulted with the Comptroller General of the United States prior to promulgating this final rule.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This document contains no collections of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies as a "significant regulatory action," requiring review by the Office of Management and Budget (OMB), unless OMB waives such review, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

VA has examined the economic, interagency, budgetary, legal, and policy implications of this final rule and has concluded that it is a significant regulatory action under Executive Order 12866 because it may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule will mainly affect large insurance companies. This final rule might have an insignificant impact on a few small entities that do an inconsequential amount of their business with VA. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.005, Grants to States for Construction of State Home Facilities; 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.012, Veterans Prescription Service; 64.013, Veterans Prosthetic Appliances; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.016, Veterans State Hospital Care; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; 64.022, Veterans Home Based Primary Care.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Editorial Note: This document was received in the Office of the Federal Register on September 30, 2010.

Approved: January 11, 2010.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

■ For the reasons stated in the preamble, VA amends 38 CFR part 17 as follows:

PART 17—MEDICAL

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, 1721, and as noted in specific sections.

■ 2. Revise the second sentence of paragraph (a)(2) and paragraph (m) of § 17.101 to read as follows:

§ 17.101 Collection or recovery by VA for medical care or services provided or furnished to a veteran for a nonservice-connected disability.

(a) * * *

(2) * * * In addition, the charges billed for prescription drugs not administered during treatment will be the amount determined under paragraph (m) of this section. * * *

* * * * *

(m) *Charges for prescription drugs not administered during treatment.* Notwithstanding other provisions of this section regarding VA charges, when VA provides or furnishes prescription drugs not administered during treatment, within the scope of care referred to in paragraph (a)(1) of this section, charges billed separately for such prescription drugs will consist of the amount that equals the total of the actual cost to VA for the drugs and the national average of VA administrative costs associated with dispensing the drugs for each prescription. The actual VA cost of a drug will be the actual amount expended by the VA facility for the purchase of the specific drug. The administrative cost will be determined annually using VA's managerial cost accounting system. Under this accounting system, the average administrative cost is determined by adding the total VA national drug general overhead costs (such as costs of buildings and maintenance, utilities, billing, and collections) to the total VA national drug dispensing costs (such as costs of the labor of the pharmacy department, packaging, and mailing) with the sum divided by the actual number of VA prescriptions filled nationally. Based on this accounting system, VA will determine the amount of the average administrative cost annually for the prior fiscal year (October through September) and then apply the charge at the start of the next calendar year.

* * * * *

[FR Doc. 2010–25043 Filed 10–5–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3100

[LLWO310000.L13100000.PP0000–241A.00]

RIN 1004–AE04

Promotion of Development, Reduction of Royalty Rates for Stripper Well and Heavy Oil Properties

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Land Management (BLM) is removing portions of two regulations in order to characterize accurately the current status of two programs that have been terminated. In the past, the programs reduced royalty rates for stripper well properties and for heavy oil properties, so that Federal lessees would have incentives to keep economically marginal oil wells in production. This rule provides for record retention and correction of errors in calculation of royalties requirements that enable the Office of Natural Resources Revenue (ONRR) to continue to verify that royalties associated with past production were correctly paid.

DATES: Effective October 6, 2010.

ADDRESSES: You may mail suggestions or inquiries to the Bureau of Land Management, Division of Fluid Minerals, WO–310, 1849 C Street, NW., Washington, DC 20240–0001.

FOR FURTHER INFORMATION CONTACT: Rudy Baier, Bureau of Land Management, 202–912–7146.

SUPPLEMENTARY INFORMATION:

I. Background

A. Basics

Section 39 of the Mineral Leasing Act authorizes the Secretary of the Interior to waive, suspend, or reduce the rental, or minimum royalty, or reduce the royalty on an entire leasehold, or on any tract or portion thereof segregated for royalty purposes, for the purpose of encouraging the greatest ultimate recovery of oil, gas, and other minerals, and in the interest of conservation of natural resources (1) whenever, in his judgment, it is necessary to do so in order to promote development; or (2) whenever, in his judgment, the leases cannot be successfully operated under the terms provided therein (30 U.S.C. 209).

The BLM's regulations at 43 CFR 3103.4 include a provision authorizing royalty relief on a case-by-case application basis (43 CFR 3103.4–1), as well as provisions establishing categorical royalty reductions for two categories of oil-producing properties: Stripper wells (43 CFR 3103.4–2) and heavy oil (43 CFR 3103.4–3). The BLM promulgated the latter two provisions in 1992 and 1996, respectively (57 FR 35973 (Aug. 11, 1992); 61 FR 4750 (Feb. 8, 1996)).

A stripper well property, within the meaning of section 3103.4–2, is any Federal lease or portion thereof segregated for royalty purposes, a communitization agreement, or a participating area of a unit agreement, operated by the same operator, that produces an average of less than 15 barrels of oil per eligible well per well-day for the qualifying period (43 CFR 3103.4–2(a)(1)).

A heavy oil property, within the meaning of section 3103.4–3, is any Federal lease or portion thereof segregated for royalty purposes, a communitization area, or a unit participating area, operated by the same operator, that produces crude oil with a weighted average gravity of less than 20 degrees as measured on the American Petroleum Institute scale (43 CFR 3103.4–3(a)(1)).

B. Termination

Sections 3103.4–2 and 3103.4–3 include a total of four provisions (two in each regulation) that authorize termination of the royalty reduction programs for stripper well properties and heavy oil properties. The provision for heavy oil properties (43 CFR 3103.4–3(b)(6)(ii)) and the analogous provision for stripper well properties (43 CFR 3103.4–2(b)(5)) state that royalty reduction benefits may be terminated if the Secretary determines that royalty rate reductions have not been effective.

In addition, both sections authorize termination if oil prices exceed specific thresholds. Section 3103.4–2(b)(4) (describing the royalty reduction program for stripper well properties) states that upon 6 months' notice in the **Federal Register**, the BLM may terminate royalty rate reduction benefits after a determination that the oil price, adjusted for inflation by the BLM and the ONRR, using the implicit price deflator for gross national product with 1991 as the base year, remains on average above $28 per barrel, based on West Texas Intermediate crude average posted price for a period of 6 consecutive months. A generally analogous provision for heavy oil properties sets the threshold price for termination or suspension at $24 per barrel with 1991 as the base year (43 CFR 3103.4–3(b)(6)(i)).

Exercising its authority under the "price-threshold" provisions described above, the BLM terminated the program for stripper well properties (70 FR 42093 (July 21, 2005)). The BLM suspended and subsequently terminated the program for heavy oil properties (70 FR 21810 (April 27, 2005); 72 FR 60691 (Oct. 25, 2007)). The effective dates of the terminations were February 1, 2006, for stripper well properties and May 1, 2008, for heavy oil properties.

C. Energy Policy Act

Section 343 of the Energy Policy Act is titled, "Marginal Property Production Incentives," and generally defines "marginal property" as an onshore, gas- or oil-producing Federal property with an average daily production of less than 15 barrels of oil per well, or less than 90,000,000 British thermal units of natural gas per well. Average daily production is to be based only on wells that produce on more than half of the days during the 3 most recent production months (42 U.S.C. 15903(a)).

Section 343 also states that, until such time as the Secretary issues regulations that prescribe different standards or requirements, the Secretary shall reduce the royalty rate on (1) oil production from marginal properties if the spot price of West Texas Intermediate crude oil at Cushing, Oklahoma, is, on average, less than $15 per barrel (adjusted in accordance with the Consumer Price Index for all-urban consumers, United States city average, as published by the Bureau of Labor Statistics) for 90 consecutive trading days; and (2) gas production from marginal properties if the spot price of natural gas delivered at Henry Hub, Louisiana, is, on average, less than $2.00 per million British thermal units (adjusted in accordance with the Consumer Price Index for all-urban consumers, United States city average, as published by the Bureau of Labor Statistics) for 90 consecutive trading days (42 U.S.C. 15903(b)).

The BLM has issued a notice explaining that Section 343 of the Energy Policy Act has taken the place of the royalty reduction program for stripper well properties until the Secretary of the Interior issues regulations prescribing different relief (71 FR 71187 (Dec. 8, 2006)).

II. Discussion of the Final Rule

The purpose of this rule is to avoid confusion regarding the continued availability of royalty relief under the BLM's regulations. Categorical royalty relief pursuant to the existing codified regulations is no longer available for current production, since the BLM has terminated the regulatory programs that established royalty relief and Congress has enacted a superseding relief program for marginal wells. The current regulations provide for royalty relief on a case-by-case basis.

However, it is inappropriate to rescind all of the provisions of the regulations that provide for royalty relief. While royalty relief is no longer available for current production, prior production continues to be subject to audits and, when appropriate, corrective actions. The Federal Oil and Gas Royalty Simplification and Fairness Act (30 U.S.C. 1701, *et seq.*) provides for a 7-year statute of limitations for the ONRR to pursue a demand for royalty following the date the obligation became due, i.e., the month in which oil or gas is produced (30 U.S.C. 1724(b)(1)). As a result, the ONRR continues to verify that royalties associated with the stripper well and heavy oil royalty rate reduction programs were correctly paid, and the BLM may still terminate relief retroactively if such relief was based on manipulation of normal production or adulteration of oil sold. Since the ONRR and cooperating State auditors continue to perform audits, recalculate royalty rates improperly calculated, and, together with the BLM, take compliance actions for production manipulation, the substance of existing 43 CFR 3103.4–2(b)(3)(v), (vi), and (vii) as well as 43 CFR 3103.4–3(b)(5)(vi) and (vii) is retained and redesignated. This will avoid any dispute over the continuing obligation to maintain records for BLM or ONRR inspection and to pay, upon demand, any underpaid royalties with interest or receive credits for overpaid royalties with interest.

Besides removing provisions referring to royalty relief for stripper well properties and heavy oil properties, this rule updates 43 CFR 3100.0–9(b) to remove a reference to 43 CFR 3103.4–1(d), which was removed in a previous rulemaking. The remainder of 43 CFR 3100.0–9(b) provides for information collection by the ONRR and is otherwise unchanged so that the ONRR will be able to verify that royalties associated with past production were correctly paid. In addition, this rule: (1) Corrects a typographical error in existing 43 CFR 3103.4–2(b)(v) (redesignated as 43 CFR 3103.4–2(a)), and (2) removes from existing 43 CFR 3103.4–3(b)(5)(vi) two references to existing paragraph (b) that will be confusing once that paragraph is redesignated as 43 CFR 3103.4–3(a).

This rule may be issued without first publishing a proposed rule for public comment. Pursuant to 5 U.S.C. 553(b)(3)(B), the BLM for good cause finds that notice and public procedure are unnecessary, since the royalty relief programs for stripper wells and heavy oil properties already are terminated, and the Energy Policy Act of 2005 took the place of the royalty reduction program for stripper well properties until regulations governing this area are promulgated. Additionally, the BLM for good cause finds under 5 U.S.C. 553(d)(3) that this removal may properly take effect upon publication since it does not require any change in conduct by any regulated party.

III. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

The BLM has determined that this rule is not a "significant regulatory action" within the meaning of Executive Order 12866.

- This rule will not have an annual effect on the economy of $100 million or more, and will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This rule will not have an impact on the economy because it is a ministerial action.
- This rule will not create inconsistencies with other agencies' actions. No other agency has jurisdiction over the rate of royalty for minerals produced on Federal lands. The BLM has coordinated this rulemaking with the ONRR, the agency that is responsible for enforcing royalty payment requirements.
- This rule will not materially affect entitlements, grants, loan programs, or the rights and obligations of their recipients.
- This rule will not raise novel legal or policy issues because it only removes from the regulations royalty rate reduction programs that are not in effect and will not be reinstated.

Regulatory Flexibility Act

This rule will not have a significant economic effect on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because the relief programs have been terminated and replaced by a new statute. Accordingly, a final Regulatory Flexibility Analysis is not required, and a Small Entity Compliance Guide is not required.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act.

- This rule will not have an annual effect on the economy of $100 million or more.
- This rule will not materially alter current BLM policy.
- This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- This rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

In accordance with the criteria in the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the BLM has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. The BLM has also determined that this rule does not include a Federal mandate that may result in estimated annual costs of $100 million or more to State, local, and tribal governments in the aggregate, or to the private sector. Accordingly, the BLM is not required to prepare a budgetary impact statement or a plan for providing notice to any small governments.

Executive Order 12630, Takings

The BLM has determined that this rule does not have takings implications. A takings implication assessment is not required.

Executive Order 13132, Federalism

The final rule will not have a substantial direct effect on the States, on the relationship between the National and State Governments, or on the distribution of power and responsibilities among the various levels of government. Therefore, the BLM has determined that this final rule does not warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

The BLM has determined that this rule meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988, and therefore does not unduly burden the judicial system.

Paperwork Reduction Act

This rule does not initiate any new information collection requirements. This rule does not affect any existing information collection requirements which are assigned the clearance number 1010–0090 and are administered by the ONRR. Accordingly, no analysis or action is necessary under the Paperwork Reduction Act.

National Environmental Policy Act

The BLM has determined that this rule is not a major Federal action within the meaning of 40 U.S.C. 4332(2)(C). This rule removes regulations that established two programs that have been terminated. The removal of the regulations merely clarifies the programs' current status, and is thus a ministerial act. No analysis is required under the National Environmental Policy Act.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

The BLM has determined that this rule does not have "tribal implications" within the meaning of Executive Order 13174.

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Under Executive Order 13211, a "significant energy action" is one that is "significant" under Executive Order 12866 and is likely to have a significant adverse energy effect. The BLM has determined that this rule is not "significant" within the meaning of Executive Order 12866. Moreover, the BLM has determined that this rule is not likely to have a significant adverse energy effect, in view of the price data that led to the termination of royalty reduction benefits for stripper well properties and heavy oil properties. Accordingly, the BLM has determined that this rule is not a "significant energy action" requiring a "Statement of Energy Effects" within the meaning of Executive Order 13211.

Author

The principal author of this final rule is Rudy Baier, Minerals and Realty Management, with the assistance of Jean Sonneman of the Division of Regulatory Affairs, Bureau of Land Management, Washington, DC.

List of Subjects in 43 CFR Part 3100

Mineral royalties, Oil and gas exploration and production, Public lands—mineral resources, Reporting and recordkeeping requirements, and Surety bonds.

■ For the reasons stated in the preamble, and under the authorities cited below, part 3100, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations, is amended as set forth below:

Ned Farquhar,

Deputy Assistant Secretary, Land and Minerals Management.

PART 3100—OIL AND GAS LEASING

■ 1. The authority citation for part 3100 continues to read as follows:

Authority: 30 U.S.C. 189 and 359; 43 U.S.C. 1732(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109–58).

Subpart 3103—Fees, Rentals and Royalty

§ 3103.4–1 [Amended]

■ 2. Section 3103.4–1(b)(1) is amended by removing the phrase "on other than stripper oil well leases or heavy oil properties" and the sentence "(Royalty reductions specifically for stripper oil well leases or heavy oil properties are discussed in § 3103.4–2 and § 3103.4–3 respectively.)".

§ 3103.4–2 [Amended]

■ 3. Section 3103.4–2 is amended as follows:

■ a. Remove paragraph (a), the introductory text of paragraph (b), paragraphs (b)(1)and (b)(2), the introductory text of paragraph (b)(3), and paragraphs (b)(3)(i), (b)(3)(ii), (b)(3)(iii), (b)(3)(iv), (b)(4), (b)(5), (b)(6), (b)(7), (b)(8), (b)(9), and (b)(10).

■ b. Redesignate paragraphs (b)(3)(v), (b)(3)(vi), and (b)(3)(vii) as paragraphs (a), (b), and (c).

■ c. Amend redesignated paragraph (a) by removing the term "MSS" and adding in its place the term "ONRR".

§ 3103.4–3 [Amended]

■ 4. Section 3103.4–3 is amended as follows:

■ a. Remove paragraph (a), the introductory text of paragraph (b), paragraphs (b)(1), (b)(2), (b)(3), and (b)(4), the introductory text of paragraph (b)(5), and paragraphs (b)(5)(i), (b)(5)(ii), (b)(5)(iii), (b)(5)(iv), (b)(5)(v), (b)(6), (b)(7), (b)(8), (b)(9), (b)(10), and (b)(11).

■ b. Redesignate paragraphs (b)(5)(vi) and (b)(5)(vii) as paragraphs (a) and (b).

■ c. Amend redesignated paragraph (a) by removing the phrases "authorized by this paragraph (b)," and "of this paragraph (b)".

[FR Doc. 2010–25154 Filed 10–5–10; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 395

[Docket No. FMCSA–2010–0230]

Hours of Service; Limited Exemption for the Distribution of Anhydrous Ammonia in Agricultural Operations

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of final disposition; granting of exemption.

SUMMARY: FMCSA grants a 2-year, limited exemption from the Federal hours-of-service (HOS) regulations for the transportation of anhydrous ammonia from any distribution point to a local farm retailer or to the ultimate consumer, and from a local farm retailer to the ultimate consumer, as long as the transportation takes place within a 100 air-mile radius of the retail or wholesale distribution point. This exemption extends the agricultural operations exemption established by section 345 of the National Highway System Designation Act of 1995, as amended by sections 4115 and 4130 of the Safe, Accountable, Flexible, Efficient Transportation Equity: A Legacy for Users (SAFETEA–LU), to certain drivers and motor carriers engaged in the distribution of anhydrous ammonia during the planting and harvesting seasons, as defined by the States in which the carriers and drivers operate. The Agency believes that the exemption will achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption, based on the terms and conditions imposed. The exemption preempts inconsistent State and local requirements applicable to interstate commerce.

DATES: The exemption is effective October 6, 2010. The exemption will remain in effect until October 9, 2012 unless revoked earlier by FMCSA.

FOR FURTHER INFORMATION CONTACT: Thomas L. Yager, Chief, Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave., SE., Washington, DC 20590.

E-mail: MCPSD@dot.gov. Phone (202) 366–4325.

SUPPLEMENTARY INFORMATION:

Legal Basis

Section 4007(a) of the Transportation Equity Act for the 21st Century (TEA–

21) (Pub. L. 105–178, 112 Stat. 107, 401, June 9, 1998) provided the Secretary of Transportation (the Secretary) the authority to grant exemptions from any of the Federal Motor Carrier Safety Regulations (FMCSRs) issued under chapter 313 or section 31136 of title 49 of the United States Code, to a person(s) seeking regulatory relief (49 U.S.C. 31136, 31315(b)). Prior to granting an exemption, the Secretary must request public comment and make a determination that the exemption is likely to achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained in the absence of the exemption. Exemptions may be granted for a period of up to 2 years and may be renewed.

The FMCSA Administrator has been delegated authority under 49 CFR 1.73(e)(1) and (g) to carry out the functions vested in the Secretary by 49 U.S.C. chapter 313 and subchapters I and III of chapter 311, relating, respectively, to the commercial driver's license program and to commercial motor vehicle (CMV) programs and safety regulation.

Background

On July 14, 2010, FMCSA published a notice in the **Federal Register** proposing a 2-year limited exemption from the Federal hours-of-service (HOS) regulations for the transportation of anhydrous ammonia from any distribution point to a local farm retailer or to the ultimate consumer, and from a local farm retailer to the ultimate consumer, as long as the transportation takes place within a 100 air-mile radius of the retail or wholesale distribution point (75 FR 40765). The Agency explained its rationale for proposing the exemption, set forth the proposed terms and conditions to be imposed on motor carriers and drivers operating under the exemption, and requested public comments on the proposal.

Discussion of Public Comments

The FMCSA received 28 comments to the public docket, with 2 of the comments submitted on behalf of multiple organizations. The comments included a letter signed by 23 members of the United States House of Representatives who expressed support for the exemption. Only 3 of the commenters (including 1 anonymous individual) opposed the exemption. A list of the commenters is provided below:

1. Agricultural and Food Transporters Conference of the American Trucking Associations (with the following organizations listed in its submission to the docket): Agricultural Retailers Association; American Sugarbeet Growers Association; National Agricultural Aviation Association; National Association of Wheat Growers; National Barley Growers Association; National Corn Growers Association; National Cotton Council; National Council of Farmer Cooperatives; National Farmers Union; National Sunflower Association; North American Equipment Dealers Association; The Fertilizer Institute; USA Rice Federal; U.S. Canola Association.
2. Agricultural Retailers Association.
3. Agriculture Education Group.
4. Agrium.
5. Cabery Fertilizer Company.
6. Commercial Vehicle Safety Alliance (CVSA).
7. Cooperative Network.
8. Denis Brandon.
9. Donovan Farmers Co-Op Elevator, Inc.
10. E. Albert Allen.
11. Far West Agribusiness Association.
12. Growmark.
13. Huellinghoff Brothers, Inc.
14. Illinois Department of Agriculture.
15. Illinois Fertilizer and Chemical Association.
16. Kohlbrecher Truck Service, Inc.
17. Kova Fertilizer (with the following organizations listed in its submission to the docket): Agricultural Education Group; Agricultural Food and Transporters Conference; Agricultural Retailers Association; The Fertilizer Institute; National Council of Farmer Cooperatives.
18. Missouri Agribusiness Association.
19. North American Equipment Dealers Association.
20. Northern Partners Cooperative.
21. Oregon Wheat Growers League.
22. Patrick W. Herbert.
23. Perry Feed and Fertilizer.
24. Raymond J. Schroeder.
25. Transport America.
26. United Farmers Cooperative.

A list of the Members of Congress who signed a joint docket submission is provided below, in alphabetical order:

Rep. Leonard Boswell; Rep. Howard Coble; Rep. Jerry Costello; Rep. Jo Ann Emerson; Rep. Sam Graves; Rep. Deborah Halvorson; Rep. Phil Hare; Rep. Lyn Jenkins; Rep. Tim Johnson; Rep. Steve King; Rep. Tom Latham; Rep. Dave Loebsack; Rep. Blaine Luetkemeyer; Rep. Cynthia Lummis; Rep. Donald Manzullo; Rep. Betsy Markey; Rep. Jerry Moran; Rep. Collin Peterson; Rep. Aaron Schock; Rep. John Shimkus; Rep. Ike Skelton; Rep. Adrian Smith; Rep. Lee Terry.

Comments in Support of the Exemption

Generally, the comments in favor of the exemption either categorically supported the exemption, requested that it be expanded to include liquid and dry fertilizers, or asked that it include all agricultural products. For example, the North American Equipment Dealers Association stated:

We believe Congress, when it authorized the HOS agricultural exemptions in 1995, intended to address the special needs of the nation's agricultural industry and rural communities. The HOS agricultural exemption is critical for the timely delivery and transportation of agricultural inputs during peak planting and harvesting seasons defined by each state.

Farmers and ranchers expect their equipment dealers to provide parts, repairs and service of planting and harvesting equipment and, as such, should also be included in a HOS agricultural exemption.

The Illinois Fertilizer and Chemical Association also expressed an interest in expanding the scope of the proposal. The association stated:

While the exemption for the movement of anhydrous ammonia is very critical due to the extra scrutiny placed on ammonia transporters and the permit requirements for this product, the HOS exemption is also critically essential for the timely movement of non-hazardous fertilizers.

If FMCSA is willing to grant an HOS exemption for the delivery of ammonia, which is DOT regulated as an extremely hazardous substance and an inhalation hazard, then it makes even more sense to apply the exemption to the shipments of bulk non-hazardous fertilizers which are equally important to the growth of Illinois crops.

Cooperative Network indicated that the exemption is a more appropriate means of addressing the agricultural industry's needs than the use of FMCSA's emergency relief provision under 49 CFR 390.23(a). It offered the following comment:

For the past three years, Cooperative Network has requested and received a declaration of emergency in each instance following the provisions of § 390.23(a) to increase anhydrous ammonia supply during periods of extremely high demand. The repeated acts of the governors of Minnesota and Wisconsin in issuing emergency declarations, and thereby lifting the hours-of-service requirements for farm supply shipments, demonstrates the supply challenges farmers and their suppliers endure during the planting and harvesting seasons.

The CVSA supports the exemption but suggests that, in evaluating the proposal, FMCSA look for data in addition to that which the Agency discussed in the July notice. The CVSA also requested that the Agency consider more stringent terms and conditions for the exemption.

CVSA believes the terms and conditions should be strengthened so that a more robust safety determination can be made during and after this 2-year exemption period. CRs [compliance reviews] should be conducted on all carriers seeking to take advantage of the exemption so a current Safety Rating can be assigned; carriers must maintain a "Satisfactory" safety rating. FMCSA should require that the carrier have a credential to be carried on the vehicle.

The CVSA also suggested that FMCSA monitor carriers' safety performance during the exemption.

FMCSA Response

First, FMCSA acknowledges the concerns of commenters that believe the scope of the exemption should be expanded to include either dry and liquid fertilizers, or all agricultural products. The Agency, however, continues to believe that would be inappropriate at this time.

The FMCSA is committed to being responsive to the needs of the agricultural community in delivering products for American consumers, but the Agency must also fulfill its safety mission. The safety mission requires that the Agency exercise sparingly its authority to grant exemptions. No matter what the substance being shipped, the Agency must be extremely sensitive to the number of drivers and trucks that it allows to operate outside of the HOS regulations, for any period of time.

By granting of the proposed exemption, FMCSA extends to certain drivers and motor carriers engaged in the distribution of anhydrous ammonia the agricultural operations exemption established by section 345(a) of the National Highway System Designation Act of 1995 (NHS Act) (Pub. L. 104–59, November 28, 1995, 109 Stat. 568, 613, 49 U.S.C. 31136 note, as amended by section 4130, redesignated by section 4115(a)(2) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, August 10, 2005, 119 Stat. 1144, 1726) and implemented by 49 CFR 395.1(k)).

The July 14 notice proposing this exemption indicated that FMCSA had been contacted by Members of Congress on behalf of their constituents concerning the Agency's interpretation of the agricultural exemption provided by section 345(a)(1) of the NHS Act. Motor carriers engaged in the transportation of farm supplies—particularly anhydrous ammonia—argued that FMCSA's reading of the agricultural exemption denied certain distribution activities the regulatory relief intended by Congress. At the time the Agency was contacted, the emphasis was on the transportation of anhydrous ammonia rather than all fertilizers or all agricultural commodities. Therefore, the Agency focused its attention on anhydrous ammonia.

Second, with regard to the interpretation of the NHS Act exemption, the Agency acknowledges that the legislative history adds an explanation of the sponsors' intent that was not incorporated into the statutory language itself. The Agency has consistently held that the agricultural operations exemption applies to the transportation of farm supplies from the local farm retailer to the ultimate consumer within a 100 air-mile radius. The FMCSA's interpretation, however, has not extended the HOS exemption to deliveries from wholesalers to either local farm retailers or farms. (*See* Question 33, 49 CFR 395.1 on the Agency's Web site: *http://www.fmcsa.dot.gov.*) Question 33 reads as follows:

> *Question 33:* How is "point of origin" defined for the purpose of § 395.1(k)?
>
> *Guidance:* The term "point of origin" is not used in the NHS Designation Act; the statutory term is "source of the [agricultural] commodities." The exemption created by the Act applies to two types of transportation. The first type is transportation from the source of the agricultural commodity—where the product is grown or raised—to a location within a 100 air-mile radius of the source. The second type is transportation from a retail distribution point of the farm supply to a location (farm or other location where the farm supply product would be used) within a 100 air-mile radius of the retail distribution point.
>
> The legislative history of the agricultural exemption indicates it was intended to only apply to retail store deliveries. Thus, it is clear Congress intended to limit this exemption to retail distributors of farm supplies.
>
> Second-stage movements, such as grain hauled from an elevator (or sugar beets from a cold storage facility) to a processing plant, are more likely to fall outside the exempt radius. Similarly, the exemption does not apply to a wholesaler's transportation of an agricultural chemical to a local cooperative because this is not a retail delivery to an ultimate consumer, even if it is within the 100 air-mile radius.

There is substantial controversy about the weight to be assigned to legislative history in the interpretation of statutes. Because the exemption being granted today responds to the most immediate needs of the agricultural community, FMCSA will not revisit its previous guidance at this time.

Third, in response to Cooperative Network's reference to States' emergency declarations, FMCSA cautions all interstate motor carriers subject to the FMCSRs to adhere to safety regulations unless the declaration by a State or local official is for an "emergency" as defined under 49 CFR 390.5. The FMCSA does not question the authority of State and local officials to make declarations about matters within their jurisdiction.

Motor carriers subject to the FMCSRs, however, have a responsibility for determining whether the "emergency" referenced by the State or local official is one that "* * * interrupts the delivery of essential services (such as, electricity, medical care, sewer, water, telecommunications, and telecommunication transmissions) or essential supplies (such as, food and fuel) or otherwise immediately threatens human life or public welfare, * * *"[1] Also, any motor carrier that intends to operate under the emergency relief provision must ensure that it is engaged in providing "direct assistance," as defined in 49 CFR 390.5, in responding to the emergency. Therefore, motor carriers that have exceeded the applicable HOS requirements for the purpose of applying fertilizer during the planting and harvesting seasons should cease such practices as they clearly do not fall within scope of FMCSA's emergency relief provision.

Finally, FMCSA acknowledges the CVSA's concerns. As explained in the July notice, however, the Agency has considered the data available, including its experience from the 90-day limited waiver granted earlier this year. On March 22, 2010, FMCSA published a notice in the **Federal Register** announcing a limited 90-day waiver from the Federal HOS regulations for the transportation of anhydrous ammonia from any distribution point to a local farm retailer or to the ultimate consumer, and from a local farm retailer to the ultimate consumer, as long as the transportation takes place within a 100 air-mile radius of the retail or wholesale distribution point (54 FR 13441). As explained in the Agency's July notice, there were no crashes or incidents reported as a result of the waiver. FMCSA also sought information from the Pipeline and Hazardous Materials Safety Administration's (PHMSA) Hazardous Materials Incident Reporting Systems and from FMCSA field offices concerning the safety performance of anhydrous ammonia transporters and received no negative reports. In addition, none of the commenters responding to the July notice provided information suggesting safety performance problems associated with the motor carriers and drivers engaged in the transportation of anhydrous ammonia.

Based on a review of the available information, the Agency believes it is appropriate to grant the exemption.

With respect to CVSA's recommendation that FMCSA impose more stringent terms and conditions for motor carriers and drivers that would operate under the exemption, the

[1] See definition of the term "emergency" in 49 CFR 390.5.

Agency does not believe such action is warranted at this time. There is no basis for requiring that each carrier undergo a compliance review prior to being allowed to operate under the exemption. If the carrier's safety performance were suspect, it is likely that it would be considered a "high-risk" carrier under the current Agency safety monitoring system, which takes into account roadside inspection data and crash data. The Agency would have prioritized the carrier for a compliance review or investigation, and would take appropriate enforcement action to address the safety performance problems. If the problems were such that the carrier receives a rating of "conditional" or "unsatisfactory," the carrier would be precluded from operating under the exemption.

Comments in Opposition to the Exemption

Transport America, one of three commenters opposed to the exemption, believes that all motor carriers should operate under the same regulations. Transport America stated:

> It [the exemption] has nothing to do with safety but caters to a large farming special interest group. The just in time justification is no more relevant than retailers would have for Christmas, building products companies would have for construction season, snow blower manufacturers would have for the start of winter and the list goes on and on.

Patrick W. Herbert also expressed opposition to the exemption. Mr. Herbert believes that exceeding the HOS rules increases the risk of fatigue. He bases his views on his experience as a truck driver who has operated within a 100 air-mile radius for 30 years.

FMCSA Response

FMCSA acknowledges the concerns of the commenters. The Agency continues to believe the exemption is appropriate because local retailers and farms have limited storage capacity and therefore must constantly replenish certain supplies during the planting and harvesting seasons. They are part of the "just in time" distribution system that extends from a wholesaler to the ultimate consumer of the supplies. Because of storage constraints and the demand for the transportation of anhydrous ammonia to support agricultural operations, and the likelihood that such conditions will continue for some time, FMCSA believes the 2-year, limited exemption is necessary to provide regulatory relief for the transportation of anhydrous ammonia during the planting and harvesting seasons, as defined by the States in which the anhydrous ammonia transporters operate. The Agency emphasizes that the exemption provides limited regulatory relief to facilitate planting activities that will ultimately result in the production of agricultural commodities at prices to which consumers have become accustomed, with no foreseeable degradation of safety. The Agency will continue to monitor the safety performance of motor carriers and drivers engaged in the transportation of anhydrous ammonia. It will take appropriate action at any time it appears that a motor carrier or driver should be prohibited from operating under the exemption or that the entire exemption should be reconsidered because of poor safety performance.

Safety Determination for Granting the Exemption

FMCSA is committed to ensuring high standards of motor carrier safety. As explained in the July notice, the Agency has considered the available data concerning the safety performance of agricultural operations in general and the safety performance of anhydrous ammonia transporters during the 90-day, limited waiver referenced above. FMCSA compared safety performance data for agricultural carriers currently operating under the statutory HOS exemption provided by the NHS Act, as amended, with the data for non-agricultural carriers that are not exempt from HOS regulations to determine whether the exemption would be likely to achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained in the absence of the exemption. The data were collected as part of a study, "Agricultural Commodity and Utility Carriers Hours of Service Exemption Analysis," May 2010, FMCSA–RRA–10–448. A copy of the report has been placed in the public docket identified at the beginning of this notice.

The study was conducted in two phases. Phase 1 compares the safety performance of agricultural and non-agricultural carriers for the period 2005 through 2008, and also examines two additional industries, livestock and utility carriers, whose operations were not exempt from HOS regulations prior to the passage of SAFETEA–LU.[2] The Phase 1 analysis used carrier registration, inspection and crash data from FMCSA's Motor Carrier Management Information System (MCMIS). The study used cargo classification information on the FMCSA Motor Carrier Identification Report (Form MCS–150) in MCMIS to identify the carrier's industry group (agricultural, livestock, or utility carrier), and used MCS–150 information to identify carriers operating within and beyond a 100-air-mile radius. The operating radius information was used to create two agricultural carrier subgroups: (1) Agricultural carriers with 100 percent of drivers operating within a 100-air-mile radius; and (2) agricultural carriers with 100 percent of drivers operating beyond a 100-air-mile radius. The analysis used the first subgroup as representative of agricultural carriers exempt from the HOS requirements, and the second subgroup as representative of agricultural carriers not exempt from the HOS requirements.

For the Phase 2 analysis, inspection data of agricultural commodity and utility carriers (which are also exempt from HOS regulations) were collected during an FMCSA special study of a sample of States. These data included only those inspections occurring during the States' planting and harvesting seasons and indicated both the commodity being transported and whether the driver was operating within or beyond the 100-air-mile radius exempt from HOS regulations. The Phase 2 analysis assessed the safety performance of the HOS exempt agricultural commodity and utility service carriers identified in the survey in comparison with non-HOS-exempt carriers based on their out-of-service (OOS) violation rates and crash rates.

The Agency did not place as much emphasis on the OOS rates because there were no HOS violation data to consider, given that the agricultural carriers for which data were available were operating under a statutory exemption from the HOS rule. Differences between the OOS rates for other issues such as driver qualifications and vehicle defects and deficiencies, while important in considering overall safety management controls of the carriers, were not necessarily related to the potential safety impact of the exemption.

The Phase 1 analysis indicates that nationally, agricultural carriers operating within a 100-air-mile radius had lower crash rates per 100 power units than those operating beyond this radius, except for in 2008, when there was no difference in the crash rates.

To provide additional validation of the crash analysis, which uses power unit data reported on the Form MCS–150, a separate analysis was performed using data only for carriers domiciled in States participating in FMCSA's Performance and Registration Information Systems Management (PRISM) program that enforces MCS–

[2] Section 4130(a).

150 updating.[3] PRISM links State motor vehicle registration systems with carrier safety data in order to identify unsafe commercial motor carriers. The PRISM State carriers are required to update their MCS–150 annually. By contrast, non-PRISM State carriers are required by FMCSA to update their MCS–150 biennially. As a result, the PRISM State data are considered more current and reliable than non-PRISM State data where there are no direct consequences for not updating the data. Data from PRISM States that enforce MCS–150 updating show that agricultural carriers operating within a 100-air-mile radius had more varied results, with crash rates higher than carriers operating beyond a 100-air-mile radius in 2008, lower in 2006 and 2007, and nearly the same in 2005.

The Phase 2 analysis indicates that in the four States participating in the survey (Idaho, Kansas, Maryland, Michigan), agricultural carriers that were subject to the HOS requirements had higher crash rates per 100 power units than agricultural carriers exempt from the HOS requirements.

In addition to the study, the Agency considered information from the PHMSA Hazardous Materials Incident Reporting Systems and from FMCSA field offices concerning the safety performance of anhydrous ammonia transporters during the limited 90-day waiver mentioned above.

With regard to information from FMCSA's field offices, the Agency did not receive any information about accidents, as defined in 49 CFR 390.5, involving motor carriers transporting anhydrous ammonia using drivers operating under the limited 90-day waiver. The Agency acknowledges that there is a gap between the date that a crash occurs and the date the States would typically submit crash reports. However, because FMCSA sought information through its field offices rather than relying solely on routine crash reporting by State enforcement agencies, it is unlikely that there have been any crashes resulting in fatalities or injuries, involving a driver operating under the limited 90-day waiver, referenced above.

In the absence of any data or information to the contrary, the Agency continues to believe the real-world experience of anhydrous ammonia transporters during the 90-day limited waiver suggests that the level of safety under an exemption would be equivalent to, or greater than, the level that would be achieved absent such exemption.

FMCSA Decision

In light of the information presented in the July 14, 2010, notice and after considering all the comments submitted in response to the notice, FMCSA grants a 2-year, limited exemption from the Federal HOS regulations for interstate motor carriers engaged in the distribution of anhydrous ammonia during the planting and harvesting seasons as defined by the States. As indicated in the July 14, 2010, notice, the Agency's review of the available crash data comparing exempt and non-exempt motor carriers, and a review of crash data from anhydrous ammonia transporters operating during the limited 90-day waiver provide a reasonable basis to believe that the limited exemption is likely to achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption, based on the terms and conditions that rare being imposed.

Terms and Conditions of the Exemption

The FMCSA provides a 2-year, limited exemption from the requirements of 49 CFR part 395 concerning the HOS requirements for drivers of property-carrying vehicles engaged in the distribution of anhydrous ammonia during the planting and harvesting seasons, as determined by the State(s) in which the transportation takes place. This limited exemption extends the agricultural operations exemption from the Federal HOS regulations to drivers used by motor carriers in the distribution system, provided that: (1) The driver is delivering anhydrous ammonia; (2) none of the transportation movements within the distribution chain exceeds a 100 air-mile radius—whether from the retail or wholesale distribution point; and (3) the motor carrier using the driver has a "satisfactory" safety rating or is "unrated;" drivers for motor carriers with "conditional" or "unsatisfactory" safety ratings are prohibited from taking advantage of the exemption.

The exemption allows drivers for "unrated" motor carriers and those with a satisfactory safety rating to use the HOS exemption when the drivers are delivering anhydrous ammonia from any distribution point to a local farm retailer or to the ultimate consumer, and from a local farm retailer to the ultimate consumer, as long as the transportation takes place within a 100 air-mile radius of the retail or wholesale distribution point.

Safety Rating

Motor carriers that have received compliance reviews and want their drivers to be exempt from the HOS regulations are required to have a "satisfactory" rating. The compliance review is an on-site examination of a motor carrier's operations, including records on drivers' HOS, maintenance and inspection, driver qualification, commercial driver's license requirements, financial responsibility, accidents, hazardous materials, and other safety and transportation records to determine whether a motor carrier meets the safety fitness standard. The assignment of a "satisfactory" rating means the motor carrier has in place adequate safety management controls to comply with the Federal safety regulations, and that the safety management controls are appropriate for the size and type of operation of the motor carrier.

FMCSA will allow drivers for "unrated" carriers to take advantage of the exemption. Unrated motor carriers are those that have not received a compliance review. FMCSA is allowing drivers for unrated motor carriers to participate because it is unfair to exclude them simply because these carriers were not selected by the Agency for a compliance review. The absence of a compliance review is in no way an indication that the carrier has done anything wrong or has safety problems.

The Agency will not allow drivers for motor carriers with conditional or unsatisfactory ratings to participate because both of those ratings indicate that the carrier has safety management control problems. There is little reason to believe that carriers rated either "unsatisfactory" or "conditional" could be relied upon to comply with the terms and conditions of the exemption.

Accident and Hazardous Materials Reporting Requirement

Within 10 business days following an accident (as defined in 49 CFR 390.5) or any unintentional discharge of anhydrous ammonia that requires the submission of the Department of Transportation Hazardous Materials Incident Report (DOT Form F 5800.1) (*see* 49 CFR 171.16) involving any of the CMVs operated by a motor carrier whose drivers are using the exemption, irrespective of whether the CMV involved in the accident or discharge was being operated by a driver using the exemption, the motor carrier must submit the following information:

[3] Current PRISM States that enforce the MCS–150 updating requirement are Alabama, Arizona, Arkansas, Connecticut, Georgia, Iowa, Kentucky, Louisiana, Maine, Minnesota, Missouri, Nebraska, New Hampshire, New Mexico, North Carolina, Ohio, South Carolina, South Dakota, Tennessee, Utah, Vermont, Washington, and West Virginia.

(a) Date of the accident;

(b) City or town in which the accident occurred, or city or town closest to the scene of the accident;

(c) Driver's name and license number;

(d) Vehicle number and State license number;

(e) Number of injuries;

(f) Number of fatalities;

(g) Whether hazardous materials, other than fuel spilled from the fuel tanks of the motor vehicles involved in the accident, were released;

(h) The police-reported cause of the accident;

(i) Whether the driver was cited for violating any traffic laws, motor carrier safety regulations, or hazardous materials discharge; and

(j) Whether the driver was operating under the exemption, and if so, an estimate of the total driving time, on-duty time for the day of the accident and each of the seven calendar days prior to the accident.

Duration of the Exemption

The exemption is effective October 6, 2010 and will remain in effect until October 9, 2012 unless revoked earlier by FMCSA. The exemption may be renewed by the Agency; the Agency will provide notice and an opportunity for public comment prior to renewing the exemption. The exemption preempts inconsistent State or local requirements applicable to interstate commerce.

Safety Oversight of Carriers Operating Under the Exemption

FMCSA expects that any drivers and their employing motor carrier operating under the terms and conditions of the exemption will maintain their safety record. Should any deterioration occur, however, FMCSA will, consistent with the statutory requirements of TEA–21, take all steps necessary to protect the public interest. Use of the exemption is voluntary, and FMCSA will immediately revoke the exemption for any interstate driver or motor carrier for failure to comply with the terms and conditions exemption.

Issued on: September 30, 2010.

Anne S. Ferro,

Administrator.

[FR Doc. 2010–25207 Filed 10–5–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 18

[Docket No. FWS–R7–FHC–2010–0002; 71490–1351–0000–L5–FY10]

RIN 1018–AW94

Marine Mammal Protection Act; Deterrence Guidelines

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: These guidelines set forth best practices that we, the Fish and Wildlife Service, find are appropriate for safely and nonlethally deterring polar bears from damaging private and public property and endangering the public. Anyone deciding to carry out the deterrence measures or practices set out in this rule may do so without our written authorization or supervision. As discussed in the background section of the proposed rule (75 FR 21571) as well as in our responses to public comments, we authorize other, more aggressive deterrence activities through separate provisions of the Marine Mammal Protection Act. This rule is being promulgated to better inform the public on the safe deterrence of polar bears as directed under the MMPA and not because of specific or recurring incidences.

DATES: This rule becomes effective on November 5, 2010.

ADDRESSES: The final rule and associated environmental assessment are available for viewing at *http://regulations.gov.* Supporting documentation we used in preparing this final rule is available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Marine Mammals Management Office, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503; telephone 907/786–3800; facsimile 907/786–3816.

FOR FURTHER INFORMATION CONTACT: Charles S. Hamilton, Wildlife Biologist, Office of Marine Mammals Management (*see* **ADDRESSES** section). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

Background

It is our intent to discuss only those topics directly relevant to the deterrence of the polar bear as provided for in the 1994 amendments to the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*). For more information on the polar bear, including its status as a threatened species under the Endangered Species Act of 1973, as amended (ESA) (16 U.S.C. 1531 *et seq.*), refer to the final listing rule published on May 15, 2008 (73 FR 28212), the final special rule published on December 16, 2008 (73 FR 76249), the proposed designation of critical habitat published on October 29, 2009 (74 FR 56058), and the May 5, 2010 (75 FR 24545) notice of availability of the draft Economic Analysis for the polar bear proposed designation of critical habitat.

As discussed in our notice of April 26, 2010 (75 FR 21571), the 1994 amendments to the MMPA provide an exception to otherwise prohibited acts, allowing the use of measures that may deter a marine mammal from, among other things, damaging private property or endangering personal safety [16 U.S.C. 1371(a)(4)(A)(ii) and (iii), respectively]. These acts of deterrence must not result in the death or serious injury of a marine mammal. Section 101(a)(4)(A) of the MMPA specifically identifies the circumstances when the deterrence of a polar bear may be undertaken and by whom. These include the owner of fishing gear or catch (or his or her employee or agent) when deterring a polar bear from damaging that gear or catch and the owner (or his agent, bailee, or employee) of private property (other than fishing gear or catch) when deterring a polar bear from damaging their property. In addition, under section 101(a)(4)(A) of the MMPA any person may deter a polar bear from endangering personal safety and a government employee may also deter a polar bear from damaging public property. Separate from this authorization, section 101(a)(4)(B) of the MMPA directs the Fish and Wildlife Service (Service) to recommend specific measures that the public may use to safely, nonlethally deter marine mammals, including those listed as endangered or threatened under the ESA. Section 101(a)(4)(C) of the MMPA provides for the prohibition of certain forms of deterrence if the Service determines, using the best scientific information available, and subsequent to public comment, that the deterrence measure has a significant adverse effect on marine mammals.

We have developed these guidelines based on information gained over the past twenty years from our Incidental Take program and cooperative agreements with Alaska Native organizations. Additionally, we received

comment on our proposed guidelines from both the public and experts in the field. These guidelines provide measures that the public may use safely and, if applied properly, will not kill or seriously injure a polar bear. These guidelines are needed to reduce potential occurrences of bear-human interactions and result in no more than minor, short-term behavioral effects on polar bears.

Additional deterrence measures are available under other provisions of the MMPA. As discussed below, these exceptions may be carried out by certain individuals even if they may pose the risk of serious injury or mortality to the polar bear. Section 109(h) of the MMPA allows a Federal, State, or local government employee, acting in their official capacity, to take a polar bear for the protection or welfare of the animal, the protection of the public health and welfare, or the nonlethal removal of nuisance marine mammals. Private persons who have a section 112(c) cooperative agreement with the Service may also carry out such deterrence activities under section 109(h) but only in their capacity as designated persons under such agreement and in full compliance with its terms and conditions. Section 101(c) of the MMPA also allows any person to take a polar bear if the taking is imminently necessary in self-defense or to save the life of a person in immediate danger, and such taking is reported to the Secretary within 48 hours.

Summary of Comments and Recommendations

During the public comment period, we requested written comments from the general public on the proposed deterrence guidelines for the polar bear. Also, as directed under section 101(a)(4)(B), we invited appropriate experts to peer review the proposed guidelines. These experts included representatives from the State of Alaska's Department of Fish and Game, and local community experts that have had experience in areas where the polar bear and human population overlap.

The comment period on the proposed deterrence guidelines opened on April 26, 2010 (75 FR 21571) and closed on May 26, 2010. During that time, we received 8 public comments, and 1 peer review comment on the proposed deterrence guidelines: 1 from the United States Marine Mammal Commission; 1 from the North Slope Borough; 1 from an appropriate expert; and the remainder from organizations and individuals. We reviewed all comments, which are part of the Docket for this rulemaking, received for substantive issues, new information, and recommendations regarding deterrence guidelines for the polar bear. These comments are summarized and addressed below, and are incorporated into the final rule as appropriate.

Comments and Responses

Comment 1: The guidelines are not all inclusive, nor are they exhaustive of the means by which polar bears may be deterred; there are a number of other well recognized and accepted methods which may be used to deter, deflect and haze polar bears.

Response: We recognize there are a number of devices and actions individuals can and do take to protect themselves, or their property, from bears. For example, people use bear spray (*see* comment 2 below), electric fences (see comment 3 below), cracker shells, bean bags, rubber or plastic bullets, and other projectile devices, to successfully haze polar bears. Yet, all such activities which necessitate interactions between humans and bears (especially those activities which include use of a firearm), without appropriate training, may result in either personal injury or injury to a polar bear. These specified deterrence guidelines include activities that any individual may take, regardless of skill, training, or ability. By following these guidelines, we believe the possibility that a polar bear-human interaction will escalate to a circumstance where a polar bear, or an individual, is killed or seriously hurt is minimized.

Apart from these guidelines, the MMPA does provide for the use of other means to deter polar bears. As discussed in the preamble above, section 101(a)(4)(A) allows for certain persons in certain situations to conduct acts of deterrence, as long as they do not result in the death or serious injury of the polar bear. Under section 109(h), Federal, State, or local governmental officials or employees may also deter polar bears when acting in the course of their official duties, and private persons who have a section 112(c) cooperative agreement with the Service may carry out deterrence measures when acting in their capacity as designated persons under such agreement and in full compliance with its terms and conditions.

Comment 2: There is no discussion of bear spray and its effectiveness.

Response: We acknowledge that bear spray (a product registered by the EPA with use directions on the label specifically for repelling bears) is an important tool for deterring bears when used properly. However, bear spray is not effective in all circumstances. For example, according to the Interagency Grizzly Bear Committee [1] (IGBC), bear spray should be used as a deterrent only in an aggressive or attacking confrontation with a bear. According to the IGBC, the more agitated a bear is, the more effective bear spray is. A bear that is charging or attacking breathes deeply and draws the active ingredient into its throat and lungs. Bear spray is not designed to be used on non-aggressive bears. Non-aggressive bears that have been sprayed while feeding tend to walk off and return in a short time.

Despite the lack of data related to the use of bear spray on polar bears, bear spray can likely be effectively used with polar bears as they are similar to grizzly bears, having evolved from the brown bear. However, the Service believes proper training is necessary prior to using bear spray as a preventive deterrence measure when faced with something other than an aggressive animal, such as a curious bear. In addition, aversive conditioning may be an appropriate use of bear spray on a curious animal to prevent the bear from interacting with humans in the future. Multiple deterrent sessions may be necessary to condition the bear. This would entail an increased level of training and knowledge of bear behavior for the user. For this reason, the Service believes that bear spray can be addressed in our other intentional take programs, which address more aggressive deterrent techniques, rather than these guidelines. However, should additional data become available, either from the Service's own management actions or the public, on the use of bear spray for polar bears, including non-aggressive bears, the Service will be able to better evaluate bear spray as a preventive deterrent for the public. Additionally, the appropriate use of bear spray as a means of self-defense or to save the life of a person in immediate danger would not be a violation per section 101(c) of the MMPA.

Comment 3: Electric fences and other electrified products, such as electrified door mats, should be included in the guidelines.

Response: The Service acknowledges that electric fencing is an important tool

[1] In 1983, the Interagency Grizzly Bear Committee (IGBC) was created to coordinate management efforts and research actions across multiple Federal lands and States within the various Recovery Zones to recover the grizzly bear in the lower 48 States. Its objective was to change land management practices to more effectively provide security and maintain or improve habitat conditions for the grizzly bear. The IGBC is made up of upper level managers from affected State, Federal, and Tribal entities. More information about the IGBC may be found on line at: *http://www.igbconline.org/index.html*. The IGBC is still in service today.

that can be used by the public for deterring polar bears when used properly. However, because training is necessary to properly install, use, and maintain an electric fence in the arctic environment, electric fences are not included in these deterrence guidelines.

Comment 4: The use of sound at strengths no greater than 150 dB SPL (sound pressure level) needs to be further evaluated to assess the efficacy in deterring polar bears.

Response: The Service acknowledges there are limited field trials looking at the response of polar bears to sound (for example, Wooldridge 1983, Miller 1987, and Anderson and Aars 2008) and agrees that further investigation is desirable. However, based on available information, as discussed under Preventative Deterrence below, the Service has determined that the reasonable use of acoustic devices may startle or dissuade a bear from approaching a person or their environs thus reducing the likelihood of a more deleterious encounter to the bear or human. Additionally, the use of an acoustic device may also alert other individuals in a village or worksite to the presence of a bear.

Comment 5: The guidelines should be broad in nature and scope to make it easier (and more attractive) for Alaska Natives, who have significant experience with polar bears, to deter polar bears from private property rather than killing them for subsistence purposes.

Response: We readily acknowledge that coastal Alaska Natives have had a long and unique coexistence with the polar bear. These guidelines do not limit the ability of Alaska Natives, or any other individual, to continue to use appropriate means to deter a polar bear but rather provide measures that the Service has determined may be used by **any** individual regardless of training, experience, or ability, to safely deter a polar bear. As noted in our proposed rule, the Service works with Alaska Natives and Alaska Native organizations to authorize more aggressive techniques for hazing polar bears. Integral to these authorizations, issued under sections 109(h) and 112(c) of the MMPA, is an understanding that individuals implementing deterrence or hazing activities are either experienced, or have been trained in their uses, thus limiting the possibility of an individual inadvertently hurting themselves, others, or a polar bear. Similarly, under our Incidental Take program, we issue Letters of Authorization [under section 101(a)(5)(A) of the MMPA for incidental take, or 109(h) and 112(c) for intentional take] that ensure individuals, who may be hazing polar bears, are adequately experienced and trained in the tools of deterrence and the behavior of bears. The Service does not intend for these guidelines to replace or supersede existing protocols or programs, but rather, consistent with the MMPA, we are issuing these guidelines to supplement those efforts.

There are two inherent components to successful deterrence of a polar bear, first an understanding of the tools being used, second, and equally important, an understanding of the general nature of the animal's behavior and responses. These guidelines are targeted towards anyone who has a basic understanding of both polar bear behavior and various deterrence measures regardless of their level of skill or training. The extensive knowledge gleaned from living and working in polar bear habitat for generations is relevant but is not required to implement the measures set out in these guidelines.

Comment 6: Why is fencing limited to 10,000 square feet or larger? Fencing seems appropriate to any size building located on pilings or cribbing that would offer a place for bears to hide.

Response: We agree and this final rule has been revised appropriately.

Comment 7: Distance between bars on exclusion cages is currently at 3 inches. A 4 inch distance between the bars would be sufficient to prevent a bear from reaching through, while providing more visible space between bars.

Response: We agree and this final rule has been revised appropriately.

Comment 8: There is no discussion of bear-resistant containers for remote seasonal camps.

Response: We agree and this final rule has been revised appropriately.

Comment 9: The guidelines should clarify if automobile sirens or horns are included in these guidelines.

Response: We agree and this final rule has been revised appropriately.

Comment 10: Commercial audio products have not been addressed. There are on the market existing commercial products that have proven effective at deterring bears, including grizzly bears around a carcass.

Response: We agree and this final rule has been revised appropriately.

Comment 11: Why are only enclosed vehicles included? Having the vehicle enclosed (as in the cab of an automobile) does not necessarily confer greater protection.

Response: We agree and this final rule has been revised appropriately.

Comment 12: The Service should clarify that any action taken to deter a polar bear from damaging property or injuring a person, that does not kill or seriously injure the animal, is permissible.

Response: Any taking of a polar bear that results from a person carrying out one of the measures enumerated in these deterrence guidelines (*i.e.,* promulgated under section 101(a)(4)(B)) would not be considered a violation of the MMPA as long as that person complies with the conditions and limitations set out in the guidelines. Separate from this, section 101(a)(4)(A) of the MMPA, as discussed in the background section above, allows for certain persons to carry out other deterrence measures so long as such measures do not result in the death or serious injury of the affected polar bear. In addition, the authority afforded under section 101(a)(4)(A) of the MMPA differs depending on the particular person carrying out the measure. For example: Only the owner of fishing gear or catch (or his or her employee or agent) may deter a marine mammal from damaging the gear or catch; only the owner (or his agent, bailee, or employee) of private property (other than fishing gear or catch) may deter a polar bear from damaging such property; any person may deter a polar bear from endangering personal safety; and a government employee may deter a polar bear from damaging public property. As is the case with deterrence measures prescribed in these guidelines under paragraph (B), persons eligible to carry out deterrence measures under paragraph (A) may do so without any written authorization from the Service.

Comment 13: The Service should consider less formal ways of adopting and implementing measures of deterring the polar bear.

Response: The Service did consider less formal ways of adopting and implementing measures to deter a polar bear consistent with the provisions of the MMPA. However, these polar bear deterrence guidelines adopted under section 101(a)(4)(B) of the MMPA establish, if followed by a person otherwise subject to the provisions of the MMPA, an exception to the taking prohibition of the MMPA. As such, the guidelines establish a binding norm that has the effect of law in any future interaction between the public and the Service on the issue of polar bear deterrence. Under the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*), "the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy" is a "rule" (5 U.S.C. 551(4)), and the process governing the promulgation of a "rule" is set out at 5 U.S.C. 553. The Service was obligated to

use the public notice-and-comment procedure of the APA in adopting these deterrence guidelines. The Service will continue working with Alaska Native villages, industry, and individuals to implement, and where appropriate, refine our polar bear deterrence efforts. Of course, we will pursue all effective means possible to solicit input and inform the public on actions that may reduce bear-human interactions; the promulgation of this final rule is but one means to that end.

Summary of Changes From the April 26, 2010 Proposed Rule

Comments on our April 26, 2010 proposed rule (75 FR 21571) to issue guidelines for the safe deterrence of the polar bear generally indicated a belief that additional, more aggressive means of deterrence should be included. For reasons stated in our response to comments section, the Service did not adopt more aggressive deterrence measures for the polar bear. A number of comments recommended the Service clarify the applicability of the guidelines as well as other provisions of the law and the Service adopted those recommendations and clarified this final rule where needed.

As stated in our proposed rule (75 FR 21571) the Service encourages individuals living, travelling, or working in areas that polar bears may frequent to become aware of the practices in these guidelines to reduce the likelihood of bear-human interactions. Polar bears are generally found in the marine environment and along the coastline. Polar bears can be found far inland; however, most recorded polar bear-human interactions have occurred within 5 miles or less of the coastlines of the Chukchi and Beaufort seas.

We also encourage people, especially those within 5 miles of the coastline and within the range of the polar bear, to develop practices that may help prevent a bear-human interaction. These practices include: (1) Developing and attending polar bear awareness training; and (2) attending outreach events hosted by local communities or by the Service that provide information to reduce bear-human interactions.

For example, by attending an outreach event [2], people can share information on developing and implementing *detection systems,* which allow for early observation of polar bears in the vicinity of human settlement. Detection systems could include any of the following: Bear monitors (*i.e.,* individuals trained to watch for and alert others to the presence of bears); trip-wire fences; closed-circuit TV; and electronic alarm systems. Furthermore, constant vigilance for polar bears by all personnel working at a work site augments a detection system web and can significantly reduce the occurrence of a bear-human interaction.

In addition, *operational management plans* [3] for communities or private companies operating in polar bear habitat can be used to establish a formalized structure to incorporate passive and preventive deterrence measures. These could include measures for:

- Attractants management—Establishing protocols and procedures to limit attractants to wild animals within property boundaries by storing garbage, human waste, food, and other products in areas not accessible to bears;
- Garbage management—Establishing protocols and procedures for how communities or sites will control and dispose of garbage to limit its attraction to bears as a food source (*e.g.,* the use of incinerators);
- Snow management—Establishing protocols and procedures to remove snow around buildings and work areas to increase visibility, such as planning the placement of snow berms; and
- Lighting systems management—Establishing protocols and procedures to install lighting in areas where it is needed to detect bears that may be in the vicinity.

The Service recognizes our dual responsibilities to provide for the conservation of the polar bear and minimize the threat to public safety posed by the presence of a large, curious, and at times hungry predator in their vicinity. In the past, we have worked with local communities to identify actions that may ameliorate the potential impacts of the presence of polar bears in local communities. We will continue to do so by working with Alaska coastal communities on the implementation of these guidelines and other deterrence measures authorized by the Service. Further, and in situations where there is an imminent risk to public safety, Federal, State, and local government officials have the authority to take marine mammals if doing so is for the protection or welfare of the animals or for the protection of the public health and welfare. Regulations governing such takings, which take into account the special training and experience levels of such officials, are in place at 50 CFR 18.22.

Guidelines

These guidelines, for use in safely deterring polar bears in the wild, provide acceptable types of deterrence actions that any person, or their employee, or their agent can utilize to deter a polar bear from damaging their private property. The guidelines, developed using the best available information, call for caution and restraint in their use and give direction to ensure that deterrence actions do not result in the serious injury or death of a polar bear. Further, the Service believes that adhering to these guidelines will minimize the possibility that a polar bear-human interaction escalates to the point where a polar bear must be killed in the interest of public safety.

There are two levels of deterrence a person could follow under these guidelines in order to nonlethally deter a problem polar bear: Passive and preventive. Each type of measure includes a suite of appropriate actions that the public may use.

Passive deterrence measures are those that prevent polar bears from gaining access to property or people. The proper use of these passive deterrence devices provides for human safety and does not increase the risk of serious injury or death of a polar bear. Such measures include rigid fencing and other fixed barriers such as gates and fence skirting to limit a bear's access, bear exclusion cages to provide a protective shelter for people in areas frequented by bears, and bear-proof garbage containers to exclude polar bear access and limit food-conditioning and habituation to humans. The Service also recognizes the IGBC, *see* footnote 1, which has published minimum design and structural standards, inspection and testing methodology for grizzly bear resistant containers. Bear-resistant products approved for use on public lands can be considered as well (Web site: *http://www.igbconline.org/FinalBearResistantContTesting May2008-09.pdf*). The IGBC bear-resistant standards can be used as a resource when selecting appropriate bear-resistant containers for polar bears.

[2] The Service, as well as the North Slope Borough, and local communities hold ad hoc outreach events throughout the year regarding polar bears and polar bear safety, these may be informal discussions or more formal events, which are advertised at the local level; all are encouraged to attend.

[3] For an example of an operational management plan that incorporates elements of minimizing bear-human interactions see Shell's "Polar Bear, Pacific Walrus, and Grizzly Bear Avoidance and Human Encounter/Interaction Plan 2010 Exploration Drilling Program Chukchi Sea, Alaska" available on the Service's Web page at: *http://alaska.fws.gov/fisheries/mmm/Chukchi_Sea/2010_shell_exploratory_drilling_program/Shell%20Chukchi%20Bear-walrus%20interaction%20Plan%202010.pdf.*

Preventive deterrence measures are those that can dissuade a polar bear from initiating an interaction with property or people. The proper use of these preventive deterrence devices provides for safe human use and does not increase the risk of serious injury or death of a polar bear. Such measures include the use of acoustic devices to create an auditory disturbance causing polar bears to move away from the area and vehicles or boats to deter or block an approaching polar bear.

The use of acoustic deterrence is limited to those devices that create no more than a reasonable level of noises, *e.g.,* vehicle engines, automobile sirens, or horns, or an air horn, where such auditory stimuli could startle a bear and disrupt its approach to property or people. Recent research on responses of captive polar bears to auditory stimuli has shown that polar bears are able to detect sounds down to 125 Hertz (Hz) (Bowles *et al.* 2008) and high-frequency sounds up to 22.5 kHz (Nachtigall *et al.* 2007).

Polar bears possess an acute hearing ability at a wider frequency range than humans, which is less than 20 kHz. Data indicate that polar bears hear very well within the frequency range of 11.2 to 22.5 kHz (Nachtigall *et al.* 2007). Sounds ('roars') with frequency content between 100 and 600 Hz and broadcast directionally at over 120 dB SPL (sound pressure level) appeared to have the most success in deterring bears (Wooldridge 1978, Wooldridge and Belton 1980). However, there are no data available to indicate minimum received sound levels required to cause damage (*e.g.,* a temporary threshold shift [TTS]) to polar bear hearing.

While these upper limits are unknown for polar bears, the nearest species, ecologically, to extrapolate from is likely the California sea lion (*Zalophus californianus*). Like polar bears, sea lions have, primarily, a land-adapted ear that goes in and out of water. Kastak *et al.* (2007) conducted noise-induced TTS studies in air on a California sea lion and in summarizing their findings stated that an aircraft flying over a sea lion rookery and exposing the animals to broadband noise for 30 seconds to 1 minute would need to generate received levels of 140–145 dB in order to induce a TTS. The Service believes that appropriate and reasonable use of sound deterrent devices will not harm polar bears and, therefore, sound deterrence is allowable as long as the sound level of the directed acoustic device used to deter bears has a sound strength of no greater than 140 dB SPL and is deployed for no more than 30 seconds per occasion. The use of commercially available air horns and other similar devices designed to deter wild animals falls below this upper limit, can be modulated, and may be effective in deterring bears while causing no lasting or permanent harm to individual animals.

MMPA Consultation

Section 101(a)(4) of the MMPA (16 U.S.C. 1371(a)(4)) requires the Service to consult with appropriate experts on the development of safe and nonlethal deterrence provisions. The Service provided the proposed guidelines to three appropriate experts that have experience and knowledge of interactions with polar bears and/or the use of deterrence devices, including representatives from the State of Alaska Department of Fish and Game, and local and Alaska Native experts, and invited them to peer review the proposed guidelines. We received comments back from one of these experts and carefully considered their comments and recommendations in preparing this final rule. We have summarized all comments, including expert comments, in the Comments and Responses section above.

Required Determinations

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments (59 FR 22951), E.O. 13175, and the Department of the Interior's manual at 512 DM 2, we acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3225 of January 19, 2001 [Endangered Species Act and Subsistence Uses in Alaska (Supplement to Secretarial Order 3206)], Department of the Interior Memorandum of January 18, 2001 (Alaska Government-to-Government Policy), and the Native American Policy of the U.S. Fish and Wildlife Service, June 28, 1994, we acknowledge our responsibilities to work directly with Alaska Natives in developing programs for healthy ecosystems, to seek their full and meaningful participation in evaluating and addressing conservation concerns for listed species, to remain sensitive to Alaska native culture, and to make information available to Tribes.

For these guidelines we consulted with and requested expert comment from the Alaska Nanuuq Commission (Commission). The Commission, established in 1994, is a Tribally Authorized Organization created to represent the interests of subsistence users and Alaska Native polar bear hunters when working with the Federal Government on the conservation of polar bears in Alaska. We also met with the North Slope Borough Assembly in order to provide information on and receive comment from Assembly members on the development of these guidelines.

We do not anticipate that the guidelines will have an effect on Tribal activities especially as they may pertain to Tribal subsistence activities. We have reached this determination because: (1) Under our incidental or intentional take programs, as discussed above, activities that whole communities are taking to minimize bear-human interactions are being developed in partnership with the Service and under separate and relevant authorities; and (2) the taking of polar bears for subsistence or handicraft purposes is exempted from these guidelines and, therefore, not impacted by these guidelines. The guidelines are designed to provide people with means to safely deter polar bears.

Intra-Service Consultation Under Section 7 of the ESA

On May 15, 2008, the Service listed the polar bear as a threatened species under the ESA (73 FR 28212). Section 7(a)(1) and (2) of the ESA (16 U.S.C. 1536(a)(1) and (2)) direct the Service to review its programs and to utilize such programs in the furtherance of the purposes of the ESA and to ensure that a proposed action is not likely to jeopardize the continued existence of an ESA-listed species. Consistent with these statutory requirements, the Service's Marine Mammal Management Office conducted a consultation over these guidelines with the Service's Fairbanks Fish and Wildlife Field Office. On July 16, 2010, the Service's Fairbanks Fish and Wildlife Office responded to our request for an Intra-Service Consultation under the ESA concurring that the guidelines may affect, but are not likely to adversely affect the polar bear.

National Environmental Policy Act (NEPA) Considerations

We have prepared an environmental assessment in conjunction with these guidelines in which the Service determined that the guidelines do not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the NEPA of 1969. Specifically we found that the guidelines for the deterrence of the

polar bear may be accomplished safely and will not likely result in the serious injury or death to polar bears and that the environmental consequences of the guidelines are negligible. Because we have found that these guidelines will have no significant impact on the human environment an environmental impact statement is not required. For a copy of the environmental assessment, go to *http://www.regulations.gov* and search for Docket No. FWS–R7–FHC–2010–0002 or contact the individual identified above in the section **FOR FURTHER INFORMATION CONTACT.**

Regulatory Planning and Review

The Office of Management and Budget (OMB) has determined that this rule is significant and has conducted a review under Executive Order 12866. OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

Small Business Regulatory Enforcement Fairness Act

We have determined that this rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The rule is also not likely to result in a major increase in costs or prices for consumers, individual industries, or government agencies or have significant adverse effects on competition, employment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Expenses will be related to, but not necessarily limited to, the purchase of bear-proof garbage containers, fencing material, air horns, and additional lighting. Any costs associated with implementing a guideline should be offset by reductions in potential bear–human interactions and safety.

Regulatory Flexibility Act

We have determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Any costs associated with implementing a guideline should be offset by reductions in potential bear-human interactions and safety. Therefore, a Regulatory Flexibility Analysis is not required.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. Any costs associated with implementing a guideline should be offset by reductions in potential bear-human interactions and safety. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings Implications

This rule does not have takings implications under Executive Order 12630. Therefore, a takings implications assessment is not required.

Federalism Effects

This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132. The MMPA gives the Service the authority and responsibility to protect polar bears and specifically allows for people to undertake activities to deter polar bears.

Civil Justice Reform

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Paperwork Reduction Act

This rule does not contain information collection requirements, and a submission under the Paperwork Reduction Act (PRA) is not required.

Information Quality Act

In developing this rule we did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Pub. L. 106–554).

Effects on the Energy Supply

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

Clarity of This Regulation

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section.

References

We include a list of the references cited in this final rule:

Anderson M. and J. Aars. 2008. Short-term behavioral response of polar bears (*Ursus maritimus*) to snowmobile disturbance. Polar Bio. 31:501–507.

Bowles, A.E., M.A. Owen, S.L. Denes, S.K. Graves, and J.L. Keating. 2008. Preliminary Results of a Behavioral Audiometric Study of the Polar Bear. J. Acoust. Soc. Am. 123, 3509.

Kastak, D., C. Reichmuth, M.M. Holt, J. Mulsow, B.L. Southall, and R.J. Schusterman. 2007. Onset, growth, and recovery of in-air temporary threshold shift in a California sea lion (*Zalophus californianus*). J. Acoust. Soc. Am. 122,:2916–2924.

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OCS Study MMS 93–0008. LGL Ecol. Res. Assoc., Inc., Bryan, TX.
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List of Subjects in 50 CFR Part 18

Administrative practice and procedure, Alaska, Imports, Indians, Marine mammals, Oil and gas exploration, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

■ For the reasons set forth in the preamble, the Service amends part 18, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below.

PART 18—MARINE MAMMALS

■ 1. The authority citation for part 18 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

Subpart D—Special Exceptions

■ 2. Add § 18.34 to subpart D to read as follows:

§ 18.34 Guidelines for use in safely deterring polar bears.

(a) These guidelines are intended for use in safely deterring polar bears in the wild. They provide acceptable types of deterrence actions that any person, or their employee, or their agent, can use to deter a polar bear from damaging private property; or that any person can use to deter a polar bear from endangering personal safety; or that a government employee can use to deter a polar bear from damaging public property, and not cause the serious injury or death of a polar bear. Anyone acting in such a manner and conducting activities that comply with the guidelines in this subpart does not need authorization under the MMPA to conduct such deterrence. Furthermore, actions consistent with these guidelines do not violate the take prohibitions of the MMPA or this part. A Federal, State or local government official or employee may take a polar bear in the course of his duties as an official or employee, as long as such taking is accomplished in accordance with § 18.22 of this part.

(b) There are two types of deterrence measures that a person, or their employee, or their agent could follow to nonlethally deter a polar bear. Each type of measure includes a suite of appropriate actions that the public may use.

(1) *Passive deterrence measures.* Passive deterrence measures are those that prevent polar bears from gaining access to property or people. These measures provide for human safety and do not increase the risk of serious injury or death of a polar bear. They include:

(i) *Rigid fencing.* Rigid fencing and other fixed barriers such as gates and fence skirting can be used around buildings or areas to limit bears from accessing community or industrial sites and buildings. Fencing areas 5 acres (~2 ha) and smaller can be used to limit human–bear interactions. Industry standard chain-link fencing material can be used. Chain-link fencing can be placed around buildings on pilings as fence skirting to limit access of bears underneath the buildings.

(ii) *Bear exclusion cages.* Bear exclusion cages provide a protective shelter for people in areas frequented by bears. Cages erected at building entry and exit points exclude polar bears from the immediate area and allow safe entry and exit for persons gaining access to, or leaving, a building should a polar bear be in the vicinity. Additionally, they provide an opportunity for people exiting a building to conduct a visual scan upon exit. Such a scan is especially important in areas where buildings are constructed above ground level due to permafrost because bears may be resting underneath. These cages can be used at homes or industrial facilities to deter bears as well. Cages can be used in remote areas where bear use is not known, and along bear travel corridors, *e.g.,* within 0.5 mile from coastline, to deter bears from facilities. Cages must be no smaller than 4 ft (width) by 4 ft (length) by 8 ft (height). Bars must be no smaller than 1 inch wide. Distance between bars must be no more than 4 inches clear on stairways and landings or when otherwise attached to a habitable structure; they may be no more than 5 inches clear for use in cages not attached to any habitable structure. A 4-inch distance between the bars would be sufficient to prevent a bear from reaching through, while providing visible space between bars. The ceiling of the cage must be enclosed.

(iii) *Bear-resistant garbage containers.* Bear-resistant garbage containers prevent bears from accessing garbage as a food source and limit polar bears from becoming food-conditioned or habituated to people and facilities. The absence of habituation further reduces the potential for bear–human interactions. Bear-resistant garbage cans and garbage bins are manufactured by various companies and in various sizes. Commercially designed residential bear-resistant containers (32–130 gallons) can be used. Two- to 6-cubic yard containers can be specifically designed by commercial vendors as bear-proof containers or have industry-standard lid locks to prohibit bear entry, depending on the need and location. For remote seasonal camps, garbage can be temporarily stored in steel drums secured with locking rings and a gasket, and removed from the site when transportation is available. Larger garbage containers, such as dumpsters or "roll-offs" (20 to 40 cubic yards), can limit bear–human interactions when the containers have bear-proof lids. Lids must be constructed of heavy steel tubing or similarly constructed with heavy expanded metal.

(2) *Preventive deterrence measures.* Preventive deterrence measures are those that can dissuade a polar bear from initiating an interaction with property or people. These measures provide for safe human use and do not increase the risk of serious injury or death of a polar bear. These are:

(i) *Acoustic devices.* Acoustic deterrent devices may be used to create an auditory disturbance causing polar bears to move away from the affected area. The reasonable use of loud noises, *e.g.,* vehicle engines, automobile sirens or horns, and air-horns, where such auditory stimuli could startle a bear and disrupt its approach to property or people, is authorized. This authorization is limited to deterrent devices with a sound strength of no greater than 140 dB SPL to be deployed for no more than a 30-second continuous time interval. The use of commercially available air horns or other audible products used as perimeter alarms, which create sounds that fall below this upper limit, is acceptable.

(ii) *Vehicle or boat deterrence.* Patrolling the periphery of a compound or encampment using a vehicle, such as a truck or all-terrain vehicle (*e.g.,* a snowmobile or a four wheeler), and deterring, but not chasing, polar bears with engine noise, or by blocking their approach without making a physical contact with the animal, is an acceptable preventive deterrence. Similarly patrolling an area in a small boat using similar methods is acceptable.

(c) The deterrence guidelines are passive or preventive in nature. Any action to deter polar bears that goes beyond these specific measures could result in a taking and, unless otherwise exempted under the MMPA, would require separate authorization. The Service acknowledges that there will be numerous new techniques developed, or new applications of existing techniques, for deterring bears. The Service will work to establish a system for evaluating

new bear deterrence applications and techniques and will update this set of guidelines with examples of future approved methods. Deterrence actions (other than the measures described in these guidelines) that do not result in serious injury or death to a polar bear remain permissible for persons identified in section 101(a)(4)(A) of the MMPA. Prior to conducting activities beyond those specifically described in these guidelines, persons should contact the Service's Alaska Regional Office's Marine Mammal Program for further guidance (for the location of the Alaska Regional Office see 50 CFR 2.2(g)).

Dated: September 22, 2010.

Tom Strickland,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2010–25044 Filed 10–5–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910131362–0087–02]

RIN 0648–XZ38

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 in the Gulf of Alaska

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

ACTION: Inseason adjustment; request for comments.

SUMMARY: NMFS issues an inseason adjustment prohibiting directed fishing for pollock in Statistical Area 630 of the Gulf of Alaska (GOA) 36 hours after opening directed fishing for pollock, effective 2400 hrs, Alaska local time (A.l.t.), October 2, 2010. This adjustment is necessary to manage the pollock total allowable catch limit in Statistical Area 630 of the GOA.

DATES: Effective 2400 hrs, Alaska local time (A.l.t.), October 2, 2010, through 2400 hrs, A.l.t., December 31, 2010. Comments must be received at the following address no later than 4:30 p.m., A.l.t., October 18, 2010.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by RIN 0648–XZ38, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal at *http://www.regulations.gov.*
- *Mail:* P.O. Box 21668, Juneau, AK 99802.
- *Fax:* (907) 586–7557.
- *Hand delivery to the Federal Building:* 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record. No comments will be posted to *http://www.regulations.gov* for public viewing until after the comment period has closed. Comments will generally be posted without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2010 total allowable catch (TAC) of pollock in Statistical Area 630 of the GOA is 19,118 metric tons (mt) as established by the final 2010 and 2011 harvest specifications for groundfish of the GOA (75 FR 11749, March 12, 2010).

As of September 29, 2010, approximately 5,700 mt of pollock remain in the 2010 TAC for pollock in Statistical Area 630. The D season allowance of the pollock TAC in Statistical Area 630 is 5,912 mt for the period beginning October 1, 2010 through November 1, 2010. Section 679.23(b) specifies that the time of all openings and closures of fishing seasons other than the beginning and end of the calendar fishing year is 1200 hrs, A.l.t. Current information shows the catching capacity of vessels catching pollock in Statistical Area 630 of the GOA is in excess of 4,000 mt per day. The Administrator, Alaska Region, (Regional Administrator) has determined that the pollock TAC could be exceeded if a 48-hour fishery were allowed to occur. NMFS intends that the TAC not be exceeded and, therefore, will not allow a 48-hour directed fishery. NMFS, in accordance with § 679.25(a)(1)(i), is issuing an inseason adjustment prohibiting directed fishing for pollock in Statistical Area 630 of the GOA by closing the fishery at 2400 hrs, A.l.t., October 2, 2010. This action has the effect of opening the fishery for 36 hours. NMFS is taking this action to allow a controlled fishery to occur, thereby preventing the overharvest of the pollock TAC. In accordance with § 679.25(a)(2)(iii), NMFS has determined that prohibiting directed fishing at 2400 hrs, A.l.t., October 2, 2010, after a 36 hour opening is the least restrictive management adjustment to achieve the pollock TAC and will allow other fisheries to continue in noncritical areas and time periods. The Regional Administrator considered the following factors in reaching this decision: (1) The current catch of pollock in Statistical Area 630 of the GOA and, (2) the harvest capacity and stated intent on future harvesting patterns of vessels in participating in this fishery.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of pollock directed fishing in Statistical Area 630 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of September, 29, 2010. NMFS will be accepting comments after the effective date of this closure (*See* **DATES**).

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: September 30, 2010.

Carrie Selberg,

Acting Director,

Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–25162 Filed 10–1–10; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0912231441–0465–03]

RIN 0648–AY48

Fisheries of the Exclusive Economic Zone Off Alaska; Skate Management in the Groundfish Fisheries of the Bering Sea and Aleutian Islands; Groundfish Annual Catch Limits for the Bering Sea and Aleutian Islands Management Area and Gulf of Alaska

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to implement Amendments 95 and 96 to the Fishery Management Plan (FMP) for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI) and Amendment 87 to the FMP for Groundfish of the Gulf of Alaska (GOA), (collectively referred to as "the FMPs"). Amendment 95 moves skates from the "other species" category to the "target species" category in the FMP. Amendments 96 and 87 revise the FMPs to meet the National Standard 1 guidelines for annual catch limits and accountability measures. These amendments move all remaining species groups from the "other species" category to the "target species" category, remove the "other species" and "non-specified species" categories from the FMPs, establish an "ecosystem component" category, and describe the current practices for groundfish fisheries management in the FMPs, as required by the guidelines. The final rule removes references to the "other species" category for purposes of the harvest specifications and adds skate species to the reporting codes for the BSAI groundfish fisheries. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMPs, and other applicable laws.

DATES: Effective November 5, 2010.

ADDRESSES: Electronic copies of Amendments 95 and 96 to the FMP for Groundfish of the BSAI, Amendment 87 to the FMP for Groundfish of the GOA, the Environmental Assessments (EAs), and the Regulatory Impact Review (RIR) prepared for this action are available from NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802 or from the Alaska Region NMFS Web site at *http://www.alaskafisheries.noaa.gov/regs/summary.htm.*

FOR FURTHER INFORMATION CONTACT: Melanie Brown, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fisheries in the exclusive economic zone of the BSAI and GOA are managed under the FMPs. The North Pacific Fishery Management Council (Council) prepared the FMPs under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations implementing the FMPs appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

Background

Amendment 95 was unanimously adopted by the Council in October 2009. This amendment moves skates from the "other species" category to the "target species" list in the BSAI FMP, allowing the management of skates as a target species complex or as individual skate species. NMFS trawl survey and catch information shows that 15 skate species occur in the BSAI. In the Bering Sea subarea, the most abundant species is the Alaska skate, while the most abundant species in the Aleutian Islands subarea is the whiteblotched skate. Individual species of skate could be listed under the skate complex in the "target species" list during the harvest specifications process to allow NMFS to separately manage harvest of these individual species.

The Council unanimously adopted Amendments 96 and 87 in April 2010. These amendments revise the FMPs to meet the Magnuson-Stevens Act requirements to establish annual catch limits (ACLs) and accountability measures (AMs), and conform to the National Standard 1 (NS1) guidelines (74 FR 3178, January 16, 2009). The Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (MSRA), which was signed into law on January 12, 2007, included new requirements regarding ACLs and AMs, which reinforce existing requirements to prevent overfishing and rebuild fisheries. The proposed rule for this action presents background on the NS1, MSRA requirements for ACLs and AMs, and harvest management of groundfish species (75 FR 41424, July 16, 2010).

The Council submitted Amendments 87, 95, and 96 for review by the Secretary of Commerce, and a notice of availability of the amendments was published in the **Federal Register** on July 2, 2010 (75 FR 38454), with comments on the amendments invited through August 31, 2010. The comments on the proposed rule were invited through August 30, 2010. The Secretary of Commerce approved the amendments to the FMPs on September 22, 2010.

Regulatory Amendments

This final rule revises definitions for "groundfish," "license limitation groundfish," and "target species," in § 679.2, to remove reference to the "other species" category. Removing the term "other species category" from these definitions reduces confusion related to target species and the harvest specifications, as Amendments 96 and 87 remove the "other species" category from the FMPs for purposes of the harvest specifications, and leave only "target species" as a category for which NMFS must establish harvest specifications. This final rule revises the definition for "other species" to allow the continued management of BSAI and GOA sharks, sculpins, and octopuses, and GOA squids as a group for purposes of prohibited species catch under § 679.21 and maximum retainable amounts specified in Tables 10 and 11 to part 679.

This final rule revises § 679.20 by removing the term "other species category" in paragraphs related to harvest limits, reserves, harvest specifications, and fishery closures. This revision ensures the regulations for harvest specifications and "target species" management are consistent with Amendments 96 and 87, which remove "other species" from the FMP for purposes of harvest specifications and inseason management.

This final rule revises § 679.25 to remove the "other species" category from the paragraph related to reopening an area to achieve total allowable catch (TAC) for a target species. This revision ensures the regulations are consistent with removing "other species" from the FMP for purposes of target species management.

This final rule revises Table 2a to part 679 by adding whiteblotched, Alaska, and Aleutian skates, as well as the scientific names for individual skate

species. Adding these individual skate species and the scientific names facilitates the reporting of individual skate species taken during groundfish harvest and provides more detailed information regarding skate harvests for stock assessments and fisheries management. This revision ensures the regulations are consistent with Amendment 95, providing the species-specific information to support managing skates as a target species group or as individual target species.

Comments and Responses

NMFS received two letters of comment, which included four distinct comments, in response to proposed Amendment 87 to the GOA FMP and Amendments 95 and 96 to the BSAI FMP (75 FR 41424, July 16, 2010). These letters were from organizations representing trawl catcher/processors targeting groundfish in the BSAI and GOA. NMFS made no changes to the final rule from the proposed rule. The comments are summarized and responded to below.

Comment 1: The dissolution of the "other species" category into its major taxonomic complexes and management of those species complexes under Tier 6 would result in the overfishing limits (OFLs) and acceptable biological catch limits (ABCs) being frequently reached and cause the closure of other directed fisheries. These closures would provide no additional benefit to these species complexes.

Response: The OFLs and ABCs are established annually by harvest specifications (75 FR 11778 and 75 FR 11749, March 12, 2010). Under this final action, the OFLs and TACs for the complexes currently managed under the "other species" category could be set at a level that may be reached during the fishing year. As described in Section 1.5.2.1 in the EA for Amendments 96 and 87, NMFS will take initial inseason management measures necessary to prevent exceeding the TACs of these complexes, such as closing the complex to directed fishing. NMFS may implement large scale fisheries closures to prevent the OFL from being exceeded if other actions would not adequately limit fishing mortality. A Tier 6 OFL is based on the average historical catch over a period of years and is used for stocks that do not have enough biomass information to be managed at Tier 5 or higher. In the absence of enough information to manage stocks at Tier 5 or higher information level, a Tier 6 OFL represents a reasonable means of preventing overfishing. Section 1.5.2.1 of the EA for Amendments 96 and 87 describe the tier system for setting ABCs and OFLs (*see* **ADDRESSES**).

NMFS and the Council recognize the concern that setting OFLs based on historical catch may result in fisheries restrictions that otherwise would not be used if the OFL could be set based on the stock's biomass. Even though it is not based on stock abundance, a Tier 6 OFL is intended to meet NMFS's legal obligation to prevent overfishing. It is necessary to break out the complexes from the "other species" category to ensure that the TACs and ACLs for these complexes can prevent overfishing. The Council sponsored a workshop on July 8, 2010, to address the issues associated with, and alternatives to, Tier 6 management. The Tier 6 workshop report was discussed at the September 2010 Groundfish Plan Team meeting and is scheduled for discussion by the Council's Scientific and Statistical Committee (SSC) in October 2010. The Tier 6 workshop report, Plan Team, and SSC minutes are available from the Council at *http://alaskafisheries.noaa.gov/npfmc/default.htm.* One alternative previously adopted for a Tier 6 stock (squid and octopus in the GOA) was to set the OFL at the maximum catch of the stock over a set period of years. The Council has expressed an interest in developing FMP amendments to address these concerns. NMFS will determine the appropriate management measures to take to prevent reaching the OFL, including the consideration of closing other directed fisheries, if necessary. The types of management options that NMFS may use inseason to prevent overfishing are described in Section 1.5.2.1 of the EA for Amendments 96 and 87 (see **ADDRESSES**). The type of action to prevent overfishing may depend on the species, fisheries, and locations.

Comment 2: NMFS inseason managers have the flexibility to gather fleet catch information in real time, and identify discrete areas of high incidental catch. This could result in fine scale closures for individual sectors, and avoid the unneeded potentially catastrophic economical effects associated with large area, fleet-wide closures. The Bering Sea fleet is rationalized and is managed under a cooperative system capable of assisting NMFS in fleet communication, data distribution, and implementing voluntary management measures to avoid large scale fleet or area closures. NMFS is encouraged to use its management flexibility to avoid large fleet shutdowns.

Response: As described in the EA for this action, NMFS does intend to use small scale area and gear closures, as well as other inseason management measures short of large scale closures, to avoid OFL and ABC overages when possible. NMFS intends to work with the industry to achieve these goals and notes that cooperatives engaged in voluntary actions can be of great assistance.

Comment 3: It is unclear what action NMFS can or will take when the harvest of one of the other species groups (sharks, skates, sculpins, octopus, or squid) approaches overfishing.

Response: See the response to Comment 2. NMFS has the ability to implement inseason localized area and gear closures to prevent the ABCs from being reached, and the industry has demonstrated the ability to voluntarily avoid fishing in areas of high incidental catch (e.g., avoiding squid in the 2006 BSAI pollock fishery). The EA prepared for this action discusses in detail possible actions NMFS could undertake to avoid overfishing of these stocks. The EA/RIR for this action is available from NMFS (*See* **ADDRESSES**).

Comment 4: This action has been rushed with no time to request additional information such as fisheries impacts and did not attempt to quantify the potential cost to commercial fisheries. This information is necessary to make a considered decision. The action should be disapproved in favor of the status quo.

Response: This action must be implemented in 2011 to comply with the provisions mandated by the Magnuson-Stevens Act. The EA/RIR prepared for this action considers the impacts on fisheries and potential costs to the industry, using the best information available on the economic impacts of this action. This analysis was available to the public during the public comment period and Secretarial review of the proposed amendments. The EA/RIR for this action is available from NMFS (*See* **ADDRESSES**). As noted in the response to Comment 1, the Council has expressed an interest in considering FMP amendments (*e.g.,* moving squid from target species to the ecosystem component species) to address some of the issues raised in the consideration of this action.

Classification

The Administrator, Alaska Region, NMFS, determined that the FMP Amendments 87, 95, and 96 are necessary for the conservation and management of the groundfish fisheries and that they are consistent with the Magnuson-Stevens Act and other applicable laws.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: October 1, 2010.

Samuel D. Rauch III,

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

■ For reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.;* 1801 *et seq.;* 3631 *et seq.;* Pub. L. 108–447.

■ 2. In § 679.2, revise paragraph (2) of the definition for "Groundfish", and the definitions of "License limitation groundfish", "Other species", and "Target species" to read as follows:

§ 679.2 Definitions.

* * * * *

Groundfish * * *

* * * * *

(2) Target species specified annually pursuant to § 679.20(a)(2) (See also the definitions for: *License limitation groundfish*; *CDQ species*; and *IR/IU species* of this section).

* * * * *

License limitation groundfish means target species specified annually pursuant to § 679.20(a)(2), except that demersal shelf rockfish east of 140° W. longitude, sablefish managed under the IFQ program, and pollock allocated to the Aleutian Islands directed pollock fishery and harvested by vessels 60 feet (18.3 m) LOA or less, are not considered license limitation groundfish.

* * * * *

Other species is a category of target species for the purpose of MRA and PSC management that consists of groundfish species in each management area. These target species are managed as an other species group and identified in Tables 10 and 11 to this part pursuant to § 679.20(e).

* * * * *

Target species are those species or species groups for which a TAC is specified pursuant to § 679.20(a)(2).

* * * * *

■ 3. In § 679.20, revise paragraphs (a)(1)(i) introductory text, (a)(2), (a)(3) introductory text, (a)(3(i), (b)(1)(i), (b)(2) introductory text, (c)(1)(iii), (c)(1)(iv), (c)(3)(ii), (c)(3)(iii), (d)(1)(i), (d)(1)(iii)(B), and (d)(2) to read as follows:

§ 679.20 General limitations.

(a) * * *

(1) * * *

(i) *BSAI and GOA.* The OY for BSAI and GOA target species is a range or specific amount that can be harvested consistently with this part, plus the amounts of "nonspecified species" taken incidentally to the harvest of target species. The species categories are defined in Table 1 of the specifications as provided in paragraph (c) of this section.

* * * * *

(2) *TAC.* NMFS, after consultation with the Council, will specify and apportion the annual TAC and reserves for each calendar year among the GOA and BSAI target species. TACs in the target species category may be split or combined for purposes of establishing new TACs with apportionments thereof under paragraph (c) of this section. The sum of the TACs so specified must be within the OY range specified in paragraph (a)(1) of this section.

(3) *Annual TAC determination.* The annual determinations of TAC for each target species and the reapportionment of reserves may be adjusted, based upon a review of the following:

(i) *Biological condition of groundfish stocks.* Resource assessment documents prepared annually for the Council that provide information on historical catch trend; updated estimates of the MSY of the groundfish complex and its component species groups; assessments of the stock condition of each target species; assessments of the multispecies and ecosystem impacts of harvesting the groundfish complex at current levels, given the assessed condition of stocks, including consideration of rebuilding depressed stocks; and alternative harvesting strategies and related effects on the component species group.

* * * * *

(b) * * *

(1) * * *

(i) *Nonspecified reserve.* Fifteen percent of the BSAI TAC for each target species, except pollock, the hook-and-line and pot gear allocation for sablefish, and the Amendment 80 species, which includes Pacific cod, is automatically placed in the nonspecified reserve before allocation to any sector. The remaining 85 percent of each TAC is apportioned to the initial TAC for each target species that contributed to the nonspecified reserve. The nonspecified reserve is not designated by species or species group. Any amount of the nonspecified reserve may be apportioned to target species that contributed to the nonspecified reserve, provided that such apportionments are consistent with paragraph (a)(3) of this section and do not result in overfishing of a target species.

* * * * *

(2) *GOA.* Initial reserves are established for pollock, Pacific cod, flatfish, squids, octopuses, sharks, and sculpins, which are equal to 20 percent of the TACs for these species or species groups.

* * * * *

(c) * * *

(1) * * *

(iii) *GOA.* The proposed specifications will specify for up to two fishing years the annual TAC for each target species and apportionments thereof, halibut prohibited species catch amounts, and seasonal allowances of pollock and Pacific cod.

(iv) *BSAI.* The proposed specifications will specify for up to two fishing years the annual TAC for each target species and apportionments thereof, PSQ reserves and prohibited species catch allowances, seasonal allowances of pollock, Pacific cod, and Atka mackerel TAC (including pollock, Pacific cod, and Atka mackerel CDQ), and CDQ reserve amounts.

* * * * *

(3) * * *

(ii) *GOA.* The final specifications will specify for up to two fishing years the annual TAC for each target species and apportionments thereof, halibut prohibited species catch amounts, and seasonal allowances of pollock and Pacific cod.

(iii) *BSAI.* The final specifications will specify for up to two fishing years the annual TAC for each target species and apportionments thereof, PSQ reserves and prohibited species catch allowances, seasonal allowances of pollock (including pollock, Pacific cod, and Atka mackerel CDQ), and CDQ reserve amounts.

* * * * *

(d) * * *

(1) * * *

(i) *General.* If the Regional Administrator determines that any

allocation or apportionment of a target species specified under paragraph (c) of this section has been or will be reached, the Regional Administrator may establish a directed fishing allowance for that species or species group.

* * * * *

(iii) * * *

(B) *Retention of incidental species.* Except as described in § 679.20(e)(3)(iii), if directed fishing for a target species or species group is prohibited, a vessel may not retain that incidental species in an amount that exceeds the maximum retainable amount, as calculated under paragraphs (e) and (f) of this section, at any time during a fishing trip.

* * * * *

(2) *Groundfish as prohibited species closure.* When the Regional Administrator determines that the TAC of any target species specified under paragraph (c) of this section, or the share of any TAC assigned to any type of gear, has been or will be achieved prior to the end of a year, NMFS will publish notification in the **Federal Register** requiring that target species be treated in the same manner as a prohibited species, as described under § 679.21(b), for the remainder of the year.

* * * * *

■ 4. In § 679.25, revise paragraph (a)(2)(iii)(D) to read as follows:

§ 679.25 Inseason adjustments.

(a) * * *

(2) * * *

(iii) * * *

(D) Reopening of a management area or season to achieve the TAC or gear share of a TAC for any of the target species.

* * * * *

■ 5. Revise Table 2a to part 679 to read as follows:

TABLE 2A TO PART 679—SPECIES CODES: FMP GROUNDFISH

Species description	Code
Atka mackerel (*greenling*)	193
Flatfish, miscellaneous (flatfish species without separate codes)	120
Flounder:	
Alaska plaice	133
Arrowtooth and/or Kamchatka	121
Starry	129
Octopus, North Pacific	870
Pacific cod	110
Pollock	270
Rockfish:	
Aurora (*Sebastes aurora*)	185
Black (BSAI) (*S. melanops*)	142
Blackgill (*S. melanostomus*)	177
Blue (BSAI) (*S. mystinus*)	167
Bocaccio (*S. paucispinis*)	137
Canary (*S. pinniger*)	146
Chilipepper (*S. goodei*)	178
China (*S. nebulosus*)	149
Copper (*S. caurinus*)	138
Darkblotched (*S. crameri*)	159
Dusky (*S. variabilis*)	172
Greenstriped (*S. elongatus*)	135
Harlequin (*S. variegatus*)	176
Northern (*S. polyspinis*)	136
Pacific Ocean Perch (*S. alutus*)	141
Pygmy (*S. wilsoni*)	179
Quillback (*S. maliger*)	147
Redbanded (*S. babcocki*)	153
Redstripe (*S. proriger*)	158
Rosethorn (*S. helvomaculatus*)	150
Rougheye (*S. aleutianus*)	151
Sharpchin (*S. zacentrus*)	166
Shortbelly (*S. jordani*)	181
Shortraker (*S. borealis*)	152
Silvergray (*S. brevispinis*)	157
Splitnose (*S. diploproa*)	182
Stripetail (*S. saxicola*)	183
Thornyhead (all *Sebastolobus* species)	143
Tiger (*S. nigrocinctus*)	148
Vermilion (*S. miniatus*)	184
Widow (*S. entomelas*)	156
Yelloweye (*S. ruberrimus*)	145
Yellowmouth (*S. reedi*)	175
Yellowtail (*S. flavidus*)	155
Sablefish (*blackcod*)	710
Sculpins	160
Sharks:	
Other (if salmon, spiny dogfish or Pacific sleeper shark—use specific species code)	689
Pacific sleeper	692
Salmon	690
Spiny dogfish	691
Skates:	
Whiteblotched (*Bathyraja maculata*)	705
Aleutian (*B. aleutica*)	704
Alaska (*B. parmifera*)	703
Big (*Raja binoculata*)	702
Longnose (*R. rhina*)	701
Other (if Whiteblotched, Aleutian, Alaska, Big, or Longnose—use specific species code listed above)	700
Sole:	
Butter	126
Dover	124
English	128
Flathead	122
Petrale	131
Rex	125
Rock	123
Sand	132
Yellowfin	127
Squid, majestic	875
Turbot, Greenland	134

[FR Doc. 2010–25202 Filed 10–5–10; 8:45 am]

BILLING CODE 3310–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0911031392–0457–02]

RIN 0648–AY34

Fisheries of the Exclusive Economic Zone Off Alaska; Modified Nonpelagic Trawl Gear and Habitat Conservation in the Bering Sea Subarea

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

ACTION: Final rule.

SUMMARY: NMFS hereby issues a final rule that implements Amendment 94 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). Amendment 94 requires participants using nonpelagic trawl gear in the directed fishery for flatfish in the Bering Sea subarea to modify the trawl gear to raise portions of the gear off the ocean bottom. Amendment 94 also changes the boundaries of the Northern Bering Sea Research Area to establish the Modified Gear Trawl Zone (MGTZ) and to expand the Saint Matthew Island Habitat Conservation Area. Nonpelagic trawl gear also is required to be modified to raise portions of the gear off the ocean bottom if used in any directed fishery for groundfish in the MGTZ. This action is necessary to reduce potential adverse effects of nonpelagic trawl gear on bottom habitat, to protect additional blue king crab habitat near St. Matthew Island, and to allow for efficient flatfish harvest as the distribution of flatfish in the Bering Sea changes. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable laws.

DATES: Effective January 20, 2011.

ADDRESSES: Electronic copies of Amendment 94, maps of the action area, the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA), and Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for this action may be obtained from NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802, or from the Alaska Region Web site at *http://alaskafisheries.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Melanie Brown, 907–586–7228.

SUPPLEMENTARY INFORMATION: The Bering Sea groundfish fisheries are managed under the FMP. In 1981, the North Pacific Fishery Management Council (Council) prepared the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations implementing the FMP appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

The Council submitted Amendment 94 for review by the Secretary of Commerce, and a notice of availability of Amendment 94 was published in the **Federal Register** on June 29, 2010, (75 FR 37371). The proposed rule was published in the **Federal Register** on July 15, 2010 (75 FR 41123). Comments on the amendment and the proposed rule were invited through August 30, 2010. The amendment to the FMP was approved by the Secretary of Commerce on September 17, 2010.

Background

Amendment 94 requires participants in the directed fishery for flatfish in the Bering Sea subarea to use modified nonpelagic trawl gear. It also changes the boundaries of the Northern Bering Sea Research Area (NBSRA) to establish the MGTZ, and expands the Saint Matthew Island Habitat Conservation Area (SMIHCA). Four minor changes to the FMP also are made, three of which do not require regulatory changes. (Details on these minor changes are in the EA/RIR/FRFA for this action (*see* **ADDRESSES**), and in the notice of availability for Amendment 94 published in the **Federal Register** on June 29, 2010 (75 FR 37371)). One minor technical amendment for the NBSRA requires a regulatory amendment. The background on the regulatory amendments, including details on the development of the modified nonpelagic trawl gear and performance standards, is further explained in the proposed rule for this action (75 FR 41123, July 15, 2010).

Regulatory Amendments

1. Section 679.2 is revised to add a definition for the MGTZ, and to add text to several definitions to support the requirement to use modified nonpelagic trawl gear to meet the gear standards at § 679.24. The definition for "directed fishing" is revised by adding a subparagraph specific to directed fishing for flatfish in the Bering Sea subarea. This revision requires the use of modified nonpelagic trawl gear for the directed flatfish fishery in the Bering Sea subarea and lists the species that are flatfish for purposes of the modified nonpelagic trawl gear requirement. The definition for "federally permitted vessel" is revised to include the fishery restrictions that are established for the MGTZ, and for modified nonpelagic trawl gear fishing in the Bering Sea subarea. This revision identifies vessels that need to comply with the modified nonpelagic trawl gear requirements. The definition for "fishing trip" is revised to apply to vessels that are directed fishing for flatfish based on a fishing trip and the species composition of the catch, as described in the definition for directed fishing for flatfish. The fishing trip definition also applies to recordkeeping and reporting requirements in § 679.5. The heading for the first definition of a fishing trip is revised to add "recordkeeping and reporting requirements under § 679.5" to reflect the full scope of this definition in 50 CFR part 679. A definition for the "Modified Gear Trawl Zone" is added to define this fishery management area consistent with other fishery management area definitions and for use under the revised definition for "federally permitted vessels."

2. Subparagraph (5) is added to § 679.7(c) to prohibit directed fishing for Bering Sea flatfish without modified nonpelagic trawl gear that meets the standards specified at § 679.24(f). This revision is needed to require the use of modified nonpelagic trawl gear for directed fishing for flatfish in the Bering Sea subarea, for directed fishing for groundfish with nonpelagic trawl gear within the MGTZ, and to ensure the modified nonpelagic trawl gear meets the standards specified at § 679.24(f). Subparagraphs (3) and (4) are added and reserved to allow for future rulemaking recommended by the Council for Pacific cod fishing in the BSAI parallel fisheries.

3. Figure 17 to part 679 and Table 43 to part 679 is revised to show the boundaries of the NBSRA. Figure 17 to part 679 is revised to remove the area that becomes the MGTZ, and to remove the area that becomes part of the eastern portion of the SMIHCA. The northern portion of Figure 17 to part 679 also is revised to include the area of the Bering Sea subarea near the Bering Strait that was open to nonpelagic trawling (Figure 2) but that will now be closed. The coordinates in Table 43 to part 679 are revised to delineate the new boundaries of the NBSRA. These revisions are necessary to implement the Council's recommended changes in the boundaries of the NBSRA and the SMIHCA, and to remove the portion of the NBSRA that is the MGTZ.

4. Table 46 to part 679 is revised to delineate the new boundaries of the SMIHCA. The coordinates in Table 46 to part 679 are changed to reflect the extension of the eastern boundary to the 12-nm Territorial Sea. This revision is necessary to establish the new boundaries of the SMIHCA.

5. Table 51 to part 679 is added to delineate the coordinates of the MGTZ. Because the MGTZ area is a simple shape and easily identified, no figure is added to the regulations. This revision is necessary to identify the boundaries of the MGTZ.

6. Section 679.22 lists the closure areas for the Alaska groundfish fisheries. Because the MGTZ is closed to nonpelagic trawling, except for directed fishing with modified nonpelagic trawl gear, this section is revised to add the MGTZ. This revision is necessary to identify the area and the gear type that is required in this area.

7. Paragraph (f) is added to § 679.24 to establish enforceable standards for modified nonpelagic trawl gear. The standards include a minimum clearance for the sweeps and a minimum and maximum distance between elevating devices. The standards also describe the measuring locations to determine compliance with the clearance requirement and cross section limitations for the line between elevating devices. This revision is necessary to ensure that standards are described in the regulations to facilitate construction, maintenance, and inspection of modified nonpelagic trawl gear that meet the intent of the Council to reduce potential adverse impacts on bottom habitat from nonpelagic trawl gear.

8. Figures 25, 26, and 27 to part 679 are added to describe the measuring locations for determining compliance with the clearance standards, and to describe the location of the elevating devices that is required under § 679.24(f). Section 679.24(f) refers to these figures to better describe how the modified nonpelagic trawl gear is to be configured and how to comply with the clearance standard for the gear. This revision is necessary to facilitate compliance with the gear standards for those who may be constructing, maintaining, or inspecting the modified nonpelagic trawl gear.

Changes From the Proposed Rule

A change was made in § 679.24(f)(3)(iii)(B) to clarify the spacing to which the elevating device minimum clearance applied. The proposed rule stated that paragraph (B) would apply to "elevating devices spaced 66 feet (19.8 m) to 95 feet (29 m) * * *." The final rule was changed to apply paragraph (B) to elevating devices

spaced greater than 65 feet (19.8 m) to 95 feet (29 m). This change to paragraph (B) in the final rule ensures that elevating devices spaced more than 65 feet (19.8 m) but less than 66 feet (20.12 m) are required to meet the minimum clearance described in paragraph (B).

Other minor changes with no substantive effects were made in the final rule from the proposed rule. These changes clarified the notes to Tables 43, 46, and 51.

Comments and Responses

NMFS received 4 letters of comments on the notice of availability for Amendment 94 (75 FR 37371, June 29, 2010) and on the proposed rule (75 FR 41123, July 15, 2010). Comments were received from an organization that provides services to Bering Sea tribes, a private individual, and the fishing industry. No changes were made in the final rule from the proposed rule in response to public comment. The following summarizes and responds to the 10 unique comments received on this action.

Comment 1: Ban all nonpelagic trawling, establish habitat conservation zones, and go back to individual fishing.

Response: Nonpelagic trawling is the most effective method for harvesting certain groundfish species in the Bering Sea. These species include flatfish and other species which occur on or near the ocean bottom. Banning nonpelagic trawling would not meet NMFS's responsibility to sustainably manage fisheries, given the best scientific information available regarding impacts on the marine environment and impacts on the fish stocks. Selective restrictions on the use of nonpelagic trawl gear where impacts are most likely to be a concern are more appropriate. This action prohibits nonpelagic trawling in the expanded SMIHCA, as described in the preamble.

The Council and NMFS implemented Amendment 89, which established several habitat conservation areas in the Bering Sea to protect bottom habitat from the potential effects of bottom trawling (73 FR 43362, July 25, 2008). Prohibiting all bottom trawling and limiting fishing to individuals is not consistent with the national standards 1 and 5 of the Magnuson-Stevens Act, which require the prevention of overfishing while achieving optimum yield from each fishery and consideration of efficiency in the use of fish resources.

Comment 2: We support requiring modified nonpelagic trawl sweeps for all vessels fishing for flatfish in the Bering Sea subarea, and reopening the MGTZ to nonpelagic trawling with modified gear. Even though the modified gear will have an economic impact on the flatfish vessel fleet, the industry's participation in the modified gear development process shows the industry's commitment to responsible fishing practices. The research indicated that modified nonpelagic trawl gear had reduced effects on bottom habitat compared to conventional nonpelagic trawl gear.

The MGTZ is an historically important fishing area for Bering flounder, flathead sole, and rock sole harvest because of the high concentration of these species and low concentration of Pacific halibut that may be incidentally taken during the flatfish fisheries. Establishing the MGTZ meets the Council's goals and the Magnuson-Stevens Act national standards 1 and 9 to achieve optimum yield and to reduce bycatch.

The western boundary of the MGTZ addresses potential blue king crab bycatch in the flatfish fishery by protecting blue king crab habitat within the SMIHCA. Tribal subsistence concerns are also addressed by the eastern boundary of the MGTZ by providing a buffer between the MGTZ and the Nunivak Island, Etolin Strait, and Kuskokwim Bay Habitat Conservation Area. This action by the Council was based solely on public testimony, and no analysis of this change was available for the Council to consider in this decision.

The research indicates that nonpelagic trawling in sand and mud substrate of the Bering Sea produces an indiscernible effect to essential fish habitat. The modified nonpelagic trawl gear required to be used in the MGTZ would have insignificant effects on the bottom habitat. The habitat substrate in the MGTZ is similar to bottom habitat to the south of this area that is currently open to nonpelagic trawling. The modified nonpelagic gear requirement will ensure less impact on the bottom habitat than nonpelagic trawl impacts that have occurred in the past.

Response: Support noted. Regarding the eastern boundary of the MGTZ, the Council had sufficient information in the EA/RIR/IRFA (*see* **ADDRESSES**) to understand the potential effects of recommending the location of this boundary based on public testimony. The EA/RIR/IRFA was further revised based on the Council's recommended action to provide the public and the Secretary of Commerce an analysis of the likely impacts of the preferred alternative.

Comment 3: We support the eastern expansion of the SMIHCA and the northern expansion of the NBSRA to include Little Diomede. These changes to the boundaries of these areas would protect subsistence resources from the potential impacts of nonpelagic trawling.

Response: Your support of this action is noted.

Comment 4: We are opposed to the MGTZ and are concerned that the Council offered commercial bottom trawling in the NBSRA as an incentive for the development of the modified nonpelagic trawl gear. Many Alaska Natives in the Bering Strait region have voiced their opposition to any nonpelagic trawling in the northern Bering Sea, including research trawling that may support future commercial nonpelagic trawling. NMFS has failed to adequately respond to multiple tribal consultation requests regarding nonpelagic trawling in the Bering Sea.

Response: NMFS acknowledges the commentor's concerns regarding any nonpelagic trawling in the northern Bering Sea and the process used for developing the MGTZ. The process used to develop this action is described Section 2 and Appendices C and D in the EA/RIR/FRFA for this action (*see* **ADDRESSES**).

The tribal consultations regarding Amendment 94 are described in the Classifications section of this rule. NMFS discussed Amendment 94 during a tribal consultation with tribal representatives from Bering Sea communities in Unalakleet on February 16, 2010. NMFS also received requests for tribal consultation on research that was conducted in the summer of 2010 in the northern Bering Sea with vessels using nonpelagic trawl gear that meet research standards. Each tribal consultation request received by NMFS was responded to in writing with an offer of further discussion. Commercial and research nonpelagic trawling in the northern Bering Sea was discussed during meetings with NMFS and tribal representatives in Anchorage in February 2010. NMFS also held a teleconference on July 7, 2010, open to all tribes who had requested consultation on the research trawling and to other parties interested in the issue. NMFS followed up the research teleconference with daily reports to all meeting participants while the research activities were conducted. Additional information on NMFS tribal outreach activities are on the NMFS Alaska Region Web site at *http://www.alaskafisheries.noaa.gov/tc/.*

Comment 5: The purpose of the NBSRA is to provide a location where studies of the effects of nonpelagic trawling could be conducted. The NMFS summer trawl survey in the

NBSRA did not collect data that could be used for studies on the effects of nonpelagic trawling. None of the research and testing for the development of the modified nonpelagic trawl gear was conducted in the NBSRA. The Council is only interested in expanding commercial bottom trawl fisheries.

Response: The purpose of the NMFS summer trawl survey in the northern Bering Sea was to provide information for the Loss of Sea Ice study to understand the potential effects of climate change on the Bering Sea ecosystem. Information collected can be used in the development of the NBSRA research plan including that portion of the research plan that will define the design of studies on the impacts of nonpelagic trawl gear on bottom habitat. The Council and NMFS sponsored a subsistence and community workshop in February 2010, to discuss the development of the NBSRA research plan. The results of this workshop are available at the NMFS Alaska Region Web site at *http://www.alaskafisheries.noaa.gov/tc/bs/2010_workshop_minutes.pdf.*

Comment 6: No action should be taken by NMFS before careful and complete analysis of the impacts on subsistence users has been undertaken, in collaboration with subsistence users.

Response: NMFS uses the best available scientific information to inform fishery management decisions. The EA/RIR/IRFA describes the potential impacts of the action on environmental components of the northern Bering Sea, including marine mammals and bottom habitat that support subsistence marine resources. Even though adverse effects may occur in the MGTZ from modified nonpelagic trawling compared to prohibiting nonpelagic trawling, these impacts are not expected to cause substantial impacts on subsistence resources. NMFS's outreach activity with subsistence users in relation to this action are further described in the section on tribal consultation in the Classification section and in response to Comment 4.

Comment 7: The EA/RIR socio-economic analysis ignores the impacts on fishing communities immediately adjacent to the NBSRA, but examines communities that are dependent on the commercial fisheries that may be conducted in the northern Bering Sea. Fishing communities are defined by the Magnuson-Stevens Act as "a community which is substantially dependent on or substantially engaged in the harvest or processing of fishery resources to meet social and economic needs * * *" Communities in the northern Bering Sea are dependent on marine resources for subsistence, traditional Alaska Native culture, and commercial uses. NMFS has ignored the importance of the northern Bering Sea fishery resources for Bering Sea communities. The failure of NMFS to include any of the subsistence-based communities in the Bering Strait region in the analysis for this proposed action while focusing almost exclusively on commercial fisheries is in direct conflict with national standards 6 and 8 of the Magnuson-Stevens Act. NMFS must consider the impacts to all types of activities potentially affected by this action in their analysis, including subsistence activities. NMFS must also include all subsistence activities in the socio-economic analysis, and not exclude the value of subsistence and related cultural activities.

Response: National standard 6 requires that conservation and management take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches. Among other things, national standard 8 requires conservation and management measures to take into account the importance of fishery resources to fishing communities, to provide sustained participation of such communities, and to the extent practicable, minimize adverse economic impacts. The EA/RIR includes an analysis of impacts on subsistence resources. No substantial impacts on subsistence resources for each of the environmental components were found, and therefore, no further discussion of effects on communities dependent on subsistence resources was developed. If potential impacts to subsistence resources had been identified, additional analysis on subsistence-based communities would have been included in the EA/RIR/IRFA. If substantial impacts on subsistence resources had been identified that would have affected subsistence practices, these would have been addressed in the socio-economic section of the document.

Comment 8: Any development of commercial nonpelagic trawl fisheries in the northern Bering Sea is irresponsible because of the lack of understanding and research about the natural and human activity changes and potential impacts in the northern Bering Sea and on the marine resources.

Response: Enough information is available regarding the northern Bering Sea environment to analyze the potential impacts of this action and to make a decision on commercial fisheries management in this area. NMFS agrees that more research would improve the understanding of natural and human activity impacts on the marine environment in the northern Bering Sea.

Comment 9: NMFS does not have enough supportive data to allow commercial nonpelagic trawling in the MGTZ. Half of the MGTZ is not part of the NMFS bottom trawl survey. The EA/RIR shows the lack of research and poorly understood ecosystem processes in the northern Bering Sea, but then arbitrarily states that impacts are likely to be insignificant based on almost no data. The amount of data that NMFS is using to justify this action is inappropriate to the scope and implications of the action.

Response: Sufficient data is available to provide for the sustainable management of the Bering Sea flatfish fishery, including allowing fishing inside the MGTZ. The EA/RIR/IRFA describes the bottom habitat inside the MGTZ, historical catch, NMFS trawl surveys, and fishing activities inside and outside the MGTZ. This information can be used to manage fishing activities within and outside the MGTZ. NMFS agrees that additional information regarding the northern Bering Sea ecosystem would be desirable but this additional information is not required to implement this action.

Comment 10: The EA/RIR states that continuing fishing activity and continued subsistence harvest are potentially the most important sources of additional annual adverse impacts on marine mammals. Expanding commercial bottom trawling northward into the northern Bering Sea may result in unknown effects on marine mammals. Harvest activities analyzed are not determined to be a threat to marine mammal populations. The value of subsistence harvests outweighs the short term gain from commercial fish harvest. The EA/RIR fails to put a value on the potential loss of subsistence or culture as a result of expansion of nonpelagic trawling into the northern Bering Sea and its impacts. The EA/RIR also does not recognize climate changes and other developmental impacts as additional annual adverse impacts on marine mammals.

Response: In section 5.4 of the EA/RIR/IRFA, the analysis of marine mammals examines three types of potential impacts of the fisheries: incidental takes, prey availability, and disturbance. The impacts of incidental takes are examined in the context of other types of human caused mortality on marine mammals. For marine mammals harvested for subsistence, the amount of subsistence harvests is much greater than the amount of incidental

takes in the fisheries, but these combined amounts are a small enough percentage of the population not to pose a biological threat to the stock. For these marine mammals, the continued subsistence harvest and fisheries incidental takes compose the majority of the human caused injury and mortality and are therefore the most important factors to consider when analyzing incidental takes of marine mammals. NMFS agrees that the continued subsistence harvest of marine mammals at the current levels does not pose a threat to the marine mammal populations.

Enough information is available to determine the potential effects of opening the MGTZ to nonpelagic trawling with modified gear. Information on the sediment types, fish stocks, impacts of the gear on bottom habitat, and the potential dependence of marine mammals on the location provide enough information in the EA/RIR/IRFA to determine the potential effects of the action.

The EA/RIR/IRFA did not find that this action would cause a loss in the potential use of subsistence resources due to the opening of the MGTZ. The MGTZ eastern boundary was adjusted to accommodate a buffer between this zone and the Nunivak Island, Etolin Strait, and Kuskokwim Bay Habitat Conservation Area where subsistence activities occur. No information was available that indicates that activity in the MGTZ directly or indirectly impacts important subsistence resources.

Section 5.7 of the EA/RIR/IRFA contains a cumulative effects discussion including the impacts of climate change and other developmental impacts on all of the environmental components analyzed, including marine mammals. This section describes the potential effects of climate change on the Bering Sea environment, including marine mammals and diving seabirds. The cumulative effects were considered with the direct and indirect effects on each environmental component to determine the significance of effects of the action.

Classification

The Administrator, Alaska Region, NMFS, determined that Amendment 94 is necessary for the conservation and management of the groundfish fisheries and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

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

A final regulatory flexibility analysis (FRFA) was prepared for this rule. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, NMFS responses to those comments, and a summary of the analyses completed to support the action. Descriptions of the action, the reasons it is under consideration, and its objectives and legal basis are included earlier in the preamble and in the **SUMMARY** section of the preamble. A copy of the FRFA is available from NMFS (*see* **ADDRESSES**).

A summary of the IRFA was provided in the classification section to the proposed rule (75 FR 41123, July 15, 2010), and the public was notified of how to obtain a copy of the IRFA. The public comment period ended on August 30, 2010. No comments were received on the IRFA. A summary of the FRFA follows.

In 2007, all of the catcher/processors (CPs) targeting flatfish in the Bering Sea subarea (46 vessels) exceeded the $4.0 million threshold that the Small Business Administration (SBA) uses to define small fishing entities. Due to their combined groundfish revenues, the CPs would be considered large entities for purposes of the Regulatory Flexibility Act (RFA). However, based on their combined groundfish revenues, none of the four catcher vessels that participated in 2007 exceeded the SBA's small entity threshold, and these vessels are considered small entities for purposes of the RFA. It is likely that some of these vessels also are linked by company affiliation, which may then categorize them as large entities, but there is no available information regarding the ownership status of these vessels at an entity level. Therefore, the FRFA may overestimate the number of small entities directly regulated by this action.

This regulation does not impose new recordkeeping and reporting requirements on the regulated small entities.

The Council considered three alternatives, an option, and a set of minor changes for this action. Alternative 1 is the status quo, which does not meet the Council's recommendations to further protect Bering Sea bottom habitat. Both Alternatives 2 and 3 would require modified nonpelagic trawl gear for vessels directly fishing for flatfish in the Bering Sea subarea. Additionally, under Alternative 3, which is the preferred alternative, an area that is currently closed to nonpelagic trawling would be opened to vessels using modified nonpelagic trawl gear. Alternative 2 does not provide fishing opportunity within the MGTZ, and therefore does not minimize the potential economic impact on small entities in the same manner as provided by Alternative 3. The SMIHCA option has no economic effect on small entities as this area is currently closed to nonpelagic trawling as part of the NBSRA. The minor changes ensure the FMP is easier to read and understand, and that the FMP accurately reflects the Council's intent and the provisions of the Magnuson-Stevens Act.

The modified nonpelagic trawl gear component of Alternatives 2 and 3 contains explicit provisions regarding mitigating potential adverse economic effects on directly regulated entities, the vast majority of which are large entities. Performance standards (rather than design standards) would be required for the modified nonpelagic trawl gear. Use of performance standards simplifies compliance requirements for directly regulated entities, including small entities, while still maintaining the ability of NMFS to enforce the regulation.

Additionally, the Council has recommended that NMFS implement the amendment on a timeline that takes into account the resources available to directly regulated entities. NMFS has determined that implementation will not occur sooner than the beginning of the 2011 fishing year. Such a timetable is important to allow sufficient time for any vessels that require re-engineering to accommodate the modified nonpelagic trawl gear to schedule shipyard time without having to forego participation in the fishery. The preferred alternative (Alternative 3) and option reflect the least burdensome of available management structures in terms of directly regulated small entities, while fully achieving the conservation and management purposes articulated by the Council and consistency with applicable statutes.

Small Entity Compliance Guide

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 a 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." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, NMFS Alaska Region has developed a Web site that provides easy access to details of this final rule, including links to the final rule, maps of closure areas, and frequently asked questions

regarding essential fish habitat. The relevant information available on the Web site is the Small Entity Compliance Guide. The Web site address is *http://www.alaskafisheries.noaa.gov/habitat/efh.htm.* Copies of this final rule are available upon request from the NMFS, Alaska Regional Office (*see* **ADDRESSES**).

Tribal Summary Impact Statement (E.O. 13175)

Executive Order 13175 of November 6, 2000 (25 U.S.C. 450 note), the Executive Memorandum of April 29, 1994 (25 U.S.C. 450 note), and the American Indian and Alaska Native Policy of the U.S. Department of Commerce (March 30, 1995) outline the responsibilities of NMFS in matters affecting tribal interests. Section 161 of Public Law 108–199 (188 Stat. 452), as amended by section 518 of Public Law 109–447 (118 Stat. 3267), extends the consultation requirements of Executive Order 13175 to Alaska Native corporations.

Executive Order 13175 requires Federal agencies to establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications.

Section 5(b)(2)(B) of Executive Order 13175 requires NMFS to prepare a tribal summary impact statement as part of the final rule. This statement must contain: (1) A description of the extent of the agency's prior consultation with tribal officials; (2) a summary of the nature of their concerns; (3) a statement of the extent to which the concerns of tribal officials have been met; and (4) the agency's position supporting the need to issue the regulation.

A Description of the Extent of the Agency's Prior Consultation With Tribal Officials

On October 13, 2009, NMFS received a request from the Native Village of Unalakleet for tribal consultation on a number of fishery management issues regarding the Bering Sea. On February 16, 2010, NMFS met with tribal representatives from the Native Village of Unalakleet, Koyuk, Stebbins, Elim, Gambell, Savoonga, Saint Michael, Shaktoolik, and King Island in Unalakleet, AK. Among other issues, proposed Amendment 94 was discussed. On July 15, 2010, NMFS provided opportunity for further discussion on this action by contacting all tribal governments and Alaska Native corporations that may be affected by the action and providing them with a copy of the proposed rule. No additional response from tribal governments or Alaska Native corporations was received regarding this action.

Among the recommendations provided to NMFS from the Unalakleet tribal consultation and in March 2010 letters from Shishmaref, King Island, Saint Michael, Solomon, Koyuk, Wales, Brevig Mission, and Savoonga, the tribal representatives requested that nonpelagic trawling not be allowed to expand northward into the northern Bering Sea. This limit on expansion would include not establishing the MGTZ. NMFS responded to the recommendations from the Unalakleet tribal consultation in writing to all participants, and this report is available from the NMFS Alaska Region Web site at *http://www.alaskafisheries.noaa.gov/tc/unalakleet/report0210.pdf.*

A Statement of the Extent To Which the Concerns of Tribal Officials Have Been Met

Except for the area used to establish the MGTZ, the NBSRA remains closed to commercial nonpelagic trawl fishing. The final rule allows for modified nonpelagic trawl gear to be used in the MGTZ. Tribal officials have stated that they want no nonpelagic trawling in the NBSRA. Allowing any commercial nonpelagic trawling in the NBSRA does not meet the concerns of tribal officials. This action reduces the size of the NBSRA approximately 5 percent by establishing the MGTZ. NMFS understands that the concern of the tribal representatives is primarily on the potential adverse impact that nonpelagic trawling may have on bottom habitat, and particularly bottom habitat that supports subsistence resources. Because the regulations require the use of modified nonpelagic trawl gear in the MGTZ, the potential effects on bottom habitat in the MGTZ from nonpelagic trawling is reduced. The rest of the NBSRA remains closed to commercial nonpelagic trawling.

NMFS' Position Supporting the Need To Issue the Regulation

This final rule is needed to implement Amendment 94, a precautionary management measure to reduce the potential impacts of nonpelagic trawling on benthic habitat. NMFS recognizes the tribes' concerns regarding the expansion of bottom trawling into the NBSRA with the establishment of the MGTZ. NMFS is balancing the recommendation by the Council to open this area to ensure efficient flatfish harvest with the requirement that nonpelagic trawl gear be modified. The potential impacts on the bottom habitat from trawling in this area are mitigated by requiring modified nonpelagic trawl gear in the MGTZ.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: October 1, 2010.

Samuel D. Rauch III,

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

■ For reasons set out in the preamble, NMFS amends 50 CFR part 679 as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.;* 1801 *et seq.;* 3631 *et seq.;* Pub. L. 108–447.

■ 2. In § 679.2, revise the definition for "Federally permitted vessel" and the introductory text of paragraph (1) of the definition of "Fishing trip," and add, in alphabetical order, paragraph (5) to "Directed fishing," and the definition for "Modified Gear Trawl Zone" to read as follows:

§ 679.2 Definitions.

* * * * *

Directed fishing * * *

* * * * *

(5) *With respect to the harvest of flatfish in the Bering Sea subarea,* for purposes of nonpelagic trawl restrictions under § 679.22(a) and modified nonpelagic trawl gear requirements under §§ 679.7(c)(5) and 679.24(f), fishing with nonpelagic trawl gear during any fishing trip that results in a retained aggregate amount of yellowfin sole, rock sole, Greenland turbot, arrowtooth flounder, flathead sole, Alaska plaice, and other flatfish that is greater than the retained amount of any other fishery category defined under § 679.21(e)(3)(iv) or of sablefish.

* * * * *

Federally permitted vessel means a vessel that is named on either a Federal fisheries permit issued pursuant to § 679.4(b) or on a Federal crab vessel permit issued pursuant to § 680.4(k) of this chapter. Federally permitted vessels must conform to regulatory requirements for purposes of fishing restrictions in habitat conservation areas, habitat conservation zones, habitat protection areas, and the Modified Gear Trawl Zone; for purposes of anchoring prohibitions in habitat protection areas; for purposes of requirements for the BS nonpelagic trawl fishery pursuant to § 679.7(c)(5)

and § 679.24(f); and for purposes of VMS requirements.

* * * * *

Fishing trip * * *

(1) With respect to retention requirements (MRA, IR/IU, and pollock roe stripping), recordkeeping and reporting requirements under § 679.5, and determination of directed fishing for flatfish.

* * * * *

Modified Gear Trawl Zone means an area of the Bering Sea subarea specified at Table 51 to this part that is closed to directed fishing for groundfish with nonpelagic trawl gear, except by vessels using modified nonpelagic trawl gear meeting the standards at § 679.24(f).

* * * * *

■ 3. In § 679.7, add and reserve paragraphs (c)(3) and (c)(4), and add paragraph (c)(5) to read as follows:

§ 679.7 Prohibitions.

* * * * *

(c) * * *

(3) [Reserved]

(4) [Reserved]

(5) Conduct directed fishing for flatfish as defined in § 679.2 with a vessel required to be federally permitted in any reporting area of the Bering Sea subarea as described in Figure 1 to this part without meeting the requirements for modified nonpelagic trawl gear specified in § 679.24(f).

* * * * *

■ 4. In § 679.22, add paragraph (a)(21) to read as follows:

§ 679.22 Closures.

(a) * * *

(21) *Modified Gear Trawl Zone.* No vessel required to be federally permitted may fish with nonpelagic trawl gear in the Modified Gear Trawl Zone specified at Table 51 to this part, except for federally permitted vessels that are directed fishing for groundfish using modified nonpelagic trawl gear that meets the standards at § 679.24(f).

* * * * *

■ 5. In § 679.24, add paragraph (f) to read as follows:

§ 679.24 Gear limitations.

* * * * *

(f) *Modified nonpelagic trawl gear.* Nonpelagic trawl gear modified as shown in Figure 26 to this part must be used by any vessel required to be federally permitted and that is used to directed fish for flatfish, as defined in § 679.2, in any reporting areas of the BS or directed fish for groundfish with nonpelagic trawl gear in the Modified Gear Trawl Zone specified in Table 51 to this part. Nonpelagic trawl gear used by these vessels must meet the following standards.

(1) *Elevated section minimum clearance.* Except as provided for in paragraph (f)(3)(iii) of this section, elevating devices must be installed on the elevated section shown in Figure 26 to this part to raise the elevated section at least 2.5 inches (6.4 cm), as measured adjacent to the elevating device contacting a hard, flat surface that is parallel to the elevated section, regardless of the elevating device orientation, and measured between the surface and the widest part of the line material. Elevating devices must be installed on each end of the elevated section, as shown in Figure 26 to this part. Measuring locations to determine compliance with this standard are shown in Figure 25 to this part.

(2) *Elevating device spacing.* Elevating devices must be secured along the entire length of the elevated section shown in Figure 26 to this part and spaced no less than 30 feet (9.1 m) apart; and either

(i) If the elevating devices raise the elevated section shown in Figure 26 to this part 3.5 inches (8.9 cm) or less, the space between elevating devices must be no more than 65 feet (19.8 m); or

(ii) If the elevating devices raise the elevated section shown Figure 26 to this part more than 3.5 inches (8.9 cm), the space between elevating devices must be no more than 95 feet (29 m).

(3) *Clearance measurements and line cross sections.* (i) The largest cross section of the line of the elevated section shown in Figure 26 to this part between elevating devices shall not be greater than the cross section of the material at the nearest measurement location, as selected based on the examples shown in Figure 25 to this part. The material at the measurement location must be—

(A) The same material as the line between elevating devices, as shown in Figures 25a and 25d to this part;

(B) Different material than the line between elevating devices and used to support the elevating device at a connection between line sections (e.g., on a metal spindle, on a chain), as shown in Figure 25b to this part; or

(C) Disks of a smaller cross section than the elevating device, which are strung continuously on a line between elevating devices, as shown in Figure 25c to this part.

(ii) Portions of the line between elevating devices that are braided or doubled for section terminations or used for line joining devices are not required to be a smaller cross section than the measuring location.

(iii) *Required minimum clearance for supporting material of a larger cross section than the cross section of the line material.* When the material supporting the elevating device has a larger cross section than the largest cross section of the line between elevating devices, except as provided for in paragraph (f)(3)(ii) of this section, based on measurements taken in locations shown in Figure 27 to this part, the required minimum clearance shall be as follows:

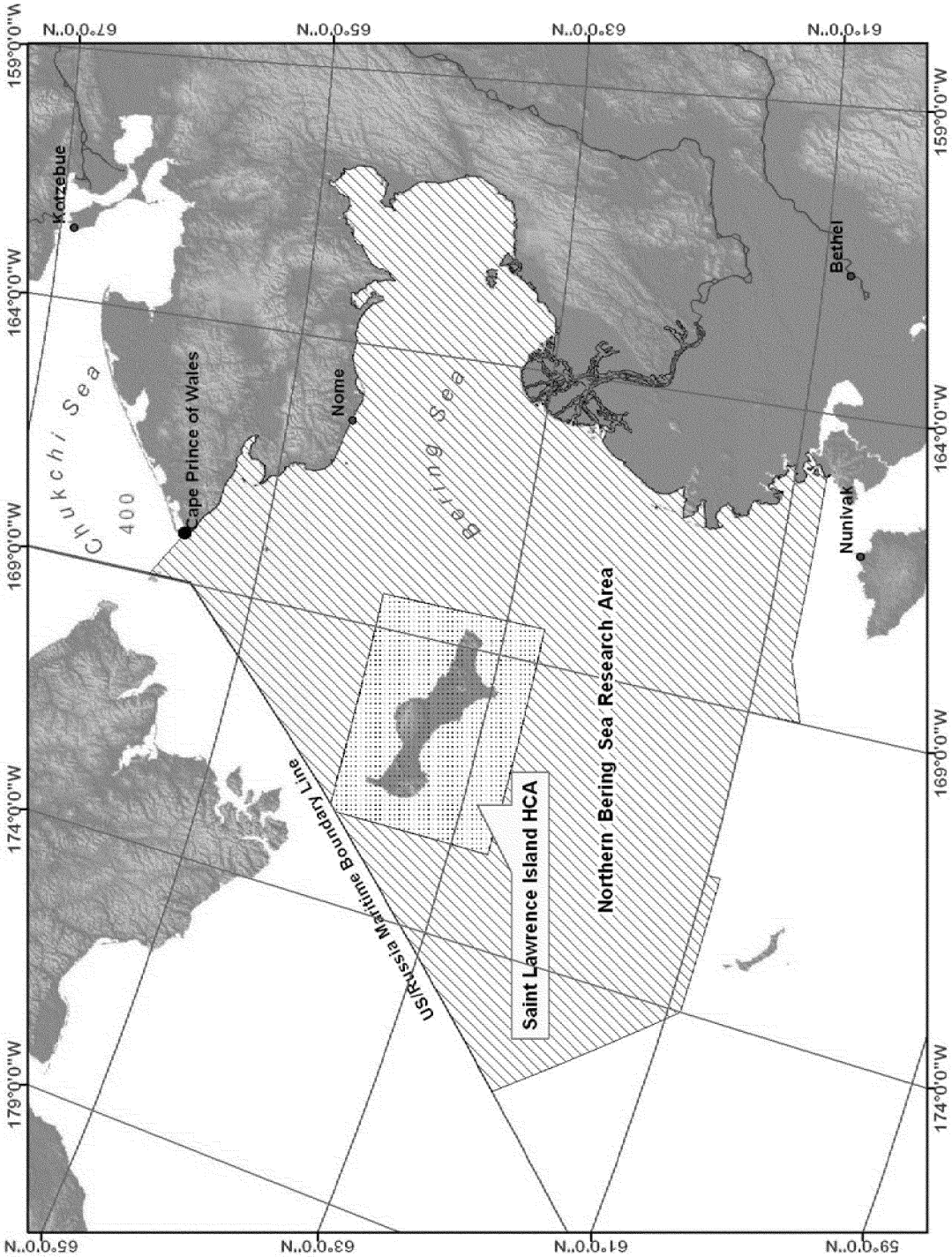
(A) For elevating devices spaced 30 feet (9.1 m) to 65 feet (19.8 m), the required minimum clearance is ≥ [2.5 inches − ((support material cross section − line material cross section)/2)], or

(B) For elevating devices spaced greater than 65 feet (19.8 m) to 95 feet (29 m), the required minimum clearance is ≥ [3.5 inches − ((support material cross section − line material cross section)/2)].

■ 6. Figure 17 to part 679 is revised to read as follows:

BILLING CODE 3510–22–P

Figure 17 to Part 679 – Northern Bering Sea Research Area and Saint Lawrence Island Habitat Conservation Area (HCA)



■ 7. Figure 25 to part 679 is added to read as follows:

Figure 25 to Part 679 – Elevating Device Clearance Measurement Locations for Modified Nonpelagic Trawl Gear

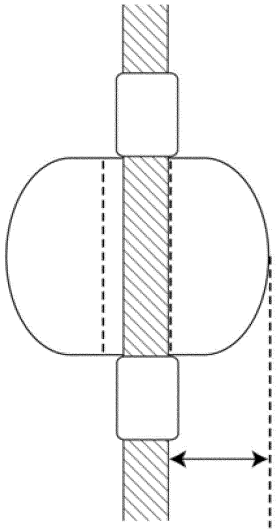


Figure 25a Line Clamps Flush to Elevating Device

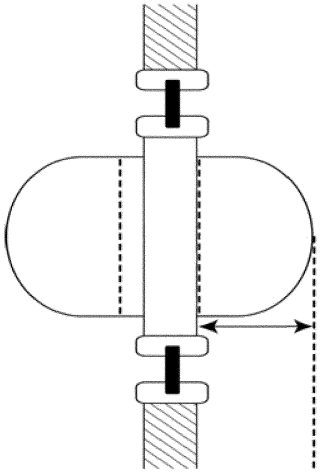


Figure 25b Elevating Device Supported by Material Different from Line Material

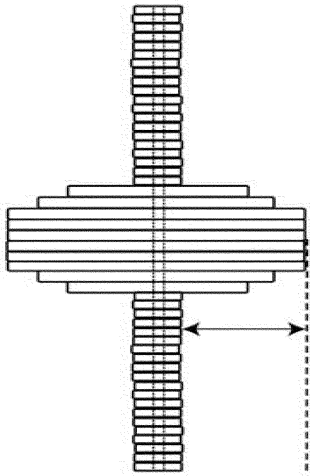


Figure 25c Cookie Gear

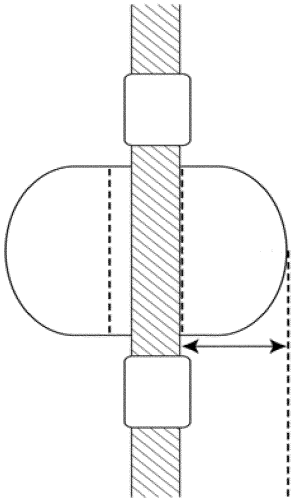


Figure 25d Line Clamps Not Flush to Elevating Device

Measuring points are shown for a variety of elevating devices located on the elevated section shown in Figure 26 to part 679. The measuring location is indicated on each figure by the arrow. The measurement is made from where the line contacts the inside surface of the device.

■ 8. Figure 26 to part 679 is added to read as follows:

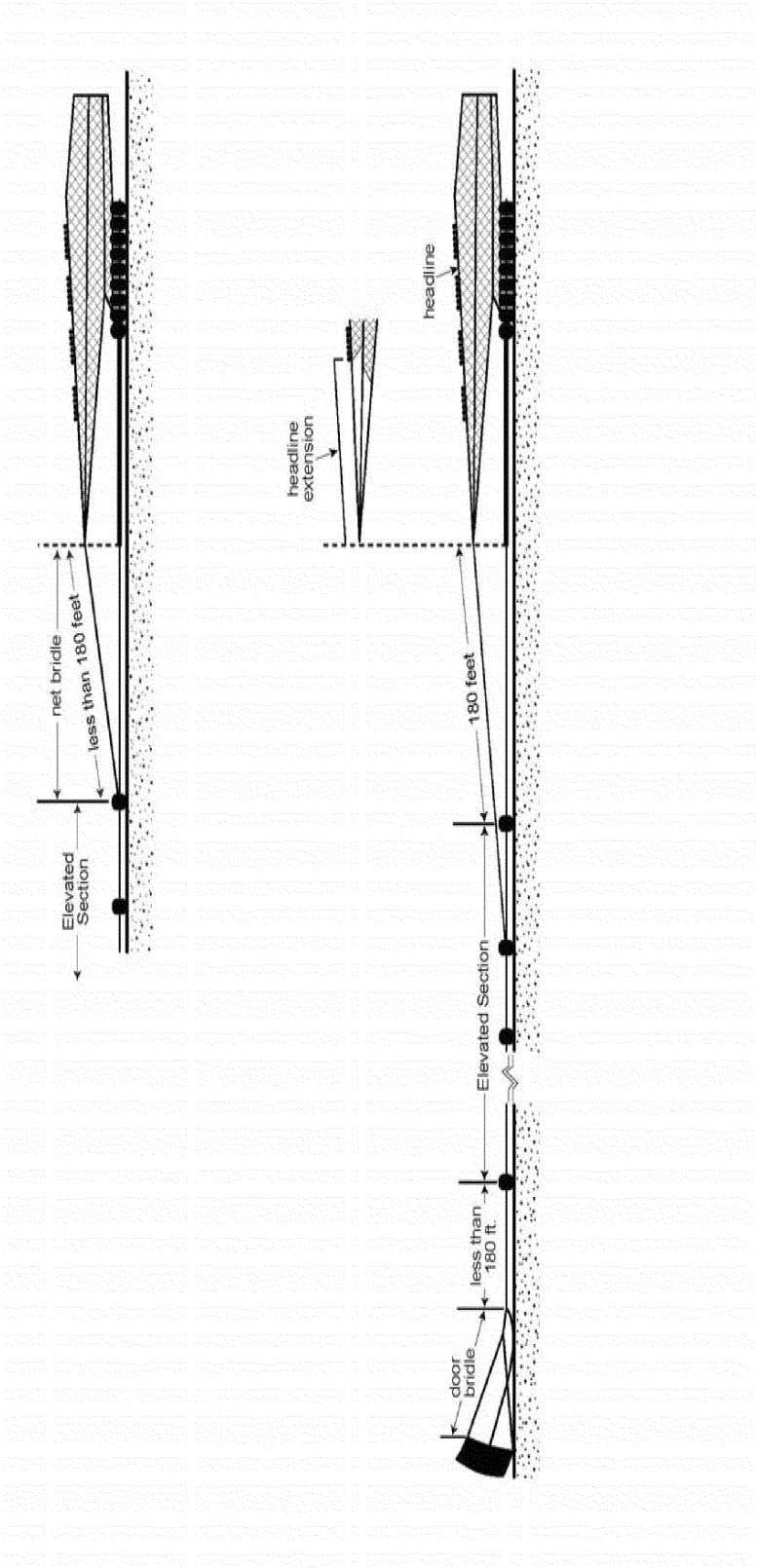
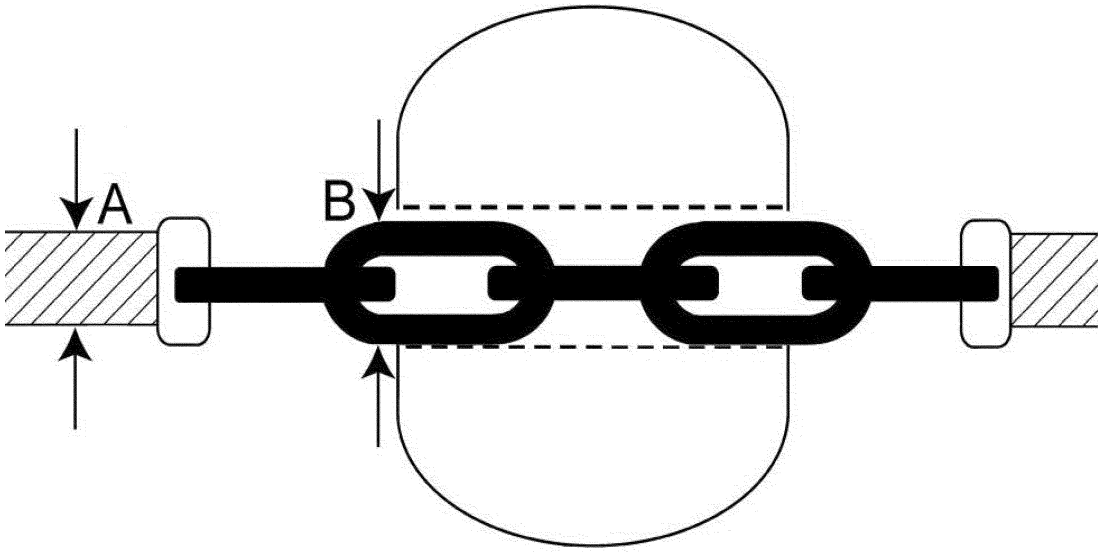


Figure 26 to Part 679 – Modified Nonpelagic Trawl Gear

This figure shows the location of elevating devices in the elevated section of modified nonpelagic trawl gear, as specified under § 679.24(f). The top image shows the location of the end elevating devices in the elevated section for gear with net bridles less than 180 feet. The bottom image shows the locations of the beginning elevating devices near the doors and the end elevating devices near the net for gear with net bridles greater than 180 feet. [END PHOTO]

■ 9. Figure 27 to part 679 is added to read as follows:

Figure 27 to Part 679 Locations for Measuring Maximum Cross Sections of Line Material (shown as A) and Supporting Material (shown as B) for Modified Nonpelagic Trawl Gear.



BILLING CODE 3510–22–C

Note: The location for measurement of maximum line material cross section does not include any devices or braided or doubled material used for section termination.

■ 10. Table 43 to part 679 is revised to read as follows:

TABLE 43 TO PART 679—NORTHERN BERING SEA RESEARCH AREA

Longitude		Latitude	
168	7.41 W	65	*37.91 N
165	1.54 W	60	45.54 N
167	59.98 W	60	45.55 N
169	00.00 W	60	35.50 N
169	00.00 W	61	00.00 N
171	45.00 W	61	00.00 N
171	45.00 W	60	54.00 N
174	1.24 W	60	54.00 N
176	13.51 W	62	6.56 N
172	24.00 W	63	57.03 N
172	24.00 W	62	42.00 N
168	24.00 W	62	42.00 N
168	24.00 W	64	0.00 N
172	17.42 W	64	0.01 N
168	58.62 W	65	30.00 N
168	58.62 W	65	**49.81 N

Note: The area is delineated by connecting the coordinates in the order listed by straight lines except as noted by * below. The last set of coordinates for the area is connected to the first set of coordinates for the area by a straight line. The projected coordinate system is North American Datum 1983, Albers.

* This boundary extends in a clockwise direction from this set of geographic coordinates along the shoreline at mean lower-low tide line to the next set of coordinates.

** Intersection of the 1990 United States/Russia maritime boundary line and a line from Cape Prince of Wales to Cape Dezhneva (Russia) that defines the boundary between the Chukchi and Bering Seas, Area 400 and Area 514, respectively.

■ 11. Table 46 to part 679 is revised to read as follows:

TABLE 46 TO PART 679—ST. MATTHEW ISLAND HABITAT CONSERVATION AREA

Longitude		Latitude	
171	45.00 W	60	54.00 N
171	45.00 W	60	6.15 N
174	0.50 W	59	42.26 N
174	24.98 W	60	9.98 N
174	1.24 W	60	54.00 N

Note: The area is delineated by connecting the coordinates in the order listed by straight lines. The last set of coordinates for the area is connected to the first set of coordinates for the area by a straight line. The projected coordinate system is North American Datum 1983, Albers.

■ 12. Tables 48 through 50 to part 679 are added and reserved.

■ 13. Table 51 to part 679 is added to read as follows:

TABLE 51 TO PART 679—MODIFIED GEAR TRAWL ZONE

Longitude		Latitude	
171	45.00 W	61	00.00 N
169	00.00 W	61	00.00 N
169	00.00 W	60	35.48 N
171	45.00 W	60	06.15 N

Note: The area is delineated by connecting the coordinates in the order listed by straight lines. The last set of coordinates for the area is connected to the first set of coordinates for the area by a straight line. The projected coordinate system is North American Datum 1983, Albers.

[FR Doc. 2010–25211 Filed 10–5–10; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 75, No. 193
Wednesday, October 6, 2010

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.

FINANCIAL STABILITY OVERSIGHT COUNCIL

12 CFR Chapter XIII

Advance Notice of Proposed Rulemaking Regarding Authority To Require Supervision and Regulation of Certain Nonbank Financial Companies

AGENCY: Financial Stability Oversight Council.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Section 113 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "DFA") gives the Financial Stability Oversight Council (the "Council") the authority to require that a nonbank financial company be supervised by the Board of Governors of the Federal Reserve System ("Board of Governors") and subject to prudential standards if the Council determines that material financial distress at such a firm, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the firm, could pose a threat to the financial stability of the United States.

This advance notice of proposed rulemaking (ANPR) invites public comment on the criteria that should inform the Council's designation of nonbank financial companies under the DFA.

DATES: Comments on this ANPR must be received by November 5, 2010.

ADDRESSES: Interested persons are invited to submit comments regarding this advance notice of proposed rulemaking according to the instructions for "Electronic Submission of Comments" below. All submissions must refer to the document title. The FSOC encourages the early submission of comments.

Electronic Submission of Comments. Interested persons must submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt, and enables the FSOC to make them available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through the method specified above. Again, all submissions must refer to the docket number and title of the notice.

Public Inspection of Public Comments. All properly submitted comments will be available for inspection and downloading at *http://www.regulations.gov.*

Additional Instructions. Please note the number of the question to which you are responding at the top of each response. Though the responses will be screened for obscenities and appropriateness, in general comments received, including attachments and other supporting materials, are part of the public record and are immediately available to the public. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: For further information regarding this interim final rule contact the Office of Domestic Finance, Treasury, at (202) 622–1703. All responses to this Notice and Request for Information should be submitted via *http://www.regulations.gov* to ensure consideration.

SUPPLEMENTARY INFORMATION:

I. Background

The Council was established by section 111 of the DFA for the purposes of "(A) * * * identify[ing] risk to the financial stability of the United States that could arise from the material financial distress or failure, or ongoing activities, of large, interconnected bank holding companies or nonbank financial companies, or that could arise outside the financial services marketplace; (B) * * * promot[ing] market discipline, by eliminating expectations on the part of shareholders, creditors, and counterparties of such companies that the Government will shield them from losses in the event of failure; and (C) * * * respond[ing] to emerging threats to the stability of the United States financial system." The Council has ten voting members and 5 nonvoting members. The voting members consist of the Secretary of the Treasury who also is the Chairperson of the Council, the Chairman of the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Bureau of Consumer Financial Protection, the Chairman of the Securities and Exchange Commission, the Chairperson of the Federal Deposit Insurance Corporation, the Chairperson of the Commodity Futures Trading Commission, the Director of the Federal Housing Finance Agency, the Chairman of the National Credit Union Administration Board, and an independent member appointed by the President with the advice and consent of the Senate, having insurance expertise. The nonvoting members are the Director of the Office of Financial Research, the Director of the Federal Insurance Office, and a State insurance commissioner, a State banking supervisor, and a State securities commissioner, each designated by a selection process determined by their respective state supervisors or commissioners.

Through this ANPR the Council is seeking to gather information as it begins to develop the specific criteria and analytical framework by which it will designate nonbank financial companies [1] for enhanced supervision under the DFA.

a. Considerations in Making a Determination

Under the provisions of the DFA, in making a determination on whether the company should be subject to supervision by the Board of Governors, the Council must consider:

(A) The extent of the leverage of the company;

(B) The extent and nature of the off-balance-sheet exposures of the company;

(C) The extent and nature of the transactions and relationships of the company with other significant nonbank financial companies and significant bank holding companies;

(D) The importance of the company as a source of credit for households, businesses, and State and local

[1] As defined in Section 102(a)(4) of DFA.

governments and as a source of liquidity for the United States financial system;

(E) The importance of the company as a source of credit for low-income, minority, or underserved communities, and the impact that the failure of such company would have on the availability of credit in such communities;

(F) The extent to which assets are managed rather than owned by the company, and the extent to which ownership of assets under management is diffuse;

(G) The nature, scope, size, scale, concentration, interconnectedness, and mix of the activities of the company;

(H) The degree to which the company is already regulated by 1 or more primary financial regulatory agencies;

(I) The amount and nature of the financial assets of the company;

(J) The amount and types of the liabilities of the company, including the degree of reliance on short-term funding; and

(K) Any other risk-related factors that the Council deems appropriate.

The Council must consider similar factors in determining whether a foreign nonbank financial company should be designated and its U.S. operations and activities subject to supervision by the Board of Governors. In addition, the Council must consider the factors relevant to a U.S. or foreign nonbank financial company in determining whether a U.S. or foreign company, respectively, should be designated for supervision by the Board of Governors under the special anti-evasion provisions in section 113(c) of the DFA.

b. Process for Making a Determination

Under the provisions of the DFA, the Council must provide a nonbank financial firm with advance notice that it plans to designate the firm, and the firm has up to 30 days to request a hearing and an additional 30 days to submit material. Upon holding a hearing, the Council has up to 60 days to make a final determination. If a firm does not make a timely request for a hearing, the Council must notify the firm of its final determination within 40 days of the firm's receipt of advance notice from the Council. In making a determination, the Council must consult with the primary financial regulator, if any, of the affected firm, and with the appropriate foreign regulatory authorities as appropriate.[2] Once designated, the Council must reevaluate its determination regarding each designated firm at least annually. Council designations are subject to judicial review. The Council is not requesting comments on these procedural requirements.

II. Criteria for Designation

1. What metrics should the Council use to measure the factors it is required to consider when making determinations under Section 113 of DFA?

a. How should quantitative and qualitative considerations be incorporated into the determination process?

b. Are there some factors that should be weighted more heavily by the Council than other factors in the designation process?

2. What types of nonbank financial companies should the Council review for designation under DFA? Should the analytical framework, considerations, and measures used by the Council vary across industries? Across time? If so, how?

3. Since foreign nonbank companies can be designated, what role should international considerations play in designating companies? Are there unique considerations for foreign nonbank companies that should be taken into account?

4. Are there simple metrics that the Council should use to determine whether nonbank financial companies should even be considered for designation?

5. How should the Council measure and assess the scope, size, and scale of nonbank financial companies?

a. Should a risk-adjusted measure of a company's assets be used? If so, what methodology or methodologies should be used?

b. Section 113 of DFA requires the Council to consider the extent and nature of the off-balance-sheet exposures of a company. Given this requirement, what should be considered an off-balance sheet exposure and how should they be assessed? How should off-balance sheet exposures be measured (*e.g.,* notional values, mark-to-market values, future potential exposures)? What measures of comparison are appropriate?

c. How should the Council take managed assets into consideration in making designations? How should the term "managed assets" be defined? Should the type of asset management activity (*e.g.,* hedge fund, private equity fund, mutual fund) being conducted influence the assessment under this criterion? How should terms, conditions, triggers, and other contractual arrangements that require the nonbank financial firm either to fund or to satisfy an obligation in connection with managed assets be considered?

d. During the financial crisis, some firms provided financial support to investment vehicles sponsored or managed by their firm despite having no legal obligation to do so. How should the Council take account of such implicit support?

6. How should the Council measure and assess the nature, concentration, and mix of activities of a nonbank financial firm?

a. Section 113 of DFA requires the Council to consider the importance of the company as a source of credit for households, businesses, and State and local governments, and as a source of liquidity for the United States financial system. Given this requirement, are there measures of market concentration that can be used to inform the application of this criterion? How should these markets be defined? What other measures might be used to assess a nonbank financial firm's importance under this criterion?

b. Section 113 of DFA requires the Council to consider the importance of the company as a source of credit for low-income, minority, and underserved communities. Given this requirement, are there measures of market concentration that can be used to inform the application of this criterion? How should these markets be defined? What other measures might be used to assess a nonbank financial firm's importance under this criterion?

7. How should the Council measure and assess the interconnectedness of a nonbank financial firm?

a. What measures of exposure should be considered (*e.g.,* counterparty credit exposures, operational linkages, potential future exposures under derivative contracts, concentration in revenues, direct and contingent liquidity or credit lines, cross-holding of debt and equity)? What role should models of interconnectedness (*e.g.,* correlation of returns or equity values across firms, stress tests) play in the Council's determinations?

b. Should the Council give special consideration to the relationships (including exposures and dependencies) between a nonbank financial company and other important financial firms or markets? If so, what metrics and thresholds should be used to identify what financial firms or markets should be considered significant for these purposes? What metrics and thresholds should be used in assessing the importance of a nonbank financial company's relationships with these other firms and markets?

[2] Under Section 113(f), the Council may waive the requirements on an emergency basis if necessary to prevent or mitigate threats to financial stability.

8. How should the Council measure and assess the leverage of a nonbank financial firm? How should measures of leverage address liabilities, off-balance sheet exposures, and non-financial business lines? Should standards for leverage differ by types of financial activities or by industry? Should acceptable leverage standards recognize differences in regulation? Are there existing standards (*e.g.,* the Basel III leverage ratio) for measuring leverage that could be used in assessing the leverage of nonbank financial companies?

9. How should the Council measure and assess the amount and types of liabilities, including the degree of reliance on short-term funding of a nonbank financial firm?

a. What factors should the Council consider in developing thresholds for identifying excessive reliance on short-term funding?

b. How should funding concentrations be measured?

c. Do some nonbank financial companies have funding sources that are contractually short-term but stable in practice (similar to "stable deposits" at banks)?

d. Should the assessment link the maturity structure of the liabilities to the maturity structure and quality of the assets of nonbank financial companies?

10. How should the Council take into account the fact that a nonbank financial firm (or one or more of its subsidiaries or affiliates) is already subject to financial regulation in the Council's decision to designate a firm? Are there particular aspects of prudential regulation that should be considered as particularly important (*e.g.,* capital regulation, liquidity requirements, consolidated supervision)? Should the Council take into account whether the existing regulation of the company comports with relevant national or international standards?

11. Should the degree of public disclosures and transparency be a factor in the assessment? Should asset valuation methodologies (*e.g.,* level 2 and level 3 assets) and risk management practices be factored into the assessment?

12. During the financial crisis, the U.S. Government instituted a variety of programs that served to strengthen the resiliency of the financial system. Nonbank financial companies participated in several of these programs. How should the Council consider the Government's extension of financial assistance to nonbank financial companies in designating companies?

13. Please provide examples of best practices used by your organization or in your industry in evaluating and considering various types of risks that could be systemic in nature.

a. How do you approach analyzing and quantifying interdependencies with other organizations?

b. When and if important counterparties or linkages are identified, how do you evaluate and quantify the risks that a firm is exposed to?

c. What other types of information would be effective in helping to identify and avoid excessive risk concentrations that could ultimately lead to systemic instability?

14. Should the Council define "material financial distress" or "financial stability"? If so, what factors should the Council consider in developing those definitions?

15. What other risk-related considerations should the Council take into account when establishing a framework for designating nonbank financial companies?

Dated: October 1, 2010.

Alastair Fitzpayne,

Deputy Chief of Staff and Executive Secretary, Department of the Treasury.

[FR Doc. 2010–25321 Filed 10–4–10; 4:15 pm]

BILLING CODE 4810–25–P–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1006; Directorate Identifier 2009–CE–057–AD]

RIN 2120–AA64

Airworthiness Directives; Piper Aircraft, Inc. Model PA–28–161 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Piper Aircraft, Inc. (Piper) Model PA–28–161 airplanes equipped with Thielert Aircraft Engine GmbH (TAE) Engine Model TAE–125–01 installed per Supplemental Type Certificate (STC) No. SA03303AT. This proposed AD would require installing a full authority digital engine control (FADEC) backup battery, replacing the supplement pilot's operating handbook and FAA approved airplane flight manual, and revising the limitations section of the supplement airplane maintenance manual. This proposed AD results from an incident where an airplane experienced an in-flight engine shutdown caused by a momentary loss of electrical power to the FADEC. We are proposing this AD to prevent interruption of electrical power to the FADEC, which could result in an uncommanded engine shutdown. This failure could lead to a loss of engine power.

DATES: We must receive comments on this proposed AD by November 22, 2010.

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 Thielert Aircraft Engines Service GmbH, Platanenstraße 14, 09350 Lichtenstein, Deutschland; telephone: +49 (37204) 696–0; fax: +49 (37204) 696–1910; Internet: *http://www.thielert.com/.*

FOR FURTHER INFORMATION CONTACT: Don O. Young, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office (ACO), 1701 Columbia Avenue, College Park, Georgia 30337; telephone: (404) 474–5585; fax: (404) 474–5606; e-mail: *don.o.young@faa.gov.*

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–2010–1006; Directorate Identifier 2009–CE–057–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

In 2007, a Diamond DA42 airplane experienced a dual in-flight engine shutdown. Our review of the incident determined the root cause was an unsafe design feature that allowed momentary interruption of electrical power to both engine FADECs. The interruption caused the FADECs to reset, shutting down both engines with a consequent loss of engine power. Piper Model PA–28–161 airplanes modified by STC No. SA03303AT have a similar unsafe design feature that can allow the FADEC to shut down or reset if the main battery is depleted and the electrical charging system malfunctions.

This condition, if not corrected, could result in an uncommanded engine shutdown. This failure could lead to a loss of engine power.

Relevant Service Information

We have reviewed Thielert Aircraft Engines GmbH Service Bulletin TM TAE 651–0007, Revision 7, dated July 30, 2010.

The service information describes procedures for installation of a FADEC backup battery.

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 require installation of a FADEC backup battery, replacement of the supplement pilot's operating handbook and FAA approved airplane flight manual, and revision of the limitations section of the supplement airplane maintenance manual.

Costs of Compliance

We estimate that this proposed AD would affect zero airplanes in the U.S. registry.

We estimate the following costs to do the proposed modification:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
7 work-hours × $85 per hour = $595	$780	$1,375	Not applicable.

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 adding the following new AD:

Piper Aircraft, Inc.: Docket No. FAA–2010–1006; Directorate Identifier 2009–CE–057–AD.

Comments Due Date

(a) We must receive comments on this airworthiness directive (AD) action by November 22, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model PA–28–161 airplanes, all serial numbers, that are:

(1) Equipped with Thielert Aircraft Engine GmbH (TAE) Engine Model TAE–125–01 installed per Supplemental Type Certificate (STC) No. SA03303AT; and

(2) Certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 72: Engine.

Unsafe Condition

(e) This AD results from an incident where an airplane experienced an in-flight engine shutdown caused by a momentary loss of electrical power to the FADEC. We are issuing this AD to prevent interruption of electrical power to the FADEC, which could result in an uncommanded engine shutdown. This failure could lead to a loss of engine power.

Compliance

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

Actions	Compliance	Procedures
(1) Modify the engine electrical system by installing a backup battery system and associated wiring and circuitry.	Within the next 100 hours time-in-service after the effective date of this AD or within 30 days after the effective date of this AD, whichever occurs first.	Follow Thielert Aircraft Engines GmbH Service Bulletin TM TAE 651–0007, Revision 7, dated July 30, 2010.
(2) Revise the airworthiness limitations section to require repetitive replacement of the FADEC backup battery every 12 calendar months. Thereafter, except as provided in paragraph (g) of this AD, no alternative replacement times may be approved for this part.	Before further flight after doing the modification required in paragraph (f)(1) of this AD.	Incorporate Chapter 40–AMM–04–01 "Airworthiness Limitations, Revision 1", dated January 25, 2010, of Thielert Aircraft Engines GmbH Supplement Airplane Maintenance Manual Piper PA28–161 TAE 125–01, Doc. No.: AMM–40–01 US–Version) Version: 1/1, into TAE Airplane Maintenance Manual Supplement, Piper PA28/TAE 125–01, AMM–40–01 (US–Version), Rev. Issue 1, dated February 3, 2006.
(3) Incorporate Thielert Aircraft Engines GmbH Supplement Pilot's Operating Handbook and FAA Approved Airplane Flight Manual, TAE–No.: 40–0310–40042, issue 2, revision 0, dated June 1, 2010, into the pilot's operating handbook.	Before further flight after doing the modification required in paragraph (f)(1) of this AD.	Not applicable.

Alternative Methods of Compliance (AMOCs)

(g) The Manager, Atlanta Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Don O. Young, Aerospace Engineer, FAA, Atlanta ACO, 1701 Columbia Avenue, College Park, Georgia 30337; telephone: (404) 474–5585; fax: (404) 474–5606; e-mail: *don.o.young@faa.gov.* 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

(h) To get copies of the service information referenced in this AD, contact Thielert Aircraft Engines Service GmbH, Platanenstraße 14, 09350 Lichtenstein, Deutschland; telephone: +49 (37204) 696–0; fax: +49 (37204) 696–1910; Internet: *http://www.thielert.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 September 30, 2010.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–25208 Filed 10–5–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0956; Directorate Identifier 2010–NM–018–AD]

RIN 2120–AA64

Airworthiness Directives; Transport Category Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to revise an existing airworthiness directive (AD) that applies to transport category airplanes that have one or more lavatories equipped with paper or linen waste receptacles. The existing AD currently requires installation of placards prohibiting smoking in the lavatory and disposal of cigarettes in the lavatory waste receptacles; establishment of a procedure to announce to airplane occupants that smoking is prohibited in the lavatories; installation of ashtrays at certain locations; and repetitive inspections to ensure that lavatory waste receptacle doors operate correctly. This proposed revision to the AD would extend the time an airplane may be operated with certain missing ashtrays. This proposed revision to the AD was prompted by the determination that certain compliance times required by the existing AD could be extended and still address fires occurring in lavatories caused by, among other things, the improper disposal of smoking materials in lavatory waste receptacles. The proposed revision to the AD would continue to prevent possible fires that could result from smoking materials being dropped into lavatory paper or linen waste receptacles.

DATES: We must receive comments on this proposed AD by November 22, 2010.

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office

(telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Alan Sinclair, Aerospace Engineer, Airframe/Cabin Safety Branch, ANM–115, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone 425–227–2195; fax 425–227–1232.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0956; Directorate Identifier 2010–NM–018–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

On June 17, 1996, we issued AD 74–08–09 R2, amendment 39–9680 (61 FR 32318, June 24, 1996), for transport category airplanes that have one or more lavatories equipped with paper or linen waste receptacles. Revision 2, as well as previous versions of the AD, requires installation of placards prohibiting smoking in the lavatory and disposal of cigarettes in the lavatory waste receptacles; establishment of a procedure to announce to airplane occupants that smoking is prohibited in the lavatories; installation of ashtrays at certain locations; and repetitive inspections to ensure that lavatory waste receptacle doors operate correctly. The original AD resulted from fires occurring in lavatories caused by, among other things, the improper disposal of smoking materials in lavatory waste receptacles. We issued that AD, and subsequent versions of the AD, to prevent possible fires that could result from smoking materials being dropped into lavatory paper or linen waste receptacles.

Actions Since Existing AD Was Issued

Since we issued AD 74–08–09 R2, we have been advised that the current required replacement schedule for missing or inoperative ashtrays may be overly conservative and burdensome on operators. We have determined that slightly extending the time an airplane may be operated with missing or inoperative ashtrays will not compromise safety. We have adjusted the compliance time accordingly in paragraph (j) of this NPRM.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified that an unsafe condition continues to exist or could develop on any transport category airplane that has one or more lavatories equipped with paper or linen waste receptacles. For this reason, we are proposing this AD, which would revise AD 74–08–09 R2 and would retain the requirements of the existing AD. This proposed AD would simply extend the time an airplane may be operated with some ashtrays missing or inoperative.

Changes to Existing AD

We have added paragraph (m) to this proposed AD to include the standard provision for operators to request approval of an alternative method of compliance (AMOC). This provision did not appear in AD 74–08–09 R2. Since the issuance of that AD, we issued Part 252 of the Federal Aviation Regulations (14 CFR part 252), "Smoking Aboard Aircraft," which bans smoking of tobacco products on certain flights. Therefore, the risk associated with the identified unsafe condition in this proposed AD has been reduced significantly. In light of this, we have determined that an AMOC provision may be added to this proposed AD.

We have revised the applicability of AD 74–08–09 R2 to provide the list of manufacturers of current known transport category airplanes holding U.S. type certificates.

This proposed AD would retain the requirements of AD 74–08–09 R2. Since AD 74–08–09 R2 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 74–08–09 R2	Corresponding requirement in this proposed AD
paragraph (a)	paragraph (g).
paragraph (b)	paragraph (h).
paragraph (c)	paragraph (i).
paragraph (d)	paragraph (j).
paragraph (e)	paragraph (k).
paragraph (f)	paragraph (l).

Costs of Compliance

This action merely extends a certain compliance time and does not add any new additional economic burden on affected operators. The relief provided by this proposed AD would allow operators to continue to operate airplanes without the required number of ashtrays for a longer period of time than was previously permitted. This will result in reduced costs to affected operators since it will reduce the potential interruptions in service to reinstall the ashtrays. The current costs associated with this AD are provided below for the convenience of affected operators. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane
Placard installations	1	$85	Negligible	$85.
Inspections	2	$85	$0	$170 per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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 place it in the AD docket. *See* the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing amendment 39–9680 (61 FR 32318, June 24, 1996) and adding the following new AD:

Transport Category Airplanes: Docket No. FAA–2010–0956; Directorate Identifier 2010–NM–018–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by November 22, 2010.

Affected ADs

(b) This AD revises AD 74–08–09 R2, Amendment 39–9680.

Applicability

(c) This AD applies to transport category airplanes, certificated in any category, that have one or more lavatories equipped with paper or linen waste receptacles. These lavatories may be on various airplanes, identified in but not limited to the airplanes of the manufacturers included in Table 1 of this AD.

TABLE 1—AFFECTED AIRPLANES

Airplane manufacturer
328 Support Services GmbH (Type Certificate previously held by AvCraft Aerospace GmbH; Fairchild Dornier GmbH; Dornier Luftfahrt GmbH).
AEROSPATIALE (Societe Nationale Industrielle Aerospatiale).
Airbus.
ATR—GIE Avions de Transport Régional.
BAE Systems (Operations) Limited.
The Boeing Company.
Bombardier, Inc.
British Aerospace Regional Aircraft.
Cessna Aircraft Company.
DASSAULT AVIATION.
EADS CASA (Type Certificate previously held by Construcciones Aeronauticas, S.A.).
Empresa Brasileira de Aeronautica S.A. (EMBRAER).
Fokker Services B.V.
Gulfstream Aerospace Corporation/
Gulfstream Aerospace LP (Type Certificate previously held by Israel Aircraft Industries, Ltd.).
Hamburger Flugzeugbau GmbH.
Hawker Beechcraft Corporation (Type Certificate previously held by Raytheon Aircraft Company; Beech Aircraft Corporation).
Israel Aircraft Industries, Ltd.
Learjet Inc.
Lockheed Aircraft Corporation.
Lockheed Martin Corporation/Lockheed Martin Aeronautics Company.
Maryland Air Industries, Inc.
McDonnell Douglas Corporation.
Mitsubishi Heavy Industries, Ltd.
Saab AB, Saab Aerosystems.
Sabreliner Corporation.
Short Brothers PLC.
Vickers-Armstrongs (Aircraft Limited).
Viking Air Limited (Type Certificate previously held by Bombardier, Inc.).

Subject

(d) Air Transport Association (ATA) of America Code 25: Equipment/furnishings.

Unsafe Condition

(e) This revision to the AD was prompted by the determination that certain compliance times required by the existing AD may be extended and still address fires occurring in lavatories caused by, among other things, the improper disposal of smoking materials in lavatory waste receptacles. This proposed revision to the AD would continue to prevent possible fires that could result from smoking

materials being dropped into lavatory paper or linen waste receptacles.

Compliance

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

Restatement of Requirements of AD 74–08–09 R2, Amendment 39–9680, With Revised Compliance Times in Paragraph (j)

Placard Installation

(g) Within 60 days after August 6, 1974 (the effective date of AD 74–08–09, amendment 39–1917), or before the accumulation of any time in service on a new production aircraft after delivery, whichever occurs later—except that new production aircraft may be flown in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to a base where compliance may be accomplished: Accomplish the requirements of paragraphs (g)(1) and (g)(2) of this AD.

(1) Install a placard on each side of each lavatory door over the door knob, or on each side of each lavatory door, or adjacent to each side of each lavatory door. The placards must contain the legible words "No Smoking in Lavatory" or "No Smoking," or contain "No Smoking" symbology in lieu of words, or contain both wording and symbology, to indicate that smoking is prohibited in the lavatory. The placards must be of sufficient size and contrast and be located so as to be conspicuous to lavatory users. And

(2) Install a placard on or near each lavatory paper or linen waste disposal receptacle door, containing the legible words or symbology indicating "No Cigarette Disposal."

Announcement Procedures

(h) Within 30 days after August 6, 1974, establish a procedure that requires that, no later than a time immediately after the "No Smoking" sign is extinguished following takeoff, an announcement be made by a crewmember to inform all aircraft occupants that smoking is prohibited in the aircraft lavatories; except that, if the aircraft is not equipped with a "No Smoking" sign, the required procedure must provide that the announcement be made prior to each takeoff.

Ashtray Installation

(i) Except as provided by paragraph (j) of this AD: Within 180 days after August 6, 1974, or before the accumulation of any time in service on a new production aircraft, whichever occurs later—except that new production aircraft may be flown in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to a base where compliance may be accomplished: Install a self-contained, removable ashtray on or near the entry side of each lavatory door. One ashtray may serve more than one lavatory door if the ashtray can be seen readily from the cabin side of each lavatory door served.

(j) An airplane with multiple lavatory doors may be operated with up to 50 percent of the lavatory door ashtrays missing or inoperative, provided 50 percent of the missing or inoperative ashtrays are replaced within 3 days and all remaining missing or inoperative ashtrays are replaced within 10 days. An airplane with only 1 lavatory door may be operated for a period of 10 days with the lavatory door ashtray missing or inoperative.

Note 1: This AD permits a lavatory door ashtray to be missing, although the FAA-approved Master Minimum Equipment List (MMEL) may not allow such provision. In any case, the provisions of this AD prevail.

(k) Within 30 days after August 6, 1974, and thereafter at intervals not to exceed 1,000 hours' time-in-service from the last inspections, accomplish the following:

(1) Inspect all lavatory paper and linen waste receptacle enclosure access doors and disposal doors for proper operation, fit, sealing, and latching for the containment of possible trash fires.

(2) Correct all defects found during the inspections required by paragraph (k)(1) of this AD.

(l) Upon the request of an operator, the FAA Principal Maintenance Inspector (PMI) may adjust the 1,000-hour repetitive inspection interval specified in paragraph (k) of this AD to permit compliance at an established inspection period of the operator if the request contains data to justify the requested change in the inspection interval.

Alternative Methods of Compliance (AMOCs)

(m)(1) The Manager, Airframe/Cabin Safety Branch, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *Attn:* Alan Sinclair, Aerospace Engineer, Airframe/Cabin Safety Branch, ANM–115, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2195; fax 425–227–1232.

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

Issued in Renton, Washington, on September 30, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–25124 Filed 10–5–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

Docket No. FAA–2010–0784; Airspace Docket No. 10–AWP–5

Proposed Modification of Class D and E Airspace, and Revocation of Class E Airspace; Flagstaff, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class D and E airspace at Flagstaff, AZ, to accommodate aircraft departing and arriving under Instrument Flight Rules (IFR) at Flagstaff Pulliam Airport. This action also would remove Class E airspace designated as an extension to a Class D or E surface area at Flagstaff Pulliam Airport. This action, initiated by the biennial review of the Flagstaff airspace area, would enhance the safety and management of aircraft operations at the airport.

DATES: Comments must be received on or before November 22, 2010.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2010–0784; Airspace Docket No. 10–AWP–5, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Richard Roberts, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4517.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA

2010–0784 and Airspace Docket No. 10–AWP–5) and be submitted in triplicate to the Docket Management System (*see* **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov*.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA–2010–0784 and Airspace Docket No. 10–AWP–5". The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (*see* the **ADDRESSES** section for the address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue, SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying Class D airspace and Class E airspace extending upward from 700 feet above the surface to meet current standards for IFR departures and arrivals at Flagstaff Pulliam Airport, Flagstaff, AZ. This modification eliminates the need for Class E airspace designated as an extension to a Class D or E surface area, and, therefore, would be removed. This action was initiated by a biennial review of the airspace and is necessary for the safety and management of aircraft departing and arriving under IFR operations at the airport.

Class D and E airspace designations are published in paragraph 5000, 6004 and 6005, respectively, of FAA Order 7400.9U, dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR Part 71.1. The Class D and E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation; (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes additional controlled airspace at Flagstaff Pulliam Airport, Flagstaff, AZ.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

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

1. The authority citation for 14 CFR Part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR Part 71.1 of the FAA Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010 is amended as follows:

Paragraph 5000 Class D airspace.

* * * * *

AWP AZ D Flagstaff, AZ [Modified]

Flagstaff Pulliam Airport, AZ
(Lat. 35°08′25″ N., long. 111°40′09″ W.)

That airspace extending upward from the surface to and including 9,500 feet MSL within a 5-mile radius of Flagstaff Pulliam Airport beginning at lat. 35°13′28″ N., long. 111°37′59″ W., clockwise to lat. 35°07′20″ N., long. 111°46′14″ W., thence to the point of beginning; and that airspace 1.5 miles each side of the Flagstaff Pulliam Airport 127° bearing extending to 7 miles southeast of the Flagstaff Pulliam Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6004 Class E airspace areas designated as an extension to Class D or Class E surface area.

* * * * *

AWP AZ E4 Flagstaff, AZ [Removed]

Paragraph 6005 Class E airspace areas extending upward from 700 feet above the surface.

* * * * *

AWP AZ E5 Flagstaff, AZ [Modified]

Flagstaff Pulliam Airport, AZ
(Lat. 35°08′25″ N., long. 111°40′09″ W.)

That airspace extending upward from 700 feet above the surface beginning southwest of the Flagstaff Pulliam Airport at lat. 35°07′58″ N., long. 111°50′44″ W., clockwise along an 8.5 mile arc to lat. 35°16′04″ N., long. 111°36′7″ W., thence to lat. 35°08′25″ N., long. 111°14′50″ W., thence to lat. 35°08′25″ N., long. 111°14′50″ W., to lat. 34°54′20″ N.,

long. 111°26′11″ W., to lat. 34°58′47″ N., long. 111°37′17″ W., to lat. 34°43′58″ N., long. 111°50′21″ W., to lat. 34°45′01″ N., long. 112°01′17″ W., to lat. 34°54′24″ N., long. 112°05′16″ W., to lat. 35°08′10″ N., long. 111°51′59″ W., thence to the point of beginning. That airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 35°05′04″ N., long. 112°27′43″ W., to lat. 35°11′22″ N., long. 110°52′43″ W., thence clockwise along the 39 mile arc to the point of beginning, excluding the Sedona, AZ, Class E airspace area.

Issued in Seattle, Washington, on September 30, 2010.

Lori Andriesen,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2010–25200 Filed 10–5–10; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–R09–OAR–2010–0680; FRL–9209–7]

State of California; Request for Approval of Section 112(l) Authority for Hazardous Air Pollutants; Perchloroethylene Air Emission Standards From Dry Cleaning Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve California's Airborne Toxic Control Measure for Emissions of Perchloroethylene from Dry Cleaning and Water-Repelling Operations, Requirements for Perc Manufacturers, and Requirements for Perc Distributors to be implemented and enforced in place of the National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities. EPA is proposing this action under section 112(l) of the Clean Air Act (CAA). We are taking comments on this proposal and plan to follow with a final action.

DATES: Comments on California's request for approval must be received on or before November 5, 2010.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2010–0680, concurrently to EPA and the California Air Resources Board. Comments submitted to the California Air Resources Board should be mailed to the address below:

Dan Donohoue, Chief, Emissions Assessment Branch, Stationary Source Division, California Air Resources Board, 1001 "I" Street, P.O. Box 2815, Sacramento, CA 95812.

Comments sent to EPA should be submitted by one of the following methods:

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

2. *E-mail: steckel.andrew@epa.gov.*

3. *Mail or Deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Mae Wang, EPA Region IX, (415) 947–4124, *wang.mae@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

Table of Contents

I. Background

Under CAA section 112(l), EPA is authorized to delegate to State agencies the authority to implement and enforce the National Emission Standards for Hazardous Air Pollutants (NESHAPs). The Federal regulations governing EPA's approval of State rules or programs under section 112(l) are located at 40 CFR part 63, subpart E. Under these regulations, a State has the option to request EPA's approval to substitute a State rule for the comparable NESHAP. Under this "rule substitution" option, EPA is required to make a detailed and thorough evaluation of the State's submittal to ensure that it meets the stringency and other requirements of 40 CFR 63.93. Upon approval the State is given the authority to implement and enforce its rule in lieu of the NESHAP.

On September 22, 1993, EPA promulgated the NESHAP for perchloroethylene (perc) dry cleaning facilities, which has been codified in 40 CFR part 63, subpart M, National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities (dry cleaning NESHAP) (*see* 58 FR 49354). On May 21, 1996, EPA approved a request submitted by the California Air Resources Board (CARB) for approval to implement and enforce California's Airborne Toxic Control Measure for Emissions of Perchloroethylene from Dry Cleaning Operations (original dry cleaning ATCM) in lieu of the dry cleaning NESHAP (*see* 61 FR 25397).

On July 27, 2006, EPA amended the dry cleaning NESHAP (*see* 71 FR 42743). In 2007, CARB revised California's original dry cleaning ATCM.

II. California's Submittal

A. Amended Dry Cleaning ATCM

California's Airborne Toxic Control Measure for Emissions of Perchloroethylene from Dry Cleaning and Water Repelling Operations, Requirements for Perc Manufacturers, and Requirements for Perc Distributors, sections 93109, 93109.1, and 93109.2, Title 17 of the California Code of Regulations (amended dry cleaning ATCM), became State law on December 27, 2007. On July 15, 2009, CARB submitted a request to implement and enforce the amended dry cleaning ATCM in lieu of the dry cleaning NESHAP and the previously approved original dry cleaning ATCM. This request was submitted pursuant to the

provisions of 40 CFR 63.93 and found to be complete on August 13, 2009.

The amended dry cleaning ATCM is implementing a ban on the use of perc in dry cleaning operations in California. Since January 1, 2008, there has been a prohibition on the installation or use of any perc dry cleaning machines at new facilities. Existing facilities must meet equipment and operational requirements until the existing machines are phased out in accordance with the time frames established in the amended dry cleaning ATCM.

B. Major Dry Cleaning Sources

Under the dry cleaning NESHAP, dry cleaning facilities are divided between major sources and area sources. CARB's request for approval includes only those provisions of the dry cleaning NESHAP that apply to area sources. Thus, dry cleaning facilities that are major sources, as defined by the dry cleaning NESHAP, remain subject to the dry cleaning NESHAP and the CAA Title V operating permit program.

C. California District Rules

After the May 21, 1996, approval of the original dry cleaning ATCM, the following California District rules were approved in place of the dry cleaning NESHAP:

District	Rule	Adoption date	Approval date
San Luis Obispo County APCD	432: Perchloroethylene Dry Cleaning Operations	11/13/1996	12/10/1997 (62 FR 65022)
South Coast AQMD	1421: Control of Perchloroethylene Emissions from Dry Cleaning Systems.	6/13/1997	5/13/1998 (63 FR 26463)
Yolo-Solano AQMD	9.7: Perchloroethylene Dry Cleaning Operations	11/13/1998	1/28/1999 (64 FR 4298)

If the current submittal of the amended dry cleaning ATCM is approved, then the amended dry cleaning ATCM will replace the above rules from San Luis Obispo County Air Pollution Control District and Yolo-Solano County Air Quality Management District as the federally-enforceable regulation in those Districts for perc dry cleaning area sources. In the future, a District may request approval for a local rule under the provisions of 40 CFR § 63.93. Until a request for delegation of a local regulation is submitted and approved by EPA, the amended dry cleaning ATCM would serve as the federally applicable regulation, with the one exception discussed below.

In the South Coast Air Quality Management District (SCAQMD), the previously approved version of Rule 1421 would remain in place as the federally-enforceable regulation for perc dry cleaning area sources. The SCAQMD has asked to be excluded from the CARB request for delegation and intends to submit an amended version of Rule 1421 in a separate delegation request in the future. Therefore, if the amended dry cleaning ATCM is approved, then it will be the federally applicable regulation for perc dry cleaning area sources in all Districts of California except the SCAQMD.

D. California's Authorities and Resources To Implement and Enforce CAA Section 112 Standards

Any request for approval under CAA section 112(l) must meet the approval criteria in 112(l)(5) and 40 CFR part 63, subpart E. To streamline the approval process for future applications, a State may submit for approval a demonstration that it has adequate authorities and resources to implement and enforce *any* CAA section 112 standards. Approval of this demonstration will obviate the need for the State to resubmit in each subsequent request for approval its prior demonstration that it has adequate authorities and resources to implement and enforce the section 112 standard.

As part of its original dry cleaning ATCM application, approved on May 21, 1996, CARB also requested and received approval of California's authorities and resources to implement and enforce all CAA section 112 programs and rules, with the exception of the accidental release prevention program promulgated pursuant to CAA section 112(r) (*see* 61 FR 25397). Although approval of California's authorities and resources did not result in delegation of the section 112 standards, it obviated the need for California to resubmit a demonstration of these same authorities and resources for every subsequent request for delegation of section 112 standards, regardless of whether the State requests approval of rules that are identical to or differ from the Federal standards as promulgated.

In CARB's request for approval of the amended dry cleaning ATCM, submitted on July 15, 2009, CARB satisfied the need to submit certain demonstrations of legal authorities and resources by referencing the demonstrations contained in its original application, approved on May 21, 1996 (*see* 61 FR 25397), and stating that those demonstrations are still applicable. By reference, those original demonstrations are considered a part of this current submittal. The approval of the original application contained a more detailed discussion of EPA's evaluation of these demonstrations of legal authorities and resources, including a discussion of penalty authorities and variances. The May 21, 1996, action should be consulted for further information.

III. EPA's Evaluation

When a State requests EPA's approval to substitute a State rule for the applicable CAA section 112 Federal rule, EPA is required to "make a detailed and thorough evaluation of the State's submittal to ensure that it meets the stringency and other requirements" of 40 CFR 63.93 (*see* 58 FR 62274). After reviewing CARB's request for approval of its amended dry cleaning ATCM (see docket for more information), EPA has determined that CARB's request meets all the requirements necessary to qualify for approval under CAA section 112(l) and 40 CFR 63.91 and 63.93.

While EPA notes that there are differences between the dry cleaning NESHAP and the amended dry cleaning ATCM because the regulations differ in structure and approach, the amended dry cleaning ATCM is designed to phase out the use of perc at dry cleaning facilities. For example, in addition to California's previous prohibition of transfer, vented, and self-service perc dry cleaning machines, the sale or new lease of perc dry cleaning machines was prohibited as of January 1, 2008. The use of perc dry cleaning machines or perc water-repelling operations at new facilities was also prohibited, along with the use of drying cabinets and dip tanks. As of July 1, 2010, existing perc converted machines and perc dry cleaning machines at co-residential locations have been prohibited. Other machines are being phased out according to the age of the machine, and all remaining perc dry cleaning machines must be removed from service

by January 1, 2023. In the final analysis, EPA believes that approval of the amended dry cleaning ATCM will result in emission reductions from each affected sources that are no less stringent than would result from the dry cleaning NESHAP. Accordingly, EPA is proposing to grant California the authority to implement and enforce its amended dry cleaning ATCM in place of the dry cleaning NESHAP for area sources in the State of California, with the exception of the SCAQMD.

IV. Public Comment and Proposed Action

Because EPA believes California's request meets all the requirements necessary to qualify for approval under CAA section 112(l) and 40 CFR 63.91 and 63.93, we are proposing approval of the amended dry cleaning ATCM as a substitute for the dry cleaning NESHAP. We will accept comments on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will establish the amended dry cleaning ATCM as the federally-enforceable regulation in California, with the exception of the SCAQMD, for perc dry cleaning area sources. Although California would have primary implementation and enforcement responsibility, EPA would retain the right, pursuant to CAA section 112(l)(7), to enforce any applicable emission standard or requirement under CAA section 112. If this proposal is finalized, the amended dry cleaning ATCM would be the federally-enforceable standard in California and would be enforceable by the Administrator and citizens under the CAA. However, any provision of the amended dry cleaning ATCM that allows for the approval of alternative means of emission limitations must also receive approval from EPA before such alternatives can be used (*e.g.,* Section 93109(d)(27) and (38), and (i)(3)(A)(2)). Additionally, this delegation does not extend to the provisions regarding California's enforcement authorities or its collection of fees as described in Sections 93109.1(c) and 93109.2(c) and (d), Title 17 of the California Code of Regulations. Approval of the amended dry cleaning ATCM does not in any way limit the enforcement authorities, including the penalty authorities, of the Clean Air Act.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a State delegation submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7412(l); 40 CFR 63.90. Thus, in reviewing delegation submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the submitted rule is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 63

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

Authority: This action is issued under the authority of Title III of the Clean Air Act as amended, 42 U.S.C. 2399.

Dated: August 30, 2010.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2010–25127 Filed 10–5–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R4-ES-2008-0107]
[92210 1111 0000-B2]

RIN 1018-AV88

Endangered and Threatened Wildlife and Plants; Endangered Status for the Altamaha Spinymussel and Designation of Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose to list the Altamaha spinymussel (*Elliptio spinosa*), a freshwater mussel endemic to the Altamaha River drainage of southeastern Georgia, as an endangered species under the Endangered Species Act of 1973, as amended (Act), and to designate approximately 240 kilometers (149 miles) of mainstem river channel as critical habitat in Appling, Ben Hill, Coffee, Jeff Davis, Long, Montgomery, Tattnall, Telfair, Toombs, Wayne, and Wheeler Counties, Georgia. This proposed rule, if made final, would implement the Federal protections provided by the Act.

DATES: We will consider comments received or postmarked on or before December 6, 2010. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by November 22, 2010.

ADDRESSES: You may submit comments by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov. Follow the instructions* for submitting comments on Docket no. **FWS-R4-ES-2008-0107**.
- U.S. mail or hand-delivery: Public Comments Processing, Attn: **FWS-R4-ES-2008-0107**; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will post all comments on *http://www.regulations.gov. This generally means* that we will post any personal information you provide us (see the **Public Comments** section below for more information).

FOR FURTHER INFORMATION CONTACT: Sandra Tucker, Field Supervisor, U.S. Fish and Wildlife Service, Georgia Ecological Services Office, 105 Westpark Dr., Suite D, Athens, GA 30606; telephone 706-613-9493; facsimile 706-613-6059. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION: This document consists of: (1) A proposed rule to list the Altamaha spinymussel (*Elliptio spinosa*) as endangered; and (2) a proposed critical habitat designation for this species.

Previous Federal Action

The Altamaha spinymussel was first identified as a candidate for protection under the Act in the May 22, 1984, **Federal Register** (49 FR 21664). As a candidate, it was assigned a status category 2 designation, which was given to those species with some evidence of vulnerability, but for which additional biological information was needed to support a proposed rule to list as endangered or threatened. In our Notices of Review dated January 6, 1989 (54 FR 554), November 21, 1991 (56 FR 58804), and November 15, 1994 (59 FR 58982), we retained a status category 2 designation for this species. We discontinued assigning categories to candidate species in our Notice of Review dated February 28, 1996 (61 FR 7596), and only species for which the U.S. Fish and Wildlife Service (Service) had sufficient information on biological vulnerability and threats to support issuance of a proposed rule were regarded as candidate species.

On June 13, 2002, we listed the Altamaha spinymussel in the **Federal Register** (67 FR 40657) as a candidate species with a listing priority number (LPN) of 5. Candidate species are assigned LPNs based on immediacy and the magnitude of threat, as well as their taxonomic status. The lower the LPN, the higher priority that species is for us to determine appropriate action using our available resources. In our Notices of Review dated May 4, 2004 (69 FR 24876), and May 11, 2005 (70 FR 24870), we determined that publication of a proposed rule to list the species was precluded by our work on higher priority listing actions and retained a LPN of 5 for this species, in accordance with our priority guidance published on September 21, 1983 (48 FR 43098).

On September 12, 2006 (71 FR 53755), we changed the species' LPN from 5 to 2. Recent data suggesting declines from surveys conducted in the early 1990s and information on a new threat from deadhead logging justified the change in LPN. An LPN of 2 reflects threats that are both imminent and high in magnitude, as well as the taxonomic classification of the Altamaha spinymussel as a full species. We have retained an LPN of 2 in subsequent Notices of Review (72 FR 69033, December 6, 2007; 73 FR 75175, December 10, 2008; 74 FR 57803, November 9, 2009).

Public Comments

We intend that any final action resulting from this proposal will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) The factors that are the basis for making a listing determination for a species under section 4(a) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), which are:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence.

(2) Additional information concerning the range, distribution, and population size of this species, including the locations of any additional populations of this species.

(3) Any information on the biological or ecological requirements of the species.

(4) Land use designations and current or planned activities, including deadhead logging, in the areas occupied by the species and possible impacts of these activities on this species.

(5) Which areas would be appropriate as critical habitat for the species.

(6) The reasons why areas should or should not be designated as critical habitat as provided by section 4 of the Act (16 U.S.C. 1531 *et seq.*).

(7) Comments or information that may assist us in identifying or clarifying the primary constituent elements.

(8) Specific information on

(a) The amount and distribution of Altamaha spinymussel habitat,

(b) What areas occupied at the time of listing (i.e., currently occupied) and that contain features essential to the conservation of the species which may require special management considerations or protection we should include in the designation and why, and

(c) What areas not occupied at the time of listing are essential for the conservation of the species and why.

(9) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation, in particular, any impacts to small entities, and the benefits of including or excluding areas that exhibit these impacts.

(10) Whether any specific areas we are proposing as critical habitat should be considered for exclusion under section 4(b)(2) of the Act, and whether benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act.

(11) Information on any quantifiable economic costs of the proposed designation.

(12) Information on the projected and reasonably likely impacts of climate change on the Altamaha spinymussel, and any special management needs or protections that may be needed in critical habitat areas we are proposing.

(13) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov. If your written comments provide personal* identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection

on *http://www.regulations.gov, or by appointment, during normal business hours, at the U.S.* Fish and Wildlife Service, Georgia Ecological Services Office, Athens, Georgia (see **FOR FURTHER INFORMATION CONTACT**).

Background

Species Description

The Altamaha spinymussel (*Elliptio spinosa*) is a freshwater mussel, in the family Unionidae, endemic to the Altamaha River drainage of southeastern Georgia. The Altamaha River is formed by the confluence of the Ocmulgee and Oconee rivers and lies entirely within the State of Georgia. The species was described by I. Lea in 1836 from a site near the mouth of the Altamaha River in Darien, Georgia (Johnson 1970, p. 303).

This species reaches a shell length of approximately 11.0 centimeters (cm) (4.3 inches (in)). The shell is subrhomboidal or subtriangular in outline and moderately inflated. As the name implies, the shells of these animals are adorned with one to five prominent spines. These spines may by straight or crooked, reach lengths from 1.0 to 2.5 cm (0.39 to 0.98 in), and are arranged in a single row that is somewhat parallel to the posterior ridge. In young specimens, the outside layer or covering of the shell (periostracum) is greenish-yellow with faint greenish rays, but as the animals get older, they typically become a deep brown, although some raying may still be evident in older individuals. The interior layer of the shell (nacre) is pink or purplish (Johnson 1970, p. 303).

Life History and Habitat

Adult freshwater mussels are filter-feeders, siphoning phytoplankton, diatoms, and other microorganisms from the water column. For the first several months, juvenile mussels employ pedal (foot) feeding, extracting bacteria, algae, and detritus from the sediment (Yeager *et al.* 1994, pp. 217–221; Wisniewski 2008, pers. comm.).

Although the life history of the Altamaha spinymussel has not been studied, the life histories of other mussels in the *Elliptio* genus have been. Fertilization takes place internally, resulting in the release of parasitic larvae, termed glochidia. To ensure survival, glochidia must come into contact with a specific host fish(es) to develop into juvenile mussels. Other mussels in the genus *Elliptio* attract host fishes with visual cues, luring fish into perceiving that their glochidia are prey items (The Nature Conservancy (TNC) 2004, p. 4). This reproductive strategy depends on clear water during the time of the year when mussels release their glochidia (Hartfield and Hartfield 1996, p. 375). The Altamaha spinymussel is thought to reproduce in late spring and ready to release glochidia by May or June (Johnson 2009, p. 2). The host fish of the Altamaha spinymussel is currently unknown. Furthermore, juvenile age classes of other mussels are commonly found during surveys; however, no spinymussel recruitment has been evident in surveys conducted since 1990 (Keferl 2008, pers. comm.; Wisniewski 2008, pers. comm.). Research to develop a better understanding of the natural history and the reasons for a lack of recruitment in the species is continuing.

This spinymussel is known only from Georgia in Glynn, Ben Hill, McIntosh, Telfair, Tattnall, Long, Montgomery, Toombs, Wheeler, Appling, Jeff Davis, Coffee, and Wayne Counties. This spinymussel is considered a "big river" species; is associated with stable, coarse to fine sandy sediments of sandbars, sloughs, and mid-channel islands; and appears to be restricted to swiftly flowing water (Sickel 1980, p. 12). Johnson (1970, p. 303) reported Altamaha spinymussels buried approximately 5.1 to 10.2 cm (2.0 to 4.0 in) below the substrate surface.

Species Distribution and Status

The historical range of the Altamaha spinymussel was restricted to the Coastal Plain portion of the Altamaha River and the lower portions of its three major tributaries, the Ohoopee, Ocmulgee, and Oconee Rivers (Johnson 1970, p. 303; Keferl 2001, pers. comm.). Large-scale, targeted surveys for the mussel have been conducted since the 1960s (Keferl 1993, p. 299). Recent surveys have revealed a dramatic decline in recruitment, the number of populations, and number of individuals within populations throughout the species' historic range.

Ohoopee River

In a survey of the Ohoopee River, Keferl (1981, pp. 12–14) found at least 30 live specimens of the Altamaha spinymussel at seven of eight collection sites, in thinly scattered beds, in the lower 8 kilometers (km) (5 miles(mi)) of the river. By the early 1990s, however, only two live specimens were found at the same sites (Keferl 1995, pp. 3–6; Keferl 2008 pers. comm.; Wisniewski 2006, pers. comm.). Stringfellow and Gagnon (2001, pp. 1–2) resurveyed these sites using techniques similar to those used by Keferl (1981, p. 12), but they did not find any live Altamaha spinymussels in the Ohoopee River. Therefore, it is currently either extirpated from the system or present in such low numbers that it is undetectable.

Ocmulgee River

The Altamaha spinymussel is known from the Ocmulgee River from its confluence with the Oconee River upstream to Red Bluff in Ben Hill County. Early collecting efforts in the Ocmulgee River near Lumber City yielded many live Altamaha spinymussels. In 1962, Athearn made a single collection of 40 live spinymussels downstream of U.S. Highway 341 near Lumber City (Johnson *et al.* 2008, Athearn database). Researchers collected 19 and 21 live individuals, respectively, during two surveys at Red Bluff (Thomas and Scott 1965, p. 67). In 1986, Stansbery collected 11 live individuals at the U.S. Highway 441 Bridge near Jacksonville, Georgia (Wisniewski 2006, pers. comm.).

The lower Ocmulgee River was surveyed by Keferl in the mid 1990s, during 2000–2001 (Cammack *et al.* 2001, p. 11; O'Brien 2002, p. 2), and in 2004 (Dinkins 2004, pp. 1-1 and 2-1). Over 90 sites have been surveyed since 1993, many of which were repeatedly surveyed, resulting in a total of 19 live Altamaha spinymussels detected at 10 sites, distributed from Jacksonville downstream to the Oconee River confluence.

Oconee River

There are few historical records of Altamaha spinymussels from the Oconee River. Athearn collected 18 spinymussels, including 5 juveniles, at a site in Montgomery County near Glenwood in the late 1960s (Johnson 2008, Athearn database). The species has not been collected there since and is probably extirpated from the Oconee River system (Keferl 2008, pers. comm.). In 1995, as part of a dam relicensing study, 41 sites between Lake Sinclair and Dublin were surveyed (EA Engineering 1995, pp. 1-1, 3-1, 3-2, 4-2, and 4-3). One hundred forty-four hours of search time yielded 118 live mussels, but no Altamaha spinymussels. Compared to the other portions of its range, the Oconee River has not been extensively surveyed, in part because the entire mussel fauna of this river appears to be sparse.

Altamaha River

Most surveys for Altamaha spinymussels have been conducted in the Altamaha River. Although methodological differences preclude accurate comparison of mussel abundances over time, there is evidence that historically higher abundances of

Altamaha spinymussels occurred in the Altamaha River. Early surveys at the U.S. Route 301 crossing documented 20 individuals in 1963, 7 in 1965, and 43 in 1970. Sickel sampled seven sites downstream of the U.S. 1 bridge in 1967. Sixty spinymussels were collected in one 500-square meters (m^2) (5382-square feet (ft^2)) site and an additional 21 spinymussels were collected in a 400-m^2 (4306-ft^2) (Sickel 1967, p. 11; Wisniewski 2006, pers. comm.) site. One site had five live spinymussels, two sites had one each, and two sites had no Altamaha spinymussels.

From 1993 to 1996, Keferl surveyed 164 sites on the mainstem of the Altamaha River between the Ocmulgee–Oconee River confluence and the Interstate 95 crossing near the river's mouth. A total of 63 live Altamaha spinymussels were collected from 18 of these sites, located between the Oconee River and U.S. Route 301; however, no Altamaha spinymussels were collected below U.S. Route 301, suggesting absence or extreme rarity in the reach between U.S. Route 301 and the river's mouth (approximately 73 km (45 mi)). In addition, 10 of these sites were clustered within a 4-km (2-mi) reach upstream of the U.S. Route 301 crossing near Jesup; the remaining eight sites were isolated by long distances of habitat with no or sub-detectable numbers of live spinymussels.

O'Brien (2002, pp. 3–4) surveyed 30 sites on the Altamaha River from the confluence of the Ocmulgee and Oconee Rivers downstream to U.S. Route 301 during 2001, including the 18 known Altamaha spinymussel sites, reported by Keferl, within the reach. She collected a total of six live individuals from five different sites and freshly dead shells from two additional sites.

In 2003 and 2004, 25 sites were surveyed to collect specimens for host-fish trials (Albanese 2005, pers. comm.). Live Altamaha spinymussels were detected at only four sites. Five of the seven sites documented by O'Brien and all four sites documented during the host-fish surveys were clustered within a short reach of the Altamaha River just upstream of the U.S. Route 301 crossing near Jesup, Georgia.

To summarize, researchers were able to find 60 Altamaha spinymussels at a single site on the Altamaha River in 1967; in contrast, the largest number of Altamaha spinymussels observed from a single site on the Altamaha River during the 1990s or 2000s was nine (Albanese 2005, pers. comm.).

Summary of Basin-wide Population Estimates

In 1994, researchers spent 128 search-hours throughout the Altamaha Basin to find 41 spinymussels (Keferl 1995, p. 3). From 1997 through 2006, researchers searched 233 sites throughout the basin to document 34 spinymussels in more than 550 hours of searching (Wisniewski 2006, pers. comm.); from 2007 to 2009, only 23 spinymussels were found from more than 110 sites (Wisniewski 2009, pers. comm.). In summary, the Altamaha spinymussel is considered extirpated from two rivers in its historical range, the Ohoopee (15 km (9 mi)) and Oconee Rivers (45 km (28 mi)), as well as the lower 73 km (45 mi) of the Altamaha River (Table 1). Since 1997, despite extensive survey efforts made by several different researchers, only 57 spinymussels have been observed from 7 sites in the Ocmulgee (110 km (68 mi)) and 15 sites in the upper Altamaha (116 km (72 mi)) combined, and while individual spinymussels have been found scattered throughout this stretch of river, most of these sites have been clustered in the 10 km (6 mi) immediately north of the U.S. Route 301 crossing.

TABLE 1. *Decline in range of the Altamaha spinymussel.*

River Reach	Historically Occupied (linear km/mi)	Current habitat	Percent of range decline
Ohoopee	15km/9mi	Not seen since 1997	4%
Oconee	45km/28mi	Not seen since 1968	12.5%
Ocmulgee	110km/68.3mi	Widely scattered	0
Upper Altamaha	116km/72mi	Widely scattered individuals	0
Lower Altamaha	73km/45mi	Not seen since 1970	20%
Total	**359km/222 mi**	**226km/140 mi**	**36.5%**

Using GDNR's database, which included many of the surveys mentioned above, Wisniewski *et al.* (2005, p. 2) conducted a test for a temporal change in sites occupied in the Ocmulgee and Altamaha Rivers between the early 1990s and the early 2000s. Live Altamaha spinymussels were detected at 24 of 241 sites (10 percent) sampled before 2000 and at 14 of 120 sites (12 percent) sampled after 2000. Although the percentage of sites occupied is not indicative of a decline, an analysis of 39 sites sampled during both time periods, of which the spinymussel was initially present in 13 of the 39 sites, indicated that the spinymussel was lost from significantly more sites (11 sites) than it colonized (3 sites) between the early 1990s and early 2000s (Wisniewski *et al.* 2005, p. 2). This test is imprecise because the failure to detect Altamaha spinymussels when present could result in both false colonizations (species missed during early surveys but detected in recent survey) and false extirpations (species detected during early survey but missed during recent survey). Thus, although the exact number of extirpations and colonizations between the two time periods may not be accurate, the much higher number of extirpations is suggestive of a decline over this time period.

Summary of Factors Affecting the Species

Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act. The five listing factors are: (A) The present or threatened destruction, modification, or

curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence.

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

Bogan (1993, pp. 599–600 and 603–605) linked the decline and extinction of bivalves to a wide variety of threats including siltation, industrial pollution, municipal effluents, modification of stream channels, impoundments, pesticides, heavy metals, invasive species, and the loss of host fish. The Altamaha spinymussel lives within a large river drainage exposed to a variety of landscape uses. Habitat and water quality for the Altamaha spinymussel face degradation from a number of sources. Primary among these are threats from sedimentation and contaminants within the streams that the spinymussel inhabits.

Sickel (1980, p. 12) characterized the habitat of the Altamaha spinymussel as course to fine grain sandbars and suggested that this may make the Altamaha spinymussel susceptible to adverse effects from sediment (siltation). Sediments deposited on the stable sandbars required by the Altamaha spinymussel could make sandbars unstable, suffocate Altamaha spinymussels, or simply change the texture of the substrate, making them unsuitable for the species. Sedimentation, including siltation from surface runoff, has been implicated as a factor in water quality impairment in the United States and has contributed to the decline of mussel populations in streams throughout the country (Ellis 1936, pp. 39–41; Coon *et al.* 1977, p. 284; Marking and Bills 1979, pp. 209–210; Wilber 1983, pp. 25–57; Dennis 1984, pp. 207–212; Aldridge *et al.* 1987, pp. 25–26; Schuster *et al.* 1989, p. 84; Wolcott and Neves 1991, pp. 1–6; Houp 1993, p. 96; Bogan 1993, pp. 603–605; Waters 1995, pp. 53–77; Richter *et al.* 1997, p. 1084).

Specific impacts on mussels from sediments include reduced feeding and respiratory efficiency, disrupted metabolic processes, reduced growth rates, increased substrata instability, and the physical smothering of mussels (Ellis 1936, pp. 39–41; Stansbery 1970, p. 10; Markings and Bills 1979, pp. 209–210; Kat 1982, p. 124; Aldridge *et al.* 1987, pp. 25–26; Hartfield and Hartfield 1996, p. 375; Brim Box and Mossa 1999, pp. 99–102; TNC 2004, p. 4). Many southeastern streams have increased turbidity levels due to siltation (van der Schalie 1938, p. 56). Since turbidity is a limiting factor that impedes the ability of sight-feeding fishes to forage (Burkhead and Jenkins 1991, pp. 324–325), turbidity within the Altamaha River basin during the times that Altamaha spinymussels attempt to attract host fishes may have contributed and may continue to contribute to the decline of the spinymussel by reducing its efficiency at attracting the fish hosts necessary for reproduction. In addition, sediment can eliminate or reduce the recruitment of juvenile mussels (Brim Box and Mossa 1999, pp. 101–102), interfere with feeding activity (Dennis 1984, pp. 207–212), and act as a vector in delivering contaminants to streams (Salomons *et al.* 1987, p. 28).

From 1700 to 1970, agriculture practices in the Southern Piedmont physiographic province resulted in extreme soil erosion, removing more than 17.8 cm (7 in.) of soil across the landscape (Trimble 1974, p. 1). The Ocmulgee, Oconee, and Ohoopee rivers all drain through the Piedmont and were directly affected by the sediment. In 1938, van der Schalie (p. 56) reported the Altamaha River to be a yellow color due to the large amount of suspended silt originating from intensive farming and road construction occurring in the headwaters. The sediment from this practice has moved into stream channels and valleys and has covered most of the original bottomlands (Trimble 1974, p. 26). As a result, stream profiles have been dramatically altered with unstable sediment deposits being dissected and streams being incised with entrained sediment migrating downstream to be deposited in stream channels and floodplains (Trimble 1974, pp. 116–121). GDNR, Environmental Protection Division (EPD 2007, p. iii) reported to the U.S. Environmental Protection Agency (EPA) that approximately 74.9 percent of the average sediment load in the Altamaha River Basin resulted from row crops and that it contributed an average sediment load of 1.07 tons per acre per year. EPD concluded that this sediment is probably a legacy of past land use. Although it is the historical, anthropogenic land use that created the sediment, the volume of sediment still migrating through the Altamaha River Basin is a significant threat to the spinymussel.

Studies of fish population were conducted in 2000 by the GDNR Wildlife Resources Division (WRD) in the Altamaha River Basin. The Index of Biotic Integrity (IBI) and modified Index of Well-Being (IWB) were used by WRD to identify impaired fish populations. Using the IBI and IWB values to classify the populations as Excellent, Good, Fair, Poor, or Very Poor, stream segments with fish populations rated as Poor or Very Poor were listed as Biota Impacted. A lack of fish habitat due to stream sedimentation was generally the cause of a low IBI score.

Five Mile Creek (14.5 km/9 mi), Bullard Creek (12.8 km/8 mi), and Jacks Creek (14.5 km/9 mi) were rated as Very Poor and placed on the State of Georgia's 303(d) list of impaired waters due to a significant impact on fish (EPD 2007a, pp. 1-2). These three streams eventually feed into the mainstem of the Altamaha River via larger channels. As this sediment moves through the basin, habitat is periodically buried. WRD recommends that there be no net increase in sediment delivered to the impaired stream segments so that these streams will recover over time (EPD 2007a, p. 26). Agriculture and roads were the major sources of sediment with silviculture, mining sites, grazing, and urban development also contributing nonpoint sources of sediment (EPD 2007a, p. 9). Agriculture, including row crops, poultry farms, and pastures, constitute 15.5 percent of the land cover in the Piedmont and 32.7 percent of the land cover in the Coastal Plain (GDNR 2005, pp. 97 and 132).

In addition to agriculture, there are numerous sources of sediment within the Altamaha River Basin, including silviculture, unpaved roads, kaolin mines, and construction sites. A threat assessment conducted by TNC (2004, p. 9) listed sediment from urban, industrial, and nonpoint sources (NPSs) as a threat to the spinymussel. EPD (2007, p. v) reported that while historical row crop-based land use contributes the majority of sediment in the Altamaha River (75 percent) that among other sources, approximately 17.3 percent of the total sediment load is from roads; 4.3 percent from grasses and wetlands; 1.5 percent from urban lands; and 1.0 percent from quarries, strip mines, and gravel pits. In addition, estimates of the contribution from construction could not be obtained, but could represent a comparatively high sediment load on a per acre basis (EPD 2007, p. v).

Industrial forest management is practiced on approximately 8,000 hectares (40,000 acres) or 33 percent of the floodplain of the Altamaha River (TNC 1997, p. 19). Typical forest management regimes in the Altamaha River Basin use timber harvest methods and conduct other activities that result in ground disturbances. These ground disturbances can result in transport of

sediment to streams during and after precipitation events. In addition, forest management operations often require miles of unpaved roads to extract timber and to provide access for management activities. The majority of sediment from forestry occurs from roads and site preparation activities (EPD 2007a, p. 11). These roads, in conjunction with existing unpaved county roads that are prevalent throughout the Altamaha River Basin, contribute to sediment loading in streams after precipitation events. Through an agreement with EPD, the Georgia Forestry Commission (GFC) is responsible for implementing the use of Best Management Practices (BMPs) to reduce erosion and sediment from activities related to forestry such as timber harvest, haul road construction, stream crossings, stream side management zones, site preparation and reforestation. However, the Erosion and Sediment Control Act (O.C.G.A. 12-7-1) exempts commercial forestry activities from the need to acquire permits and meet the minimum requirements of that act (Georgia's BMPs for Forestry 2009, p. 64). Therefore, compliance with BMPs is voluntary and is dependent on education about BMPs to reduce sediment from reaching the Altamaha River (EPD 2007a, p. 28).

Furthermore, a number of kaolin mines are located along the Fall Line, a geologic land form that separates the Piedmont and Coastal Plain physiographic provinces, within the Oconee and Ocmulgee river basins. The operation of these mines and their supporting infrastructure, including haul roads and settling ponds, have the potential to increase downstream sediment loads if adequate erosion control measures are not maintained to stabilize areas subjected to mining-associated ground disturbances (Lasier 2004, p. 139).

In addition, sediment can act as a vector in delivering contaminants (such as heavy metals, ammonia, chlorine, numerous organic compounds) to streams (Salomons *et al.* 1987, p. 28; TNC 2004, pp. 9). Because spinymussels are filter-feeders and bury themselves in the substrate, they are exposed to metals dissolved in water, contained within suspended particles, and deposited in bottom substrates (Naimo 1995, p. 341). Contaminants contained in point and nonpoint discharges can degrade water and substrate quality and adversely impact, if not destroy, mussel populations (Horne and McIntosh 1979, pp. 127–132; McCann and Neves 1992, pp. 80–87; Havlik and Marking 1987, p. 14).

Contaminants associated with industrial and municipal effluents may cause decreased oxygen, increased acidity, and other water chemistry changes that may be lethal to mussels, particularly during the highly sensitive early life stages (Sheehan *et al.* 1989, pp. 139–140; Keller and Zam 1991, pp. 541–543; Bogan 1993, pp. 603–604; Goudreau *et al.* 1993, pp. 216–227; TNC 2004, pp. 8–9). Exposure to sublethal levels of toxic metals can alter growth, filtration efficiency, enzyme activity, and behavior (Naimo 1995, pp. 341, 354). In laboratory experiments, mussels suffered mortality when exposed to 2.0 parts per million (ppm) cadmium, 5.0 ppm ammonia, 12.4 ppm chromium, 16 ppm arsenic trioxide, 19 ppm copper, and 66 ppm zinc; however, effects depend upon the length of exposure and mussel life stage (Havlik and Marking 1987, p. 1). The adults of certain species may tolerate short-term exposure (Keller 1993, p. 701), but low levels of some metals may inhibit glochidial attachment in others (Huebner and Pynnönen 1992, p. 2353; Jacobson *et al.* 1993, pp. 881–882). Mussel recruitment may be reduced in habitats with low but chronic heavy metal and other toxicant inputs (Yeager *et al.* 1994, p. 217; Naimo 1995, pp. 347 and 351–352; Ahlstedt and Tuberville 1997, p. 75). Researchers found that several heavy metals were found to have toxic effects at different levels and duration of exposure; however, no toxicity studies have been conducted specifically on the Altamaha spinymussel (Havlik and Marking 1987, p. 3; Naimo 1995, p. 341; Keller and Lydy 1997, p. 4). Furthermore, differences between laboratory and field conditions make it difficult to predict how contaminants affect wild populations (Wisniewski 2008, pers. comm.).

From 2000 to 2008, many stream segments in the Altamaha Basin have been listed on the State's 303(d) list of impaired waters for a variety of reasons. Once a stream segment is listed as impaired, the State must complete a plan to address the issue causing the impairment; this plan is call a Total Maximum Daily Load (TMDL). Completion of the plan is generally all that is required to remove the stream segment from the 303(d) list and does not mean that water quality has changed. Once the TMDL is completed, the stream segment may be placed on the 305(b) list of impaired streams with a completed TMDL. Many of these stream segments have appeared repeatedly on the 303(d) list. The Ohoopee River and Little Ohoopee River have been listed on nearly every report for almost every violation. Other stream segments that have repeatedly showed up on the 303(d) list from 2000 until 2008 include Big Cedar Creek, Doctors Creek, Jacks Creek, Milligan Creek, Oconee Creek, Pendleton Creek, Rocky Creek, Sardis Creek, Swift Creek, Tiger Creek, and Yam Gandy Creek. This demonstrates a chronic threat, from multiple sources of pollution, scattered across the basin.

In 2000, the Altamaha River was listed on the 303(d) list of impaired waters due to excessive mercury levels in fish tissue. In 2002, the EPA Region 4 established a TMDL for mercury levels for the Altamaha River from its confluence of the Oconee and Ocmulgee Rivers to Penholoway Creek (149.5 km/92.9 mi) including Appling, Jeff Davis, Long, Tattnall, Tombs, and Wayne Counties. This river segment is entirely within the current or historic range of the spinymussel with four National Pollutant Discharge Elimination System (NPDES) permitted facilities, including:

- Rayonier Inc.-Jesup (67 million gallons per day (MGD));
- Plant Hatch (43.4 MGD);
- Jesup Water Pollution Control Plant (WPCP) (2.5 MGD); and
- Glennville WPCP (0.88 MGD) (EPA 2002a, pp. 1-5).

This 149.5 km (92.9 mi) segment of the Altamaha River, from the confluence of the Oconee and Ocmulgee Rivers to Penholloway Creek, was removed from the 303(d) list in 2002; it is currently listed as a stream supporting its designated use (fishing).

In 2000, EPD added 23 stream segments, totaling 411.9 km (256 mi), to the 303(d) list for not meeting dissolved oxygen standards (EPD 2002, p. 1). All of these segments are within tributaries to the Altamaha River within the range of the spinymussel. Between 2000–2001, there were nine NPDES permitted discharges with effluent limits for oxygen consuming substances identified in the Altamaha River Basin watershed above the 23 stream segments listed (EPD 2002, p. 11). Nonpoint source run-off from natural sources contributed oxygen-demanding pollutants (EPD 2002, p. 12). Upon completion of a TMDL in 2002, these river segments were removed from the 303(d) list.

In 2006, EPD listed 18 stream segments totaling 280 km (174 mi) as impaired due to fecal coliform bacteria in excess of water quality standards (EPD 2007c, pp. 1-2). All of these stream segments are tributaries to the Altamaha River within the current or historic range of the species. Between 2005–2006, there were 10 municipal wastewater treatment plants that discharged more than 0.1 MGD, along with four confined animal feed operations that were considered sources

of fecal coliform. Nonpoint sources include wildlife, livestock grazing, livestock access to streams, application of manure to pastureland and cropland, leaking sanitary sewer lines, leaking septic systems, land application systems (6 in the basin), and landfills (43 in the basin) (EPD 2007c, pp. 10-16). Even after the completion of the TMDL, six of these stream segments remain on the 303(d) list.

In 2008, EPD listed 362 stream miles of tributaries to the Altamaha River to the 305(b)/303(d) list of impaired waters, and all of these stream segments have completed TMDLs (EPD 2008 pp A-130 - A134). The draft 2010 305(b)/303(d) list of impaired waters for the Altamaha River included all of the stream segments from the 2008 list and added an additional 48 km (30 mi). These are all tributaries to the Altamaha or Ohoopee Rivers within the current or historic range of the Altamaha spinymussel. These stream segments are listed as impaired for a variety of reasons (e.g., dissolved oxygen, fecal coliform, and mercury levels within fish tissue). All of these river segments, such as the Ohoopee River (including the historic range of the spinymussel), have TMDLs but are still considered impaired.

More than 161 km (100 mi) of the Ohoopee River and its tributaries were added to the 303(d) list in 2000 due to excessive mercury levels in fish tissue. The primary source of mercury is believed to be deposition of atmospheric mercury. During 1998–1999, there were seven municipal wastewater treatment facilities (EPA 2002b, pp. 1–3) and as many as 170 sources of air emissions in the watershed (EPA 2002b, p. 18). These sources of mercury impacted all of the extirpated range of the spinymussel on the Ohoopee River, which is a major tributary to the Altamaha River. A TMDL was established in 2002; however, based on additional information gathered since 2002, EPA will begin revising needed load reductions in 2011 (EPA 2002b, p. 2). These segments of the Ohoopee remain on the 303(d) list.

In 2006, EPD added five stream segments, totaling 64.3 km (40 mi), within the Ohoopee drainage to the 303(d) list for not meeting dissolved oxygen standards (EPD 2007b, p. 1). All of these segments are within the range of the spinymussel. During 2004–2005, there were eight NPDES permitted discharges with effluent limits for oxygen-consuming substances identified in the Altamaha River Basin watershed (EPD 2007b, p. 10). There were four animal feeding lots and six wastewater land application operations that were identified as sources of oxygen-demanding nutrients. Nonpoint source run-off from forestry, row crop agriculture, pastureland, urban development, and natural sources also contribute oxygen-demanding pollutants (EPD 2007b, pp. 13–15). Upon completion of a TMDL in 2007, these five river segments were removed from the 303(d) list.

In addition, there have been a number of recent illegal effluent discharges into the Ohoopee that could have impacted the Altamaha spinymussel. For instance, the wastewater treatment discharge from Rogers State Prison enters the Ohoopee River approximately 10 km (6 mi) upstream of the largest historical population of Altamaha spinymussels known in the Ohoopee River. The Altamaha Riverkeeper reported fecal coliform discharges from the prison that exceeded the prison's NPDES permit (Holland 2002, pers. comm.).

There have also been a number of recent illegal effluent discharges into the Ocmulgee River that could have impacted the Altamaha spinymussel. In 2001, a court found that Amercord Inc. had violated its NPDES permit multiple times at its Lumber City tire plant by discharging quantities of cyanide, copper, zinc, and lead into the Ocmulgee River in excess of permit limitations (*Altamaha Riverkeeper* v. *Amercord, Inc.*, No. CV 300-042 (S.D. Ga) (Order on Motion for Partial Summary Judgment, Mar. 15, 2001)). In a second case, following allegations of discharges into the Ocmulgee River from Lumber City's waste treatment pond in excess of its NPDES permit, Lumber City agreed to implement several short- and long-term wastewater treatment improvements, which are expected to protect a population of Altamaha spinymussels *(Altamaha Riverkeeper* v. *City of Lumber City*, CV-300-043 (S.D. Ga)). The Altamaha Riverkeeper, a watchdog group that works to maintain the quality of the Altamaha River system, also discovered that from July 1995 to April 2001, the City of Cochran's waste treatment pond had discharged in violation of its NPDES permit (*Altamaha Riverkeepers v. City of Cochran*, No. CV-447-2) (M.D. Ga.). The City had been releasing ferric sulfate (used to treat fecal coliform) into Jordan Creek, a tributary of the Ocmulgee River approximately 80 km (50 mi) upstream of known populations of Altamaha spinymussels.

Sediment loads in the Oconee River carry toxic loads of heavy metals presumably discharged from municipal wastewater treatment plants and kaolin-mining settling ponds (Lasier 2004, pp. 139–140,144–151). Wastewater treatment plants and kaolin mines often employ settling ponds to allow pollutants to settle and turbidity to decrease. Copper sulfate and aluminum sulfate are often used as algaecides, to reduce algae blooms, and as flocculants to force precipitation of turbid waters and, in water treatment processes, to improve the sedimentation or filterability of small particles.

Lasier (2004, pp. 150-151) reported "abnormally" high levels of chromium, copper, mercury, and zinc in the lower Oconee river that would indicate a "significant" impact to the quality of sediment and pore water (the water in contact with the river bottom, and the water in which mussels reside). TNC (2004, p. 9) found water quality and sediment quality reflected "significant" inputs of pollution with concentrations of heavy metals (including cadmium, copper, chromium, lead, and zinc) at levels above regional and national concentrations. Shoults-Wilson (2008, pp. 86-92) sampled sites throughout the Altamaha River Basin to evaluate the presence of heavy metals in the water column and in the sediment and compared the bioaccumulation of heavy metals by Asian clams to *E. hopetonensis* (an Altamaha River endemic). Sampling of sites upstream and downstream of potential point sources of heavy metals demonstrated "significantly" elevated bioaccumulation of cadmium, copper, and mercury below inputs from kaolin processing, as well as elevated zinc and chromium below Plant Hatch, the Rayonier pulp mill in Jesup, Georgia, and the Amercord tire facility. Mussels in the Altamaha River basin may accumulate trace elements from the fine fraction of sediment as well as the water column.

The cumulative effects of effluent from wastewater treatment plants and kaolin mines on Altamaha spinymussel habitat have not been quantified; however, mussels appear to be among the most intolerant organisms to heavy metals (Keller and Zam 1991, p. 545), and several heavy metals are lethal, even at relatively low levels (Havlik and Marking 1987, p. 3). Most metals are persistent in the environment, remaining available for uptake, transportation, and transformation by organisms until they are removed from the river (Hoover 1978, pp. 28–38; Lasier 2004, p. 140) through processes such as washing out to sea, leaching through the soil, or being taken up by an organism that is then removed from the river.

In areas of heavy agricultural use in the Southeast, surface run-off can move pesticides, including malathion and

other insecticides, into surface water (McPherson *et al.* 2003, pp. 1–2). Stream ecosystems are negatively impacted when nutrients are added at concentrations that cannot be assimilated (TNC 2004, p. 7). The effects of pesticides on mussels may be particularly profound, potentially altering metabolic activities or resulting in delayed mortality (Fuller 1974, pp. 252–253; Havlik and Marking 1987, pp. 9–11; Moulton *et al.* 1996, pp. 132–136); commonly used pesticides have been directly implicated in a North Carolina mussel die-off (Fleming *et al.* 1995, pp. 877–879). The Oconee, Ocmulgee, and Ohoopee River systems contain significant acreage in cotton and onion farming. Malathion, one of the most important pesticides used in cotton farming, inhibits physiological activities of mussels (Kabeer *et al.* 1979, pp. 71–72) and may decrease the ability of mussels to respire and obtain food. Some studies have shown that malathion is slightly toxic to some very pollution-intolerant juvenile mussels (*Lampsilis straminea claibornensis*) at minimum concentrations of 22,000 ppm. *Elliptio icterina* had slight problems with minimum concentrations of 30,000 ppm with 96–hour exposure periods.

The operations of the Edwin I. Hatch Nuclear Power Plant (Plant Hatch), located on the Altamaha River in Appling County, may pose a threat to the Altamaha spinymussel. On September 14, 2001, the Service received Joint Public Notice 940003873 from the U.S. Army Corps of Engineers (Corps), Savannah District, describing a project to expand and maintain Plant Hatch's intake basin within the Altamaha River. Implementation of this permit authorized annual dredging of the plant intake basin and authorized removing 33,965 cubic meters (44,424 cubic yards) of material biannually from the intake basin. While the amount of material removed annually is generally far less than the amount permitted (Dodd 2008, pers. comm.), annual dredging could negatively impact the Altamaha spinymussel by decreasing channel stability (creating a potential head cut), altering sediment transport dynamics, increasing sedimentation and turbidity downstream during dredging operations, and decreasing habitat quality for host fishes. It is unknown how far downstream these impacts extend.

Impacts to aquatic fauna through entrainment of potential host fishes and thermal discharges may also occur. Plant Hatch takes in water to create steam, and then uses the steam to generate electricity. Following a cooling process, the water is returned to the river, and although it has been cooled, the water temperature is warmer than the ambient temperature of the river. Plant Hatch has made substantial efforts to reduce thermal discharges through the construction of cooling towers that have significantly reduced the thermal plume. However, thermal discharges could still negatively impact the Altamaha spinymussel from heat stress; higher water temperatures can increase the sensitivity of mussels to certain pollutants (Augspurger *et al.* 2003, p. 2574). These effects would be exacerbated during years of low rainfall, when less water would be available to dissipate the heat of the Plant Hatch effluent. Plant Hatch also monitors fish entrainment, so if the host fish of the spinymussel was known, management efforts could be made to reduce the potential of this impact.

In summary, the loss and modification of habitat is a significant threat to the Altamaha spinymussel. Degradation from sedimentation and contaminants threatens the habitat and water quality necessary to support the Altamaha spinymussel. Sediment from unpaved roads, kaolin mines, past and current agriculture practices, silviculture, and construction sites within the Altamaha River basin can suffocate Altamaha spinymussels and make stable sandbars required by Altamaha spinymussels unstable or change the texture of the substrate, rendering them unsuitable for the species. Contaminants associated with industrial and municipal effluents (e.g., heavy metals, ammonia, chlorine, numerous organic compounds) may cause decreased oxygen, increased acidity, and other water chemistry changes that are lethal to mussels, particularly the highly sensitive early life stages of mussels; exposure to sublethal levels of toxic metals can alter growth, filtration efficiency, enzyme activity, and behavior. As a result we have determined that the present or threatened destruction, modification, or curtailment of the Altamaha spinymussel's habitat or range are threats to the continued existence of the Altamaha spinymussel throughout its range.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The Altamaha spinymussel is not a commercially valuable species, nor are the streams that it inhabits subject to commercial mussel harvesting activities. However, this species has been actively sought for scientific and private collections (Keferl 2008, pers. comm.); such activity may increase if the species becomes more rare. Overcollection may have been a localized factor in the decline of this species, particularly in the Ohoopee River where a 1986 collection consisted of at least 30 live individuals (Keferl 2008, pers. comm.). Although the GDNR can regulate the number of mussels collected with a Scientific Collection Permit, the localized distribution and small size of known populations renders them extremely vulnerable to overzealous recreational or scientific collecting. However, we have no specific information indicating that overcollection is currently a threat or that overcollecting may occur in the future.

Therefore, we find that overutilization for commercial, recreational, scientific, or educational purposes is not a threat to the Altamaha spinymussel at this time.

C. Disease or Predation

Diseases of freshwater mussels are poorly known, and we have no specific information indicating that disease occurs within Altamaha spinymussel populations or poses a threat. Juvenile and adult mussels are preyed upon by some invertebrate species (particularly as newly metamorphosed juveniles), parasites (for example, nematodes, trematodes, and mites), and a few vertebrate species (for example, otter, raccoon, and turtles). However, we have no evidence of any specific declines in the Altamaha spinymussel due to predation.

In summary, diseases and predation of freshwater mussels remains largely unstudied and are not considered a threat to the Altamaha spinymussel.

D. The Inadequacy of Existing Regulatory Mechanisms

The Altamaha spinymussel is listed as a high priority species by the State of Georgia (GDNR 2005, p. 135) and has recently been listed as Endangered under Georgia's Endangered Wildlife Act (EWA). Under the EWA, it is unlawful to intentionally harm, disturb or sell a protected animal, unless authorized, or to cause the destruction of habitat of protected animals on State-owned lands. The EWA specifically states, however, that rules and regulations promulgated under the EWA shall not impede construction of any nature. Thus, protection under the EWA prevents unlawful capture or killing of the listed species, but does not prevent habitat changes that lead to population loss.

Sources of nonpoint source pollution include timber clearcutting, clearing of

riparian vegetation, urbanization, road construction, and other practices that allow sediment to enter streams (TNC 2004, p. 13). Although BMPs for sediment and erosion control are often recommended or required by local ordinances for construction projects, compliance, monitoring, and enforcement of these recommendations are often poorly implemented. Furthermore, Georgia's Erosion and Sediment Control Act exempts commercial forestry activities from the need to acquire permits and meet the minimum requirements of the Erosion and Sediment Control Act (Georgia's BMPs for Forestry 2009, p. 64). Therefore, compliance with BMPs is voluntary and is dependent on education on proper implementation of BMPs to reduce sediment from reaching the Altamaha River (EPD 2007a, p. 28). Although historical row crop-based land use contributes the majority of sediment to the Altamaha River, other sources continue to contribute to the total sediment load (See discussion under Factor A).

Point source discharges within the range of the Altamaha spinymussel have been reduced since the inception of the Federal Clean Water Act (33 U.S.C. 1251 *et seq.*), but this may not provide adequate protection for filter-feeding organisms that can be impacted by extremely low levels of contaminants. Municipal wastewater plants continue to discharge large amounts of effluent and, in some circumstances, in excess of permitted levels (see discussion under Factor A). There is no specific information on the sensitivity of the Altamaha spinymussel to common industrial and municipal pollutants, and very little information on other freshwater mollusks. Current State and Federal regulations regarding pollutants are assumed to be protective of freshwater mollusks; however, this species may be more susceptible to some pollutants than test organisms commonly used in bioassays. For example, several recent studies have suggested that EPA's criteria for ammonia may not be protective of freshwater mussels (Augspurger *et al.* 2003, p. 2571; Newton *et al.* 2003, pp. 2559–2560; Mummert *et al.* 2003, pp. 2548–2552). In a review of the effects of eutrophication on mussels, Patzner and Muller (2004, p. 329) noted that stenoecious (narrowly tolerant) species disappear as waters become more eutrophic. They also refer to studies that associate increased levels of nitrate with the decline and absence of juvenile mussels (Patzner and Muller 2004, pp. 330–333). Other studies have also suggested that early life stages of mussels are sensitive to inorganic chemicals such as chlorine, metals, and ammonia (Keller and Zam 1991, pp. 543–545; Goudreau *et al.* 1993, p. 221; Naimo 1995, pp. 354–355). Therefore, it appears that a lack of adequate research and data prevents existing regulations, such as the Clean Water Act (administered by the EPA and the Corps), from being fully utilized or effective.

In summary, some regulations exist that protect the species and its habitat; however, these regulations enforced by the State provide little direct protection of Altamaha spinymussel and only if protection of the spinymussel will not inhibit economic development. Nonpoint source pollution is not regulated, and the Clean Water Act does not adequately protect the habitat from degradation caused by point source pollutants. As described under Factor A, there have been a number of recent illegal effluent discharges into the Altamaha River basin, in excess of permit limits, that may have impacted the Altamaha spinymussel. Furthermore, The Altamaha Riverkeeper has several pending investigations pertaining to illegal discharges; they are working with violators and pursuing legal settlements when necessary. Thus, existing regulations are not effective at protecting the spinymussel and its habitat from sedimentation and lethal contaminants. Therefore we find the existing regulatory mechanisms are inadequate to ameliorate the current threats to the Altamaha spinymussel throughout its range.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Withdrawal of surface water within the Altamaha Basin for thermoelectric power generation, public water supplies, commercial industrial uses, and agriculture has a dramatic effect on flow rates (TNC 2004, p. 8). No major dams are located on the Altamaha River system within the known historical range of the Altamaha spinymussel; however, the dams that form Sinclair Reservoir on the Oconee River and Jackson and Tobesofkee Reservoirs in the Ocmulgee River basin can influence downstream mussels and their populations through changes in flows that result from electrical power generation and water storage (TNC 2004, p. 6). Within the Altamaha River basin, 1,149 MGD was withdrawn for thermoelectric power generation in 1990 (Marella and Fanning 1990, pp. 14–17). Such removals can cause drastic flow reductions and alterations that may strand mussels on sandbars, resulting in mortality of individuals and harm to populations. Laurens County, Georgia, which includes the City of Dublin, withdrew 2.64 MGD for public water supplies, 12.79 MGD for commercial industrial use, and 5.57 MGD for agricultural uses in 1990 (Marella and Fanning 1990, p. 16) In 1990, the total amount of surface water withdrawn from the Altamaha River basin was 1,315.88 MGD (Marella and Fanning 1990, p. 61). As development pressures continue to grow, water withdrawals are expected to increase.

Drought conditions were prevalent in Georgia between 1998 and 2002, and again in 2007 and 2008, which may have negatively affected the Altamaha spinymussel. Georgia averages 127 cm (50 in) of precipitation annually (U.S. Geological Survey 1986, p. 195; GDNR 2005, p. 41) but received less than 102 cm (40 in) of precipitation annually during recent droughts in 2000, 2002, and 2007 (Knaak and Joiner 2007, pp. 1-2). The Ohoopee River and many other streams in the basin suffered reduced flow rates, and the Ohoopee River was reported to have low water levels with an estimated average depth of 15 cm (6 in) in the main channel during summer surveys (Stringfellow and Gagnon 2001, p. 3). Normally, mussels will bury themselves in the river bottom as a mechanism to survive a drought, but many mussels may have died from desiccation during this prolonged drought (Keferl 2008, pers. comm.). Although the effects of the drought on the Altamaha spinymussel have not been quantified, mussel declines as a direct result of drought have been documented (Golladay *et al.* 2004, p. 494; Haag and Warren 2008, p. 1165). Furthermore, there is a growing concern that climate change may lead to increased frequency of severe storms and droughts (Golladay *et al.* 2004, p. 504; McLaughlin *et al.* 2002, p. 6074; Cook *et al.* 2004, p. 1015). Reduction in local water supplies due to drought is also compounded by increased human demand and competition for surface and ground water resources for power production, irrigation, and consumption (Golladay *et al.* 2004, p. 504).

In addition, low flow conditions provide access to the river margins and channels for all-terrain vehicles (ATV) and four-wheel drive vehicles (TNC 2004, p. 12; Stringfellow and Gagnon 2001, p. 3). During a survey in 2001, Stringfellow and Gagnon (2001, p. 3) observed heavy ATV and four-wheel drive vehicle traffic and high levels of erosion near bridges and homes. They encountered several groups of ATV users, 2 to 12 persons per group, riding in the river channel. Because water

levels were so low, ATV use of the stream extended to all portions of the channel, including pools, runs, and dried sandbars. Observations on the Ohoopee River during low flow in October of 2006 revealed extensive ATV traffic that destroyed mussel beds (Rickard 2006, personal observation). These vehicles may directly crush mussels and may also destabilize stream banks and increase sedimentation rates, burying mussels or impairing feeding, respiration, metabolism, and reproductive success (Stringfellow and Gagnon 2001, p. 3).

Nonindigenous species such as the flathead catfish (*Pylodictis olivaris*) and the Asian clam (*Corbicula fluminea*) have been introduced to the Altamaha Basin and may be adversely affecting the Altamaha spinymussel. Flathead catfish are fast-growing fish that are dominant predators in river systems and are usually exclusively piscivorous in their adult stage (Bourret *et al.* 2008, p. 413; Sakaris *et al.* 2006, p. 867). Since its introduction outside its native range, the flathead catfish has altered the composition of native fish populations through predation (Bourett *et al.* 2008, p. 413; Sakaris *et al.* 2006, p. 867; Sea Grant, 2006, p. 2; Pine *et al.* 2005, p. 902). Flatheads were introduced to the Altamaha Basin in the 1970s (USGS 2009, unpaginated). Although the host fish or fishes of the Altamaha spinymussel have not been identified, in other native freshwater mussels, various centrachids (sunfish), ictalurids (catfish), and catostomids (suckers) have been identified as hosts of the larvae. Other species of mussels in the genus *Elliptio* are known to parasitize various species of *Etheostoma* and *Percina* (darters), and other stream-adapted fish species (Haag and Warren 2003, p. 80). Flatheads introduced in the Altamaha River eliminated bullhead catfish (*Ameiurus sp.*) and caused an 80 percent decline in redbreast sunfish (*Lepomis auritus*) (Sea Grant 2006, p. 2); centrarchids and ictalurids were dominant prey items (Sakaris 2006, p. 867). Other potential centrachid host fish such as the largemouth bass (*Micropterus salmoides*) and bluegill (*L. macrochirus*) have all suffered population declines (Harrison 2001, pers. comm.), as well as the robust redhorse (*Moxostoma robustum*), shortnose sturgeon (*Acipenser brevirostrum*), and shad (*Alosa sapidissima*) (TNC 2004, p. 5). If one or more of these species is the host fish for the Altamaha spinymussel, the spinymussel's breeding success and recruitment could be reduced (Keferl 2001, pers. comm).

Asian clams (*Corbicula*) were observed in the Altamaha River in 1971, and are believed to have been introduced in the Ocmulgee River in 1968 or 1969 (Gardner 1976, p. 117). Surveys have found large numbers of Asian clams (*Corbicula*) in the Altamaha Basin for more than 25 years (Gardner *et al.* 1976, pp. 118–124; Stringfellow and Gagnon 2001, p. 2; O'Brien, pers. comm., 2001). The invasion of *Corbicula* in the Altamaha River has been accompanied by drastic declines in populations of native mussels (Gardner 1976, p. 124). Asian clams may pose a direct threat to native species through competition for available resources (space, minerals, or food), resulting in a decline or local extinction of native mussels (Williams *et al.* 1993, p. 7; Bogan 1993, p. 605).

The linear nature of the Altamaha spinymussel's habitat, reduced range, and very small population size make this species vulnerable to random detrimental or catastrophic events. Small, isolated populations may experience decreased demographic viability (population birth and death rates, immigration and emigration rates, and sex ratios), increased susceptibility of extinction from stochastic environmental factors (e.g., weather events, disease), and an increased threat of extinction from genetic isolation and subsequent inbreeding depression and genetic drift. Surviving populations of spinymussels are small, extremely localized, and vulnerable to habitat modification, toxic spills, progressive degradation from contaminants (see discussions under Factors A and D), and natural catastrophic changes to their habitats (for example, flood scour and drought). Low numbers of individuals may also increase inbreeding and reduce genetic diversity (Lynch 1996, pp. 493–494).

In summary, a variety of natural and manmade factors currently threatens the Altamaha spinymussel. Withdrawal of surface water within the Altamaha Basin for thermoelectric power generation, public water supplies, commercial industrial uses, and agriculture can cause drastic flow reductions and alterations that may strand mussels on sandbars, resulting in mortality of individuals and harm to populations. Recurring drought and water withdrawal, combined with impacts of off-road vehicles, has reduced flows and destabilized stream banks required to support this mussel. Nonindigenous species, such as flathead catfish and the Asian clam, have potentially adversely impacted populations of the spinymussel's host fish, thereby affecting recruitment, and may directly impact the spinymussel through competition for resources. Lastly, because the Altamaha spinymussel population is so small and isolated, any factor (i.e., habitat change or natural and manmade factors) that results in a decline in habitat or individuals may be problematic for the long-term recovery of this species. Therefore, we have determined that other natural and manmade factors are threats to the continued existence of the Altamaha spinymussel throughout its range.

Determination

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Altamaha spinymussel. Section 3 of the Act defines an "endangered species" as "any species which is in danger of extinction throughout all or a significant portion of its range" and a "threatened species" as "any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." As described in detail above, the species is currently at risk throughout all of its range due to ongoing threats of habitat destruction and modification (Factor A), inadequacy of existing regulatory mechanisms (Factor D), and other natural or manmade factors affecting its continued existence (Factor E). This species' extremely low and isolated populations make it particularly susceptible to extinction at any time due to threats described under Factors A, D, and E.

The Altamaha spinymussel has only been observed at 22 sites since 2000, despite extensive survey efforts made by several different researchers. Most of these sites are clustered geographically within short reaches of the lower Ocmulgee River and the Altamaha River upstream of U.S. Route 301, and there are long reaches with no or undetectable numbers of Altamaha spinymussels separating these groups of sites. Recent surveys of the Ohoopee River and the analysis presented by Wisniewski *et al.* (2005) suggest that the species may still be declining. Finally, the comparatively low numbers of Altamaha spinymussels collected during recent surveys of the Altamaha and Ocmulgee Rivers further suggests that this species has declined from historical levels. To summarize, researchers were able to find 60 Altamaha spinymussels at a single site on the Altamaha River in 1967; in contrast, the largest number of Altamaha spinymussels observed from a single site on the Altamaha River during the

1990s or 2000s was nine (Albanese 2005, pers. comm.).

The remaining small spinymussel populations are threatened by a variety of factors that are expected to persist indefinitely and impact, or have the potential to impact, remaining spinymussel habitat. These factors include siltation, industrial pollution, municipal effluents, modification of stream channels, pesticides, heavy metals, invasive species, loss of host fish, water withdrawal, recurring drought, and loss of genetic viability. In addition, as described under Factor D, existing regulatory mechanisms are inadequate to ameliorate the current threats to the Altamaha spinymussel and its habitat. We believe the remaining small, isolated populations of spinymussels are not large enough to be resilient against any of the above factors acting on the species itself or its habitat. Furthermore, we believe these threats, particularly the threats to populations resulting from habitat degradation, small population size, and drought, are current and are projected to continue into the future. If the present trends that negatively affect the species and its limited and restricted habitat continue, the Altamaha spinymussel is in immediate danger of extinction throughout all of its range.

Therefore, on the basis of the best available scientific and commercial information, we propose to list the Altamaha spinymussel as an endangered species throughout all of its range. Furthermore, because we find that the Altamaha spinymussel is endangered throughout all of its range, there is no reason to consider its status in a significant portion of its range. Consequently, we are proposing to list the Altamaha spinymussel as an endangered species under the Act.

Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(i) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(I) essential to the conservation of the species and

(II) which may require special management considerations or protection; and

(ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided under the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the prohibition against Federal agencies carrying out, funding, or authorizing the destruction or adverse modification of critical habitat. Section 7(a)(2) requires consultation on Federal actions that may affect critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner seeks or requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, Federal action agency's and the applicant's obligation is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

For inclusion in a critical habitat designation, the habitat within the geographical area occupied by the species at the time it was listed must contain the physical and biological features essential to the conservation of the species, and be included only if those features may require special management considerations or protection. Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (areas on which are found the physical and biological features (PBFs) essential for the conservation of the species). Under the Act and regulations at 50 CFR 424.12, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed only when we determine that those areas are essential for the conservation of the species and that designation limited to those areas occupied at the time of listing would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106-554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas we should designate as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

Habitat is often dynamic, and species may move from one area to another over time. In particular, we recognize that climate change may cause changes in the arrangement of occupied habitat river reaches. Climate change may lead to increased frequency and duration of severe storms and droughts (Golladay *et al.* 2004, p. 504; McLaughlin *et al.* 2002, p. 6074; Cook *et al.* 2004, p. 1015). Drought conditions in 2000–2001 and 2007–2008 greatly reduced the habitat of the spinymussel in the Ohoopee River and rendered the populations vulnerable to anthropogenic disturbances, such as water extraction and vehicles within the riverbed (Keferl 2008, pers. comm.; Stringfellow and Gagnon 2001, p. 3).

The information currently available on the effects of global climate change and increasing temperatures does not make sufficiently precise estimates of

the location and magnitude of the effects. Nor are we currently aware of any climate change information specific to the habitat of the Altamaha spinymussel that would indicate what areas may become important to the species in the future. Therefore, we are unable to determine what additional areas, if any, may be appropriate to include in the proposed critical habitat for this species; however, we specifically request information from the public on the currently predicted effects of climate change on the Altamaha spinymussel and its habitat. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas we may eventually determine, based on scientific data not now available to the Service, that are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be required for recovery of the species.

Areas that are important to the conservation of the species, but are outside the critical habitat designation, will continue to be subject to conservation actions we implement under section 7(a)(1) of the Act. These areas are also subject to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available scientific information at the time of the agency action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Prudency Determination

Section 4 of the Act, as amended, and implementing regulations (50 CFR 424.12), require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations at 50 CFR 424.12(a)(1) state that the designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other activity and the identification of critical habitat can be expected to increase the degree of threat to the species; or (2) the designation of critical habitat would not be beneficial to the species.

As we have discussed above under the Factor B analysis, there is currently no imminent threat of take attributed to collection or vandalism for this species. Moreover, we have no information to indicate that identification of critical habitat is expected to initiate such a threat to the species. Critical habitat designation identifies those physical and biological features of the habitat essential to the conservation of the Altamaha spinymussel that may require special management and protection. Accordingly, this designation will provide information to individuals, local and State governments, and other entities engaged in activities or long-range planning in areas essential to the conservation of the species. Conservation of the Altamaha spinymussel and essential features of its habitat will require habitat management, protection, and restoration, which will be facilitated by knowledge of habitat locations and the physical and biological features of the habitat. Based on this information, we believe critical habitat would be beneficial to this species. Therefore, we have determined that the designation of critical habitat for the Altamaha spinymussel is prudent.

We have reviewed the available information pertaining to the historical distribution of the Altamaha spinymussel, and the characteristics of the habitat in which it currently survives. This and other information represent the best scientific and commercial data available and lead us to conclude that we have sufficient information necessary to identify specific areas that meet the definition of critical habitat. Therefore, we have determined that the designation of critical habitat is determinable for the Altamaha spinymussel.

Methods

As required by section 4(b) of the Act, we used the best scientific data available in determining occupied areas that contain the features that are essential to the conservation of the Altamaha spinymussel, and unoccupied areas that are essential for the conservation of the Altamaha spinymussel.

We have reviewed the available information pertaining to historical and current distribution, life history, and habitat requirements of this species. Our sources included: Peer-reviewed scientific publications; unpublished survey reports; unpublished field observations by the Service, State, and other experienced biologists; and notes and communications from qualified biologists or experts.

Physical and Biological Features

In accordance with sections 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied at the time of listing to propose as critical habitat, we consider the physical and biological features essential to the conservation of the species which may require special management considerations or protection. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, and rearing of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distribution of a species.

We consider the physical and biological features to be the primary constituent elements (PCEs) laid out in the appropriate quantity and spatial arrangement essential for the conservation of the species. We derive the PCEs from the biological needs of the species as described in the Background section of this proposal. Unfortunately, little is known of the specific habitat requirements for the Altamaha spinymussel other than that they require flowing water, stable river channels, and adequate water quality. Altamaha spinymussel mussel larvae also require a currently unknown fish host for development to juvenile mussels. To identify the physical and biological needs of the species, we have relied on current conditions at locations where the species survive, the limited information available on this species and its close relatives, and factors associated with the decline and extirpation of these and other aquatic mollusks from extensive portions of the Altamaha River Basin.

Space for Individual and Population Growth and for Normal Behavior

The Altamaha spinymussel is historically associated with the main stem of the Altamaha River and its larger tributaries (greater than 500 cubic feet per second (cfs) Mean Monthly Discharge (MMD)), and does not occur in smaller tributaries. Spinymussels are generally associated with stable, coarse to fine sandy sediments of sandbars, sloughs, and mid-channel islands, and

they appear to be restricted to swiftly flowing water (Sickel 1980, p. 12). Sandbars, sloughs, and mid-channel islands provide space for the spinymussel and also provide cover, shelter, and sites for breeding, reproduction, and growth of offspring. Sandbars, sloughs, and mid-channel islands are dynamic habitats formed and maintained by water quantity, channel slope, and sediment input to the system through periodic flooding, which maintains connectivity and interaction with the flood plain. Changes in one or more of these parameters can result in channel degradation or channel aggradation, with serious effects to mollusks. Therefore, we believe that stream channel stability and floodplain connectivity are essential to the conservation of the Altamaha spinymussel.

Water

The Altamaha spinymussel is a riverine-adapted species that depends upon adequate water flow and is not found in ponds or lakes. Continuously flowing water is a habitat feature associated with all surviving populations of this species. Flowing water maintains the river bottom, sandbars, sloughs, and mid-channel islands habitat where this species is found, transports food items to the sedentary juvenile and adult life stages of the Altamaha spinymussel, removes wastes, and provides oxygen for respiration for this species.

The ranges of standard physical and chemical water quality parameters (such as temperature, dissolved oxygen, pH, and conductivity) that define suitable habitat conditions for the Altamaha spinymussel have not been investigated. However, as relatively sedentary animals, mussels must tolerate the full range of such parameters that occur naturally within the streams where they persist. Both the amount (flow) and the physical and chemical conditions (water quality) where this species currently exists vary widely according to season, precipitation events, and seasonal human activities within the watershed. Conditions across their historical ranges vary even more due to geology, geography, and differences in human population densities and land uses. In general, the species survives in areas where the magnitude, frequency, duration, and seasonality of water flow is adequate to maintain stable sandbar, slough, and mid-channel island habitats (for example, sufficient flow to remove fine particles and sediments without causing degradation), and where water quality is adequate for year-round survival (for example, moderate to high levels of dissolved oxygen, low to moderate input of nutrients, and relatively unpolluted water and sediments). Therefore, adequate water flow and water quality (as defined below) are essential to the conservation of the Altamaha spinymussel.

A natural flow regime that includes periodic flooding and maintains connectivity and interaction with the flood plain is critical for the exchange of nutrients, spawning activities for potential host fish, and sand bar maintenance. In 2007, persistent severe drought conditions throughout the southeastern United States created record low discharges (streamflow) in the Altamaha River at the U.S. Geological Survey (USGS) gauge station in Doctortown, Georgia. During the driest portions of the 2006–2009 drought period, the lowest discharges observed were 25 percent of the MMD for the 77–year period of record for the Doctortown gauge. Despite record low flows, native unionids (mussels) appeared to persist and thrive throughout most of the Lower Altamaha River Basin.

The numeric standards for pollutants and water quality parameters (for example, dissolved oxygen, pH, heavy metals) that have been adopted by the State of Georgia under the Clean Water Act (33 U.S.C. 1251 *et seq.*) represent levels that were established for human protection. Some of these standards (particularly organic and heavy metal contaminates) may not adequately protect Altamaha spinymussels, or are not being appropriately measured, monitored, or achieved in some reaches (see discussions under Factors A and D). While, Georgia's pH criterion is a range of 6.0 to 8.5 under the adopted State standards, data compiled by the GDNR indicate that pH at 159 sites in the Altamaha River Basin averaged 6.9 and ranged from 4.9 to 9.1, which means many sites are outside of the range adopted by the State. Potential contaminants such as ammonia may be more lethal at pH levels at the edges of the observed range. Therefore, we removed outliers from this data set by generating the 10th and 90th percentiles for pH, which were 6.1 to 7.7 standard units. These levels are likely more representative of natural pH levels associated with the Altamaha River Basin and would likely reduce lethal contaminant associations between other chemicals in the watershed.

Current Georgia TMDLs for waters supporting warm-water fishes require a daily average dissolved oxygen (DO) concentration of 5.0 mg/l and a minimum of 4.0 mg/l. The mean DO concentration of 217 measurements made in known spinymussel sites throughout the Altamaha River basin was 8.7 mg/l and ranged from 0.42 mg/l to 33.1 mg/l. The 10th and 90th percentiles for DO were 4.5 and 10.7 mg/l, which are similar to the observations of Golladay *et al.* (2004, pp. 501-503). A daily average DO concentration of 5.0 mg/l and a minimum DO concentration of 4.5 mg/l should provide adequate protection for the Altamaha spinymussel.

Other factors that can potentially alter water quality are droughts and periods of low flow, nonpoint source run-off from adjacent land surfaces (for example, excessive amounts of nutrients, pesticides, and sediment), and random spills or unregulated discharge events. This could be particularly harmful during drought conditions when flows are depressed and pollutants are more concentrated. Adequate water quality is essential for normal behavior, growth, and viability during all life stages of the Altamaha spinymussel.

Food

Unionid mussels, such as the Altamaha spinymussel, filter algae, detritus, and bacteria from the water column (Williams *et al.* 2008, p. 67). Although the life history of the Altamaha spinymussel has not been studied, the life histories of other mussels in the *Elliptio* genus indicate that adult freshwater mussels are filter-feeders, siphoning phytoplankton, diatoms, and other microorganisms from the water column. For the first several months, juvenile mussels employ pedal (foot) feeding, extracting bacteria, algae, and detritus from the sediment (Yeager *et al.* 1994, pp. 217–221; Wisniewski 2008, pers. comm.). Food availability and quality for the Altamaha spinymussel in sandbars, sloughs, and mid-channel island habitats are affected by habitat stability, floodplain connectivity, flow, and water quality.

Sites for Breeding, Reproduction, or Rearing

Freshwater mussels require a host fish for transformation of larval mussels (glochidia) to juvenile mussels (Williams *et al.* 2008, p. 68); therefore, presence of the appropriate host fish is essential to the conservation of the Altamaha spinymussel. The specific fish host(s) for the Altamaha spinymussel is currently unknown; however, other species of mussels in the genus *Elliptio* are known to parasitize various species of *Etheostoma, Percina*, and other stream-adapted fish species (Haag and Warren 2003, p. 80). Eighty-five fish species representing 22 families are

native to the Altamaha River Basin. Five families account for 65 percent of the native fish species in the Altamaha River Basin. The family Cyprinidae comprises 20 percent of the fish species, while Centrarchidae, Catostomidae, Ictaluridae, and Percidae comprise 15 percent, 12 percent, 11 percent, and 8 percent of the species, respectively. These families are known to be suitable hosts for most unionids in North America. All 85 species native to the Altamaha River Basin are still present within the basin.

Juvenile Altamaha spinymussels require stable sandbar, slough, and mid-channel island habitats for growth and survival. Excessive sediments or dense growth of filamentous algae can expose juvenile mussels to entrainment or predation and be detrimental to the survival of juvenile mussels (Hartfield and Hartfield 1996, pp. 372–374). Geomorphic instability can result in the loss of interstitial habitats and juvenile mussels due to scouring or deposition (Hartfield 1993, pp. 372–373). Therefore, stable sandbar, slough, and mid-channel island habitats with low to moderate amounts of filamentous algae growth are essential to the conservation of the Altamaha spinymussel.

Periodic floodplain connectivity that occurs during wet years provides habitats for spawning and foraging activities to fishes requiring floodplain habitats for successful reproduction and recruitment to adulthood. Barko *et al.* (2006, pp. 252–256) found several fish species benefited from the resource exploitation of floodplain habitats that were not typically available for use during hydrologically normal years. Furthermore, Kwak (1988, pp. 243–247) and Slipke *et al.* (2005, p. 289) indicated that periodic inundation of floodplain habitats increased successful fish reproduction, which leads to increased availability of native host fishes for unionid reproduction. However, Rypel *et al.* (2009, p. 502) indicated that unionids tended to exhibit minimal growth during high flow years. Therefore, optimal flooding of these habitats would not be too frequent and should occur at similar frequencies to that of the natural hydrologic regime of the Altamaha River.

Primary Constituent Elements (PCEs) for the Altamaha Spinymussel

Based on the above needs and our current knowledge of the life history, biology, and ecology of the species, we have determined that the Altamaha spinymussel's PCEs are:

(1) Geomorphically stable river channels and banks (channels that maintain lateral dimensions, longitudinal profiles, and sinuosity patterns over time without an aggrading or degrading bed elevation) with stable sandbar, slough, and mid-channel island habitats of course to fine sand substrates with low to moderate amounts of fine sediment and attached filamentous algae.

(2) A hydrologic flow regime (the magnitude, frequency, duration, and seasonality of discharge over time) necessary to maintain benthic habitats where the species are found. To maintain connectivity of rivers with the floodplain, allowing the exchange of nutrients and sediment for sand bar maintenance, food availability, and spawning habitat for native fishes.

(3) Water quality necessary for normal behavior, growth, and viability of all life stages, including specifically temperature (less than 32.6°C (90.68 °F) with less than 2°C (3.6 °F) daily fluctuation)), pH (6.1 to 7.7), oxygen content (daily average DO concentration of 5.0 mg/l and a minimum of 4.0 mg/l), Ammonia: 1.5 mg N/L, 0.22 mg N/L (normalized to pH 8 and 25°C (77°F)) and other chemical characteristics.

(4) The presence of fish hosts (currently unknown) necessary for recruitment of the Altamaha spinymussel. The continued occurrence of diverse native fish assemblages currently occurring in the basin will serve as an indication of host fish presence until appropriate host fishes can be identified for the Altamaha spinymussel.

This proposed designation is designed to conserve those areas containing the PCEs in the appropriate spatial arrangement and quantity essential to the conservation of the species.

Units are designated based on sufficient PCEs being present to support at least one of the species' life history functions. In this proposed designation, all areas contain all PCEs and support multiple life processes.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the areas within the geographical area occupied by the species at the time of listing contain features that are essential to the conservation of the species and whether those features may require special management considerations or protection. None of the critical habitat units proposed for this species have been designated as critical habitat for other species under the Act. Large areas of upland habitat adjacent to the proposed critical habitat are currently protected or receive special management; 13.4 km (8.4 mi.) on both sides of the river and 75.9 km (47.0 mi) on one side of the river only are managed as conservation properties. However, approximately 150.8 km (93.7 mi) have no protection. Various activities in or adjacent to each of the critical habitat units described in this proposed rule may affect one or more of the PCEs and may require special management considerations or protection. Some of these activities include, but are not limited to, those discussed in the "Summary of Factors Affecting the Species," above. Features in all of the proposed critical habitat units may require special management due to threats posed by land-use runoff and point- and nonpoint-source water pollution (see discussion under Factor A and Factor D). Other activities that may affect PCEs in the proposed critical habitat units include those listed in the "Effects of Critical Habitat" section below.

In summary, we find that the areas we are proposing as critical habitat that were occupied at the time of listing contain the features essential to the conservation of the Altamaha spinymussel, and that these features may require special management considerations or protection. Special management consideration or protection may be required to eliminate, or to reduce to negligible levels, the threats affecting each unit and to preserve and maintain the essential features that the proposed critical habitat units provide to the Altamaha spinymussel. Additional discussions of threats facing individual sites are provided in the individual unit descriptions.

Criteria Used to Identify Proposed Critical Habitat

As required by section 4(b) of the Act, we used the best scientific data available in determining areas within the geographical area occupied by the species that contain the physical and biological features essential to the conservation of the Altamaha spinymussel (see above), and areas outside of the geographical area occupied by the species that are essential for the conservation of the species. We are proposing to designate as critical habitat all river channels that are currently occupied by the species. We are also proposing to designate a specific area not currently occupied but that was historically occupied, because we have determined (1) that the area is essential for the conservation of the Altamaha spinymussel, and (2) that designating only occupied habitat is not sufficient to conserve this species.

When determining proposed critical habitat boundaries, we make every effort

to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands usually lack PCEs for endangered or threatened species. Areas proposed for critical habitat for the Altamaha spinymussel include only stream channels within the ordinary high water line, and do not contain any developed areas or structures. The ordinary high water line defines the stream channel and is the point on the stream bank where water is continuous and leaves some evidence such as erosion or aquatic vegetation.

Occupied Stream Reaches Proposed as Critical Habitat

We have defined occupied habitat as those stream reaches known to be currently occupied by the Altamaha spinymussel. We used information from surveys and reports prepared by the GDNR, private contractors, and Service field records to identify the specific locations occupied by the Altamaha spinymussel.

Currently, the limited occupied habitat for this species is extremely scattered and isolated. The Altamaha spinymussel persists in scattered portions of the Altamaha and Ocmulgee Rivers (see *Population Estimates and Status* above). We have determined that all occupied areas contain features essential to the conservation of the species.

River habitats are highly dependent upon upstream and downstream channel habitat conditions for their maintenance. Therefore, where one occurrence record was known from a river reach, we considered the entire reach between the uppermost and lowermost locations as occupied habitat, as discussed below.

The Altamaha spinymussel is currently known to survive in scattered populations along 223 km (138 mi) of the Ocmulgee and upper Altamaha Rivers extending from Telfair and Ben Hill Counties to Long and Wayne Counties, Georgia, except for a 2.7-km (1.7-mi) reach of river in the vicinity of the Plant Hatch facility. From 1997 through 2009, researchers searched 336 sites throughout the basin and documented 57 Altamaha spinymussels, with all occurrences widely scattered throughout its current range. There are no known barriers to movement in this range; therefore, we consider the entire 223-km (138-mi) reach between the uppermost and lowermost collection sites for the Altamaha spinymussel as occupied habitat. In the area proposed for critical habitat, boundaries extend from the nearest downstream landmark at both of ends of the reach.

Unoccupied Stream Reaches Proposed as Critical Habitat

The unoccupied stream reach we are proposing as critical habitat was historically occupied (i.e., prior to 1997; see Table 1). We believe that this reach is essential for Altamaha spinymussel conservation because the range of the Altamaha spinymussel has been severely curtailed, occupied habitats are limited and isolated, and population sizes are extremely small, and the area meets the selection criteria identified below. Furthermore, the occupied habitats are contiguous, placing them at high risk of extirpation and extinction from stochastic events. The inclusion of essential unoccupied areas, in a separate tributary, will provide habitat for population reintroduction, reduce the level of stochastic threats to the species' survival, and decrease the risk of extinction for this species.

The area proposed as critical habitat that is not known to be currently occupied meets all of the following criteria:

(1) It contains sufficient PCEs (for example, such characteristics as geomorphically stable channels, perennial water flows, and appropriate benthic substrates) to support life history functions of the Altamaha spinymussel;

(2) It supports diverse aquatic mollusk communities, including the presence of closely related species requiring PCEs similar to the Altamaha spinymussel; and

(3) It is adjacent to currently occupied areas where there is potential for natural dispersal and reoccupation by the Altamaha spinymussel.

In identifying unoccupied river reaches that could be essential for the conservation of the Altamaha spinymussel, we first considered the availability of potential habitat throughout the historical range that may be suitable for the survival and persistence of the species. We also eliminated from consideration free-flowing rivers or river segments without any historical records of occurrence (that is the Little Ocmulgee River and the upper portions of the Oconee and Ocmulgee Rivers). We eliminated the lower Oconee River and the lower portion of the Altamaha River from consideration because of poor water quality and limited habitat availability.

We have identified 14.4 km (9 mi) of habitat in the Ohoopee River that is currently unoccupied by the Altamaha spinymussel and that meets the criteria for designation as critical habitat. Historical records of Altamaha spinymussel occurred in the lower portions of the Ohoopee River. Keferl (1981, p. 15) referred to the Ohoopee as a possible refugia for the Altamaha spinymussel. However, extreme drought and all-terrain vehicle disturbance appear to have extirpated the species from otherwise suitable habitat. This river habitat meets criteria (1), (2), and (3) identified above and is therefore considered essential to the conservation of the Altamaha spinymussel.

Proposed Critical Habitat Designation

We are proposing four units, totaling approximately 240 km (149 mi), as critical habitat for the Altamaha spinymussel. Georgia owns navigable stream bottoms within the ordinary high water line. All proposed units are considered navigable and, as stated more fully below, critical habitat is proposed for the stream channel within the ordinary high water line only; accordingly, the State of Georgia owns the stream bottoms within all of the areas proposed for designation as critical habitat. Lands adjacent to critical habitat units are either in private ownership or are conservation lands. Table 2 identifies the proposed units, occupancy of the units, and the approximate extent proposed as critical habitat for the Altamaha spinymussel. It also provides information on the ownership of lands adjacent to the river within the proposed unit.

TABLE 2. *Occupancy and ownership of lands adjacent to proposed critical habitat units for Altamaha spinymussel.*

Unit	Location	Occupancy	Total Length km (mi)	Private km (mi)	Conservation/ Private km (mi)	Conservation km (mi)
1	Ocmulgee River	Occupied	110 (68.3)	89.2 (55.4)	14.3 (8.8)	6.4 (4.0)

TABLE 2. *Occupancy and ownership of lands adjacent to proposed critical habitat units for Altamaha spinymussel.*—Continued

Unit	Location	Occupancy	Total Length km (mi)	Private km (mi)	Conservation/ Private km (mi)	Conservation km (mi)
2A	Upper Altamaha River A	Occupied	31.4 (19.5)	2.7 (1.7)	21.6 (13.4)	7.1 (4.4)
2B	Upper Altamaha River B	Occupied	30.7 (19.1)	22.9 (14.2)	7.8 (4.9)	0 (0)
3	Middle Altamaha River	Occupied	50.9 (31.6)	18.8 (11.7)	32.1 (19.9)	0 (0)
4	Lower Ohoopee River	Unoccupied	14.4 (9.0)	14.4 (9.0)	0 (0)	0 (0)
Total			**240.2 (149.3)**	**150.8 (93.7)**	**75.9 (47)**	**13.4 (8.4)**

*Ownership is categorized by private ownership on both banks of the river (Private), conservation area on one bank and private on the other (Conservation/Private), and conservation area on both banks (Conservation).

We present brief descriptions of all units and reasons why they meet the definition of critical habitat for the Altamaha spinymussel. The proposed critical habitat units include the river channels within the ordinary high water line. As defined in 33 CFR 329.11, the ordinary high water mark on nontidal rivers is the line on the shore established by the fluctuations of water and indicated by physical characteristics, such as a clear, natural line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas. For each stream reach proposed as a critical habitat unit, the upstream and downstream boundaries are described generally below. More precise definitions are provided in the Proposed Regulation Promulgation section at the end of this proposed rule.

Unit 1: Ocmulgee River, Ben Hill, Telfair, Coffee, and Jeff Davis Counties

Unit 1 includes 110 km (68.3 mi) of the lower Ocmulgee River from the confluence of House Creek with the Ocmulgee River at Red Bluff Landing in Ben Hill and Telfair Counties, downstream to the Altamaha River (at the confluence of the Oconee and Ocmulgee Rivers, Jeff Davis and Telfair Counties). Live Altamaha spinymussels have been collected from 11 sites within proposed Unit 1, the uppermost near Red Bluff (Thomas and Scott 1965, p. 67). Surveys conducted since 1997 on the Ocmulgee River have yielded 19 Altamaha spinymussels from seven sites (Cammack *et al.* 2001, p. 11; O'Brien 2002, p. 2; Dinkins 2004, pp. 1-1 and 2-1). The entire reach of the Ocmulgee River that composes proposed Unit 1 is occupied. This unit contains all of the PCEs.

The Altamaha spinymussel and its habitat may require special management considerations or protection to address changes in the existing flow regime due to activities such as impoundment, water diversion, or water withdrawal; alteration of water chemistry or water quality; and changes in streambed material composition and quality from activities that would release sediments or nutrients into the water, such as deadhead logging (instream log salvage), construction projects, livestock grazing, timber harvesting, and off-road vehicle use.

Unit 2: Upper Altamaha River, Wheeler, Toombs, Montgomery, Jeff Davis, Appling, and Tatnall Counties

Unit 2 includes a total of 62.1 km (38.6 mi) of the Altamaha River from the confluence of the Ocmulgee and Oconee Rivers (Wheeler and Jeff Davis Counties) downstream to the confluence of the Altamaha and Ohoopee Rivers (Appling and Tattnall Counties).

Unit 2A includes 31.4km (19.5mi) of the Altamaha River from the confluence of the Ocmulgee and Oconee Rivers to the Route 1.

Unit 2B includes 30.7km (19.1mi) of the Altamaha River from the upstream boundary of Moody forest to the confluence of the Altamaha and Ohoopee Rivers.

However, we are not including in this critical habitat designation a stretch of the Altamaha River from U.S. Route 1 downstream to the State-owned property of Moody Forest (2.7 km (1.7 mi)), which includes Plant Hatch. This area does not contain the PCEs necessary for the Altamaha spinymussel due to:

(1) Dredging for intake pipes at Plant Hatch, which destabilizes the river channel and banks, sandbar, slough, and mid-channel island habitats and disrupts the movement of course to fine sand substrates with low to moderate amounts of fine sediment; and

(2) Thermal discharges from Plant Hatch that reduce water quality.

In the upper Altamaha River, historic surveys collected Altamaha spinymussels from 15 sites, while recent surveys have collected live Altamaha spinymussels from only two sites; dead shells have been collected from an additional 14 sites (Sickel 1967; Keferl 1995, p. 3; Cammack *et al.* 2001, p. 11, O'Brien 2002, p. 2; Wisniewski 2009, pers. comm.). The entire reach of the Altamaha River that composes proposed Unit 2 is occupied. This unit contains all of the PCEs.

The Altamaha spinymussel and its habitat may require special management considerations or protection to address changes in the existing flow regime due to activities such as impoundment, water diversion, or water withdrawal; alteration of water chemistry or water quality; and changes in streambed material composition and quality from activities that would release sediments or nutrients into the water, such as deadhead logging (instream log salvage), construction projects, livestock grazing, timber harvesting, and off-road vehicle use.

Unit 3: Middle Altamaha River, Tattnall, Appling, Wayne, and Long Counties

Unit 3 includes approximately 50.9 km (31.6 mi) of the Altamaha River from the confluence with the Ohoopee (Tattnall and Appling Counties) downstream to U.S. Route 301 (Wayne and Long Counties). Historic and recent

surveys of the middle Altamaha River have yielded live Altamaha spinymussels from 26 sites. Dead shells were found at an additional 13 sites (Keferl 1981, p. 14; Keferl 1995, p. 3; Cammack *et al.* 2001, p. 11; O'Brien 2002, p. 2; Wisniewski 2009, pers. comm.). The entire reach of the Altamaha River that composes proposed Unit 3 is occupied. This unit contains all of the PCEs.

The Altamaha spinymussel and its habitat may require special management considerations or protection to address changes in the existing flow regime due to such activities as impoundment, water diversion, or water withdrawal; alteration of water chemistry or water quality; and changes in streambed material composition and quality from activities that would release sediments or nutrients into the water, such as deadhead logging (instream log salvage), construction projects, livestock grazing, timber harvesting, and off-road vehicle use.

Unit 4: Lower Ohoopee River, Tattnall County

Unit 4 includes the lower 14.4 km (9 mi) of the Ohoopee River, from 2.2 km (1.3 mi) upstream of Tattnall County Road 191, downstream to the confluence of the Ohoopee and the Altamaha River in Tattnall County, Georgia.

The Altamaha spinymussel historically occupied this stretch of the Ohoopee River but has not been found here since the mid-1990s (Stringfellow and Gagnon 2001, pp. 1–2) and is considered extirpated. Historic collections were made from seven sites (Keferl 1981, p. 14). Keferl (1981, p. 15) considered the Ohoopee to contain excellent habitat that would serve as a refuge for declining mussel populations. This stretch of the Ohoopee River contains PCEs I, III and IV for the Altamaha spinymussel, and continues to support four species commonly associated with the presence of the Altamaha spinymussel: *Elliptio dariensis* (75 percent of sites with *E. spinosa*), *E. hopetonensis* (93 percent), *E. shepardiana* (80 percent), and *Lampsilis dolabraeformis* (90 percent). *Lampsilis splendida* was found at 72 percent of sites (Wisniewski 2009, pers. comm.). The Ohoopee does not meet state water quality standards for mercury, however, EPA will begin revising needed load reductions in 2011 (EPA 2002b, p. 2).

Proposed critical habitat units 1, 2, and 3 are contiguous, making them very vulnerable to a catastrophic event that could eliminate all known occupied habitat for the Altamaha spinymussel. Therefore, we believe that the stream segment within this unit is essential to the conservation of the species.because re-establishing the Altamaha spinymussel on a separate tributary such as the Ohoopee River would significantly reduce the level of stochastic threats to the species' survival.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. Decisions by the courts of appeals for the Fifth and Ninth Circuits Court of Appeals have invalidated our definition of "destruction or adverse modification" (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service*, 378 F. 3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, 245 F. 3d 434, 442F (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain those physical and biological features that relate to the ability of the area to periodically support the species) to serve its intended conservation role for the species.

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. As a result of this consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. We define "Reasonable and prudent alternatives" at 50 CFR 402.02 as alternative actions identified during consultation that:

- Can be implemented in a manner consistent with the intended purpose of the action,
- Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,
- Are economically and technologically feasible, and
- Would, in the Director's opinion, avoid jeopardizing the continued existence of the listed species or destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies may sometimes need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Federal activities that may affect Altamaha spinymussel or its designated critical habitat require section 7 consultation under the Act. Activities on State, Tribal, local, or private lands requiring a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from us under section 10 of the Act) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) are subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or permitted, do not require section 7 consultations.

Application of the Jeopardy and Adverse Modification Standard

Jeopardy Standard

Prior to and following listing and designation of critical habitat, the Service applies an analytical framework for jeopardy analyses that relies heavily on the importance of core area populations to the survival and recovery of the species. The section 7(a)(2) analysis is focused not only on these populations but also on the habitat conditions necessary to support them.

The jeopardy analysis usually expresses the survival and recovery needs of the species in a qualitative fashion without making distinctions between what is necessary for survival and what is necessary for recovery. Generally, if a proposed Federal action is incompatible with the viability of the affected core area population(s), inclusive of associated habitat conditions, a jeopardy finding is considered to be warranted, because of the relationship of each core area population to the survival and recovery of the species as a whole.

Adverse Modification Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species, or would retain its current ability for the PCEs to be functionally established. Activities that may destroy or adversely modify critical habitat are those that alter the physical and biological features to an extent that appreciably reduces the conservation value of critical habitat for the Altamaha spinymussel.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and therefore should result in consultation for the Altamaha spinymussel include, but are not limited to:

(1) Actions that would alter the geomorphology of their stream and river habitats. Such activities could include, but are not limited to, instream excavation or dredging, impoundment, channelization, and discharge of fill materials. These activities could cause aggradation or degradation of the channel bed elevation or significant bank erosion, result in entrainment or burial of these mollusks, and cause other direct or cumulative adverse effects to these species and their life cycles.

(2) Actions that would significantly alter the existing flow regime. Such activities could include, but are not limited to, impoundment, water diversion, water withdrawal, and hydropower generation. These activities could eliminate or reduce the habitat necessary for growth and reproduction of these mollusks.

(3) Actions that would significantly alter water chemistry or water quality (for example, temperature, pH, contaminants, and excess nutrients). Such activities could include, but are not limited to, hydropower discharges, or the release of chemicals, biological pollutants, or heated effluents into surface water or connected groundwater at a point source or by dispersed release (nonpoint source). These activities could alter water conditions that are beyond the tolerances of these mollusks and result in direct or cumulative adverse effects to the species and their life cycles.

(4) Actions that would significantly alter stream bed material composition and quality by increasing sediment deposition or filamentous algal growth. Such activities could include, but are not limited to, construction projects, livestock grazing, timber harvest, off-road vehicle use, and other watershed and floodplain disturbances that release sediments or nutrients into the water. These activities could eliminate or reduce habitats necessary for the growth and reproduction of these mollusks by causing excessive sedimentation and burial of the species or their habitats, or nutrification leading to excessive filamentous algal growth. Excessive filamentous algal growth can cause reduced night-time dissolved oxygen levels through respiration and prevent mussel glochidia from settling into stream sediments.

Exemptions

Application of Section 4(a)(3) of the Act

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108-136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: "The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation."

There are no Department of Defense lands with a completed integrated natural resources management plan within the proposed critical habitat designation for the Altamaha spinymussel.

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary must designate or make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the legislative history is clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Under section 4(b)(2) of the Act, we may exclude an area from designated critical habitat based on economic impacts, impacts on national security, and any other relevant impacts. In considering whether to exclude a particular area from the designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and determine whether the benefits of exclusion outweigh the benefits of inclusion. If, based on this analysis, we determine that the benefits of exclusion outweigh the benefits of inclusion, we can exclude the area only if such exclusion would not result in the extinction of the species.

Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we are preparing an analysis of the probable economic impacts of the proposed critical habitat designation and related factors.

We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. At

that time, copies of the draft economic analysis will be available for downloading from the Internet at the Federal eRulemaking Portal: *http://www.regulations.gov, or by contacting the Georgia* Ecological Services Office directly (see **FOR FURTHER INFORMATION CONTACT**). During the development of a final designation, we will consider economic impacts, public comments, and other new information, and as an outcome of our analysis of this information, we may exclude areas from the final critical habitat designation under section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense (DOD) where a national security impact might exist. In preparing this proposal, we have determined that the lands within the proposed designation of critical habitat for the Altamaha spinymussel are not owned or managed by the DOD, and therefore, we anticipate no impact to national security.

Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors including whether landowners have developed any conservation plans or other management plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion of lands from, critical habitat. In addition, we look at any Tribal issues, and consider the government-to-government relationship of the United States with tribal entities. We also consider any social impacts that might occur because of the designation.

In preparing this proposed rule, we have determined that there are currently no conservation plans or other management plans for the species, and the proposed designation does not include any Tribal lands or trust resources. We anticipate no impact to Tribal lands, partnerships, or management plans from this proposed critical habitat designation.

Notwithstanding these decisions, as stated under "Public Comments" above, we are seeking specific comments on whether any areas we are proposing for designation should be excluded under section 4(b)(2) of the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies; groups; and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being or has been designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Federal agencies are required to confer with us informally on any action that is likely to jeopardize the continued existence of a proposed species, or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal activities that may affect the Altamaha spinymussel include, but are not limited to, the carrying out or the issuance of permits for reservoir construction, stream alterations, discharges, wastewater facility development, water withdrawal projects, pesticide registration, mining, and road and bridge construction. It has been the experience of the Service, however, that nearly all section 7 consultations have been resolved so that species have been protected and the project objectives have been met.

Listing the Altamaha spinymussel initiates the development and implementation of a rangewide recovery plan for the species. This plan will bring together Federal, State, and local agency efforts for the conservation of this species. Recovery plans establish a framework for agencies to coordinate their recovery efforts. The plans set recovery priorities and estimate the costs of the tasks necessary to accomplish the priorities. They also describe the site-specific actions necessary to achieve conservation and survival of each species.

Listing also will require us to review any actions on Federal lands and activities under Federal jurisdiction that may affect the Altamaha spinymussel; allow State plans to be developed under section 6 of the Act; encourage scientific investigations of efforts to enhance the propagation or survival of the species under section 10(a)(1)(A) of the Act; and promote habitat conservation plans on non-Federal lands under section 10(a)(1)(B) of the Act.

The Act and its implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are set forth at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species and for incidental take in connection with otherwise lawful activities.

Under the Interagency Cooperative Policy for Endangered Species Act Section 9 Prohibitions, published in the **Federal Register** on July 1, 1994 (59 FR 34272), we identify to the maximum extent practicable those activities that would or would not constitute a violation of section 9 of the Act if the Altamaha spinymussel is listed. The intent of this policy is to increase public awareness as to the effects of this proposed listing on future and ongoing activities within a species' range. We believe, based on the best available information, that the following actions will not result in a violation of the provisions of section 9 of the Act, provided these actions are carried out in accordance with existing regulations and permit requirements:

(1) Possession, delivery, or movement, including interstate transport that does not involve commercial activity, of specimens of these species that were legally acquired prior to the addition of the Altamaha spinymussel to the Federal List of Endangered or Threatened Wildlife;

(2) Discharges into waters supporting the Altamaha spinymussel, provided these activities are carried out in accordance with existing regulations and permit requirements (e.g., activities subject to section 404 of the Clean Water Act and discharges regulated under the National Pollutant Discharge Elimination System (NPDES));

(3) Development and construction activities designed and implemented under State and local water quality regulations and implemented using approved best management practices; and

(4) Any actions that may affect the Altamaha spinymussel that are authorized, funded, or carried out by a Federal agency (such as bridge and highway construction, pipeline construction, hydropower licensing), when the action is conducted in accordance with the consultation requirements for listed species under section 7 of the Act.

Potential activities that we believe will likely be considered a violation of section 9 of the Act if this species becomes listed, include, but are not limited to, the following:

(1) Unauthorized possession, collecting, trapping, capturing, harming, killing, harassing, sale, delivery, or movement, including interstate and foreign commerce, or attempting any of these actions, with the Altamaha spinymussel;

(2) Unlawful destruction or alteration of their habitats (such as unpermitted instream dredging, impoundment, channelization, or discharge of fill material) that impairs essential behaviors, such as breeding, feeding, or sheltering, or results in killing or injuring the Altamaha spinymussel;

(3) Violation of any discharge or water withdrawal permit that results in harm or death to any individuals of this species or that results in degradation of its occupied habitat to an extent that essential behaviors such as breeding, feeding and sheltering are impaired; and

(4) Unauthorized discharges or dumping of toxic chemicals or other pollutants into waters supporting the Altamaha spinymussel that kills or injures or otherwise impairs essential life-sustaining requirements, such as reproduction, food, or shelter.

Other activities not identified above will be reviewed on a case-by-case basis to determine if a violation of section 9 of the Act may be likely to result from such activity should we list the Altamaha spinymussel as endangered. The Service does not consider the description of future and ongoing activities provided above to be exhaustive; we provide them simply as information to the public.

If you have questions regarding whether specific activities will likely violate the provisions of section 9 of the Act, contact the Georgia Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**). Requests for copies of regulations regarding listed species and inquiries about prohibitions and permits should be addressed to the U.S. Fish and Wildlife Service, Ecological Services Division, 1875 Century Boulevard, Atlanta, GA 30345 (phone 404-679-7313; fax 404-679-7081).

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure that our proposed rule is based on scientifically sound data, assumptions, and analyses. We will send copies of this proposed rule to these peer reviewers immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding our proposal to list the Altamaha spinymussel as endangered and our decision regarding critical habitat for this species. We will consider all comments and information received during the comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

Section 4(b)(5)(E) of the Act requires us to hold at least one public hearing on this proposal, if properly requested. Requests for public hearings must be made in writing within 45 days of the publication of this proposal in the **Federal Register** (see **DATES**). We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Persons needing reasonable accommodations to attend and participate in the public hearings should phone James Rickard at (706) 613-9493 as soon as possible. To allow sufficient time to process requests, please call no later than one week before the hearing date. Information regarding the proposal is available in alternative formats upon request.

Required Determinations

Regulatory Planning and Review — Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is not significant under Executive Order 12866 (E.O. 12866). OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

Small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; as well as small businesses. Small businesses include manufacturing and mining concerns

with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine whether potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

At this time, we lack the specific information necessary to provide an adequate factual basis for determining the potential incremental regulatory effects of the designation of critical habitat for the Altamaha spinymussel to either develop the required RFA finding or provide the necessary certification statement that the designation will not have a significant impact on a substantial number of small business entities. On the basis of the development of our proposal, we have identified certain sectors and activities that may potentially be affected by a designation of critical habitat for the Altamaha spinymussel. These sectors include industrial development and urbanization along with the accompanying infrastructure associated with such projects such as road, stormwater drainage, bridge and culvert construction and maintenance. We recognize that not all of these sectors may qualify as small business entities. However, while recognizing that these sectors and activities may be affected by this designation, we are collecting information and initiating our analysis to determine (1) which of these sectors or activities are or involve small business entities and (2) what extent the effects are related to the Altamaha spinymussel being listed as an endangered species under the Act (baseline effects) or whether the effects are attributable to the designation of critical habitat (incremental). We believe that the potential incremental effects resulting from a designation will be small. As a consequence, following an initial evaluation of the information available to us, we do not believe that there will be a significant impact on a substantial number of small business entities resulting from this designation of critical habitat for the Altamaha spinymussel. However, we will be conducting a thorough analysis to determine if this may in fact be the case. As such, we are requesting any specific economic information related to small business entities that may be affected by this designation and how the designation may impact their business. Therefore, we defer our RFA finding on this proposal designation until completion of the draft economic analysis prepared under section 4(b)(2) of the Act and E.O. 12866.

As discussed above, this draft economic analysis will provide the required factual basis for the RFA finding. Upon completion of the draft economic analysis, we will announce availability of the draft economic analysis of the proposed designation in the **Federal Register** and reopen the public comment period for the proposed designation. We will include with this announcement, as appropriate, an initial regulatory flexibility analysis or a certification that the rule will not have a significant economic impact on a substantial number of small entities accompanied by the factual basis for that determination. We conclude that deferring the RFA finding until completion of the draft economic analysis is necessary to meet the purposes and requirements of the RFA. Deferring the RFA finding in this manner will ensure that we make a sufficiently informed determination based on adequate economic information and provide the necessary opportunity for public comment.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute or regulation that would impose an enforceable duty upon State, local, tribal governments, or the private sector and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)-(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or tribal governments" with two exceptions. It excludes "a condition of Federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding," and the State, local, or tribal governments "lack authority" to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program."

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not jeopardize the continued existence of the species, or destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would listing these species or designating critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) We do not believe that this rule will significantly or uniquely affect small governments because the Altamaha spinymussel only occurs in navigable waters in which the river bottom is owned by the State of Georgia. However, the adjacent upland properties are owned by private entities, the State, or Federal partners (see Table 2). As such, a Small Government Agency Plan is not required. We will, however, further evaluate this issue as we conduct our economic analysis and revise this assessment if appropriate.

Takings

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of designating critical habitat for the Altamaha spinymussel in a takings implications assessment. The takings implications assessment concludes that this designation of critical habitat for the Altamaha spinymussel does not pose significant takings implications.

Federalism

In accordance with Executive Order 13132 (Federalism), the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of this proposed critical habitat designation with appropriate State resource agencies in Georgia. The critical habitat designation may have some benefit to this government in that the areas that contain the features essential to the conservation of the species are more clearly defined, and the PCEs of the habitat necessary to the conservation of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform

In accordance with E.O. 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are proposing designating critical habitat in accordance with the provisions of the Act. This proposed rule uses standard property descriptions and identifies the PCEs within the designated areas to assist the public in understanding the habitat needs of the Altamaha spinymussel.

Paperwork Reduction Act of 1995

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), need not be prepared in connection with regulations adopted under section 4(a)(1) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Also, it is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses as defined by NEPA in connection with designating critical habitat under section 4(a)(3) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt*, 48 F. 3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Government-to-Government Relationship with Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and the Department of Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act", we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes.

We have determined that there are no tribal lands occupied at the time of listing that contain the features essential for the conservation, and no tribal lands that are unoccupied areas that are essential for the conservation, of the Altamaha spinymussel. Therefore, we have not proposed designation of critical habitat for the Altamaha spinymussel on Tribal lands.

Energy Supply, Distribution, or Use

On May 18, 2001, the President issued an Executive Order (E.O. 13211; Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. We do not expect this rule to significantly affect energy supplies, distribution, or use. Although two of the proposed units are below hydropower reservoirs, current and proposed operating regimes have been deemed adequate for the species, and therefore their operations will not be affected by the proposed designation of critical habitat. All other proposed units are remote from energy supply, distribution, or use activities. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment as warranted.

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you

should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Field Supervisor, Georgia Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Author(s)

The primary author of this package is staff of the Georgia Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1.The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding "Spinymussel, Altamaha" in alphabetical order under CLAMS to the List of Endangered and Threatened Wildlife, to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*		*	*	*
CLAMS							
*	*	*	*		*	*	*
Spinymussel, Altamaha	*Elliptio spinosa*	U.S.A. (GA)	NA	E		17.95(f)	NA
*	*	*	*		*	*	*

3. Amend § 17.95(f) by adding an entry for "Altamaha spinymussel (*Elliptio spinosa*)" in the same order that the species appears in the table at § 17.11(h), to read as set forth below:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(f) *Clams and Snails.*

* * * * *

Altamaha spinymussel (*Elliptio spinosa*)

(1) Critical habitat units are depicted for Appling, Ben Hill, Coffee, Jeff Davis, Long, Montgomery, Tattnall, Telfair, Toombs, Wayne and Wheeler Counties, Georgia, on the maps below.

(2) The primary constituent elements (PCEs) of critical habitat for the Altamaha spinymussel are the habitat components that provide:

(i) Geomorphically stable river channels and banks (channels that maintain lateral dimensions, longitudinal profiles, and sinuosity patterns over time without an aggrading or degrading bed elevation) with stable sandbar, slough, and mid-channel island habitats of course to fine sand substrates with low to moderate amounts of fine sediment and attached filamentous algae.

(ii) A hydrologic flow regime (the magnitude, frequency, duration, and seasonality of discharge over time) necessary to maintain benthic habitats where the species are found. To maintain connectivity of rivers with the floodplain, allowing the exchange of nutrients and sediment for sand bar maintenance, food availability, and spawning habitat for native fishes.

(iii) Water quality necessary for normal behavior, growth, and viability of all life stages, including specifically temperature (less than 32.6°C (90.68 °F) with less than 2°C (3.6 °F) daily fluctuation)), pH (6.1 to 7.7), oxygen content (daily average DO concentration of 5.0 mg/l and a minimum of 4.0 mg/l), Ammonia: 1.5 mg N/L, 0.22 mg N/L (normalized to pH 8 and 25°C (77°F)) and other chemical characteristics.

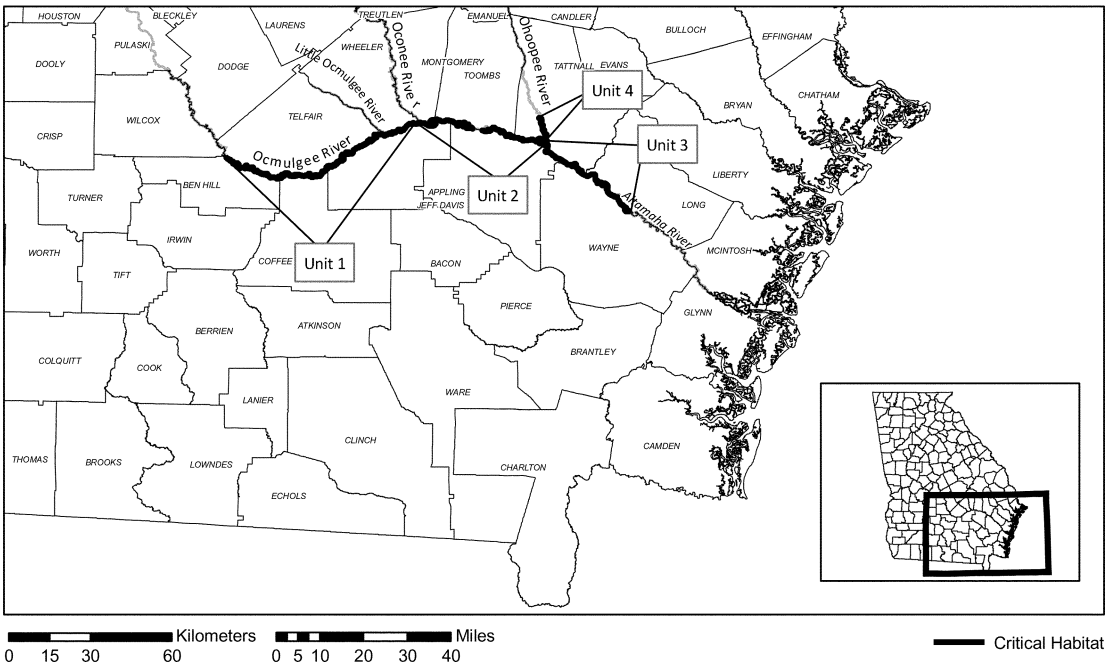
(iv) The presence of fish hosts (currently unknown) necessary for recruitment of the Altamaha spinymussel. The continued occurrence of diverse native fish assemblages currently occurring in the basin will serve as an indication of host fish presence until appropriate host fishes can be identified for the Altamaha spinymussel.

(3) Critical habitat does not include manmade structures existing on the effective date of this rule and not containing one or more of the PCEs, such as buildings, bridges, aqueducts, airports, and roads, and the land on which such structures are located.

(4) *Critical habitat unit maps.* Maps were developed from USGS 7.5 minute quadrangles, and critical habitat unit upstream and downstream limits were then identified by longitude and latitude using decimal degrees.

(5) *Note*: Index map of critical habitat units for the Altamaha spinymussel follows:

Altamaha Spinymussel (*Elliptio spinosa*) Critical Habitat in Georgia

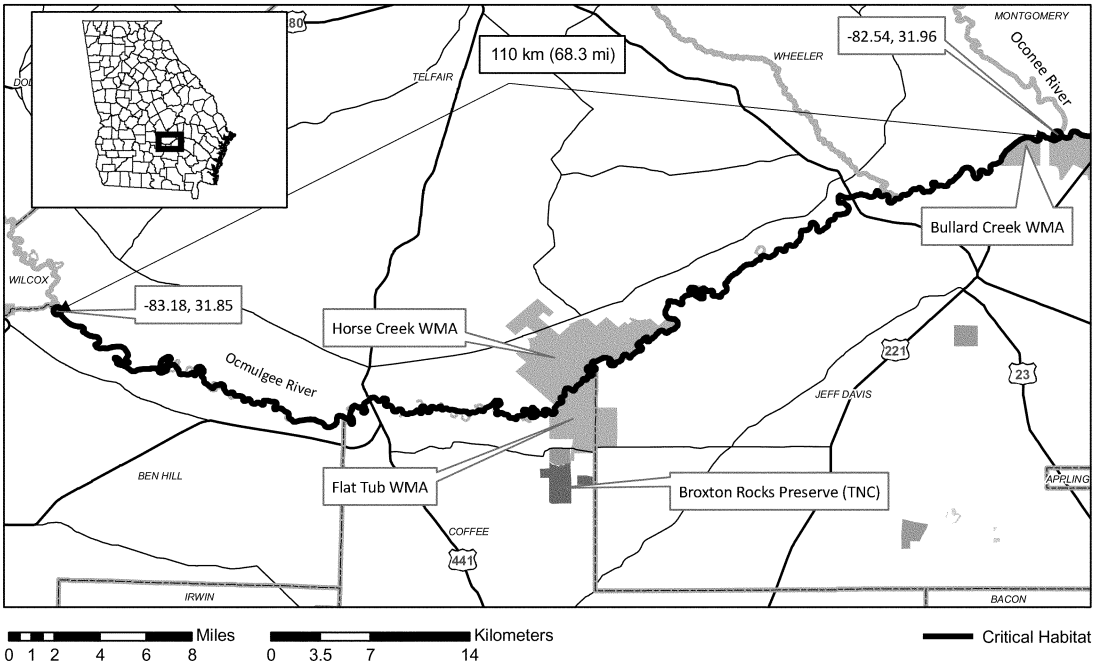


(6) Unit 1: Ocmulgee River, Ben Hill, Telfair, Coffee, and Jeff Davis Counties, Georgia.

(i) Unit 1 includes the channel of the Ocmulgee River from the confluence of House Creek with the Ocmulgee at Red Bluff Landing (longitude -83.18, latitude 31.85), Ben Hill and Telfair Counties, Georgia, downstream to Altamaha River (longitude -82.54, latitude 31.96), at the confluence of the Oconee and Ocmulgee Rivers, Jeff Davis and Telfair Counties, Georgia.

(ii) *Note*: Map of Unit 1 (Ocmulgee River) follows:

Unit 1 of Altamaha Spinymussel (*Elliptio spinosa*) Critical Habitat in Georgia



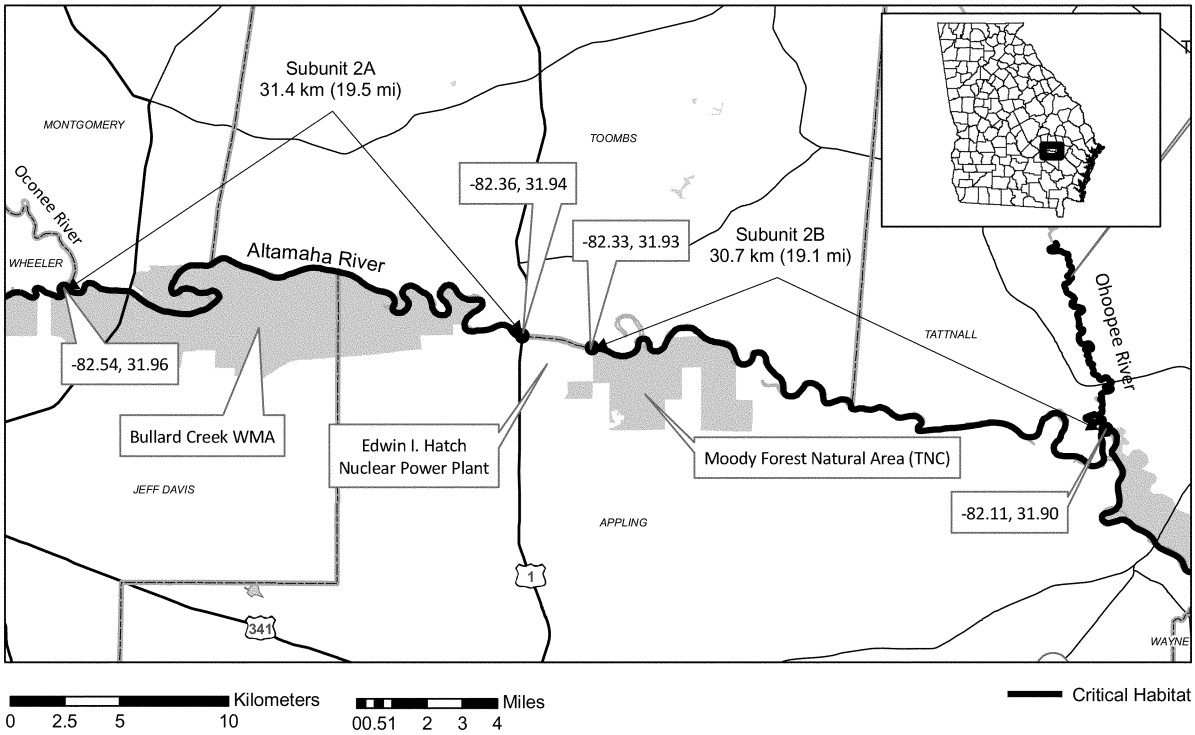
(7) Unit 2: Upper Altamaha River, Wheeler, Toombs, Montgomery, Jeff Davis, Appling, and Tattnall Counties, Georgia.

(i) Unit 2 includes the channel of the Altamaha River from the confluence of the Ocmulgee and Oconee Rivers (longitude -82.54, latitude 31.96), Wheeler and Jeff Davis Counties, Georgia, downstream to the US 1 crossing (longitude -82.36, latitude 31.94), and from the western edged or Moody Forest (longitude -82.33, latitude 31.93) downstream to the confluence of

the Altamaha and Ohoopee Rivers (longitude -82.11, latitude 31.90), Appling and Tattnall Counties, Georgia.

(ii) *Note*: Map of Unit 2 (Upper Altamaha River) follows:

Unit 2 of Altamaha Spinymussel (*Elliptio spinosa*) Critical Habitat in Georgia

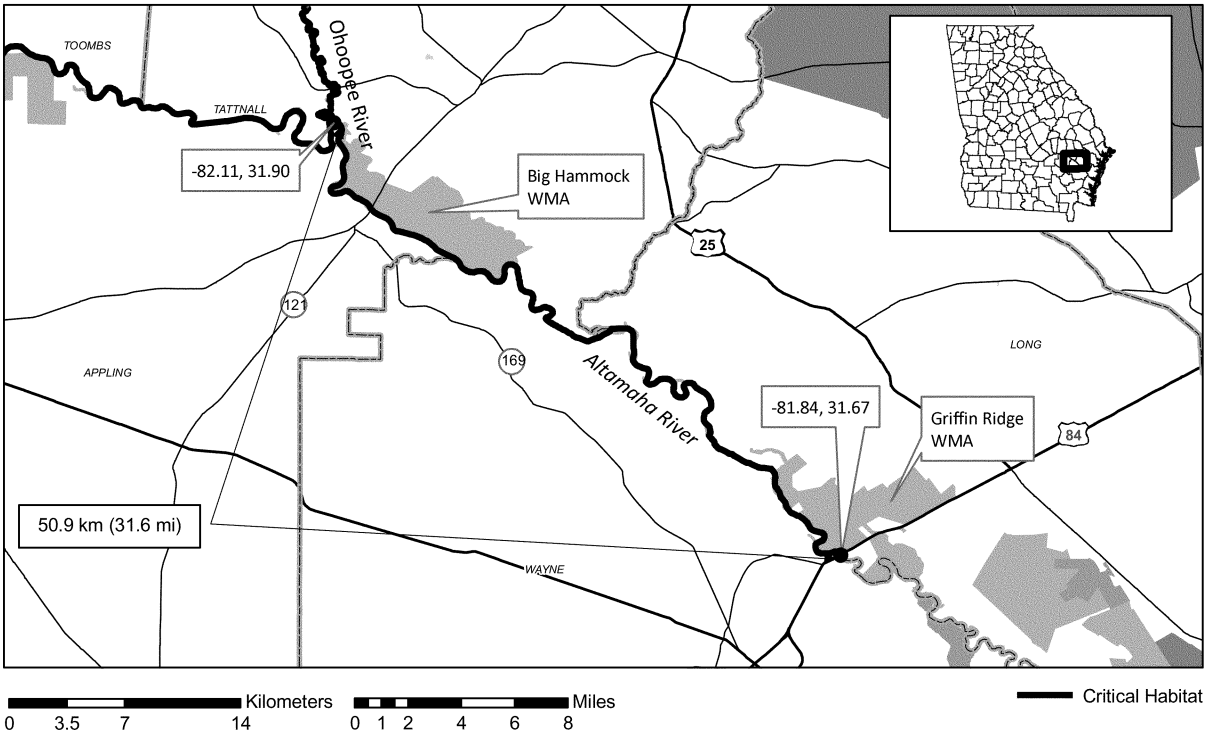


(8) Unit 3: Middle Altamaha River, Tattnall, Appling, Wayne, and Long Counties, Georgia.

(i) Unit 3 includes the channel of Altamaha River, extending from the confluence with the Ohoopee (longitude -82.11, latitude 31.90), Tattnall and Appling Counties, Georgia, downstream to U.S. Route 301 (longitude -81.84, latitude 31.67), Wayne and Long Counties, Georgia.

(ii) *Note*: Map of Unit 3 (Middle Altamaha River) follows:

Unit 3 of Altamaha Spinymussel (*Elliptio spinosa*) Critical Habitat in Georgia

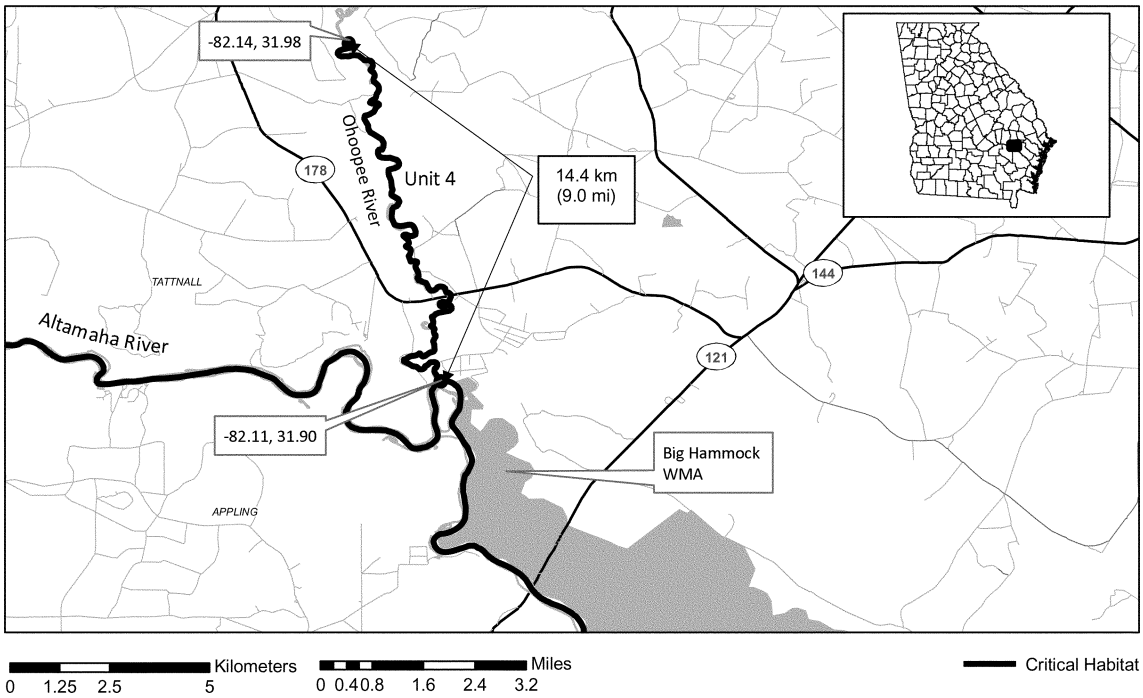


(9) Unit 4: Lower Ohoopee River, Tattnall County, Georgia.

(i) Unit 4 includes the channel of the Ohoopee River, starting 2.2 km (1.3 mi) upstream of Tattnall County Road 191 (longitude -82.14, latitude 31.98), Tattnall County, Georgia, downstream to the confluence of the Ohoopee River with the Altamaha River (longitude -82.11, latitude 31.90), Tattnall County, Georgia.

(ii)*Note*: Map of Unit 4 (Lower Ohoopee River) follows:

Unit 4 of Altamaha Spinymussel (*Elliptio spinosa*) Critical Habitat in Georgia



* * * * *

Dated: August 12, 2010.

Jane Lyder,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2010–25026 Filed 10–5–10; 8:45 am]

BILLING CODE 4310–55–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 100924467–0467–02]

RIN 0648–XZ26

Endangered and Threatened Wildlife and Designating Critical Habitat for the Endangered North Atlantic Right Whale

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

ACTION: Notice of 90-day petition finding, and notice of 12-month determination.

SUMMARY: We, the National Marine Fisheries Service (NMFS), announce our 90-day finding and 12-month determination on how to proceed with a petition to revise critical habitat for the North Atlantic right whale (*Eubalaena glacialis*) pursuant to the Endangered Species Act of 1973, as amended (ESA). The petition seeks to revise the existing critical habitat designation by expanding the areas designated as critical feeding and calving habitat areas for the North Atlantic right whale. Additionally, the petition seeks to include a migratory corridor as part of the critical habitat designation for the North Atlantic right whale. Our 90-day finding is that the petition, in conjunction with the information readily available in our files, presents substantial scientific information indicating that the requested revision may be warranted. Our 12-month determination on how to proceed with the petition is that we intend to continue our ongoing rulemaking process with the expectation that a proposed critical habitat rule for the North Atlantic right whale will be submitted to the **Federal Register** for publication in the second half of 2011.

DATES: The finding announced in this document was made on October 6, 2010.

ADDRESSES: This finding is available on the Internet at *http://www.nero.noaa.gov/nero/regs/com.html.* Supporting documentation used to prepare this finding is available for public inspection by appointment during normal business hours at the NMFS Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930, by telephone at 978–281–9328; or by facsimile at 978–281–9394.

FOR FURTHER INFORMATION CONTACT: Mary Colligan, Assistant Regional Administrator for Protected Resources, NMFS, Northeast Regional Office; by mail (*see* **ADDRESSES**): by telephone at 978–281–9328; or facsimile at 978–281–9394; or Marta Nammack, NMFS, HQ, at 301–713–1401.

SUPPLEMENTARY INFORMATION: On October 1, 2009, we received a petition from the Center for Biological Diversity (CBD), Defenders of Wildlife, Humane Society of the United States, Ocean Conservancy, and the Whale and Dolphin Conservation Society (the Petitioners) to revise the designated critical habitat of the North Atlantic right whale (CBD *et al.*, 2009). On October 27, 2009, we sent a letter to the petitioners acknowledging receipt of the petition.

Background

Critical habitat is defined under section 3(5)(A) of the ESA as: "(i)The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (III) specific areas outside the geographical areas occupied by the species at the time it is listed, upon a determination that such areas are essential to the conservation of the species."

Section 4(b)(2) of the ESA requires us to designate and make revisions to critical habitat for listed species on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary may exclude any particular area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines that the failure to designate such areas as critical habitat will result in the extinction of the species concerned. The ESA provides that NMFS may revise critical habitat from time-to-time as appropriate (section 4(a)(3)(A)(ii)).

Section 4(b)(3)(D)(i) of the ESA requires that, to the maximum extent practicable, within 90 days after receiving a petition to revise critical habitat, the Secretary make a finding as to whether a petition presents substantial scientific information indicating that the revision may be warranted. Our implementing regulations (50 CFR 424.14) define "substantial information" as the "amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted." Our regulations provide further that, in making a 90-day finding on a petition to revise critical habitat, we shall consider whether a petition includes substantial information indicating that: (i) Areas contain physical and biological features essential to, and that may require special management to provide for the conservation of the species; or (ii) areas designated as critical habitat do not contain resources essential to, or do not require special management to provide for, the conservation of the species. In determining whether substantial information exists, we take into account several factors, including information submitted with, and referenced in, the petition and all other information readily available in our files. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If we find that a petition presents substantial information indicating that the revision may be warranted, within 12 months after receiving the petition, we are required to determine how we intend to proceed with the requested revision and promptly publish notice of such intention in the **Federal Register**. The statute says nothing more about options or considerations regarding the Secretary's 12-month determination, nor does it prescribe any procedures or timelines for acting on petitions beyond the 12-month finding. *See* ESA Section 4(b)(3)(D)(ii).

Listing and Designated Critical Habitat History

In 1970, right whales, *Eubalaena* spp. were listed as endangered (35 FR 18319; December 2, 1970). We consider this listing to have included two species of right whales, the northern right whale (*Eubalaena glacialis*) and the southern right whale (*Eubalaena australis*) (71 FR at 77706; December 27, 2006). Until the listing was changed in 2008, we considered the northern right whale species (*Eubalaena glacialis*) to consist of two populations—one occurring in the North Atlantic Ocean and the other in the North Pacific Ocean. In 1994, we

designated critical habitat for the northern right whale in the North Atlantic Ocean (59 FR 28805; June 3, 1994). This critical habitat designation includes portions of Cape Cod Bay and Stellwagen Bank, the Great South Channel (each off the coast of Massachusetts), and waters adjacent to the coasts of Georgia and the east coast of Florida. These areas were determined to provide critical feeding, nursery, and calving habitat for the North Atlantic population of northern right whales.

In 2006, we published a comprehensive status review report for the northern right whale, which concluded recent genetic data provided unequivocal support to distinguish three right whale lineages as separate phylogenetic species (Rosenbaum *et al.,* 2000): (1) The North Atlantic right whale (*Eubalaena glacialis*) ranging in the North Atlantic Ocean; (2) the North Pacific right whale (*Eubalaena japonica*) ranging in the North Pacific Ocean; and (3) the southern right whale (*Eubalaena australis*), historically ranging throughout the oceans of the southern hemisphere. Based on these findings, we published proposed and final determinations listing right whales in the North Atlantic and North Pacific as separate endangered species under the ESA (71 FR 77704, December 27, 2006; 73 FR 12024, March 6, 2008). As stated previously, these individual species were previously encompassed in the broader listing of northern right whales, and the 1994 designation of critical habitat for the northern right whale analyzed and included only areas in the North Atlantic Ocean. The population analyzed in the critical habitat designation was right whales in the North Atlantic Ocean. Since the biological basis and analysis for the 1994 critical habitat designation was based on the North Atlantic population of right whales, we believe that analysis and designation applies to the North Atlantic right whales as they were subsequently listed as a separate species in 2008. We, therefore, consider the 1994 designation legally valid and applicable until it is revised when the ongoing analysis is completed through rulemaking.

Analysis of Petition and 90-Day Finding

As discussed above, petitioners seek to include expanded areas off the coast of New England and the Southeast United States, as well as new areas within the mid-Atlantic region, as critical habitat for the North Atlantic right whale. The petition contains information on the natural history, status, and threats to the North Atlantic right whale.

To support the requested revision, the petition provides summaries of several analyses conducted by NMFS as well as additional published and unpublished sighting survey data. The first is a 2008 evaluation of foraging habitat and of potential overwintering habitat in the Gulf of Maine (Pace and Merrick, 2008). The second is a 2007 NOAA Technical Memorandum detailing the results of a habitat model that evaluated the correlation between selected habitat features and right whale sightings in the southeastern U.S. (Garrison, 2007). The petition also discusses the NMFS summary of sightings data from 1972 to 2000 provided in the 2008 ship speed rule (73 FR 60173; October 10, 2008) and Environmental Impact Statement for that rule (2008). The petition also provides information from two separate analyses of North Atlantic right whale sightings data and migration (Firestone *et al.,* 2008; Schick *et al.,* 2009) to support the request for revising designated critical habitat to include a migratory corridor.

Based on the above information and information readily available in our files related to an ongoing rulemaking effort for critical habitat for the North Atlantic right whale, and pursuant to criteria specified in 50 CFR 424.14(c), we find the petition presents substantial scientific information indicating that the requested revision may be warranted.

12-Month Determination

As indicated above, the ESA provides us with broad discretion respecting revision of designated critical habitat, allowing us to determine when revision is appropriate, and affording us wide latitude to determine how to respond to a petition to revise critical habitat designations. In this instance, we received the petition while conducting an ongoing analysis and evaluation of new information available since the 1994 designation that indicates the designation should be revised. We are in the process of evaluating the nature and extent of physical or biological features that may be considered essential to the conservation of the North Atlantic right whale, and which may require special management consideration or protections, and identifying specific areas on which such features are found. We have also begun preparing the impacts analysis required under 4(b)(2) of the ESA, which will take into consideration the economic impact, impact on national security, and any other relevant impacts of designating any particular area as critical habitat. Our analysis will include an evaluation of the information provided in the petition. Therefore, it is our intention to proceed with the petition by completing our ongoing rulemaking. Based on an updated assessment of the time required for completing the rulemaking, we expect to submit a proposed rule to the **Federal Register** in the second half of 2011.

Petition 12-Month Determination

Based on the information above, pursuant to the provisions of the ESA respecting revision of critical habitat and petitions for revision, we have determined it is timely and appropriate to revise the 1994 designation of critical habitat for northern right whales by continuing our ongoing rulemaking process for designating critical habitat for the North Atlantic right whale. When we complete our analysis, we will publish a proposed rule and will solicit public comments. Those comments will be considered in preparing a final determination. Until we are able to revise the critical habitat designation for the North Atlantic right whale, the currently designated critical habitat, as well as those areas that support North Atlantic right whales but are outside of the current critical habitat designation, will continue to be subject to conservation actions implemented under section 7(a)(1) of the ESA. Federal agency actions are subject to the regulatory protections afforded by section 7(a)(2), which requires Federal agencies to ensure that actions they fund, authorize, or carry out are not likely to jeopardize the continued existence of any listed species or result in destruction or adverse modification of critical habitat.

References Cited

A complete list of all references is available upon request from the Protected Resources Division of the NMFS Northeast Regional Office (*see* **ADDRESSES**).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: October 1, 2010.

Eric C. Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–25214 Filed 10–5–10; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 75, No. 193

Wednesday, October 6, 2010

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Notice of the National Agricultural Research, Extension, Education, and Economics Advisory Board Meeting

AGENCY: Research, Education, and Economics, USDA.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App 2, the United States Department of Agriculture (USDA) announces a meeting of the National Agricultural Research, Extension, Education, and Economics Advisory Board.

DATES: The National Agricultural Research, Extension, Education, and Economics Advisory Board will meet October 27–29, 2010. The public may file written comments before or up to two weeks after the meeting with the contact person.

ADDRESSES: The meeting will take place at the Hotel Palomar, 2121 P Street, NW., Washington, DC 20037. Written comments from the public may be sent to the Contact Person identified in this notice at: The National Agricultural Research, Extension, Education, and Economics Advisory Board Office, Room 3901 South Building, United States Department of Agriculture, STOP 0321, 1400 Independence Avenue, SW., Washington, DC 20250–0321.

FOR FURTHER INFORMATION CONTACT: J. Robert Burk, Executive Director or Shirley Morgan-Jordan, Program Support Coordinator, National Agricultural Research, Extension, Education, and Economics Advisory Board; telephone: (202) 720–3684; fax: (202) 720–6199; or e-mail: *Robert.Burk@ars.usda.gov* or *Shirley.Morgan@ars.usda.gov.*

SUPPLEMENTARY INFORMATION: The Honorable Secretary of Agriculture Tom Vilsack, and the Under Secretary of Research, Education, and Economics have been invited to provide brief remarks and welcome the new Board members during the meeting.

On Wednesday, October 27, 2010, an orientation session for new members and interested incumbent members will be held from 9 a.m.–12 p.m. (noon). The full Advisory Board will convene at 12 p.m. (noon) with introductory remarks by the Chair of the Advisory Board. The afternoon session will include: Brief introductions of new Board members, incumbents, and guests; comments from a variety of distinguished leaders, experts, and departmental personnel; items of board business; and will conclude with comments from the public. Specific items on the afternoon session will include the return on investment in USDA and partnering institution's research, extension, education, and economic programs and their impact on the productivity of agriculture. The meeting will adjourn by 5 p.m.

On Thursday, October 28, 2010, the Board will reconvene at 8:30 a.m. Presentations and discussions throughout the day will include congressional staff and agency administrators, and will focus on the evaluation of the trajectory and focus of funding for the Research, Education, and Economics mission area. Agency leaders will provide information for the Board to consider while developing recommendations regarding future funding directions. The meeting will adjourn by 5 p.m.

On Friday, October 29, 2010, the Board plans to reconvene at 8:30 a.m. to discuss initial recommendations resulting from the meeting and future planning for the Board, and to finalize Board business for the meeting. Opportunity for public comment will be offered each day of the meeting. The Board Meeting will adjourn by 12 p.m. (noon) on Friday, October 29, 2010.

Written comments by attendees or other interested stakeholders will be welcomed for the public record before and up to two weeks following the Board meeting (by close of business Friday, November 12, 2010). All statements will become a part of the official record of the National Agricultural Research, Extension, Education, and Economics Advisory Board and will be kept on file for public review in the Research, Extension, Education, and Economics Advisory Board Office.

Done at Washington, DC, September 29, 2010.

Ann Bartuska,

Acting Under Secretary, Research, Education, and Economics.

[FR Doc. 2010–25064 Filed 10–5–10; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS FV–10–0076; FV10–983–2NC]

Notice of Request for Extension and Revision of a Currently Approved Information Collection for Pistachios

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision to the forms currently used to collect information under Federal Marketing Order No. 983, for pistachios grown in California, Arizona, and New Mexico. This notice also announces AMS' intention to merge two form packages into one.

DATES: Comments on this notice must be received by December 6, 2010.

Additional Information: Contact Lillie Zeng, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; (202) 690–3870, Fax: (202) 720–8938, or e-mail: *Weiya.Zeng@ams.usda.gov.* Small businesses may request information on this notice by contacting Antoinette Carter, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; telephone (202) 690–3919, Fax: (202) 720–8938, or e-mail: *Antoinette.Carter@ams.usda.gov.*

Comments: Comments should reference the document number and the date and page number of this issue of the **Federal Register**, and be mailed to the Docket Clerk, Fruit and Vegetable

Programs, AMS, USDA, 1400 Independence Avenue, SW., Room 1406–S, Washington, DC 20250–0237; Fax: (202) 720–8938; or submitted through the Internet at *http://www.regulations.gov.* Comments should reference OMB No. 0581–0215 and the Marketing Order for Pistachios Grown in California, Arizona and New Mexico, M.O. No. 983, and the date and page number of this issue of the **Federal Register**. All comments received will be available for public inspection in the Office of the Docket Clerk during regular USDA business hours at 1400 Independence Ave., SW., Washington, DC, Room 1406–S.

SUPPLEMENTARY INFORMATION:

Title: Pistachios Grown in California, Arizona and New Mexico, Marketing Order No. 983.

OMB Number: 0581–0215.

Expiration Date of Approval: April 30, 2011.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: Under the Agricultural Marketing Agreement Act of 1937 (AMAA), as amended (7 U.S.C. 601–674), fresh fruits, vegetables and specialty crop industries can enter into marketing order programs which provide an opportunity for producers, in a specified production area, to work together to solve marketing problems and ensure adequate supplies of high quality product and returns to producers. The Secretary of Agriculture is authorized to oversee the order operations and issue regulations recommended by a committee of representatives from each commodity industry.

The pistachio marketing order regulates the handling of pistachios grown in California, Arizona and New Mexico, hereinafter referred to as the order, (7 CFR part 983). The order authorizes grade and size requirements, as well as a requirement for aflatoxin testing on domestic shipments only.

The order authorizes the Administrative Committee for Pistachios (Committee) to locally administer the order, and require handlers and producers to submit certain information in order to effectively implement the requirements of the order, and fulfill the intent of the AMAA, as expressed in order, as well as assist the industry in carrying out marketing decisions. Only authorized employees of the Committee, and authorized representatives of the USDA, including AMS, Fruit and Vegetable Programs' regional and headquarter's staff have access to information provided on the forms.

Requesting public comments on the forms described below is part of the process to obtain approval through the Office of Management and Budget (OMB). Forms needing OMB approval are contained in OMB No. 0581–0215 and include forms for committee nominations and ballots for producers (FV–245 and FV–246) and handlers (FV–245A and FV–244), as well as background statements for those nominated who agree to serve on the Committee (FV–243). In addition, all producers and/or handlers in the regulated area are required to sign a marketing order agreement (FV–242), and referendums on amendments to (FV–240A), and continuation of (FV–240), the order. There are also forms to report on receipts/assessments (ACP–1), minimal testing for aflatoxins (ACP–5), inter-handler transfer (ACP–6), inventory shipments (ACP–7), producer delivery (ACP–8), exemptions for handlers (ACP–4), and failed lot notifications (ACP–2) and dispositions (ACP–3).

AMS intends to merge OMB packets No. 0581–0215, "Pistachios Grown in California," and No. 0581–0256, "Pistachios Grown in CA (Recommended Decision AZ and NM)". By doing so, OMB packet No. 0581–0215 forms will also cover the New Mexico and Arizona regions of the marketing order.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 17 minutes per response.

Respondents: Pistachio producers, handlers and testing laboratories.

Estimated Number of Respondents: 821.

Estimated Number of Responses per Respondent: 893.2.

Estimated Total Annual Burden on Respondents: 206.90 hours.

Comments: Comments are invited on: (1) Whether the proposed collection of the information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the 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 through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

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.

Dated: September 30, 2010.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2010–25065 Filed 10–5–10; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Coconino Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Coconino Resource Advisory Committee will meet in Flagstaff, Arizona. The purpose of the meeting is to receive training on Resource Advisory Committees and National Environmental Policy Act, Travel Reimbursement procedures, establish proposal meeting dates, and proposal outreach. No proposals will be heard at this meeting.

DATES: The meeting will be held October 28, 2010, beginning at 1 p.m. to approximately 4 p.m.

ADDRESSES: The meeting will be held in the Ponderosa Room of the Coconino County Health Department, 2625 N. King St., Flagstaff, Arizona 86004. Send written comments to Brady Smith, RAC Coordinator, Coconino Resource Advisory Committee, c/o Forest Service, USDA, 1824 S. Thompson St., Flagstaff, Arizona 86001 or electronically to *bradysmith@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Brady Smith, Coconino National Forest, (928) 527–3490.

SUPPLEMENTARY INFORMATION: Agenda items for this meeting include discussion about (1) Training about Resource Advisory Committees; (2) Training about National Environmental Policy Act; (3) Travel Reimbursement procedures; (4) Options for project proposal outreach. The meeting is open to the public.

Dated: September 30, 2010.

M. Earl Stewart,

Forest Supervisor, Coconino National Forest.

[FR Doc. 2010–25219 Filed 10–5–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–FV–10–0069; FV10–900–1NC]

Notice of Request for Extension of the Organic Assessment Exemption

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for the forms currently used by marketers to apply for exemption from market promotion assessments under 26 marketing order programs.

DATES: Comments on this notice must be received by December 6, 2010.

Additional Information: Contact Sasha Nel, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Room 1406–S, Washington, DC 20250–0237; *Tel:* (202) 205–2829, *E-mail: sasha.nel@ams.usda.gov.*

Small businesses may request information on this notice by contacting Antoinette Carter, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Room 1406–S, Washington, DC 20250–0237; *Tel:* (202) 690–3919; or *E-mail: antoinette.carter@ams.usda.gov.*

Comments: Comments are welcome and should reference the docket number and the date and page number of this issue of the **Federal Register**, as well as the appropriate Marketing Order number. Comments may be submitted by mail to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Room 1406–S, Washington, DC 20250–0237, or online at *http://www.regulations.gov.* All comments received will be available for public inspection in the Office of the Docket Clerk during regular USDA business hours, or they can be viewed at *http://www.regulations.gov.*

All comments to this notice will be summarized and included in the request for OMB approval, and will become a matter of public record.

SUPPLEMENTARY INFORMATION:

Title: Organic Handler Market Promotion Assessment Exemption under 26 Federal Marketing Orders.

OMB Number: 0581–0216.

Expiration Date of Approval: February 21, 2011.

Type of Request: Extension of a currently-approved information collection.

Abstract: Marketing Order (Order) programs provide an opportunity for producers of fresh fruit, vegetables, and specialty crops in specified production areas to work together to solve marketing problems that cannot be solved individually.

Under the Agricultural Marketing Agreement Act of 1937 as amended (7 U.S.C. 601–674), Orders may authorize production and marketing research, including paid advertising, to promote various commodities, which is paid for by assessments that are levied on the handlers who are regulated by the Orders.

On May 13, 2002, the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7201) was amended by the Farm Security and Rural Investment Act (7 U.S.C. 7901), exempting any person who handles or markets solely 100 percent organic products from paying these assessments with respect to any agricultural commodity that is produced on a certified organic farm, as defined in the Organic Foods Production Act of 1990 (7 U.S.C. 6502). A certified organic handler can apply for this exemption by completing a "Certified Organic Handler Application for Exemption from Market Promotion Assessments Paid Under Federal Marketing Orders," and submitting it to the applicable Marketing Order Committee or Board.

Section 900.700 of the regulations (7 CFR part 900.700) provides for exemption from assessments. This notice applies to the following Marketing Order programs: 7 CFR parts 906, Oranges and grapefruit grown in Lower Rio Grande Valley in Texas; 915, Avocados grown in south Florida; 916, Nectarines grown in California; 917, Fresh pears and peaches grown in California; 922, Apricots grown in designated counties in Washington; 923, Sweet cherries grown in designated counties in Washington; 924, Fresh prunes grown in designated counties in Washington and in Umatilla County, Oregon; 925, Grapes grown in a designated area of southeastern California; 927, Pears grown in Oregon and Washington; 929, Cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in New York; 930, Tart cherries grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin; 932, Olives grown in California; 947, Irish potatoes grown in Modoc and Siskiyou Counties, California and in all counties in Oregon, except Malheur County; 948, Irish potatoes grown in Colorado; 955, Vidalia onions grown in Georgia; 956, Sweet onions grown in the Walla Walla Valley of southeast Washington and northeast Oregon; 958, Onions grown in certain designated counties in Idaho, and Malheur County, Oregon; 959, Onions grown in South Texas; 966, Tomatoes grown in Florida; 981, Almonds grown in California; 982, Hazelnuts grown in Oregon and Washington; 984, Walnuts grown in California; 985, Marketing order regulating the handling of spearmint oil produced in Washington, Idaho, Oregon, and parts of Nevada and Utah; 987, Domestic dates produced or packed in Riverside County, California; 989, Raisins produced from grapes grown in California; and 993, Dried prunes produced in California.

The information collected is used only by authorized Marketing Order Committee or Board employees, who are the primary users of the information, and by authorized representatives of the USDA, including the AMS Fruit and Vegetable Programs' regional and headquarters staff, who are the secondary users of the information.

Estimate of Burden: The public reporting burden for this collection of information is estimated to average 30 minutes per response.

Respondents: Respondents are eligible certified organic handlers.

Estimated Number of Respondents: 65.

Estimated Number of Total Annual Responses: 65.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 33 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (2) the accuracy of the 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 through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: September 30, 2010.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2010–25063 Filed 10–5–10; 8:45 am]

BILLING CODE 3410–02–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

Board for International Food and Agricultural Development; One Hundred and Sixtieth Meeting; Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of the one hundred and sixtieth meeting of the Board for International Food and Agricultural Development (BIFAD). The meeting will be held from 8:15 a.m. to 4 p.m. on October 12, 2010 at the Des Moines Marriott Downtown located at 700 Grand Avenue, Des Moines, Iowa. The meeting venue is in the Marriott Hotel's Iowa Ballroom, Salons A, B, and C located on the second floor. "Higher Education: A Critical Partner in Global Food Security" will be the central theme of the October meeting.

Dr. Robert Easter, Chairman of BIFAD, will preside over the proceedings. Dr. Easter is Interim Chancellor and Provost, University of Illinois at Urbana-Champaign.

On May 20 of this year, the Administration officially rolled out its global food security strategy, known as "Feed the Future." This new initiative has generated considerable anticipation within the higher education community, especially since one of the Agency's main program pillars will be expansion of research and development to increase agricultural productivity globally. As part of the plan to increase agricultural research, USAID and USDA have developed the Borlaug Initiative. Concurrently, USAID is undertaking a Science and Technology Initiative to improve dramatically its scientific capacity to carry out Feed the Future and other critical global development challenges that increasingly necessitate scientific analysis. The 160th BIFAD meeting will review these efforts and provide a forum to advance the dialogue between the Title XII community and their Federal partners.

To set the stage for the day's activities, the Board will begin with a presentation by Dr. Allen C. Christensen, past Board member and Director of the Benson Agricultural and Food Institute at Brigham Young University. Dr Christensen will provide a historical perspective on important contributions Title XII and universities have made over the years, particularly during the last global food crisis 25–30 years ago, toward improving the plight of the small, rural farmer in developing countries. The lessons learned over the years can have an important impact for moving forward with a new global food security policy paradigm.

With Dr. Christensen's presentation as the backdrop, the Board will then move forward to sign a Memorandum of Understanding that outlines strategic areas of cooperation on science and technology in development over the coming months. Signing on behalf of USAID will be Dr. Alex Dehgan, the Agency's Chief Scientist and Director of the Agency's new Office of Science and Technology. Signing for BIFAD will be Chairman Robert Easter. Dr. Dehgan will make remarks regarding USAID's strategic priority on "Transforming Development through Science, Technology and Innovation (STI)."

After the signing ceremony, the Board will then proceed to its main theme of the meeting, highlighting the potential role of universities in the Administration's Feed the Future Initiative and USAID's renewed STI focus. This session will last two hours and provide an opportunity for the Title XII community to learn more about the Administration's global food security strategy while demonstrating the value added of greater university engagement. A panel of USAID and USDA speakers will discuss an array of plans and ideas under development for addressing global agricultural problems. A panel focusing on the role of research and representing the Title XII community will follow. It is expected that a Director of a Managing Entity of a Collaborative Research Support Program (CRSP) will participate on the panel and explain how the CRSP model can help achieve research goals of Feed the Future. Another panel member will discuss how the Africa-U.S. Higher Education Initiative can build agricultural capacity in Sub-Saharan African universities for sustainable agricultural development. One or two Deans of Land-Grant universities will round out the panel. Their message will highlight how universities have responded to change and have been in the vanguard of new approaches, processes, technologies, etc., in the functional areas of teaching, research, and extension for addressing global problems.

The Board will then move into the public comment period. At the conclusion of comments from the public, the Board will recess for an executive luncheon (closed to the public).

When the Board re-convenes, it will hear a panel discussion on the recent workshop conducted by the Minority Serving Institutions Task Force, established by BIFAD last year to rejuvenate the partnership between USAID and Minority Serving Institutions. The panel will be moderated by Board member William DeLauder, who chairs the Task Force.

The Board will then hear a report on the activities of the Haiti Task Force, which the Board established in 2010 in response to the tragic earthquake in Haiti. The Task Force is chaired by Board member Elsa Murano, who will present a proposal for the long-term rebuilding of Haiti's agricultural system.

After the Haiti Task Force presentation, BIFAD will hear two short reports summarizing efforts to build agricultural higher education capacity in Iraq, Afghanistan and Pakistan. Title XII institutions continue to play an important role in helping the civilian populations of these countries improve agricultural productivity amidst past and ongoing hostilities.

The Board will wrap up its day's proceedings with an update on the Title XII report to Congress for FY 2009. The presentation will be made by John Becker, USAID/ODP. The Title XII annual report to Congress is required by Title XII of the Foreign Assistance Act, and provides an opportunity for BIFAD's views to be incorporated in the report.

After the presentations are concluded for the day, but before adjournment, the Board will provide another opportunity for public comment.

The Board meeting is open to the public. The Board welcomes open dialogue to promote greater focus on critical issues facing USAID, the role of universities in development, and applications of U.S. scientific, technical and institutional capabilities to international agriculture. Note on Public Comments: Due to time constraints public comments to the Board will be limited to three (3) minutes to accommodate as many as possible. It is preferred to have requests for comments submitted to the Board in writing. Two periods for public comment will be provided during the Board meeting—just before lunch and adjournment.

Those wishing to attend the meeting or obtain additional information about BIFAD should contact Dr. Ronald S. Senykoff, Executive Director and Designated Federal Officer for BIFAD. Write him in care of the U.S. Agency for International Development, Ronald Reagan Building, Office of Development Partners, 1300 Pennsylvania Avenue, NW., Room 6.7–153, Washington, DC

20523–2110 or telephone him at (202) 712–0218 or fax (202) 216–3124.

Any questions concerning this notice may be directed to:

—Ronald S. Senykoff, PhD, Executive Director, BIFAD, Office of Development Partners, (202) 712–0218.

Ronald S. Senykoff,

Executive Director and USAID Designated Federal Officer for BIFAD, Office of Development Partners, U.S. Agency for International Development.

[FR Doc. 2010–25201 Filed 10–5–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 58–2010]

Foreign-Trade Zone 51—Duluth, MN; Application for Reorganization Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Duluth Seaway Port Authority, grantee of FTZ 51, requesting authority to reorganize the zone under the alternative site framework (ASF) adopted by the Board (74 FR 1170, 1/12/09; correction 74 FR 3987, 1/22/09). The ASF is an option for grantees for the establishment or reorganization of general-purpose zones and can permit significantly greater flexibility in the designation of new "usage-driven" FTZ sites for operators/users located within a grantee's "service area" in the context of the Board's standard 2,000-acre activation limit for a general-purpose zone project. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on October 1, 2010.

FTZ 51 was approved by the Board on November 27, 1979 (Board Order 149, 44 FR 70508; 12/7/1979) and expanded on September 23, 1982 (Board Order 197, 47 FR 43102, 9/30/1982).

The current zone project includes the following sites: *Site 1* (27.3 acres)—located within the Arthur M. Clure Public Marine Terminal, Duluth; and, *Site 2* (3 acres)—located within the Airpark Industrial Park at Enterprise Circle and Airpark Boulevard, Duluth.

The grantee's proposed service area under the ASF would be Carlton and Lake Counties, as well as portions of Itasca and St. Louis Counties, Minnesota, as described in the application. If approved, the grantee would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The proposed service area is within and adjacent to the Duluth Customs and Border Protection port of entry.

The applicant is requesting authority to reorganize its existing zone project to include the existing sites as "magnet" sites. The ASF allows for the possible exemption of one magnet site from the "sunset" time limits that generally apply to sites under the ASF, and the applicant proposes that Site 1 be so exempted. The applicant has also requested that Site 1 be expanded to include an additional 34.15 acres. Because the ASF only pertains to establishing or reorganizing a general-purpose zone, the application would have no impact on FTZ 51's authorized subzone.

In accordance with the Board's regulations, Elizabeth Whiteman of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is December 6, 2010. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to December 20, 2010.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230–0002, and in the "Reading Room" section of the Board's Web site, which is accessible via *http://www.trade.gov/ftz.* For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: October 1, 2010.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–25225 Filed 10–5–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 57–2010]

Foreign-Trade Zone 148—Knoxville, TN; Application for Subzone; Toho Tenax America, Inc. (Carbon Fiber and Oxidized Polyacrylonitrile Fiber Manufacturing); Rockwood, TN

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Industrial Development Board of Blount County, Tennessee, grantee of FTZ 148, requesting special-purpose subzone status for the carbon fiber and oxidized polyacrylonitrile fiber (OPF) manufacturing and warehousing facilities of Toho Tenax America, Inc. (Toho), located in Rockwood, Tennessee. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on September 29, 2010.

The Toho facilities (154 employees) consist of two sites in Rockwood, Tennessee: *Site 1* (20 acres, 192,932 sq. ft. of enclosed space)—manufacturing plant, located at 121 Cardiff Valley Road; and, *Site 2*—60,000 square foot warehouse facility, located at 200 Cardiff Valley Road. Activity to be conducted under FTZ procedures would include manufacturing, warehousing and distribution of polyacrylonitrile (PAN)—based carbon fiber and OPF (up to 4,000 metric tons combined annually) for export and the domestic market. The company manufactures standard grade carbon fiber for industrial and recreational uses, including wind turbine blades, specialty plastics, oil flotation devices, pressure vessels, and golf club shafts. The OPF is primarily used in aircraft brakes, but is also used in some technical yarns. Foreign-origin PAN fiber (HTSUS 5501.30, duty rate: 7.5%) is used as the primary production input, which represents some 35–45 percent of finished product value.

FTZ procedures could exempt Toho from customs duty payments on the foreign PAN fiber used in export production (some 30 percent of annual shipments). On its domestic sales, Toho would be able to choose the duty rate during customs entry procedures that applies to the finished carbon fiber (HTSUS 6815.10, duty-free) for the foreign PAN fiber. The OPF is classified under the same HTSUS subheading (5501.30) as the foreign PAN fiber input and would not involve inverted tariff savings. Toho would also be exempt from duty payments on any foreign-

origin PAN fiber that becomes scrap or waste during manufacturing. FTZ designation may further allow Toho to realize logistical benefits through the use of weekly customs entry and direct delivery procedures. The request indicates that the savings from FTZ procedures would help improve the facilities' international competitiveness.

In accordance with the Board's regulations, Diane Finver of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is December 6, 2010. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to December 20, 2010.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230–0002, and in the "Reading Room" section of the Board's Web site, which is accessible via *http://www.trade.gov/ftz.*

For further information, contact Diane Finver at *Diane.Finver@trade.gov* or (202) 482–1367.

Dated: September 30, 2010.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–25227 Filed 10–5–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–863]

Honey From the People's Republic of China: Extension of Time Limit for the Final Results for New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* October 6, 2010.

FOR FURTHER INFORMATION CONTACT: Josh Startup, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5260.

Background

On February 4, 2010, the Department of Commerce ("Department") initiated this new shipper review ("NSR") of the antidumping duty order on honey from the People's Republic of China ("PRC"), covering the period December 1, 2008, through November 30, 2009. *See Honey from the People's Republic of China: Initiation of New Shipper Antidumping Duty Reviews,* 75 FR 5764 (February 4, 2010). On February 12, 2010, the Department exercised its discretion to toll the deadlines for all Import Administration cases by seven calendar days due to the February 5, through February 12, 2010, Federal Government closure. *See* "Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding 'Tolling of Administrative Deadlines as a Result of the Government Closure During the Recent Snowstorm,' " dated February 12, 2010. On July 7, 2010, the Department exercised its discretion to extend the deadline for preliminary results of this NSR by 90 days, making the preliminary results due no later than November 2, 2010. *See Honey From the People's Republic of China: Extension of Time Limit for the Preliminary Results for New Shipper Review,* 75 FR 38980 (July 7, 2010). On September 10, 2010, the Department published the preliminary results of this NSR. *See Honey from the People's Republic of China: Preliminary Intent to Rescind New Shipper Reviews,* 75 FR 55307 (September 10, 2010). As a result, the final results of this NSR are currently due no later than December 1, 2010.

Extension of Time Limit for the Final Results

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended ("Act"), and 19 CFR 351.214(i)(1) require the Department to issue the preliminary results of a NSR within 180 days after the date on which the NSR was initiated, and the final results of a review within 90 days after the date on which the preliminary results were issued. The Department may, however, extend the deadline for completion of the final results of a NSR by 60 days if it determines that the case is extraordinarily complicated. *See* section 751(a)(2)(B)(iv) of the Act, and 19 CFR 351.214(i)(2).

The Department has determined that the review is extraordinarily complicated because of issues related to surrogate valuation and the Department will need additional time to review the supplemental questionnaire responses received after the preliminary results. Therefore, the Department has determined that the final results of this NSR cannot be completed within the statutory time limit of 90 days. Accordingly, the Department is extending the time limit for the completion of the final results by 60 days until January 31, 2011, in accordance with section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2).[1]

This notice is issued and published in accordance with section 751(a)(1) of the Act and 19 CFR 351.214(i)(2).

Dated: September 30, 2010.

Susan H. Kuhbach,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–25235 Filed 10–5–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–904]

Certain Activated Carbon From the People's Republic of China: Extension of Time Limits for Preliminary Results of the Third Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* October 6, 2010.

FOR FURTHER INFORMATION CONTACT: Bob Palmer or Katie Marksberry, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–9068 or (202) 482–7905, respectively.

Background

On May 28, 2010, the Department of Commerce ("the Department") published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on certain activated carbon from the People's Republic of China ("PRC") covering the period April 1, 2009, through March 31, 2010. *See* Initiation of Antidumping and Countervailing Duty Administrative Reviews, 75 FR 29976 (May 28, 2010); *see also* Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part, 75 FR 37759 (June 30, 2010).

[1] Department practice dictates that where a deadline falls on a weekend, the appropriate deadline is the next business day. *See Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, as Amended,* 70 FR 24533 (May 10, 2005).

On July 21, 2010, the Department selected one mandatory respondent in the above-referenced administrative review pursuant to section 777A(c)(2)(B) of the Tariff Act of 1930, as amended ("the Act"). *See* Memorandum to James Doyle, Director, Office 9, from Jamie Blair-Walker, Case Analyst, and Kabir Archuletta, Case Analyst, RE: Antidumping Duty Administrative Review of Certain Activated Carbon from the People's Republic of China: Selection of Respondent for Individual Review, dated July 21, 2010. On September 29, 2010, the Department selected Calgon Carbon (Tianjin) ("CCT") as the second mandatory respondent in the above-referenced administrative review pursuant to section 777A(c)(2)(B) the Act. *See* Memorandum to James Doyle, Director, Office 9, through Catherine Bertrand, Program Manager, Office 9, from Katie Marksberry, International Trade Specialist, RE: Antidumping Duty Administrative Review of Certain Activated Carbon from the People's Republic of China: Selection of Additional Mandatory Respondent, dated September 29, 2010. The preliminary results of this administrative review are currently due on December 31, 2010.

Statutory Time Limits

Section 751(a)(3)(A) of the Act requires the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested. Consistent with section 751(a)(3)(A) of the Act, the Department may extend the 245-day period to 365 days if it is not practicable to complete the review within a 245-day period.

Extension of Time Limit of Preliminary Results

The preliminary results are currently due on December 31, 2010. This administrative review covers two mandatory respondents, both of whom have numerous suppliers which will require the Department to gather and analyze a significant amount of information pertaining to each supplier's manufacturing methods. Moreover, because several rounds of comments and extensive analysis had delayed the Department's selection of CCT as the second mandatory respondent, the Department will need additional time to fully analyze CCT's initial questionnaire responses prior to the preliminary results. This extension is also necessary to give all parties to the proceeding adequate time to supply the Department with information related to CCT's factors of production. The current date of the preliminary results does not afford the Department adequate time to gather, analyze, request supplementary information, and allow parties to fully participate in the proceeding.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department finds that it is not practicable to complete the preliminary results within the original time period and thus the Department is extending the time limit for issuing the preliminary results by 120 days until April 30, 2011. The final results continue to be due 120 days after the publication of the preliminary results.

This notice is published pursuant to sections 751(a)(3)(A) and 777(i)(1) of the Act and 19 CFR 351.213(h)(2).

Dated: September 30, 2010.

Susan H. Kuhbach,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–25231 Filed 10–5–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Federal Consistency Appeal by Pan American Grain Co.

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of Closure—Administrative Appeal Decision Record.

SUMMARY: This announcement provides notice that the decision record for an administrative appeal filed with the Secretary of Commerce (Secretary) by Pan American Grain Co. (Pan American) has closed. No additional information, briefs, or comments (not previously submitted and made part of the decision record prior to closure) will be considered by the Secretary in deciding the appeal.

DATES: The appeal decision record closed on October 4, 2010.

ADDRESSES: Materials from the appeal record are available at NOAA, Office of General Counsel for Ocean Services, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910 and on the following Web site: *http://www.ogc.doc.gov/czma.htm.*

FOR FURTHER INFORMATION CONTACT: Gladys P. Miles, Attorney-Advisor, NOAA, Office of General Counsel, 301–713–7384, or at *gcos.inquiries@noaa.gov.*

SUPPLEMENTARY INFORMATION: On January 27, 2010, Pan American filed notice of an appeal with the Secretary, pursuant to the Coastal Zone Management Act of 1972 (CZMA), 16 U.S.C. 1451 *et seq.,* and implementing regulations found at 15 CFR Part 930, Subpart H. The appeal is taken from an objection by Puerto Rico Planning Board to Pan American's consistency certification filed in conjunction with an application to the U.S. Army Corps of Engineers for a permit to construct a new marine leg, leg storage platform, and service walkway in San Juan Bay, Puerto Rico. Notice of this appeal was published in the **Federal Register** on February 26, 2010. *See* 75 FR 8919.

The Secretary is required under the CZMA to close the decision record for an appeal no later than 220 days after notice of the appeal is first published in the **Federal Register**. *See* 16 U.S.C. 1465(b). Once the decision record is closed, the Secretary is prohibited from considering any additional information, briefs, or comments not previously submitted and made part of the decision record prior to closure. *Id.*

Consistent with these requirements, the appeal decision record for the federal consistency appeal filed by Pan American closed on October 4, 2010. No further information, briefs, or comments (not previously submitted and made part of the decision record prior to closure) will be considered by the Secretary in deciding the appeal.

Additional information on this appeal is available at the NOAA, Office of General Counsel for Ocean Services, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910 and on the following Web site: *http://www.ogc.doc.gov/czma.htm.*

[Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance.]

Dated: October 1, 2010.

Joel La Bissonniere,

Assistant General Counsel for Ocean Services, NOAA.

[FR Doc. 2010–25161 Filed 10–5–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–423–808, A–475–822, A–791–805, A–580–831, and A–583–830]

Stainless Steel Plate in Coils From Belgium, Italy, South Africa, South Korea, and Taiwan: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On June 2, 2010, the Department of Commerce (the Department) initiated sunset reviews of the antidumping duty orders on stainless steel plate in coils (SSPC) from Belgium, Italy, South Africa, South Korea, and Taiwan, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). The Department has conducted expedited (120-day) sunset reviews for these orders pursuant to 19 CFR 351.218(e)(1)(ii)(C)(2). As a result of these sunset reviews, the Department finds that revocation of the antidumping duty orders would be likely to lead to the continuation or recurrence of dumping.

DATES: *Effective Date:* October 6, 2010.

FOR FURTHER INFORMATION CONTACT: Hector Rodriguez or Elizabeth Eastwood, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–0629 and (202) 482–3874, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 2, 2010, the Department published the notice of initiation of the sunset reviews of the antidumping duty orders on SSPC from Belgium, Italy, South Africa, South Korea, and Taiwan pursuant to section 751(c) of the Act. *See Initiation of Five-Year ("Sunset") Review,* 75 FR 30777 (June 2, 2010).

The Department received a notice of intent to participate from Allegheny Ludlum Corporation, North American Stainless and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (domestic interested parties), within the deadline specified in 19 CFR 351.218(d)(1)(i). The domestic interested parties claimed interested party status under sections 771(9)(C) and (D) of the Act as U.S. producers of SSPC in the United States or a certified union whose workers are engaged in the production of SSPC in the United States.

The Department received adequate substantive responses to the notice of initiation from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). We received no substantive responses from respondent interested parties with respect to any of the orders covered by these sunset reviews. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted expedited (120-day) sunset reviews of the antidumping duty orders on SSPC from Belgium, Italy, South Africa, South Korea, and Taiwan.

Scope of the Orders

Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (*e.g.,* cold-rolled, polished, *etc.*) provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of the orders are the following: (1) Plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars.

The merchandise subject to the orders is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 7219.11.00.30, 7219.11.00.60, 7219.12.00.06, 7219.12.00.21, 7219.12.00.26, 7219.12.00.51, 7219.12.00.56, 7219.12.00.66, 7219.12.00.71, 7219.12.00.81, 7219.31.00.10, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.11.00.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to these orders is dispositive.

Analysis of Comments Received

All issues raised in these reviews are addressed in the "Issues and Decision Memorandum for the Expedited Sunset Reviews of the Antidumping Duty Orders on Stainless Steel Plate in Coils from Belgium, Italy, South Africa, South Korea, and Taiwan" from Susan H. Kuhbach, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration (September 30, 2010) (Decision Memo), which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the orders were revoked. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room 7046 of the main Department building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/frn.* The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Reviews

We determine that revocation of the antidumping duty orders on SSPC from Belgium, Italy, South Africa, South Korea, and Taiwan would be likely to lead to the continuation or recurrence of dumping at the following weighted-average percentage margins:

Manufacturers/Exporters/Producers	Weighted-average margin (percent)
Belgium:	
AMS Belgium*	8.54
All-Others Rate	8.54
Italy:	
Thyssen Krupp Acciai Speciali Terni S.p.A**	45.09
All-Others Rate	39.69

Manufacturers/Exporters/Producers	Weighted-average margin (percent)
South Africa:	
Columbus Stainless	41.63
All-Others Rate	41.63
South Korea:	
Pohang Iron & Steel Co., Ltd	16.26
All-Others Rate	16.26
Yieh United Steel Corporation	8.02
YUSCO/Ta Chen	10.20
All-Others Rate	7.39

* AMS Belgium is the successor-in-interest to ALZ N.V.
** Thyssen Krupp Acciai Speciali Terni S.p.A is the successor-in-interest to Acciai Speciali Terni SpA.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective orders is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act.

Dated: September 30, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–25216 Filed 10–5–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–405–803, A–421–811, A–401–808]

Purified Carboxymethylcellulose From Finland, the Netherlands, and Sweden: Final Results of the Expedited First Sunset Reviews of the Antidumping Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On June 2, 2010, the Department of Commerce (the Department) initiated first sunset reviews of the antidumping duty orders on purified carboxymethylcellulose (CMC) from, *inter alia,* Finland, the Netherlands, and Sweden, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). The Department has conducted expedited (120-day) sunset reviews of the Finland, the Netherlands, and Sweden antidumping duty orders pursuant to 19 CFR 351.218(e)(1)(ii)(C)(2).[1] As a result of these sunset reviews, the Department finds that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping.

FOR FURTHER INFORMATION CONTACT: Dena Crossland or Angelica Mendoza, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–3362 or (202) 482–3019, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 2, 2010, the Department published in the **Federal Register** the notice of initiation of the sunset reviews of the antidumping duty orders on CMC from Finland, the Netherlands, Mexico, and Sweden, pursuant to section 751(c) of the Act. *See Initiation of Five-Year ("Sunset") Review,* 75 FR 30777 (June 2, 2010) (*Notice of Initiation*).

The Department received a notice of intent to participate from domestic interested party Aqualon Company (Aqualon)[2] within the deadline specified in 19 CFR 351.218(d)(1)(i). Aqualon claimed interested party status under section 771(9)(C) of the Act, as the sole manufacturer of a domestic-like product in the United States.

The Department received adequate substantive responses to the *Notice of Initiation* from Aqualon within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). We received no substantive responses from respondent interested parties with respect to the antidumping duty orders on CMC from Finland and Sweden.

On July 2, 2010, respondent Akzo Nobel filed a response concerning the sunset review of CMC from the Netherlands. Using the data provided by Aqualon in its July 1, 2010, substantive response, and data provided by Akzo Nobel in its July, 2, 2010, response, the Department found that Akzo Nobel accounted for less than 50 percent of exports of subject merchandise from the Netherlands. On July 22, 2010, the Department determined that Akzo Nobel's response was not adequate because it did not account for more than 50 percent of the total exports of subject merchandise to the United States over the relevant five-year period as required by 19 CFR 351.218(e)(1)(ii)(A). *See* Memorandum to Richard O. Weible, Director, AD/CVD Operations, Office 7, "Adequacy Determination in the First Five-Year 'Sunset Review' (2005 through 2009) of the Antidumping Duty Order on Purified Carboxymethylcellulose from the Netherlands," dated July 22, 2010.

As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C)(2), the Department determined that it would conduct expedited (120-day) sunset reviews of the antidumping duty orders on CMC from Finland, the Netherlands, and Sweden and notified the U.S. International Trade Commission. *See* Letter to Ms. Catherine DeFilippo, Director, Office of Investigations, U.S. International Trade Commission, from James Maeder, Director, Office 2, AD/CVD Operations, entitled "Expedited and Full Sunset Reviews of the Antidumping Duty Orders Initiated in June 2010," dated July 22, 2010.

On September 15, 2010, the Department contacted Aqualon regarding its reference to Harmonized Tariff Schedule of the United States (HTSUS) number 3913.31.00.10 at page

[1] With respect to the antidumping duty order on CMC from Mexico, the Department is conducting a full sunset review, the preliminary results of which were signed on September 20, 2010. *See Purified Carboxymethylcellulose from Mexico: Preliminary Results of the First Five-Year ("Sunset") Review of Antidumping Duty Order,* 75 FR 60084 (September 29, 2010).

[2] Aqualon Company is a division of Hercules Incorporated.

12 of the Appendix of its substantive response, dated July 1, 2010. Aqualon stated on September 15, 2010, that it had mistakenly referenced the wrong HTSUS number in its substantive response and intended to reference HTSUS number 3912.31.00.10. *See* Memorandum to the File from Dena Crossland, Regarding Preliminary Results of First Sunset Review of the Antidumping Duty Order on Purified Carboxymethylcellulose from Finland, the Netherlands, and Sweden; Correction to Domestic Interested Party's July 1, 2010, Substantive Response, dated September 23, 2010.

Scope of the Orders

The merchandise covered by the orders is all purified CMC, sometimes also referred to as purified sodium CMC, polyanionic cellulose, or cellulose gum, which is a white to off-white, non-toxic, odorless, biodegradable powder, comprising sodium CMC that has been refined and purified to a minimum assay of 90 percent. Purified CMC does not include unpurified or crude CMC, CMC Fluidized Polymer Suspensions, and CMC that is cross-linked through heat treatment. Purified CMC is CMC that has undergone one or more purification operations, which, at a minimum, reduce the remaining salt and other by-product portion of the product to less than ten percent. The merchandise subject to the orders is currently classified in the HTSUS at subheading 3912.31.00.[3] This tariff classification is provided for convenience and customs purposes; however, the written description of the scope of the orders is dispositive.

Analysis of Comments Received

All issues raised in these reviews are addressed in the "Issues and Decision Memorandum for the Expedited First Sunset Reviews of the Antidumping Duty Orders on Purified Carboxymethylcellulose from Finland, the Netherlands, and Sweden" from Susan H. Kuhbach, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration (Decision Memo), which is hereby adopted by, and issued concurrently with, this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the orders were revoked. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room 7046 of the main Department building. In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/frn.* The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Reviews

We determine that revocation of the antidumping duty orders on CMC from Finland, the Netherlands, and Sweden would be likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

Manufacturers/Exporters/Producers	Weighted-average margin (percent)
Finland:	
CP Kelco Oy	6.65
All Others Rate	6.65
The Netherlands:	
Akzo Nobel Surface Chemistry B.V.[4]	13.39
CP Kelco B.V.	14.88
All Others Rate	14.57
Sweden:	
CP Kelco AB	25.29
All Others Rate	25.29

[3] Although HTSUS number 3912.31.00.10 may be more specific to subject merchandise, it was not created until 2005. As such, we are relying on HTSUS number 3912.31.00 for purposes of these sunset reviews because in determining whether revocation of an order would likely lead to continuation or recurrence of dumping, the Department considers the margins established in the investigation and/or reviews conducted during the sunset review period as well as the volume of imports for the periods before and after the issuance of the order. *See* section 752(c)(1) of the Act.

[4] The Department preliminarily determined that Akzo Nobel Functional Chemicals B.V. is the successor-in-interest to Akzo Nobel Surface Chemistry B.V. *See Purified Carboxymethylcellulose From the Netherlands; Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 48310 (August 10, 2010). The Department intends to issue the final results on December 8, 2010 (the deadline may be extended).

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective orders is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act.

Dated: September 30, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–25210 Filed 10–5–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XZ42

Fisheries of the South Atlantic and Gulf of Mexico; Southeast Data, Assessment and Review (SEDAR); South Atlantic Fishery Management Council (SAFMC) Scientific and Statistical Committee (SSC); Gulf of Mexico Fishery Management Council (GMFMC) Scientific and Statistical Committee; Public Meetings

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

ACTION: Notice of SEDAR spiny lobster update assessment review.

SUMMARY: SEDAR will hold a meeting of the spiny lobster update assessment review panel. The meeting will be held in Key West, FL. See **SUPPLEMENTARY INFORMATION**.

DATES: The meeting will be held November 18–19, 2010. See **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held at the Key West Marriott, 3841 N. Roosevelt Blvd., Key West, FL 33040; telephone: (800) 546–0885.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; telephone: (843) 571–4366; e-mail: *Kim.Iverson@safmc.net*.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR update assessments add additional years of information to benchmark assessment models developed and approved previously. SEDAR Update assessments are developed through a workshop and webinar process including representatives from State and Federal Agencies, Council SSCs and Advisory Panels, NGO's, and fishery constituents. Update assessments are reviewed by Council SSCs.

Representatives of the GMFMC and SAFMC SSCs are conducting this review of the updated spiny lobster assessment. They will develop stock status and fishing level recommendations that will be provided to each Council's SSC for consideration.

Spiny Lobster Update Review Schedule:

November 18, 2010: 9 a.m. - 6 p.m.

November 19, 2010: 8 a.m. - 12 p.m.

The established daily times may be adjusted as necessary to accommodate the timely completion of discussion relevant to the assessment process. Such adjustments may result in the meeting being extended from, or completed prior to, the time established by this notice.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **FOR FURTHER INFORMATION CONTACT**) at least 10 business days prior to each workshop.

Dated: September 30, 2010.

Tracey L. Thompson,

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

[FR Doc. 2010–25056 Filed 10–5–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–822]

Notice of Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review: Certain Frozen Warmwater Shrimp From Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: A Foods 1991 Co., Limited (A Foods) has requested a changed circumstances review of the antidumping duty order on certain frozen warmwater shrimp from Thailand pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.216(b). The Department of Commerce (the Department) is initiating this changed circumstances review and issuing this notice of preliminary results pursuant to 19 CFR 351.221(c)(3)(ii). We have preliminarily determined that A Foods is the successor-in-interest to May Ao Company Limited (May Ao).

DATES: *Effective Date:* October 6, 2010.

FOR FURTHER INFORMATION CONTACT: Elizabeth Eastwood, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3874.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 2005, the Department published in the **Federal Register** an antidumping duty order on certain frozen warmwater shrimp from Thailand. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from Thailand,* 70 FR 5145 (Feb. 1, 2005).

On September 1, 2010, A Foods informed the Department that it changed its name from May Ao and

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[4] The Department preliminarily determined that Akzo Nobel Functional Chemicals B.V. is the successor-in-interest to Akzo Nobel Surface Chemistry B.V. *See Purified Carboxymethylcellulose From the Netherlands; Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 48310 (August 10, 2010). The Department intends to issue the final results on December 8, 2010 (the deadline may be extended).

provided supporting documentation. Additionally, A Foods requested that the Department conduct an expedited changed circumstances review under 19 CFR 351.221(c)(3)(iii) to confirm that A Foods is the successor-in-interest to May Ao for purposes of determining antidumping duty cash deposits and liabilities.

Scope of the Order

The scope of this order includes certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,[1] deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size. The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the *Penaeidae* family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannemei*), banana prawn *(Penaeus merguiensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp *(Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of this order. In addition, food preparations, which are not "prepared meals," that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of this order.

Excluded from the scope are: (1) Breaded shrimp and prawns (HTSUS subheading 1605.20.10.20); (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTSUS subheadings 0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (HTSUS subheading 1605.20.05.10); (5) dried shrimp and prawns; (6) canned warmwater shrimp and prawns (HTSUS subheading 1605.20.10.40); (7) certain dusted shrimp; and (8) certain battered shrimp. Dusted shrimp is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a "dusting" layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and 10 percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to IQF freezing immediately after application of the dusting layer. Battered shrimp is a shrimp-based product that, when dusted in accordance with the definition of dusting above, is coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by this order are currently classified under the following HTSUS subheadings: 0306.13.00.03, 0306.13.00.06, 0306.13.00.09, 0306.13.00.12, 0306.13.00.15, 0306.13.00.18, 0306.13.00.21, 0306.13.00.24, 0306.13.00.27, 0306.13.00.40, 1605.20.10.10, and 1605.20.10.30. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this order is dispositive.

Initiation and Preliminary Results

Pursuant to section 751(b)(1) of the Act, the Department will conduct a changed circumstances review upon receipt of information concerning, or a request from an interested party for a review of, an antidumping duty order which shows changed circumstances sufficient to warrant a review of the order. As indicated in the "Background" section, we have received information indicating that May Ao officially changed its name to A Foods on December 25, 2009. This constitutes changed circumstances warranting a review of the order. *See* CFR 19 351.216(d). Therefore, in accordance with section 751(b)(1) of the Act, we are initiating a changed circumstances review based upon the information contained in A Foods' submission.

Section 351.221(c)(3)(ii) of the Department's regulations permits the Department to combine the notice of initiation of a changed circumstances review and the notice of preliminary results if the Department concludes that expedited action is warranted. In this instance, because we have on the record the information necessary to make a preliminary finding, we find that expedited action is warranted and have combined the notice of initiation and the notice of preliminary results.

In making a successor-in-interest determination, the Department examines several factors including, but not limited to, changes in: (1) Management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See, e.g., Notice of Final Results of Changed Circumstances Antidumping Duty Administrative Review: Polychloroprene Rubber From Japan,* 67 FR 58 (Jan. 2, 2002); *Brass Sheet and Strip from Canada: Final Results of Antidumping Duty Administrative Review,* 57 FR 20460, 20462 (May 13, 1992). While no single factor or combination of these factors will necessarily provide a dispositive indication of a successor-in-interest relationship, the Department will generally consider the new company to be the successor to the previous company if the new company's resulting operation is not materially dissimilar to that of its predecessor. *See, e.g., Fresh and Chilled Atlantic Salmon from Norway; Final Results of Changed Circumstances Antidumping Duty Administrative Review,* 64 FR 9979 (Mar. 1, 1999); *Industrial Phosphoric Acid from Israel; Final Results of Changed Circumstances Review,* 59 FR 6944 (Feb. 14, 1994). Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the former company, the Department will accord the new company the same antidumping treatment as its predecessor.

In its submission, A Foods has provided sufficient evidence to warrant an expedited review to determine if it is the successor-in-interest to May Ao. A Foods states that the company's management, production facilities and customer/supplier relationships have not changed as a result of the corporate name change. To support its claims, A Foods submitted the following documents: (1) The A Foods registration documentation, as filed with the Ministry of Commerce's Registration Office of Thailand; (2) the ownership chart of May Ao before, and A Foods after, the name change; (3) the board of directors list of May Ao before, and A Foods after the name change; (4) the

[1] "Tails" in this context means the tail fan, which includes the telson and the uropods.

Hazard Analysis & Critical Control Points (HACCP) Quality Manuals for both A Foods and May Ao; (5) the A Foods 2009 financial statement; (6) the local registration office notice of address change; (7) a list of the suppliers of May Ao before, and A Foods after, the name change; (8) a list of the customers of May Ao before, and A Foods after, the name change; and (9) customer order forms of May Ao before, and A Foods after, the name change.

Based on the evidence reviewed, we preliminarily find that A Foods is the successor-in-interest to May Ao. We find that A Foods operates as the same business entity as May Ao and that the production facilities, supplier relationships, and customers have not changed as a result of the name change. Further, A Foods operates under the same HACCP Plan originally prepared by May Ao, and the senior management for A Foods has remained the same since the name change from May Ao. Thus, we preliminarily find that A Foods should receive the same antidumping duty cash-deposit rate (*i.e.,* 2.61 percent) with respect to the subject merchandise as May Ao, its predecessor company.

However, because cash deposits are only estimates of the amount of antidumping duties that will be due, changes in cash deposit rates are not made retroactive. If A Foods believes that the deposits paid exceed the actual amount of dumping, it is entitled to request an administrative review during the anniversary month of the publication of the order of those entries to determine the proper assessment rate and receive a refund of any excess deposits. *See Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom: Final Results of Changed-Circumstances Antidumping and Countervailing Duty Administrative Reviews,* 64 FR 66880 (Nov. 30, 1999). As a result, if these preliminary results are adopted in our final results of this changed circumstances review, we will instruct U.S. Customs and Border Protection to suspend shipments of subject merchandise made by A Foods at May Ao's cash deposit rate (*i.e.,* 2.61 percent) effective on the publication date of our final results.

Public Comment

Any interested party may request a hearing within 30 days of publication of this notice. *See* 19 CFR 351.310(c). A hearing, if requested, will be held 44 days after the date of publication of this notice, or the first working day thereafter. Interested parties may submit case briefs and/or written comments not later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, which must be limited to issues raised in such briefs or comments, may be filed not later than 37 days after the date of publication of this notice. Parties who submit arguments are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Consistent with 19 CFR 351.216(e), we will issue the final results of this changed circumstances review no later than 270 days after the date on which this review was initiated, or within 45 days if all parties agree to our preliminary finding. We are issuing and publishing this finding and notice in accordance with sections 751(b)(1) and 777(i)(1) of the Act and 19 CFR 351.216.

Dated: September 30, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–25218 Filed 10–5–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XZ41

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting of its Snapper Grouper Advisory Panel (AP) in North Charleston, SC. See **SUPPLEMENTARY INFORMATION**.

DATES: The meeting will take place November 16–18, 2010. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meeting will be held at the Hilton Garden Inn, 5265 International Boulevard, North Charleston, SC; telephone: (843) 308–9330.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC, 29405; telephone: (843) 571–4366 or toll free (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net*.

SUPPLEMENTARY INFORMATION: Members of the Snapper Grouper Advisory Panel will meet from 1:30 p.m. until 5 p.m. on November 16, 2010; from 8:30 a.m. until 5 p.m. on November 17, 2010 and from 8:30 a.m. until 12 noon on November 18, 2010.

The Advisory Panel will receive updates from Council staff and provide recommendations on the following amendments: Regulatory Amendments 9 & 10 to the Snapper Grouper Fishery Management Plan (FMP) addressing trip limits and changes to red snapper management due to the on-going stock assessment, respectively; Amendment 18A addressing management of black sea bass and golden tilefish; Amendment 24 addressing management of red grouper and Amendment 22 addressing long-term management of red snapper, and the Comprehensive Annual Catch Limit (ACL) Amendment addressing ACLs for several snapper grouper species as well as other Council-managed species. AP members will receive status reports on the following amendments to the Snapper Grouper FMP currently under development: Amendment 18B addressing possible extension of the snapper Grouper Fishery Management Unit northward, Amendment 20 addressing changes to the wreckfish Individual Transferrable Quota (ITQ) program, and Amendment 21 addressing development of a catch shares program for the snapper grouper fishery. The AP will also discuss spawning season protection for snapper grouper species.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **FOR FURTHER INFORMATION CONTACT**) 3 days prior to the meeting.

NOTE: The times and sequence specified in this agenda are subject to change.

Dated: September 30, 2010.

Tracey L. Thompson,

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

[FR Doc. 2010–25055 Filed 10–5–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XZ33

Advisory Committee to the U.S. Section of the International Commission for the Conservation of Atlantic Tunas (ICCAT)—Fall Meeting

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

ACTION: Notice of public meeting.

SUMMARY: In preparation for the 2010 International Commission for the Conservation of Atlantic Tunas (ICCAT) meeting, the Advisory Committee to the U.S. Section to ICCAT is announcing the convening of its fall meeting.

DATES: The meeting will be held October 18–20, 2010. There will be an open session on Monday, October 18, 2010, from 9 a.m. through approximately 3 p.m. The remainder of the meeting will be closed to the public and is expected to end by 1 p.m. on October 20. Oral comments can be presented during the public comment session on October 18, 2010. Written comments on issues being considered at the meeting will be made available to the Advisory Committee, and should be received no later than October 13, 2010 (*see* **ADDRESSES**).

ADDRESSES: The meeting will be held at the Hilton Washington DC/Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910. Written comments should be sent to Keith Cialino at NOAA Fisheries, Office of International Affairs, Room 12641, 1315 East-West Highway, Silver Spring, MD 20910. Written comments can also be provided via fax (301–713–2313) or e-mail (*Keith.Cialino@noaa.gov*).

FOR FURTHER INFORMATION CONTACT: Keith Cialino, Office of International Affairs, 301–713–9090.

SUPPLEMENTARY INFORMATION: The Advisory Committee to the U.S. Section to ICCAT will meet October 18–20, 2010, first in an open session to consider management and research related information on stock status of Atlantic highly migratory species and then in a closed session to discuss sensitive matters. There will be an opportunity for oral public comment during the October 18, 2010 open session. The open session will be from 9 a.m. through 3 p.m. The public comment portion of the meeting is scheduled to begin at approximately 2 p.m. but could begin earlier depending on the progress of presentations. Written comments may also be submitted for the October open session by mail, fax or e-mail and should be received by October 13, 2010 (see **ADDRESSES**).

NMFS expects members of the public to conduct themselves appropriately at the open session of the meeting. At the beginning of the public comment session, an explanation of the ground rules will be provided (*e.g.,* alcohol in the meeting room is prohibited, speakers will be called to give their comments in the order in which they registered to speak, each speaker will have an equal amount of time to speak and speakers should not interrupt one another). The session will be structured so that all attending members of the public are able to comment, if they so choose, regardless of the degree of controversy of the subject(s). Those not respecting the ground rules will be asked to leave the meeting.

After the open session, the Advisory Committee will meet in closed session to discuss sensitive information relating to upcoming international negotiations regarding the management of Atlantic highly migratory species, including monitoring, control, surveillance, and enforcement issues.

Special Accommodations

The meeting location is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Keith Cialino at (301) 713–9090 or *Keith.Cialino@noaa.gov* at least 5 days prior to the meeting date.

Dated: September 28, 2010.

Jean-Pierre Plé

Deputy Director, Office of International Affairs, National Marine Fisheries Service.

[FR Doc. 2010–25232 Filed 10–5–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XZ40

Fisheries of the South Atlantic and Gulf of Mexico; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR Workshops for South Atlantic and Gulf of Mexico goliath grouper.

SUMMARY: The SEDAR assessment of the South Atlantic and Gulf of Mexico stock of goliath grouper consists of a Data Workshop, an Assessment Workshop, and a Review Workshop. See **SUPPLEMENTARY INFORMATION**.

DATES: The Review Workshop will take place November 15–17, 2010. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The Review Workshop will be held at the Key West Marriott Beachside Hotel, 3841 N. Roosevelt Blvd, Key West, FL 33040; telephone: (305) 296–8100.

FOR FURTHER INFORMATION CONTACT: Julie Neer, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; telephone: (843) 571–4366.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR includes three workshops: (1) Data Workshop, (2) Stock Assessment Workshop and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Stock Assessment Workshop is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Consensus

Summary documenting Panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

SEDAR 23 Review Schedule:

November 15–17, 2010; SEDAR 23 Review Workshop

November 15, 2010: 10 a.m. - 8 p.m., November 16–17, 2010, 8 a.m. - 8 p.m.

The established times may be adjusted as necessary to accommodate the timely completion of discussion relevant to the assessment process. Such adjustments may result in the meeting being extended from, or completed prior to the time established by this notice.

The Review Workshop is an independent peer review of the assessment developed during the Data and Assessment Workshops. Workshop Panelists will review the assessment and document their comments and recommendations in a Consensus Summary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **FOR FURTHER INFORMATION CONTACT**) at least 5 business days prior to each workshop.

Dated: September 30, 2010.

Tracey L. Thompson,

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

[FR Doc. 2010–25057 Filed 10–5–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1708]

Reorganization of Foreign-Trade Zone 113 Under Alternative Site Framework; Ellis County, TX

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board adopted the alternative site framework (ASF) in December 2008 (74 FR 1170, 01/12/09; correction 74 FR 3987, 01/22/09) as an option for the establishment or reorganization of general-purpose zones;

Whereas, the Ellis County Trade Zone Corporation, grantee of Foreign-Trade Zone 113, submitted an application to the Board (FTZ Docket 4–2010, filed 01/14/10) for authority to reorganize under the ASF with a service area of Ellis County, Texas, adjacent to the Dallas/Fort Worth Customs and Border Protection port of entry, and FTZ 113's existing Site 1 would be categorized as a magnet site;

Whereas, notice inviting public comment was given in the **Federal Register** (75 FR 3705, 01/22/10; 75 FR 17125, 04/05/10) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to reorganize FTZ 113 under the alternative site framework is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, and to the Board's standard 2,000-acre activation limit for the overall general-purpose zone project.

Signed at Washington, DC, September 24, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–25222 Filed 10–5–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 100920454–0473–02]

Request for Public Comments Regarding Small and Medium Enterprises' Understanding of and Compliance With the Export Administration Regulations

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice of Inquiry.

SUMMARY: The Bureau of Industry and Security (BIS) is publishing a notice of inquiry to solicit comments from the public regarding small and medium enterprises' (SMEs) understanding of and compliance with export controls maintained pursuant to the Export Administration Regulations (EAR). BIS anticipates that input from the public will help it administer and enforce export controls in a manner consistent with U.S. national security while facilitating and even increasing legitimate trade involving SMEs and the exporting community in general.

DATES: Comments must be received by December 6, 2010.

ADDRESSES: You may submit comments on this notice of inquiry, identified by "Notice of Inquiry—SME", by any of the following methods:

E-mail: publiccomments@bis.doc.gov. Include "Notice of Inquiry—SME" in the subject line of the message.

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

Mail or Hand Delivery/Courier: Sheila Quarterman, U.S. Department of Commerce, Bureau of Industry and Security, Office of Exporter Services, Regulatory Policy Division, 14th Street & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, *Attn:* "Notice of Inquiry—SME".

FOR FURTHER INFORMATION CONTACT: Sheila Quarterman, U.S. Department of Commerce, Bureau of Industry and Security, Office of Exporter Services,

Regulatory Policy Division, Telephone 202/482–2440, E-mail *squarter@bis.doc.gov*.

SUPPLEMENTARY INFORMATION:

Background

President Obama's August 2009 call for broad-based review and modernization of U.S. export controls presented the Bureau of Industry and Security (BIS) a strategic opportunity to reach out to regulated groups such as small and medium enterprises (SMEs) regarding their experience with the Export Administration Regulations (EAR). More recently, the President's National Export Initiative (NEI) announced in January 2010 focuses on expanding trade advocacy and opportunities, particularly for SMEs. Pursuant to the NEI, the Commerce Department's International Trade Administration will seek to increase the number of SMEs exporting over the next five years. BIS continues to develop the agency's commitment to addressing SMEs' concerns through its outreach efforts. At its October 2009 annual Update Conference on Export Controls, BIS led a roundtable discussion on SMEs' export compliance concerns.

In this notice of inquiry (NOI), BIS is soliciting information regarding SMEs' understanding of and compliance with the EAR. BIS intends to use the information to evaluate the need for innovations and revisions that will enhance SMEs' understanding of and compliance with the EAR. Given SMEs' strategic position in export trade, the EAR must continue to address SMEs' concerns in a manner that promotes compliance without adversely affecting competitiveness. Ultimately, the agency seeks to administer and enforce export controls in a manner that protects U.S. national security while facilitating and even increasing legitimate trade involving SMEs and the exporting community in general.

It is important to BIS to identify and address issues that impact a range of SMEs' understanding of and compliance with the EAR. BIS intends that this NOI will yield useful input not only from and about enterprises with extensive experience in export trade but also from and about enterprises less familiar and less experienced in export trade.

Unlike for small businesses or enterprises, there is no widely accepted or agreed upon definition of medium enterprises. However, industry and government entities have made progress in incorporating the consideration of medium enterprises in matters of global trade.

In formulating an appropriate definition of SMEs for purposes of this NOI, BIS reviewed relevant data from U.S. Government, industry, and international sources, including the U.S. International Trade Commission (USITC), the U.S. Small Business Administration (SBA), the U.S. Department of Agriculture, the U.S. Department of Commerce's Bureau of the Census, and the European Commission. In particular, a recent USITC report, Small and Medium-Sized Enterprises: Overview of Participation in U.S. Exports (USITC Publication 4125, January 2010), and the SBA Office of Advocacy's analysis on which it draws offer helpful guidance in defining SMEs. Based on the USITC report, the related analysis from the SBA's Office of Advocacy, and the SBA's definition of "business concern" (13 CFR 121.105), BIS defines SMEs for purposes of this NOI as enterprises with fewer than 500 employees, organized for profit, and independently operated and established within the United States. Given the range of sectors that participate in dual-use exports, BIS does not believe that a revenue threshold is appropriate. BIS welcomes comments regarding this definition.

Comments that identify issues and make recommendations regarding SMEs' awareness and understanding of the EAR, as well as their experiences complying with the EAR, will be instructive. BIS invites the public also to submit comments on the following:

(1) The principal challenges SMEs face in trying to comply with the EAR, including any challenges that SMEs uniquely face and approaches to overcoming these challenges;

(2) The value of current BIS outreach, education and counseling to SMEs in understanding and complying with the EAR;

(3) Ways to improve or expand SMEs' awareness, knowledge and understanding of the EAR and increase their capacity to comply with them; and

(4) Data, including comparative international data, that support comments and recommendations related to items (1) through (3) above; and that provide examples of effective methods of administering and enforcing export controls with special attention to SMEs.

Comments should be submitted to BIS as described in the **ADDRESSES** section of this notice by December 6, 2010. BIS will consider all comments submitted in response to this NOI that are received before the close of the comment period. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. BIS will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. BIS will return such comments and materials to the persons submitting the comments and will not consider them. All public comments in response to this NOI must be in writing (including fax or email) and will be a matter of public record, and will be available for public inspection and copying on the BIS Freedom of Information Act (FOIA) Reading Room Web site at *http://bis.doc.gov/foia/default.htm.*

Dated: September 27, 2010.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2010–25152 Filed 10–5–10; 8:45 am]

BILLING CODE 3510–33–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request: Proposed Collection; Comment Request: Rules Pertaining to Contract Markets and Their Members

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the CFTC is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): Rules Pertaining to Contract Markets and Their Members; [OMB Control Number 3038–0022]. Before submitting the ICR to OMB for review and approval, the CFTC is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before December 6, 2010.

ADDRESSES: Comments may be mailed to David Van Wagner, Commodity Futures Trading Commission, Division of Market Oversight, 202–418–5481, fax 202–418–5507, e-mail *dvanwagner@cftc.gov.* Refer to OMB Control No. 3038–0022.

FOR FURTHER INFORMATION CONTACT: David Van Wagner at 202–418–5481, fax 202–418–5507, e-mail *dvanwagner@cftc.gov.*

SUPPLEMENTARY INFORMATION:

Affected Entities: Entities potentially affected by this action are registered entities (designated contract markets, registered derivatives transaction

execution facilities and registered derivatives clearing organizations) planning to implement new rules and rule amendments by either seeking prior approval or (for most rules) certifying to the Commission that such rules or rule amendments do not violate the Act or Commission regulations. Rules 40.2, 40.3, 40.4, 40.5 and 40.6 implement these statutory provisions.

Title: Proposed Collection; Comment Request: Rules Pertaining to Contract Markets and Their Members.

Abstract: Section 5c(c) of the Commodity Exchange Act, 7 U.S.C. 7a–2(c), establishes procedures for registered entities (designated contract markets, registered derivatives transaction execution facilities and registered derivatives clearing organizations) to implement new rules and rule amendments by either seeking prior approval or (for most rules) certifying to the Commission that such rules or rule amendments do not violate the Act or Commission regulations. Rules 40.4, 40.5 and 40.6 implement these statutory provisions.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the CFTC's regulations were published on December 30, 1981. *See* 46 FR 63035 (Dec. 30, 1981).

The Commission would like to solicit comments to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- Evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, usefulness, and clarity of the information to be collected; and
- Minimize the burden of 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.

Burden of Statement: The respondent burden for this collection is estimated to average 2.53 hours per response. These estimates include the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: 12,272.

Estimated number of responses annually: 307,179.

Estimated total annual burden on respondents: 777,345 hours.

Frequency of collection: On occasion.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; and transmit or otherwise disclose the information.

Dated: September 30, 2010.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2010–25042 Filed 10–5–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

Office of the Secretary

Federal Advisory Committee; Reserve Forces Policy Board (RFPB)

AGENCY: Office of the Secretary of Defense Reserve Forces Policy Board; DoD.

ACTION: Notice of advisory committee meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the Reserve Forces Policy Board (RFPB) will meet on November 9, 2010, in Arlington, VA.

DATES: The meeting will be held on Tuesday, November 9, 2010, from 7:30 a.m.–5 p.m.

ADDRESSES: The meeting will be held in Rm. 3E863, Pentagon, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Lt Col Julie A. Small, Designated Federal Officer, (703) 697–4486 (Voice), (703) 693–5371 (Facsimile), *RFPB@osd.mil.*

Mailing address: Reserve Forces Policy Board, 7300 Defense Pentagon, Washington, DC 20301–7300. Web site: *http://ra.defense.gov/rfpb/.*

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting

An open meeting of the Reserve Forces Policy Board.

Agenda

The Board, acting through the Assistant Secretary of Defense for Reserve Affairs, is the principal policy advisor to the Secretary of Defense on matters relating to the Reserve Components. The Board will set forth the 2011 meeting schedule focusing on concerns regarding the future of the Reserve Components.

Meeting Accessibility

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. To request a seat, contact the Designated Federal Officer not later than October 26, 2010, at 703–697–4486, or by e-mail, *RFPB@osd.mil.*

Written Statements

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the membership of the Reserve Forces Policy Board at any time or in response to the stated agenda of a planned meeting. Written statements should be submitted to the Reserve Forces Policy Board's Designated Federal Officer. The Designated Federal Officer's contact information can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

Written statements that do not pertain to a scheduled meeting of the Reserve Forces Policy Board may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at a planned meeting then these statements must be submitted no later than five business days prior to the meeting in question. The Designated Federal Officer will review all submitted written statements and provide copies to all the committee members.

Dated: October 1, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–25141 Filed 10–5–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Department of Education (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. 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 December 6, 2010.

ADDRESSES: Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: September 29, 2010.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: New.

Title of Collection: Study of Teacher Residency Programs.

OMB Control Number: Pending.

Agency Form Number(s): N/A.

Frequency of Responses: On Occasion.

Affected Public: Individuals or households; State, Local, or Tribal Government, State Educational Agencies or Local Educational Agencies.

Total Estimated Number of Annual Responses: 2,132.

Total Estimated Number of Annual Burden Hours: 2,092.

Abstract: This package requests clearance to conduct a rigorous evaluation of Teacher Residency Programs (TRP). This evaluation will provide important implementation information on TRPs funded by the U.S. Department of Education. It will also provide information on the impact of teachers who participate in TRPs (including some funded by ED) on student achievement and on their retention rates. Study findings will be presented in two reports, one scheduled for release in Fall 2013 and the other in Fall 2014.

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 4409. 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 and OMB Control Number when making your request.

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. 2010–25030 Filed 10–5–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Comment Request .

SUMMARY: The Department of Education (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. 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 December 6, 2010.

ADDRESSES: Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the

respondents, including through the use of information technology.

Dated: September 29, 2010.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Elementary and Secondary Education

Type of Review: Extension.

Title of Collection: Improving Literacy through School Libraries.

OMB Control Number: 1810–0667.

Agency Form Number(s): N/A.

Frequency of Responses: Annually.

Affected Public: Businesses or other for-profit; State, Local, or Tribal Government, State Educational Agencies or Local Educational Agencies.

Total Estimated Number of Annual Responses: 70.

Total Estimated Number of Annual Burden Hours: 280.

Abstract: This information is required under Title I of the Elementary and Secondary Education Act of 1965 (ESEA), as amended. Specifically, part B, subpart 4 section 1251(h)(1) requires that ach respondent will report on "* * * how the funding was used and the extent to which the availablity of, the access to, and the use of up-to-date school library media resources in the elementary and secondary schools served by the local educatonal agency was increased." The final report makes specific request for easily retrieved information on each approved activity, personnel description and outcomes that can't be derived from any other information collection.

Additionally, section 1251(j)(1) of the ESEA requires an independent evaluation of the activities supported by funds and their impact on improved reading skills not later than three (3) years after the date of enactment for ESEA, as amended and biennially thereafter. This information collection is one of three sources of data for the congressional mandated program evaluation.

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 4412. 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 and OMB Control Number when making your request.

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. 2010–25039 Filed 10–5–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Department of Education (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. 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 December 6, 2010.

ADDRESSES: Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: September 30, 2010.

James Hyler,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: New.

Title of Collection: Integrated Evaluation of ARRA Funding, Implementation and Outcomes.

OMB Control Number: Pending.

Agency Form Number(s): N/A.

Frequency of Responses: One time.

Affected Public: State, Local, or Tribal Government, State Educational Agencies or Local Educational Agencies.

Total Estimated Number of Annual Responses: 5,551.

Total Estimated Number of Annual Burden Hours: 1,774.

Abstract: On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act (ARRA) into law (Pub. L. 111–50). ARRA supports investments in innovative strategies that are intended to lead to improved results for students, long-term gains in school and local education agency (LEA) capacity for success, and increased productivity and effectiveness.

This evaluation will focus on answering four sets of research questions:

- *Money:* Which states/districts/schools get which program funds, when, and how much? What do they spend it on? How much overlap is there across ARRA funding streams in terms of who receives the funding or what grantees do with it?
- *Strategies:* What efforts and activities are underway as a result of each of the ARRA programs and overall? What state policies are changing or being enacted? What specific interventions are districts and schools implementing? How do the strategies line up with the four assurances or with the specific strategies promoted by the different programs?
- *Implementation Process:* How much coordination do states and

districts report in the decision-making and planning for implementation across the various streams of funds? Are districts that receive funds directly (e.g., thru I3) employing strategies that are consistent with their state's policies and plans (e.g., under Race to the Top)? On an ongoing basis, what challenges do grantees face in enacting their plans and what successes have they had?

• *Outcomes:* Is receiving more ARRA funds or certain types of funds associated with improvement in student outcomes or other key measures (e.g., more equitable distribution of teacher quality)?

The integrated evaluation will draw on existing data, including ED data collections, ED ARRA program files, ARRA required reporting, and databases of achievement and other outcomes. The evaluation will also collect new information through surveys of (1) The 50 states and the District of Columbia, (2) a nationally representative sample of school districts, and (3) a nationally representative sample of schools within the sampled school districts. Surveys are planned for spring 2011, spring 2012, and spring 2013. Subsamples of school districts will also be drawn to receive a smaller set of questions (polls); these polls will be administered twice between 2011 and 2013.

A report will be prepared in the first year of the evaluation to describe the distribution of funding. A report and state tabulations will be prepared after each annual survey. The first report, based on the 2011 surveys, will focus on early ARRA implementation and strategies. The second report, based on the 2012 surveys, will expand upon strategies implemented under ARRA. The final report will draw upon existing data on outcomes as well as data from the 2013 surveys.

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 4413. 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 and OMB Control Number when making your request.

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. 2010–25153 Filed 10–5–10; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notice

AGENCY: U.S. Election Assistance Commission.

ACTION: Notice of Public Meeting and Hearing Agenda.

DATE AND TIME: Thursday, October 14, 2010, 10 a.m.–4 p.m. Pacific Daylight Time (PDT).

PLACE: Sheraton Pasadena Hotel, 303 East Cordova Street, Pasadena, CA 91101, 626–449–4000.

MEETING AGENDA: The Commission will hold a public meeting to consider and discuss the following matters: (1) Consideration of Election Worker Appreciation Resolution, and (2) Discussion of Voter Preparation and Information. Commissioners will consider other administrative matters.

HEARING AGENDA: The Commission will conduct a public hearing to receive testimony on proposed draft National Voter Registration Act (NVRA) regulations. Members of the public who wish to speak at the hearing, regarding proposed NVRA regulations may send a request to participate to the EAC via e-mail to *testimony@eac.gov* by 5 p.m. Eastern Daylight Time (EDT) on Tuesday, October 12, 2010. Members of the public may also sign up at the public meeting as long as they do so before the public meeting adjourns and the public hearing begins and EAC has not already received the maximum number of requests to testify via e-mail. Due to time constraints, the EAC can select no more than ten participants amongst the volunteers who request to participate. Each participant will be allotted up to five minutes each to share his or her viewpoint. Participants will be selected on a first-come, first-served basis. To maximize diversity of input, only one participant per organization or entity will be chosen. Participants may also submit written testimony to be published at *http://www.eac.gov.* All requests must include a description of what will be said, contact information which will be used to notify the requestor with status of request (phone number on which a message may be left or e-mail), and include the subject/attention line (or on the envelope if by mail): **Testimony on proposed NVRA regulations**. Please note that these testimonies will be made available to the public at *http://www.eac.gov.*

Written testimony from members of the public, regarding proposed NVRA regulations will also be accepted. This testimony will be included as part of the written record of the hearing, and available on our Web site. Written testimony must be submitted before the end of the public hearing, and received by 4 p.m. Pacific Daylight Time (PDT) on Thursday, October 14, 2010. Written testimony should be submitted via e-mail at *testimony@eac.gov,* via mail addressed to the U.S. Election Assistance Commission 1201 New York Avenue, NW., Suite 300, Washington, DC 20005, or by fax at 202–566–1392. All correspondence that contains written testimony must have in the subject/attention line (or on the envelope if by mail): **Written testimony on proposed NVRA regulations**.

Members of the public may observe but not participate in EAC meetings unless this notice provides otherwise. Members of the public may use small electronic audio recording devices to record the proceedings. The use of other recording equipment and cameras requires advance notice to and coordination with the Commission's Communications Office.*

*View EAC Regulations Implementing Government in the Sunshine Act.

This meeting and hearing will be open to the public.

PERSON TO CONTACT FOR INFORMATION: Bryan Whitener, Telephone: (202) 566–3100.

Donetta Davidson,

Chair, U.S. Election Assistance Commission.

[FR Doc. 2010–25290 Filed 10–4–10; 4:15 pm]

BILLING CODE 6820–KF–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, October 21, 2010 6 p.m.

ADDRESSES: Barkley Centre, 111 Memorial Drive, Paducah, Kentucky 42001.

FOR FURTHER INFORMATION CONTACT: Reinhard Knerr, Deputy Designated

Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6825.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management and related activities.

Tentative Agenda

- Call to Order, Introductions, Review of Agenda
- Deputy Designated Federal Officer's Comments
- Federal Coordinator's Comments
- Liaisons' Comments
- Administrative Issues
  - Operational Protocols Vote
  - Board Retreat Overview
  - Election—Chair
  - Election—Vice Chair
- Presentations
- Subcommittee Chairs' Comments
- Public Comments
- Final Comments
- Adjourn

Breaks Taken As Appropriate.

Public Participation: The EM SSAB, Paducah, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Reinhard Knerr at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Reinhard Knerr at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments. This notice is being published less than 15 days before the date of the meeting due to programmatic issues.

Minutes: Minutes will be available by writing or calling Reinhard Knerr at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.pgdpcab.org/meetings.html.*

Issued at Washington, DC, on September 30, 2010.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2010–25166 Filed 10–5–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

September 9, 2010.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG10–67–000.
Applicants: Chestnut Flats Wind, LLC.
Description: Self-Certification of Exempt Wholesale Generator of Chestnut Flats Wind, LLC.
Filed Date: 09/09/2010.
Accession Number: 20100909–5062.
Comment Date: 5 p.m. Eastern Time on Thursday, September 30, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER06–1331–006.
Applicants: CalPeak Power LLC, CalPeak Power—Panoche LLC, CalPeak Power—Vaca Dixon LLC, CalPeak Power—El Cajon LLC, CalPeak Power—Enterprise LLC, CalPeak Power—Border LLC, Tyr Energy LLC.
Description: CalPeak Power LLC submits supplemental information.
Filed Date: 08/24/2010.
Accession Number: 20100824–5134.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–566–001; ER08–1255–003; ER07–1106–009; ER08–1255–004.
Applicants: ArcLight Energy Marketing, LLC, Oak Creek Wind Power, LLC, Coso Geothermal Power Holdings, LLC.
Description: Coso Geothermal Power Holdings, LLC and Oak Creek Wind Power, LLC submits Supplement to Updated Market Power Analysis for the Southwest Region.
Filed Date: 09/08/2010.
Accession Number: 20100908–5162.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 29, 2010.

Docket Numbers: ER10–1816–001.
Applicants: The Dayton Power and Light Company.
Description: The Dayton Power and Light Company submits tariff filing per 35: FERC Rate Schedule No. 42, Village of Arcanum to be effective 9/9/2010.
Filed Date: 09/09/2010.
Accession Number: 20100909–5149.
Comment Date: 5 p.m. Eastern Time on Thursday, September 30, 2010.

Docket Numbers: ER10–2453–000.
Applicants: Icetec.
Description: Icetec, Inc submits Petition for Acceptance of Initial Tariff, Waivers and Blanket Authority.
Filed Date: 08/30/2010.
Accession Number: 20100830–0205.
Comment Date: 5 p.m. Eastern Time on Monday, September 20, 2010.

Docket Numbers: ER10–2454–000.
Applicants: Westar Energy, Inc.
Description: Western Resources, Inc submits Notice of Cancellation of Non-Firm Point-to-Point Transmission Service Agreements.
Filed Date: 08/30/2010.
Accession Number: 20100830–0204.
Comment Date: 5 p.m. Eastern Time on Monday, September 20, 2010.

Docket Numbers: ER10–2456–000.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corporation submits tariff filing per 35: 2010–08–30 CAISO Financial Security Deposit Compliance EL10–15 to be effective 7/1/2010.
Filed Date: 08/30/2010.
Accession Number: 20100830–5145.
Comment Date: 5 p.m. Eastern Time on Monday, September 20, 2010.

Docket Numbers: ER10–2550–000.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corporation submits tariff filing per 35.13(a)(2)(iii: 2010–09–07 Amd 2 to CAISO Service Agreement 798 to be effective 9/28/2010.
Filed Date: 09/07/2010.
Accession Number: 20100907–5134.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 28, 2010.

Docket Numbers: ER10–2551–000.
Applicants: Baldwin Wind, LLC.
Description: Baldwin Wind, LLC submits tariff filing per 35.12: Baldwin Wind, LLC MBR Application FINAL to be effective 10/15/2010.
Filed Date: 09/07/2010.
Accession Number: 20100907–5136.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 28, 2010.

Docket Numbers: ER10–2565–000.
Applicants: MidAmerican Energy Company.
Description: MidAmerican Energy Company submits a Notice of Cancellation of the Partial Requirements Wholesale Service Agreement.
Filed Date: 09/08/2010.
Accession Number: 20100909–0202.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 29, 2010.

Docket Numbers: ER10–2566–000.
Applicants: Duke Energy Carolinas, LLC.
Description: Duke Energy Carolinas, LLC submits tariff filing per 35.12: DEC Baseline Filing to be effective 9/9/2010.
Filed Date: 09/09/2010.
Accession Number: 20100909–5016.
Comment Date: 5 p.m. Eastern Time on Thursday, September 30, 2010.

Docket Numbers: ER10–2567–000.
Applicants: Kit Carson Windpower, LLC.
Description: Kit Carson Windpower, LLC submits tariff filing per 35.12: Market Based Rate Application to be effective 10/1/2010.
Filed Date: 09/09/2010.
Accession Number: 20100909–5037.
Comment Date: 5 p.m. Eastern Time on Thursday, September 30, 2010.

Docket Numbers: ER10–2568–000.
Applicants: Chestnut Flats Wind, LLC.
Description: Chestnut Flats Wind, LLC submits tariff filing per 35.12: Market-Based Rate Tariff to be effective 11/15/2010.
Filed Date: 09/09/2010.
Accession Number: 20100909–5052.
Comment Date: 5 p.m. Eastern Time on Thursday, September 30, 2010.

Docket Numbers: ER10–2569–000.
Applicants: New York Independent System Operator, Inc.
Description: New York Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 205 Filing—RS 1 provisions—Messonnier/Lampi 09/09/10 to be effective 11/8/2010.
Filed Date: 09/09/2010.
Accession Number: 20100909–5075.
Comment Date: 5 p.m. Eastern Time on Thursday, September 30, 2010.

Docket Numbers: ER10–2570–000.
Applicants: Shady Hills Power Company LLC.
Description: Shady Hills Power Company LLC submits tariff filing per 35.12: Shady Hills Power Company LLC Market Based Rate Tariff to be effective 9/9/2010.
Filed Date: 09/09/2010.
Accession Number: 20100909–5096.
Comment Date: 5 p.m. Eastern Time on Thursday, September 30, 2010.

Docket Numbers: ER10–2571–000.
Applicants: Wisconsin Electric Power Company.
Description: Wisconsin Electric Power Company submits tariff filing per 35: Coordination Sales Tariff Baseline Filing to be effective 9/9/2010.
Filed Date: 09/09/2010.
Accession Number: 20100909–5101.
Comment Date: 5 p.m. Eastern Time on Thursday, September 30, 2010.

Docket Numbers: ER10–2572–000.
Applicants: Wisconsin Electric Power Company.
Description: Wisconsin Electric Power Company submits tariff filing per 35: Tariff for Sales of Ancillary Services Baseline Filing to be effective 9/9/2010.
Filed Date: 09/09/2010.
Accession Number: 20100909–5132.
Comment Date: 5 p.m. Eastern Time on Thursday, September 30, 2010.

Docket Numbers: ER10–2573–000.
Applicants: Portland General Electric Company.
Description: Portland General Electric Company submits tariff filing per 35.12: Baseline Filing of PGE's OATT Fourth Revised Volume No. 8 to be effective 9/10/2010.
Filed Date: 09/09/2010.
Accession Number: 20100909–5146.
Comment Date: 5 p.m. Eastern Time on Thursday, September 30, 2010.

Docket Numbers: ER10–2574–000.
Applicants: BP West Coast Products LLC.
Description: BP West Coast Products LLC submits tariff filing per 35.12: Baseline MBR Tariff Filing of BP West Coast Products LLC to be effective 9/10/2010.
Filed Date: 09/09/2010.
Accession Number: 20100909–5147.
Comment Date: 5 p.m. Eastern Time on Thursday, September 30, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2010–25054 Filed 10–5–10; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

September 21, 2010.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC10–98–000.
Applicants: GDF SUEZ S.A., INTERNATIONAL POWER PLC.
Description: Joint Application for Authorization Under Section 203 of the Federal Power Act, Request for Waiver of Certain Commission Requirements, and Requests for Confidential Treatment

of GDF SUEZ S.A. and International Power Plc.

Filed Date: 09/21/2010.

Accession Number: 20100921–5079.

Comment Date: 5 p.m. Eastern Time on Thursday, October 21, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–308–003.

Applicants: Kleen Energy Systems, LLC.

Description: Kleen Energy Systems, LLC submits First Revised Sheet No 1 *et al.* to Rate Schedule FERC No 1.

Filed Date: 09/20/2010.

Accession Number: 20100921–0201.

Comment Date: 5 p.m. Eastern Time on Monday, October 4, 2010.

Docket Numbers: ER10–2779–000.

Applicants: Westerly Hospital Energy Company, LLC.

Description: Westerly Hospital Energy Company, LLC submits application for authorization to make wholesale sales of energy and capacity at negotiated market-based rates.

Filed Date: 09/20/2010.

Accession Number: 20100921–0202.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 12, 2010.

Docket Numbers: ER10–2780–000.

Applicants: New Hampshire Union Leader.

Description: Union Leader Corporation submits an application for authorization to make wholesale of energy and capacity at negotiated, market-based rates.

Filed Date: 09/20/2010.

Accession Number: 20100921–0203.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 12, 2010.

Docket Numbers: ER10–2781–000.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corporation submits tariff filing per 35: 2010–09–20 CAISO Standard Capacity Product II Compliance ER10–1524 to be effective 8/22/2010.

Filed Date: 09/20/2010.

Accession Number: 20100920–5141.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 12, 2010.

Docket Numbers: ER10–2782–000.

Applicants: Midwest Generation LLC.

Description: Midwest Generation LLC submits tariff filing per 35: Midwest Generation, LLC Reactive Supply and Voltage Control Tariff to be effective 9/21/2010.

Filed Date: 09/20/2010.

Accession Number: 20100920–5142.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 12, 2010.

Docket Numbers: ER10–2783–000.

Applicants: Arthur Kill Power LLC.

Description: Arthur Kill Power LLC submits tariff filing per 35.12: NRG Arthur Kill Power—FERC Electric Tariff to be effective 9/20/2010.

Filed Date: 09/20/2010.

Accession Number: 20100920–5144.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 12, 2010.

Docket Numbers: ER10–2784–000.

Applicants: Astoria Gas Turbine Power LLC.

Description: Astoria Gas Turbine Power LLC submits tariff filing per 35.12: Astoria Gas Turbine Power—FERC Electric Tariff to be effective 9/20/2010.

Filed Date: 09/20/2010.

Accession Number: 20100920–5146.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 12, 2010.

Docket Numbers: ER10–2785–000.

Applicants: Chevron Coalinga Energy Company.

Description: Chevron Coalinga Energy Company submits its baseline tariff filing, FERC Electric Tariff, First Revised Volume No. 1, to be effective 9/21/2010.

Filed Date: 09/21/2010.

Accession Number: 20100921–5008.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 12, 2010.

Docket Numbers: ER10–2786–000.

Applicants: Washington Gas Energy Services, Inc.

Description: Washington Gas Energy Services, Inc. submits their baseline tariff filing, FERC Electric Tariff, Second Revised Volume No 1, to be effective 9/21/2010.

Filed Date: 09/21/2010.

Accession Number: 20100921–5010.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 12, 2010.

Docket Numbers: ER10–2787–000.

Applicants: Eurus Combine Hills II LLC.

Description: Eurus Combine Hills II LLC submits its baseline tariff filing, pursuant to Order No 714, to be effective 9/21/2010.

Filed Date: 09/21/2010.

Accession Number: 20100921–5011.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 12, 2010.

Docket Numbers: ER10–2788–000.

Applicants: Florida Power Corporation.

Description: Florida Power Corporation submits tariff filing per 35.13(a)(2)(iii: Florida Power Corp. OATT Service Agreement No. 140 with The Energy Authority to be effective 9/1/2010.

Filed Date: 09/21/2010.

Accession Number: 20100921–5026.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 12, 2010.

Docket Numbers: ER10–2789–000.

Applicants: Rainbow Energy Ventures, LLC.

Description: Rainbow Energy Ventures, LLC submits its baseline tariff filing, FERC Electric Tariff to be effective 9/21/2010.

Filed Date: 09/21/2010.

Accession Number: 20100921–5033.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 12, 2010.

Docket Numbers: ER10–2791–000.

Applicants: Bayou Cove Peaking Power LLC.

Description: Bayou Cove Peaking Power LLC submits its baseline tariff filing, to be effective 9/21/2010.

Filed Date: 09/21/2010.

Accession Number: 20100921–5040.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 12, 2010.

Docket Numbers: ER10–2792–000.

Applicants: Big Cajun I Peaking Power LLC.

Description: Big Cajun I Peaking Power LLC submits tariff filing per 35.12: Big Cajun I Peaking Power—FERC Electric Tariff to be effective 9/21/2010.

Filed Date: 09/21/2010.

Accession Number: 20100921–5046.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 12, 2010.

Docket Numbers: ER10–2793–000.

Applicants: DeSoto County Generating Company, LLC.

Description: DeSoto County Generating Company, LLC submits tariff filing per 35.12: Market-based Rate Tariff in Compliance with Order No. 714 to be effective 9/21/2010.

Filed Date: 09/21/2010.

Accession Number: 20100921–5051.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 12, 2010.

Docket Numbers: ER10–2794–000.

Applicants: EDF Trading North America, LLC.

Description: EDF Trading North America, LLC submits tariff filing per 35.12: Baseline Filing to be effective 9/21/2010.

Filed Date: 09/21/2010.

Accession Number: 20100921–5052.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 12, 2010.

Docket Numbers: ER10–2795–000.

Applicants: Conemaugh Power LLC.

Description: Conemaugh Power LLC submits its baseline tariff filing, FERC Electric Tariff, Volume No 1, to be effective 9/21/2010.

Filed Date: 09/21/2010.

Accession Number: 20100921–5055.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 12, 2010.

Docket Numbers: ER10–2796–000.
Applicants: New England Electric Transmission Corporation.
Description: New England Electric Transmission Corporation submits its baseline tariff filing to Create Tariff Identifier for Service Agreements and Rate Schedules, to be effective 9/21/2010.
Filed Date: 09/21/2010.
Accession Number: 20100921–5056.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 12, 2010.

Docket Numbers: ER10–2797–000.
Applicants: Nevada Power Company.
Description: Nevada Power Company submits tariff filing per 35: Baseline Filing-NPC Tariff Vol. No. 4–Electric Service Coordination Tariff to be effective 9/21/2010.
Filed Date: 09/21/2010.
Accession Number: 20100921–5057.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 12, 2010.

Docket Numbers: ER10–2798–000.
Applicants: Connecticut Jet Power LLC.
Description: Connecticut Jet Power LLC submits tariff filing per 35.12: Connecticut Jet Power—FERC Electric Tariff to be effective 9/21/2010.
Filed Date: 09/21/2010.
Accession Number: 20100921–5063.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 12, 2010.

Docket Numbers: ER10–2799–000.
Applicants: Devon Power LLC.
Description: Devon Power LLC submits tariff filing per 35.12: Devon Power—FERC Electric Power to be effective 9/21/2010.
Filed Date: 09/21/2010.
Accession Number: 20100921–5065.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 12, 2010.

Docket Numbers: ER10–2800–000.
Applicants: Nevada Power Company.
Description: Application of Nevada Power Company for Cancellation of FERC Electric Tariff, Volume No. 2. as part of the eTariff baseline filing process.
Filed Date: 09/21/2010.
Accession Number: 20100921–5082.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 12, 2010.

Docket Numbers: ER10–2801–000.
Applicants: Dunkirk Power LLC.
Description: Dunkirk Power LLC submits tariff filing per 35.12: Dunkirk Power—FERC Electric Tariff to be effective 9/21/2010.
Filed Date: 09/21/2010.
Accession Number: 20100921–5083.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 12, 2010.

Docket Numbers: ER10–2802–000.
Applicants: Kimberly-Clark Corporation.
Description: Kimberly-Clark Corporation submits tariff filing per 35.12: Baseline Tariff Filing to be effective 9/21/2010.
Filed Date: 09/21/2010.
Accession Number: 20100921–5090.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 12, 2010.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH10–21–000.
Applicants: IGS Utilities LLC, MGH LLC, Mountaineer Gas Holdings Limited Partnership.
Description: FERC 65A—Notification of Exemption of IGS Utilities, *et al.*
Filed Date: 09/20/2010.
Accession Number: 20100920–5177.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 12, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2010–25076 Filed 10–5–10; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 1

September 23, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–1327–000.
Applicants: Questar Pipeline Company.
Description: Questar Pipeline Company submits tariff filing per 154.203: Addition of Multiple RDC Levels During Term of Agreement to be effective 10/23/2010.
Filed Date: 09/22/2010.
Accession Number: 20100922–5089.
Comment Date: 5 p.m. Eastern Time on Monday, October 4, 2010.

Docket Numbers: RP10–1328–000.
Applicants: Central New York Oil and Gas, LLC.
Description: Central New York Oil and Gas, LLC submits tariff filing per 154.203: Central New York Oil And Gas FERC Gas Tariff 1st Revised Volume 1 to be effective 9/22/2010.

Filed Date: 09/22/2010.
Accession Number: 20100922–5090.
Comment Date: 5 p.m. Eastern Time on Monday, October 4, 2010.

Docket Numbers: RP10–1329–000.
Applicants: Steuben Gas Storage Company.
Description: Steuben Gas Storage Company submits tariff filing per 154.203: Steuben Storage FERC Gas Tariff 1st Revised Volume 1 to be effective 9/22/2010.
Filed Date: 09/22/2010.
Accession Number: 20100922–5098.
Comment Date: 5 p.m. Eastern Time on Monday, October 4, 2010.

Docket Numbers: RP10–1330–000.
Applicants: Tennessee Gas Pipeline Company.
Description: Tennessee Gas Pipeline Company submits tariff filing per 154.204: Varying TQ to be effective 1/1/2011.
Filed Date: 09/22/2010.
Accession Number: 20100922–5139.
Comment Date: 5 p.m. Eastern Time on Monday, October 4, 2010.

Docket Numbers: RP10–1331–000.
Applicants: Columbia Gas Transmission, LLC.
Description: Columbia Gas Transmission, LLC submits tariff filing per 154.204: Non-Conforming Agreement—Jay Bee Production to be effective 10/1/2010.
Filed Date: 09/23/2010.
Accession Number: 20100923–5010.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 5, 2010.

Docket Numbers: RP10–1332–000.
Applicants: Columbia Gulf Transmission Company.
Description: Columbia Gulf Transmission Company submits tariff filing per 154.204: Revision to GTC Section 20—Discounts to be effective 10/23/2010.
Filed Date: 09/23/2010.
Accession Number: 20100923–5020.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 5, 2010.

Docket Numbers: RP10–1333–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: Transcontinental Gas Pipe Line Company, LLC submits tariff filing per 154.403(d)(2): LNG Fuel Tracker to be effective 11/1/2010.
Filed Date: 09/23/2010.
Accession Number: 20100923–5057.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 5, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR § 385.211 and § 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2010–25083 Filed 10–5–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

September 24, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2924–000.
Applicants: Kleen Energy Systems, LLC.
Description: Kleen Energy Systems, LLC submits tariff filing per 35.12: Kleen Energy Systems, LLC FERC Electric Tariff, Original Volume No. 1 to be effective 9/24/2010.
Filed Date: 09/24/2010.
Accession Number: 20100924–5040.
Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Docket Numbers: ER10–2925–000.
Applicants: Alabama Power Company.
Description: Alabama Power Company submits tariff filing per 35.12: Baseline Filing to be effective 9/24/2010.
Filed Date: 09/24/2010.
Accession Number: 20100924–5041.
Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Docket Numbers: ER10–2926–000.
Applicants: Georgia Power Company.
Description: Georgia Power Company submits tariff filing per 35.12: Baseline Filing to be effective 9/24/2010.
Filed Date: 09/24/2010.
Accession Number: 20100924–5046.
Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Docket Numbers: ER10–2927–000.
Applicants: Gulf Power Company.
Description: Gulf Power Company submits tariff filing per 35.12: Baseline Filing to be effective 9/24/2010.
Filed Date: 09/24/2010.
Accession Number: 20100924–5048.
Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Docket Numbers: ER10–2928–000.
Applicants: Mississippi Power Company.
Description: Mississippi Power Company submits tariff filing per 35.12: Baseline Filing to be effective 9/24/2010.
Filed Date: 09/24/2010.
Accession Number: 20100924–5049.
Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Docket Numbers: ER10–2929–000.
Applicants: Southern Power Company.
Description: Southern Power Company submits tariff filing per 35.12: Baseline Filing to be effective 9/24/2010.
Filed Date: 09/24/2010.
Accession Number: 20100924–5050.
Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Docket Numbers: ER10–2930–000.
Applicants: Northern Maine Independent System Administrator, Inc.
Description: Northern Maine Independent System Administrator, Inc.

submits tariff filing per 35.12: Baseline Tariff Filing to be effective 9/30/2010.
Filed Date: 09/24/2010.
Accession Number: 20100924–5066.
Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Docket Numbers: ER10–2931–000.
Applicants: NRG Sterlington Power LLC.
Description: NRG Sterlington Power LLC submits tariff filing per 35.12: NRG Sterlington Power FERC Electric Tariff to be effective 9/24/2010.
Filed Date: 09/24/2010.
Accession Number: 20100924–5067.
Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Docket Numbers: ER10–2932–000.
Applicants: Somerset Power LLC.
Description: Somerset Power LLC submits tariff filing per 35.12: Somerset Power FERC Electric Tariff to be effective 9/24/2010.
Filed Date: 09/24/2010.
Accession Number: 20100924–5068.
Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Docket Numbers: ER10–2933–000.
Applicants: ISO New England Inc.
Description: ISO New England Inc. submits tariff filing per 35: Unsecured Credit Compliance Filing Under Docket ER10–942–000 to be effective 12/31/9998.
Filed Date: 09/24/2010.
Accession Number: 20100924–5069.
Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Docket Numbers: ER10–2934–000.
Applicants: Logan Generating Company, L.P.
Description: Logan Generating Company, L.P. submits tariff filing per 35.12: Logan Generating Company, L.P. MBR Tariff to be effective 9/24/2010.
Filed Date: 09/24/2010.
Accession Number: 20100924–5086.
Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Docket Numbers: ER10–2935–000.
Applicants: Texas Retail Energy, LLC.
Description: Texas Retail Energy, LLC submits tariff filing per 35.12: Market-based Rate to be effective 9/24/2010.
Filed Date: 09/24/2010.
Accession Number: 20100924–5087.
Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Docket Numbers: ER10–2936–000.
Applicants: Plains End, LLC.
Description: Plains End, LLC submits tariff filing per 35.12: Plains End, LLC MBR Tariff to be effective 9/24/2010.
Filed Date: 09/24/2010.
Accession Number: 20100924–5088.
Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Docket Numbers: ER10–2937–000.
Applicants: AER NY–Gen, LLC.
Description: AER NY–Gen, LLC submits tariff filing per 35.12: AER NY–Gen Baseline Filing to be effective 9/24/2010.
Filed Date: 09/24/2010.
Accession Number: 20100924–5089.
Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Docket Numbers: ER10–2938–000.
Applicants: Alliance Energy Marketing, LLC.
Description: Alliance Energy Marketing, LLC submits tariff filing per 35.12: Alliance Energy Mktg Baseline Filing to be effective 9/24/2010.
Filed Date: 09/24/2010.
Accession Number: 20100924–5091.
Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Docket Numbers: ER10–2939–000.
Applicants: Plains End II, LLC.
Description: Plains End II, LLC submits tariff filing per 35.12: Plains End II, LLC MBR Tariff to be effective 9/24/2010.
Filed Date: 09/24/2010.
Accession Number: 20100924–5093.
Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Docket Numbers: ER10–2940–000.
Applicants: Rathdrum Power, LLC.
Description: Rathdrum Power, LLC submits tariff filing per 35.12: Rathdrum Power, LLC MBR Tariff to be effective 9/24/2010.
Filed Date: 09/24/2010.
Accession Number: 20100924–5094.
Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Docket Numbers: ER10–2941–000.
Applicants: Public Service Company of Colorado.
Description: Public Service Company of Colorado submits tariff filing per 35.13(a)(2)(iii): 2010–09–24_Att-O_PSCo_SmartGrid_Tbls2–3_chngs to be effective 8/1/2010.
Filed Date: 09/24/2010.
Accession Number: 20100924–5095.
Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Docket Numbers: ER10–2942–000.
Applicants: Elk River Windfarm, LLC.
Description: Elk River Windfarm, LLC submits tariff filing per 35.12: Baseline Filing of Market-Based Rate Tariff to be effective 9/24/2010.
Filed Date: 09/24/2010.
Accession Number: 20100924–5097.
Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Docket Numbers: ER10–2944–000.
Applicants: Elm Creek Wind, LLC.
Description: Elm Creek Wind, LLC submits tariff filing per 35.12: Baseline Filing of Market Based Rate Tariff to be effective 9/24/2010.
Filed Date: 09/24/2010.
Accession Number: 20100924–5098.
Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Docket Numbers: ER10–2945–000.
Applicants: Elm Creek Wind II LLC.
Description: Elm Creek Wind II LLC submits tariff filing per 35.12: Baseline Filing of Market-Based Rate Tariff to be effective 9/24/2010.
Filed Date: 09/24/2010.
Accession Number: 20100924–5099.
Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Docket Numbers: ER10–2947–000.
Applicants: Vienna Power LLC.
Description: Vienna Power LLC submits tariff filing per 35.12: Vienna Power FERC Electric Tariff to be effective 9/24/2010.
Filed Date: 09/24/2010.
Accession Number: 20100924–5100.
Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Docket Numbers: ER10–2948–000.
Applicants: AG–Energy, L.P.
Description: AG–Energy, L.P. submits the baseline filing of its FERC Electric Tariff, Ninth Revised Volume No. 1, to be effective 9/24/2010.
Filed Date: 09/24/2010.
Accession Number: 20100924–5101.
Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Docket Numbers: ER10–2949–000.
Applicants: Farmers City Wind, LLC.
Description: Farmers City Wind, LLC submits its Baseline Filing of Market-Based Rate Tariff, FERC Electric Tariff, Original Volume No 1, to be effective 9/24/2010.
Filed Date: 09/24/2010.
Accession Number: 20100924–5102.
Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Docket Numbers: ER10–2950–000.
Applicants: Spruance Genco, LLC.
Description: Spruance Genco, LLC submits its Market-Baes Rate Tariff, FERC Electric Tariff, Second Revised Volume No 1, to be effective 9/24/2010.
Filed Date: 09/24/2010.
Accession Number: 20100924–5103.
Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Docket Numbers: ER10–2952–000.
Applicants: Flat Rock Windpower LLC.
Description: Flat Rock Windpower LLC submits tariff filing per 35.12: Baseline Filing of Market-Based Rate Tariff to be effective 9/24/2010.
Filed Date: 09/24/2010.
Accession Number: 20100924–5104.
Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Docket Numbers: ER10–2953–000.
Applicants: Mystic I, LLC.
Description: Mystic I, LLC submits tariff filing per 35.12: Market-Based Rate Tariff in Compliance with Order No. 714 to be effective 9/24/2010.
Filed Date: 09/24/2010.
Accession Number: 20100924–5105.
Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Docket Numbers: ER10–2955–000.
Applicants: Flat Rock Windpower II LLC.
Description: Flat Rock Windpower II LLC submits tariff filing per 35.12: Baseline Filing of Market-Based Rate Tariff to be effective 9/24/2010.
Filed Date: 09/24/2010.
Accession Number: 20100924–5106.
Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Docket Numbers: ER10–2956–000.
Applicants: Flying Cloud Power Partners, LLC.
Description: Flying Cloud Power Partners, LLC submits tariff filing per 35.12: Baseline Filing of Market-Based Rate Tariff to be effective 9/24/2010.
Filed Date: 09/24/2010.
Accession Number: 20100924–5107.
Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010

Docket Numbers: ER10–2957–000.
Applicants: Hay Canyon Wind LLC
Description: Hay Canyon Wind LLC submits tariff filing per 35.12: Baseline Filing of Market-Based Rate Tariff to be effective 9/24/2010.
Filed Date: 09/24/2010
Accession Number: 20100924–5108
Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Docket Numbers: ER10–2958–000.
Applicants: Mystic Development, LLC.
Description: Mystic Development, LLC submits tariff filing per 35.12: Market-Based Rate Tariff in Compliance with Order No. 714 to be effective 9/24/2010.
Filed Date: 09/24/2010.
Accession Number: 20100924–5109.
Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Docket Numbers: ER10–2959–000.
Applicants: Chambers Cogeneration, Limited Partnership.
Description: Chambers Cogeneration, Limited Partnership submits tariff filing per 35.12: Chambers Cogeneration, Limited Partnership MBR Tariff to be effective 9/24/2010.
Filed Date: 09/24/2010.
Accession Number: 20100924–5111.
Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Docket Numbers: ER10–2960–000.
Applicants: Astoria Generating Company, L.P.
Description: Astoria Generating Company, L.P. submits tariff filing per 35.12: Market-Based Rate Tariff in Compliance with Order No. 714 to be effective 9/24/2010.
Filed Date: 09/24/2010.
Accession Number: 20100924–5112.
Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Docket Numbers: ER10–2961–000.
Applicants: Edgecombe Genco, LLC.
Description: Edgecombe Genco, LLC submits tariff filing per 35.12: Edgecombe Genco, LLC MBR Tariff to be effective 9/24/2010.
Filed Date: 09/24/2010.
Accession Number: 20100924–5114.
Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

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Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2010–25092 Filed 10–5–10; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

September 24, 2010.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG10–70–000.
Applicants: Criterion Power Partners, LLC.
Description: Self-Certification of Exempt Wholesale Generator status of Criterion Power Partners, LLC.
Filed Date: 09/23/2010.
Accession Number: 20100923–5116.
Comment Date: 5 p.m. Eastern Time on Thursday, October 14, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER03–9–020; ER98–2157–021.
Applicants: Westar Energy, Inc.; Kansas Gas and Electric Company.
Description: Notice of Change in Status of Westar Energy, Inc.
Filed Date: 09/23/2010.

Accession Number: 20100923–5172.
Comment Date: 5 p.m. Eastern Time on Thursday, October 14, 2010.

Docket Numbers: ER10–2029–002.
Applicants: Calpine Mid-Atlantic Marketing, LLC.
Description: Calpine Mid-Atlantic Marketing, LLC submits Supplement to Market Based Rate Application, to be effective 9/27/2010.
Filed Date: 09/24/2010.
Accession Number: 20100924–5002.
Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Docket Numbers: ER10–2198–001.
Applicants: Lakefield Wind Project, LLC.
Description: Lakefield Wind Project, LLC submits tariff filing per 35.17(b): Lakefield Wind Project Supplement to Application for MBR Authorization to be effective 10/10/2010.
Filed Date: 09/24/2010.
Accession Number: 20100924–5039.
Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Docket Numbers: ER10–2281–001.
Applicants: Constellation Mystic Power, LLC.
Description: Constellation Mystic Power, LLC submits amendment to its Application for Order Authorizing Market-Based Rates, and Request for Certain Waivers and Blanket Authorizations, etc.
Filed Date: 09/23/2010.
Accession Number: 20100923–0206.
Comment Date: 5 p.m. Eastern Time on Thursday, October 14, 2010.

Docket Numbers: ER10–2086–001; ER10–2513–001; ER10–2515–001; ER10–2516–001; ER10–2514–001.
Applicants: Alta Wind I, LLC, Alta Wind II, LLC, Alta Wind III, LLC, Alta Wind IV, LLC, Alta Wind V, LLC.
Description: Seller submits supplement filing to its market-based rate petitions.
Filed Date: 09/23/2010.
Accession Number: 20100923–0212.
Comment Date: 5 p.m. Eastern Time on Thursday, October 07, 2010.

Docket Numbers: ER10–2887–000.
Applicants: New Hampshire Industries, Inc.
Description: New Hampshire Industries, Inc. submits application for authorization to make wholesale sales of energy and capacity at negotiated, market-based rates.
Filed Date: 09/22/2010.
Accession Number: 20100923–0215.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 13, 2010.

Docket Numbers: ER10–2889–000.
Applicants: Luminescent Systems, Inc.
Description: Luminescent Systems, Inc submits application for authorization to make wholesale sales of energy and capacity at negotiated, market-based rates.
Filed Date: 09/22/2010.
Accession Number: 20100923–0214.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 13, 2010.

Docket Numbers: ER10–2890–000.
Applicants: Hammond Belgrade Energy, LLC.
Description: Hammond Belgrade Energy, LLC submits application for authorization to make wholesale sales of energy and capacity at negotiated market-based rates.
Filed Date: 09/23/2010.
Accession Number: 20100923–0213.
Comment Date: 5 p.m. Eastern Time on Thursday, October 14, 2010.

Docket Numbers: ER10–2891–000.
Applicants: Elektrisola, Inc.
Description: Elektrisola, Inc. submits application for authorization to make wholesale sales of energy and capacity at negotiated market-based rates.
Filed Date: 09/23/2010.
Accession Number: 20100923–0211.
Comment Date: 5 p.m. Eastern Time on Thursday, October 14, 2010.

Docket Numbers: ER10–2892–000.
Applicants: Lavalley Energy LLC.
Description: Lavalley Energy LLC submits application for authorization to make wholesale sales of energy and capacity at negotiated market-based rates.
Filed Date: 09/23/2010.
Accession Number: 20100923–0208.
Comment Date: 5 p.m. Eastern Time on Thursday, October 14, 2010.

Docket Numbers: ER10–2893–000.
Applicants: SJH Energy, LLC.
Description: SJH Energy, LLC submits an application for authorization to make wholesale sales of energy and capacity at negotiated, market-based rates.
Filed Date: 09/22/2010.
Accession Number: 20100923–0209.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 13, 2010.

Docket Numbers: ER10–2894–000.
Applicants: PalletOne Energy, LLC.
Description: PalletOne Energy, LLC submits application for authorization to make wholesale sales of energy and capacity at negotiated market-based rates.
Filed Date: 09/23/2010.
Accession Number: 20100923–0210.
Comment Date: 5 p.m. Eastern Time on Thursday, October 14, 2010.

Docket Numbers: ER10–2904–000.
Applicants: Rhode Island Eastern Massachusetts Vermont Energy Control.
Description: Rhode Island Eastern Massachusetts Vermont Energy Control submits tariff filing per 35.12: Filing to Create Tariff Identifier for REMVEC Rate Schedule to be effective 9/23/2010.
Filed Date: 09/23/2010.
Accession Number: 20100923–5135.
Comment Date: 5 p.m. Eastern Time on Thursday, October 14, 2010.

Docket Numbers: ER10–2905–000.
Applicants: Scotia Capital Energy Inc.
Description: Scotia Capital Energy Inc. submits tariff filing per 35.12: Market-Based Rate to be effective 9/23/2010.
Filed Date: 09/23/2010.
Accession Number: 20100923–5142.
Comment Date: 5 p.m. Eastern Time on Thursday, October 14, 2010.

Docket Numbers: ER10–2906–000.
Applicants: Morgan Stanley Capital Group Inc.
Description: Morgan Stanley Capital Group Inc. submits tariff filing per 35.12: Baseline to be effective 9/23/2010.
Filed Date: 09/23/2010.
Accession Number: 20100923–5144.
Comment Date: 5 p.m. Eastern Time on Thursday, October 14, 2010.

Docket Numbers: ER10–2907–000.
Applicants: Indiana Michigan Power Company, Appalachian Power Company, Ohio Power Company, Kingsport Power Company, Columbus Southern Power Company, Kentucky Power Company, Wheeling Power Company.
Description: Indiana Michigan Power Company submits tariff filing per 35.12: 20100923—MBR AEP Op Co. to be effective 8/1/2016.
Filed Date: 09/23/2010.
Accession Number: 20100923–5147.
Comment Date: 5 p.m. Eastern Time on Thursday, October 14, 2010.

Docket Numbers: ER10–2908–000.
Applicants: MS Solar Solutions Corp.
Description: MS Solar Solutions Corp. submits tariff filing per 35.12: Baseline to be effective 9/23/2010.
Filed Date: 09/23/2010.
Accession Number: 20100923–5148.
Comment Date: 5 p.m. Eastern Time on Thursday, October 14, 2010.

Docket Numbers: ER10–2909–000.
Applicants: Power Contract Financing II, Inc.
Description: Power Contract Financing II, Inc. submits tariff filing per 35.12: Baseline to be effective 9/23/2010.
Filed Date: 09/23/2010.
Accession Number: 20100923–5149.
Comment Date: 5 p.m. Eastern Time on Thursday, October 14, 2010.

Docket Numbers: ER10–2910–000.
Applicants: Power Contract Financing II, LLC.
Description: Power Contract Financing II, LLC submits tariff filing

per 35.12: Baseline to be effective 9/23/2010.

Filed Date: 09/23/2010.

Accession Number: 20100923–5150.

Comment Date: 5 p.m. Eastern Time on Thursday, October 14, 2010.

Docket Numbers: ER10–2911–000.

Applicants: Naniwa Energy LLC.

Description: Naniwa Energy LLC submits tariff filing per 35.12: Baseline to be effective 9/23/2010.

Filed Date: 09/23/2010.

Accession Number: 20100923–5154.

Comment Date: 5 p.m. Eastern Time on Thursday, October 14, 2010.

Docket Numbers: ER10–2912–000.

Applicants: Alliance For Cooperative Energy Services Power Marketing LLC.

Description: Alliance For Cooperative Energy Services Power Marketing LLC submits tariff filing per 35.12: Baseline Tariff to be effective 9/23/2010.

Filed Date: 09/23/2010.

Accession Number: 20100923–5157.

Comment Date: 5 p.m. Eastern Time on Thursday, October 14, 2010.

Docket Numbers: ER10–2913–000.

Applicants: NRG Energy Center Paxton LLC.

Description: NRG Energy Center Paxton LLC submits tariff filing per 35.12: NRG Energy Center Paxton FERC Electric Tariff to be effective 9/23/2010.

Filed Date: 09/23/2010.

Accession Number: 20100923–5158.

Comment Date: 5 p.m. Eastern Time on Thursday, October 14, 2010.

Docket Numbers: ER10–2914–000.

Applicants: NRG New Jersey Energy Sales LLC.

Description: NRG New Jersey Energy Sales LLC submits tariff filing per 35.12: NRG New Jersey Energy Sales FERC Electric Tariff to be effective 9/24/2010.

Filed Date: 09/24/2010.

Accession Number: 20100924–5018.

Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Docket Numbers: ER10–2915–000.

Applicants: NRG Rockford II LLC.

Description: NRG Rockford II LLC submits tariff filing per 35.12: NRG Rockford II FERC Electric Tariff to be effective 9/24/2010.

Filed Date: 09/24/2010.

Accession Number: 20100924–5020.

Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Docket Numbers: ER10–2916–000.

Applicants: NRG Rockford LLC.

Description: NRG Rockford LLC submits tariff filing per 35.12: NRG Rockford FERC Electric Tariff to be effective 9/24/2010.

Filed Date: 09/24/2010.

Accession Number: 20100924–5021.

Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Docket Numbers: ER10–2917–000.

Applicants: Brookfield Power Piney & Deep Creek LLC.

Description: Brookfield Power Piney & Deep Creek LLC submits tariff filing per 35.12: Brookfield Power Piney & Deep Creek LLC Baseline Market-Based Rate Tariff to be effective 9/24/2010.

Filed Date: 09/24/2010.

Accession Number: 20100924–5022.

Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Docket Numbers: ER10–2918–000.

Applicants: Carr Street Generating Station, L.P.

Description: Carr Street Generating Station, L.P. submits tariff filing per 35.12: Carr Street Generating Station, L.P. Baseline Market-Based Rate Tariff to be effective 9/24/2010.

Filed Date: 09/24/2010.

Accession Number: 20100924–5024.

Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Docket Numbers: ER10–2919–000.

Applicants: Brookfield Renewable Energy Marketing US LLC.

Description: Brookfield Renewable Energy Marketing US LLC submits tariff filing per 35.12: Brookfield Renewable Energy Marketing US LLC Baseline Market-Based Rate Tariff to be effective 9/24/2010.

Filed Date: 09/24/2010.

Accession Number: 20100924–5029.

Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Docket Numbers: ER10–2920–000.

Applicants: Erie Boulevard Hydropower, L.P.

Description: Erie Boulevard Hydropower, L.P. submits tariff filing per 35.12: Erie Boulevard Hydropower, L.P. Baseline Market-Based Rate Tariff to be effective 9/24/2010.

Filed Date: 09/24/2010.

Accession Number: 20100924–5030.

Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Docket Numbers: ER10–2921–000.

Applicants: Great Lakes Hydro America, LLC.

Description: Great Lakes Hydro America, LLC submits tariff filing per 35.12: Great Lakes Hydro America, LLC Baseline Market-Based Rate Tariff to be effective 9/24/2010.

Filed Date: 09/24/2010.

Accession Number: 20100924–5031.

Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Docket Numbers: ER10–2922–000.

Applicants: Hawks Nest Hydro LLC.

Description: Hawks Nest Hydro LLC submits tariff filing per 35.12: Hawks Nest Hydro LLC Baseline Market-Based Rate Tariff to be effective 9/24/2010.

Filed Date: 09/24/2010.

Accession Number: 20100924–5032.

Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Docket Numbers: ER10–2923–000.

Applicants: Sunbury Generation LP.

Description: Sunbury Generation LP submits tariff filing per 35.12: Sunbury Generation LP Baseline MBR and Reactive Power Tariffs to be effective 9/24/2010.

Filed Date: 09/24/2010.

Accession Number: 20100924–5033.

Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the

eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–25091 Filed 10–5–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

September 23, 2010.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC10–101–000.
Applicants: Hatchet Ridge Wind, LLC.
Description: Hatchet Ridge Wind, LLC submits application approval of a proposed sale- leaseback under section 203 of the Federal Power Act.
Filed Date: 09/22/2010.
Accession Number: 20100923–0201.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 13, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1151–002.
Applicants: AmerenEnergy Resources Generating Company.
Description: AmerenEnergy Resources Generating Company submits tariff filing per 35: AERG Correction to Baseline to be effective 5/3/2010.
Filed Date: 09/22/2010.
Accession Number: 20100922–5165.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 13, 2010.

Docket Numbers: ER10–2168–001.
Applicants: Pacific Gas and Electric Company.
Description: Pacific Gas and Electric Company submits tariff filing per 35: Compliance Filing to Revise Collinsville LGIA to be effective 10/9/2010.
Filed Date: 09/17/2010.
Accession Number: 20100917–5138.
Comment Date: 5 p.m. Eastern Time on Friday, October 8, 2010.

Docket Numbers: ER10–2710–001.
Applicants: PJM Interconnection, LLC.
Description: PJM Interconnection, LLC submits tariff filing per 35: PJM Tariffs—Baseline Amendment of OATT, OA and RAA to be effective N/A.
Filed Date: 09/23/2010.
Accession Number: 20100923–5018.
Comment Date: 5 p.m. Eastern Time on Thursday, October 14, 2010.

Docket Numbers: ER10–2713–001.
Applicants: PJM Interconnection, LLC.
Description: PJM Interconnection, LLC submits tariff filing per 35: PJM Rate Schedules—Baseline Amendment to be effective N/A.
Filed Date: 09/23/2010.
Accession Number: 20100923–5021.
Comment Date: 5 p.m. Eastern Time on Thursday, October 14, 2010.

Docket Numbers: ER10–2746–001.
Applicants: PJM Interconnection, LLC.
Description: PJM Interconnection, LLC submits tariff filing per 35: PJM Interregional Tariffs—Baseline Amendment to be effective N/A.
Filed Date: 09/23/2010.
Accession Number: 20100923–5019.
Comment Date: 5 p.m. Eastern Time on Thursday, October 14, 2010.

Docket Numbers: ER10–2854–000.
Applicants: ConocoPhillips Company.
Description: ConocoPhillips Company submits tariff filing per 35.12: Baseline to be effective 9/22/2010.
Filed Date: 09/22/2010.
Accession Number: 20100922–5147.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 13, 2010.

Docket Numbers: ER10–2855–000.
Applicants: Georgia Power Company.
Description: Georgia Power Company submits tariff filing per 35.12: Baseline Filing to be effective 9/22/2010.
Filed Date: 09/22/2010.
Accession Number: 20100922–5152.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 13, 2010.

Docket Numbers: ER10–2856–000.
Applicants: Ocean State Power II.
Description: Ocean State Power II submits tariff filing per 35.12: Ocean State Power II FERC Electric Tariff to be effective 11/22/2010.
Filed Date: 09/22/2010.
Accession Number: 20100922–5163.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 13, 2010.

Docket Numbers: ER10–2857–000.
Applicants: Gulf Power Company.
Description: Gulf Power Company submits tariff filing per 35.12: Baseline Filing to be effective 9/22/2010.
Filed Date: 09/22/2010.
Accession Number: 20100922–5164.
Comment Date: 5 p.m .Eastern Time on Wednesday, October 13, 2010.

Docket Numbers: ER10–2858–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): 09–22–10 Attachment CC revisions to be effective 11/21/2010.
Filed Date: 09/22/2010.
Accession Number: 20100922–5166.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 13, 2010.

Docket Numbers: ER10–2859–000.
Applicants: Mississippi Power Company.
Description: Mississippi Power Company submits tariff filing per 35.12: Baseline Filing to be effective 9/22/2010.
Filed Date: 09/22/2010.
Accession Number: 20100922–5167.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 13, 2010.

Docket Numbers: ER10–2860–000.
Applicants: TC Ravenswood, LLC.
Description: TC Ravenswood, LLC submits tariff filing per 35.12: TC Ravenswood, LLC Market-Based Sale of Capacity, Energy and Ancillary Services to be effective 11/22/2010.
Filed Date: 09/22/2010.
Accession Number: 20100922–5168.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 13, 2010.

Docket Numbers: ER10–2861–000.
Applicants: Fountain Valley Power, LLC.
Description: Fountain Valley Power, LLC submits tariff filing per 35.12: Baseline MBR Tariff Filing of Fountain Valley Power, LLC to be effective 9/23/2010.
Filed Date: 09/22/2010.
Accession Number: 20100922–5169.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 13, 2010.

Docket Numbers: ER10–2862–000.
Applicants: Harbor Cogeneration Company, LLC.
Description: Harbor Cogeneration Company, LLC submits tariff filing per 35.12: Baseline MBR Tariff Filing of Harbor Cogeneration Company, LLC to be effective 9/23/2010.
Filed Date: 09/22/2010.
Accession Number: 20100922–5170.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 13, 2010.

Docket Numbers: ER10–2863–000.
Applicants: Las Vegas Cogeneration II, LLC.
Description: Las Vegas Cogeneration II, L.L.C. submits tariff filing per 35.12: Baseline MBR Tariff Filing of Las Vegas Cogeneration II, LLC to be effective 9/23/2010.
Filed Date: 09/22/2010.
Accession Number: 20100922–5171.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 13, 2010.

Docket Numbers: ER10–2864–000.
Applicants: Las Vegas Cogeneration Limited Partnership.
Description: Las Vegas Cogeneration Limited Partnership submits tariff filing per 35.12: Baseline MBR Tariff Filing of Las Vegas Cogeneration Limited Partnership to be effective 9/23/2010.
Filed Date: 09/22/2010.
Accession Number: 20100922–5172.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 13, 2010.

Docket Numbers: ER10–2865–000.
Applicants: TransCanada Energy Sales Ltd.
Description: TransCanada Energy Sales Ltd. submits tariff filing per 35.12: TransCanada Energy Sales Ltd. Rate Schedule FERC No. 1 to be effective 11/22/2010.
Filed Date: 09/22/2010.
Accession Number: 20100922–5173.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 13, 2010.

Docket Numbers: ER10–2866–000.
Applicants: SWG Colorado, LLC.
Description: SWG Colorado, LLC submits tariff filing per 35.12: Baseline MBR Tariff Filing of SWG Colorado, LLC to be effective 9/23/2010.
Filed Date: 09/22/2010.
Accession Number: 20100922–5174.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 13, 2010.

Docket Numbers: ER10–2867–000.
Applicants: Valencia Power, LLC.
Description: Valencia Power, LLC submits tariff filing per 35.12: Baseline MBR Tariff Filing of Valencia Power, LLC to be effective 9/23/2010.
Filed Date: 09/22/2010.
Accession Number: 20100922–5175.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 13, 2010.

Docket Numbers: ER10–2868–000.
Applicants: TransCanada Hydro Northeast Inc.
Description: TransCanada Hydro Northeast Inc. submits tariff filing per 35.12: TransCanada Hydro Northeast Inc. Rate Schedule FERC No. 1 to be effective 11/22/2010.
Filed Date: 09/22/2010.
Accession Number: 20100922–5176.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 13, 2010.

Docket Numbers: ER10–2869–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): Module B Cross Border Out to be effective 11/22/2010.
Filed Date: 09/22/2010.
Accession Number: 20100922–5177.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 13, 2010.

Docket Numbers: ER10–2870–000.
Applicants: TransCanada Power Marketing Ltd.
Description: TransCanada Power Marketing Ltd. submits Second Revised Sheet No. 1, to be effective 11/22/2010.
Filed Date: 09/23/2010.
Accession Number: 20100923–5000.
Comment Date: 5 p.m. Eastern Time on Thursday, October 14, 2010.

Docket Numbers: ER10–2871–000.
Applicants: Keystone Power LLC.
Description: Keystone Power LLC submits its baseline tariff, FERC Electric Tariff No. 1, Volume No. 1, to be effective 9/23/2010.
Filed Date: 09/23/2010.
Accession Number: 20100923–5001.
Comment Date: 5 p.m. Eastern Time on Thursday, October 14, 2010.

Docket Numbers: ER10–2872–000.
Applicants: TransCanada Maine Wind Development Inc.
Description: TransCanada Maine Wind Development Inc. submits Second Revised Sheet No 1, to be effective 11/22/2010.
Filed Date: 09/23/2010.
Accession Number: 20100923–5002.
Comment Date: 5 p.m. Eastern Time on Thursday, October 14, 2010.

Docket Numbers: ER10–2873–000.
Applicants: Lexington Power & Light, LLC.
Description: Lexington Power & Light, LLC submits Petition for Acceptance of Initial Tariff, Waivers and Blanket Authorization.
Filed Date: 09/23/2010.
Accession Number: 20100923–0205.
Comment Date: 5 p.m. Eastern Time on Thursday, October 14, 2010.

Docket Numbers: ER10–2874–000.
Applicants: Echelon Investments Inc.
Description: Echelon Investments Inc submits Petition for Approval of Initial Market-Based Rate Tariff and Certain Blanket Authority and Waivers.
Filed Date: 09/23/2010.
Accession Number: 20100923–0204.
Comment Date: 5 p.m. Eastern Time on Thursday, October 14, 2010.

Docket Numbers: ER10–2875–000.
Applicants: Keystone Power LLC.
Description: Keystone Power LLC submits tariff filing per 35.12: Keystone Power FERC Electric Tariff to be effective 9/23/2010.
Filed Date: 09/23/2010.
Accession Number: 20100923–5017.
Comment Date: 5 p.m. Eastern Time on Thursday, October 14, 2010.

Docket Numbers: ER10–2876–000.
Applicants: Louisiana Generating LLC.
Description: Louisiana Generating LLC submits tariff filing per 35.12: Louisiana Generating FERC Electric Tariff to be effective 9/23/2010.
Filed Date: 09/23/2010.
Accession Number: 20100923–5022.
Comment Date: 5 p.m. Eastern Time on Thursday, October 14, 2010.

Docket Numbers: ER10–2877–000.
Applicants: Cobb Electric Membership Corporation.
Description: Cobb Electric Membership Corporation submits tariff filing per 35.12: Cobb Electric Baseline Tariff filing to be effective 9/23/2010.
Filed Date: 09/23/2010.
Accession Number: 20100923–5047.
Comment Date: 5 p.m. Eastern Time on Thursday, October 14, 2010.

Docket Numbers: ER10–2878–000.
Applicants: Middleton Power LLC.
Description: Middleton Power LLC submits tariff filing per 35.12: Middleton Power FERC Electric Tariff to be effective 9/23/2010.
Filed Date: 09/23/2010.
Accession Number: 20100923–5056.
Comment Date: 5 p.m.Eastern Time on Thursday, October 14, 2010.

Docket Numbers: ER10–2879–000.
Applicants: Montville Power LLC.
Description: Montville Power LLC submits tariff filing per 35.12: Montville Power FERC Electric Tariff to be effective 9/23/2010.
Filed Date: 09/23/2010.
Accession Number: 20100923–5058.
Comment Date: 5 p.m. Eastern Time on Thursday, October 14, 2010.

Docket Numbers: ER10–2880–000.
Applicants: NEO Freehold LLC.
Description: NEO Freehold LLC submits tariff filing per 35.12: NEO Freehold FERC Electric Tariff to be effective 9/23/2010.
Filed Date: 09/23/2010.
Accession Number: 20100923–5068.
Comment Date: 5 p.m. Eastern Time on Thursday, October 14, 2010.

Docket Numbers: ER10–2881–000.
Applicants: Alabama Power Company.
Description: Alabama Power Company submits its Tariff Title (Tariff

Database)—Market Based Rate Tariff, Volume No 4, to be effective 9/23/2010.
Filed Date: 09/23/2010.
Accession Number: 20100923–5069.
Comment Date: 5 p.m. Eastern Time on Thursday, October 14, 2010.

Docket Numbers: ER10–2882–000.
Applicants: Southern Power Company.
Description: Southern Power Company submits tariff filing per 35.12: Baseline Filing to be effective 9/23/2010.
Filed Date: 09/23/2010.
Accession Number: 20100923–5074.
Comment Date: 5 p.m. Eastern Time on Thursday, October 14, 2010.

Docket Numbers: ER10–2883–000.
Applicants: Mississippi Power Company.
Description: Mississippi Power Company submits tariff filing per 35.12: Baseline Filing to be effective 9/23/2010.
Filed Date: 09/23/2010.
Accession Number: 20100923–5075.
Comment Date: 5 p.m .Eastern Time on Thursday, October 14, 2010.

Docket Numbers: ER10–2884–000.
Applicants: Georgia Power Company.
Description: Georgia Power Company submits tariff filing per 35.12: Baseline Filing to be effective 9/23/2010.
Filed Date: 09/23/2010.
Accession Number: 20100923–5076.
Comment Date: 5 p.m .Eastern Time on Thursday, October 14, 2010.

Docket Numbers: ER10–2885–000.
Applicants: Gulf Power Company.
Description: Gulf Power Company submits tariff filing per 35.12: Baseline Filing to be effective 9/23/2010.
Filed Date: 09/23/2010.
Accession Number: 20100923–5077.
Comment Date: 5 p.m .Eastern Time on Thursday, October 14, 2010.

Docket Numbers: ER10–2886–000.
Applicants: Southern Turner Cimarron I, LLC.
Description: Southern Turner Cimarron I, LLC submits tariff filing per 35.12: Baseline Filing to be effective 9/23/2010.
Filed Date: 09/23/2010.
Accession Number: 20100923–5080.
Comment Date: 5 p.m. Eastern Time on Thursday, October 14, 2010.

Docket Numbers: ER10–2888–000.
Applicants: Norwalk Power LLC.
Description: Norwalk Power LLC submits tariff filing per 35.12: Norwalk Power FERC Electric Tariff to be effective 9/23/2010.
Filed Date: 09/23/2010.
Accession Number: 20100923–5091.
Comment Date: 5 p.m. Eastern Time on Thursday, October 14, 2010.

Docket Numbers: ER10–2895–000.
Applicants: Bear Swamp Power Company LLC.
Description: Bear Swamp Power Company LLC submits tariff filing per 35.12: Bear Swamp Power Company LLC Market-Based Rate Tariff to be effective 9/23/2010.
Filed Date: 09/23/2010.
Accession Number: 20100923–5096.
Comment Date: 5 p.m. Eastern Time on Thursday, October 14, 2010.

Docket Numbers: ER10–2896–000.
Applicants: NRG Energy Center Dover LLC.
Description: NRG Energy Center Dover LLC submits tariff filing per 35.12: NRG Energy Center Dover FERC Electric Tariff to be effective 9/23/2010.
Filed Date: 09/23/2010.
Accession Number: 20100923–5108.
Comment Date: 5 p.m. Eastern Time on Thursday, October 14, 2010.

Docket Numbers: ER10–2897–000.
Applicants: Krayn Wind LLC.
Description: Krayn Wind LLC submits tariff filing per 35.12: Krayn Wind LLC Market Based Rate Baseline eTariff Filing to be effective 9/23/2010.
Filed Date: 09/23/2010.
Accession Number: 20100923–5122.
Comment Date: 5 p.m. Eastern Time on Thursday, October 14, 2010.

Docket Numbers: ER10–2898–000.
Applicants: Utility Contract Funding II, LLC.
Description: Utility Contract Funding II, LLC submits tariff filing per 35.12: Baseline to be effective 9/23/2010.
Filed Date: 09/23/2010.
Accession Number: 20100923–5123.
Comment Date: 5 p.m. Eastern Time on Thursday, October 14, 2010.

Docket Numbers: ER10–2899–000.
Applicants: South Eastern Electric Development Corp.
Description: South Eastern Electric Development Corp. submits tariff filing per 35.12: Baseline to be effective 9/23/2010.
Filed Date: 09/23/2010.
Accession Number: 20100923–5124.
Comment Date: 5 p.m. Eastern Time on Thursday, October 14, 2010.

Docket Numbers: ER10–2900–000.
Applicants: South Eastern Generating Corp.
Description: South Eastern Generating Corp. submits tariff filing per 35.12: Baseline to be effective 9/23/2010.
Filed Date: 09/23/2010.
Accession Number: 20100923–5125.
Comment Date: 5 p.m. Eastern Time on Thursday, October 14, 2010.

Docket Numbers: ER10–2901–000.
Applicants: Brookfield Energy Marketing Inc.
Description: Brookfield Energy Marketing Inc. submits tariff filing per 35.12: Brookfield Energy Marketing Inc. Baseline Market-Based Rate Tarriff to be effective 9/23/2010.
Filed Date: 09/23/2010.
Accession Number: 20100923–5126.
Comment Date: 5 p.m. Eastern Time on Thursday, October 14, 2010.

Docket Numbers: ER10–2902–000.
Applicants: Brookfield Energy Marketing US LLC.
Description: Brookfield Energy Marketing US LLC submits tariff filing per 35.12: Brookfield Energy Marketing US LLC Baseline Market-Based Rate Tariff to be effective 9/23/2010.
Filed Date: 09/23/2010.
Accession Number: 20100923–5129.
Comment Date: 5 p.m. Eastern Time on Thursday, October 14, 2010.

Docket Numbers: ER10–2903–000.
Applicants: PacifiCorp.
Description: PacifiCorp submits tariff filing per 35.13(a)(2)(iii): BPA Long Term Firm Point to Point (Lost Creek) to be effective 9/8/2010.
Filed Date: 09/23/2010.
Accession Number: 20100923–5130.
Comment Date: 5 p.m. Eastern Time on Thursday, October 14, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and § 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to

challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–25089 Filed 10–5–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

September 22, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2823–000.
Applicants: Barton Windpower LLC.
Description: Barton Windpower LLC submits tariff filing per 35.12: Baseline Filing of Market-Based Rate Tariff to be effective 9/22/2010.
Filed Date: 09/22/2010.
Accession Number: 20100922–5059.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 13, 2010.

Docket Numbers: ER10–2824–000.
Applicants: Big Horn Wind Project LLC.
Description: Big Horn Wind Project LLC submits tariff filing per 35.12: Baseline Filing of Market-Based Rate Tariff to be effective 9/22/2010.
Filed Date: 09/22/2010.
Accession Number: 20100922–5060.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 13, 2010.

Docket Numbers: ER10–2825–000.
Applicants: Big Horn II Wind Project LLC.
Description: Big Horn II Wind Project LLC submits tariff filing per 35.12: Baseline Filing of Market-Based Rate Tariff to be effective 9/22/2010.
Filed Date: 09/22/2010.
Accession Number: 20100922–5061.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 13, 2010.

Docket Numbers: ER10–2826–000.
Applicants: Buffalo Ridge I LLC.
Description: Buffalo Ridge I LLC submits tariff filing per 35.12: Baseline Filing of Market-Based Rate Tariff to be effective 9/22/2010.
Filed Date: 09/22/2010.
Accession Number: 20100922–5063.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 13, 2010.

Docket Numbers: ER10–2827–000.
Applicants: Buffalo Ridge II LLC.
Description: Buffalo Ridge II LLC submits tariff filing per 35.12: Baseline Filing of Market-Based Rate Tariff to be effective 9/22/2010.
Filed Date: 09/22/2010.
Accession Number: 20100922–5064.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 13, 2010.

Docket Numbers: ER10–2828–000.
Applicants: Casselman Windpower LLC.
Description: Casselman Windpower LLC submits tariff filing per 35.12: Baseline Filing of Market-Based Rate Tariff to be effective 9/22/2010.
Filed Date: 09/22/2010.
Accession Number: 20100922–5069.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 13, 2010.

Docket Numbers: ER10–2829–000.
Applicants: Athens Energy, LLC.
Description: Athens Energy, LLC submits application for authorization to make wholesale sales of energy and capacity at negotiated, market-based rates under ER10–2829.
Filed Date: 09/22/2010.
Accession Number: 20100922–0203.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 13, 2010.

Docket Numbers: ER10–2830–000.
Applicants: The Potomac Edison Company.
Description: The Potomac Edison Company submits tariff filing per 35.12: Potomac Edison Baseline Tariff filing to be effective 9/22/2010.
Filed Date: 09/22/2010.
Accession Number: 20100922–5075.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 13, 2010.

Docket Numbers: ER10–2831–000.
Applicants: Colorado Green Holdings LLC.
Description: Colorado Green Holdings LLC submits tariff filing per 35.12: Baseline Filing of Market-Based Rate Tariff to be effective 9/22/2010.
Filed Date: 09/22/2010.
Accession Number: 20100922–5077.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 13, 2010.

Docket Numbers: ER10–2832–000.
Applicants: West Penn Power Company.
Description: West Penn Power Company submits tariff filing per 35.12: West Penn Baseline OATT Tariff to be effective 9/22/2010.
Filed Date: 09/22/2010.
Accession Number: 20100922–5078.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 13, 2010.

Docket Numbers: ER10–2833–000.
Applicants: East Avenue Energy, LLC.
Description: East Avenue Energy, LLC submits application for authorization to make wholesale sales of energy and capacity at negotiated, market-based rates under ER10–2833.
Filed Date: 09/22/2010.
Accession Number: 20100922–0202.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 13, 2010.

Docket Numbers: ER10–2834–000.
Applicants: Munnsville Wind Farm, LLC.
Description: Munnsville Wind Farm, LLC submits tariff filing per 35.12: Munnsville Wind Farm, LLC Baseline Market-Based Rate Tariff to be effective 9/22/2010.
Filed Date: 09/22/2010.
Accession Number: 20100922–5080.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 13, 2010.

Docket Numbers: ER10–2835–000.
Applicants: Google Energy LLC.
Description: Google Energy LLC submits tariff filing per 35.12: Google Energy LLC Baseline Filing for MBR Tariff to be effective 9/22/2010.
Filed Date: 09/22/2010.
Accession Number: 20100922–5083.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 13, 2010.

Docket Numbers: ER10–2836–000.
Applicants: WFM Intermediary New England, LLC.
Description: WFM Intermediary New England, LLC submits application for authorization to make wholesale sales of

energy and capacity at negotiated, market-based rates under ER10–2836.

Filed Date: 09/22/2010.

Accession Number: 20100922–0204.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 13, 2010.

Docket Numbers: ER10–2837–000.

Applicants: Spark Energy, L.P.

Description: Spark Energy, L.P. submits tariff filing per 35.12: Spark Energy, L.P. Baseline Market-Based Rate Tariff to be effective 9/22/2010.

Filed Date: 09/22/2010.

Accession Number: 20100922–5087.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 13, 2010.

Docket Numbers: ER10–2838–000.

Applicants: PacifiCorp.

Description: PacifiCorp submits its baseline tariff filing of Joint Ownership and Operating Agreement with Idaho Power, to be effective 9/22/2010.

Filed Date: 09/22/2010.

Accession Number: 20100922–5088.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 13, 2010.

Docket Numbers: ER10–2839–000.

Applicants: Midland Cogeneration Venture Limited Partnership.

Description: Midland Cogeneration Venture Limited Partnership submits its baseline electronic filing of its FERC Electric Tariff, Original Volume No. 1, to be effective 9/22/2010.

Filed Date: 09/22/2010.

Accession Number: 20100922–5091.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 13, 2010.

Docket Numbers: ER10–2840–000.

Applicants: PacifiCorp.

Description: PacifiCorp submits the Project Construction Agreement with Brigham City, designated as PacifiCorp Rate Schedule FERC No. 661, to be effective 11/22/2010.

Filed Date: 09/22/2010.

Accession Number: 20100922–5092.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 13, 2010.

Docket Numbers: ER10–2841–000.

Applicants: Safeway Inc.

Description: Safeway Inc. submits tariff filing per 35.12: Safeway, Inc. Rate Schedule FERC No. 1 Filing to be effective 9/22/2010.

Filed Date: 09/22/2010.

Accession Number: 20100922–5094.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 13, 2010.

Docket Numbers: ER10–2842–000.

Applicants: PacifiCorp.

Description: PacifiCorp submits tariff filing per 35.13(a)(2)(iii): PGE Harrison Relay Replacement Agreement to be effective 11/22/2010.

Filed Date: 09/22/2010.

Accession Number: 20100922–5095.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 13, 2010.

Docket Numbers: ER10–2843–000.

Applicants: GenConn Middletown LLC.

Description: GenConn Middletown LLC submits tariff filing per 35.12: GenConn Middletown FERC Electric Tariff to be effective 9/22/2010.

Filed Date: 09/22/2010.

Accession Number: 20100922–5097.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 13, 2010.

Docket Numbers: ER10–2844–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35: Attachment X Compliance to be effective 8/24/2010.

Filed Date: 09/22/2010.

Accession Number: 20100922–5101.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 13, 2010.

Docket Numbers: ER10–2845–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii): 1066 SubR2 Northeast TX. Elec. Coop. NITSA and NOA Original Docket No. ER10–696 to be effective 7/30/2010.

Filed Date: 09/22/2010.

Accession Number: 20100922–5102.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 13, 2010.

Docket Numbers: ER10–2846–000.

Applicants: Huntley Power LLC.

Description: Huntley Power LLC submits tariff filing per 35.12: Huntley Power FERC Electric Tariff to be effective 9/22/2010.

Filed Date: 09/22/2010.

Accession Number: 20100922–5107.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 13, 2010.

Docket Numbers: ER10–2847–000.

Applicants: TransAlta Centralia Generation LLC.

Description: TransAlta Centralia Generation LLC submits tariff filing per 35.12: TACG Baseline Filing to be effective 9/22/2010.

Filed Date: 09/22/2010.

Accession Number: 20100922–5110.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 13, 2010.

Docket Numbers: ER10–2848–000.

Applicants: AP Holdings, LLC.

Description: AP Holdings, LLC submits tariff filing per 35.12: AP Holdings—Baseline eTariff Filing to be effective 9/22/2010.

Filed Date: 09/22/2010.

Accession Number: 20100922–5123.

Comment Date: 5 pm Eastern Time on Wednesday, October 13, 2010.

Docket Numbers: ER10–2849–000.

Applicants: EDF Industrial Power Services (NY), LLC.

Description: EDF Industrial Power Services (NY), LLC submits tariff filing per 35.12: Market-based Rate Tariff to be effective 9/22/2010.

Filed Date: 09/22/2010.

Accession Number: 20100922–5135.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 13, 2010.

Docket Numbers: ER10–2850–000.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corporation submits tariff filing per 35: 2010–09–22 IBAA Compliance to be effective 6/28/2010.

Filed Date: 09/22/2010.

Accession Number: 20100922–5143.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 13, 2010.

Docket Numbers: R10–2851–000.

Applicants: Alabama Power Company.

Description: Alabama Power Company submits tariff filing per 35.12: Baseline Filing to be effective 9/22/2010 under ER10–02851–000 Filing Type: 370.

Filed Date: 09/22/2010.

Accession Number: 20100922–5144.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 13, 20.

Docket Numbers: ER10–2852–000.

Applicants: Eagle Industrial Power Services (IL), LL.

Description: Eagle Industrial Power Services (IL), LLC submits tariff filing per 35.12: Market Based Rate to be effective 9/22/2010 under ER10–02852–000 Filing Type: 360.

Filed Date: 09/22/2010.

Accession Number: 20100922–5145.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 13, 2010.

Docket Numbers: ER10–2853–000.

Applicants: Ocean State Power.

Description: Ocean State Power submits tariff filing per 35.12: Ocean State Power—FERC Electric Tariff to be effective 11/22/2010 under ER10–02853–000 Filing Type: 360.

Filed Date: 09/22/2010.

Accession Number: 20100922–5146.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 13, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and § 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same

docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–25088 Filed 10–5–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

September 22, 2010.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC10–97–000.
Applicants: APX, Inc.
Description: APX, Inc submits Application for Authorization under Section 203 of the Federal Power Act and Request for Expedited Action and Confidential Treatment.
Filed Date: 09/20/2010.
Accession Number: 20100921–0205.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 12, 2010.

Docket Numbers: EC10–99–000.
Applicants: Cross-Sound Cable Company, LLC, Prime Infrastructure Group, BIP Bermuda Holdings IV Limited, BIP Bermuda Holdings I Limited, Brookfield Infrastructure L.P., Brookfield Infrastructure Partners L.P., Brookfield Infrastructure Partners Limit, Brookfield Infrastructure GP L.P., Brookfield Infrastructure General Partner, Brookfield Renewable Power Inc., Great Lakes Holding Inc., Brookfield Asset Management Inc.
Description: Application for Authorization Under Section 203 of the Federal Power Act, and for Expedited Consideration, Confidential Treatment and Waivers of Cross-Sound Cable Company, LLC *et al.*
Filed Date: 09/21/2010.
Accession Number: 20100921–5174.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 12, 2010.

Docket Numbers: EC10–100–000.
Applicants: Sempra Energy Solutions LLC, Noble Americas Gas and Power Corp.
Description: Application for Authorization for Disposition of Jurisdictional Facilities, Acquisition of Securities by a Public Utility, and Request for Expedited Action of Sempra Energy Solutions LLC and Noble Americas Gas and Power Corp.
Filed Date: 09/22/2010.
Accession Number: 20100922–5129.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 13, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER99–4102–009.
Applicants: Milford Power Company, LLC.
Description: Supplement to Notice of Change in Status of Milford Power Company, LLC.
Filed Date: 09/21/2010.
Accession Number: 20100921–5109.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 12, 2010.

Docket Numbers: ER03–198–015.
Applicants: Pacific Gas and Electric Company.
Description: Pacific Gas and Electric Company Notice of Non-Material Change in Status.
Filed Date: 09/21/2010.
Accession Number: 20100921–5121.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 12, 2010.

Docket Numbers: ER10–192–005.
Applicants: Public Service Company of Colorado.
Description: Xcel Energy submits a fully-executed Offer of Settlement and Settlement Agreement.
Filed Date: 08/26/2010.
Accession Number: 20100826–0201.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 29, 2010.

Docket Numbers: ER10–1350–003.
Applicants: Entergy Services, Inc.
Description: Errata to 2010 Bandwidth Filing of Entergy Services, Inc.
Filed Date: 09/21/2010.
Accession Number: 20100921–5176.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 12, 2010.

Docket Numbers: ER10–1732–000; ER10–1733–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest ISO's Response to the Commission's 9/3/10 Deficiency Letter.
Filed Date: 09/20/2010.
Accession Number: 20100920–5178.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 12, 2010.

Docket Numbers: ER10–1732–000; ER10–1733–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Wisconsin Electric Power Company submits responses to the Commission's data request.
Filed Date: 09/20/2010.
Accession Number: 20100921–0001.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 12, 2010.

Docket Numbers: ER10–1732–000; ER10–1733–000.
Applicants: Midwest Independent Transmission System Operator, Inc.

Description: LSP–Whitewater Limited Partnership response to the Commission's 9/3/10 Data Request re the unexecuted Generator Interconnection Agreement.
Filed Date: 09/20/2010.
Accession Number: 20100921–0002.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 12, 2010.

Docket Numbers: ER10–1808–002.
Applicants: Western Massachusetts Electric Company.
Description: Western Massachusetts Electric Company submits tariff filing per 35: WMECO Compliance filing of Certificate of Concurrence to be effective 7/19/2010.
Filed Date: 09/07/2010
Accession Number: 20100907–5150.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 28, 2010.

Docket Numbers: ER10–2522–001.
Applicants: Top of the World Wind Energy, LLC.
Description: Top of the World Wind Energy, LLC submits tariff filing per 35.17(b): Supplement to MBR Application to be effective 9/3/2010.
Filed Date: 09/22/2010
Accession Number: 20100922–5134.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 13, 2010.

Docket Numbers: ER10–2567–001.
Applicants: Kit Carson Windpower, LLC.
Description: Kit Carson Windpower, LLC submits tariff filing per 35.17(b): Supplement to MBR Application to be effective 10/1/2010.
Filed Date: 09/22/2010.
Accession Number: 20100922–5131.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 13, 2010.

Docket Numbers: ER10–2790–000.
Applicants: Power Contract Finance, LLC.
Description: Power Contract Finance, LLC submits a Notice of Cancellation of their market-based rate schedule, Electric Rate Schedule FERC 1.
Filed Date: 09/20/2010.
Accession Number: 20100921–0204.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 12, 2010.

Docket Numbers: ER10–2803–000.
Applicants: Discount Energy Group, LLC.
Description: Discount Energy Group, LLC submits Petition for Acceptance of Initial Tariff, Waivers and Blanket Authority *et al.*
Filed Date: 09/21/2010.
Accession Number: 20100921–0211.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 12, 2010.

Docket Numbers: ER10–2804–000.
Applicants: Public Service Company of Colorado.
Description: Public Service Company of Colorado submits tariff filing per 35.37: 2010_09_21 PSCo Triennial Revision to be effective N/A.
Filed Date: 09/21/2010.
Accession Number: 20100921–5110.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 12, 2010.

Docket Numbers: ER10–2805–000.
Applicants: Central Hudson Gas & Electric Corporation.
Description: Central Hudson Gas & Electric Corporation submits tariff filing per 35.12: Baseline Filing—CHG&E MBR to be effective 9/22/2010.
Filed Date: 09/21/2010.
Accession Number: 20100921–5111.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 12, 2010.

Docket Numbers: ER10–2806–000.
Applicants: TransAlta Energy Marketing (U.S.) Inc.
Description: TransAlta Energy Marketing (U.S.) Inc. submits tariff filing per 35.12: TEMUS Baseline Tariff to be effective 9/21/2010.
Filed Date: 09/21/2010.
Accession Number: 20100921–5115.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 12, 2010.

Docket Numbers: ER10–2807–000.
Applicants: TransAlta Energy Marketing Corporation.
Description: TransAlta Energy Marketing Corporation submits tariff filing per 35.12: TransAlta Centralia Generation Baseline Tariff filing to be effective 9/21/2010.
Filed Date: 09/21/2010.
Accession Number: 20100921–5116.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 12, 2010.

Docket Numbers: ER10–2808–000.
Applicants: Freeport-McMoRan Copper & Gold Energy Services, LLC.
Description: Freeport-McMoRan Copper & Gold Energy Services, LLC submits tariff filing per 35.12: FMES FERC Electric MBR Second Revised Volume No. 1 to be effective 9/21/2010.
Filed Date: 09/21/2010.
Accession Number: 20100921–5140.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 12, 2010.

Docket Numbers: ER10–2809–000.
Applicants: Palama, LLC.
Description: Palama, LLC submits tariff filing per 35.12: Palama, LLC Baseline Market-Based Rate Tariff Filing to be effective 9/21/2010.
Filed Date: 09/21/2010.
Accession Number: 20100921–5143.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 12, 2010.

Docket Numbers: ER10–2810–000.
Applicants: Barclays Capital Energy Inc.
Description: Barclays Capital Energy Inc. submits tariff filing per 35.12: Baseline to be effective 9/21/2010.
Filed Date: 09/21/2010.
Accession Number: 20100921–5148.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 12, 2010.

Docket Numbers: ER10–2811–000.
Applicants: Barclays Bank PLC.
Description: Barclays Bank PLC submits tariff filing per 35.12: Baseline to be effective 9/21/2010.
Filed Date: 09/21/2010.
Accession Number: 20100921–5149.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 12, 2010.

Docket Numbers: ER10–2812–000
Applicants: GenConn Devon LLC
Description: GenConn Devon LLC submits tariff filing per 35.12: GenConn Devon FERC Electric Tariff to be effective 9/21/2010.
Filed Date: 09/21/2010.
Accession Number: 20100921–5154
Comment Date: 5 p.m. Eastern Time on Tuesday, October 12, 2010.

Docket Numbers: ER10–2813–000.
Applicants: Northwest Wind Partners, LLC.
Description: Northwest Wind Partners, LLC submits tariff filing per 35.15: Northwest Wind FERC Electric Tariff Cancellation to be effective 9/21/2010.
Filed Date: 09/21/2010.
Accession Number: 20100921–5155.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 12, 2010.

Docket Numbers: ER10–2814–000.
Applicants: Sempra Generation.
Description: Sempra Generation submits tariff filing per 35.12: Sempra Generation FERC Electric Tariff Volume No. 1 Baseline Filing to be effective 9/21/2010.
Filed Date: 09/21/2010.
Accession Number: 20100921–5159.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 12, 2010.

Docket Numbers: ER10–2815–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits tariff filing per 35.13(a)(2)(iii): Revised Interconnection Facilities Agreement with City of Banning to be effective 11/22/2010.
Filed Date: 09/21/2010.
Accession Number: 20100922–5000.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 12, 2010.

Docket Numbers: ER10–2816–000.
Applicants: Sierra Pacific Power Company.
Description: Sierra Pacific Power Company submits its baseline tariff

filing FERC Electric Tariff Volume No. 1–Resale Tariff, to be effective 9/22/2010.

Filed Date: 09/22/2010.

Accession Number: 20100922–5008.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 13, 2010.

Docket Numbers: ER10–2817–000.

Applicants: GearyEnergy, LLC.

Description: GearyEnergy, LLC submits tariff filing per 35.12: GearyEnergy, LLC Baseline eTariff Filing to be effective 9/23/2010.

Filed Date: 09/22/2010.

Accession Number: 20100922–5019.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 13, 2010.

Docket Numbers: ER10–2818–000.

Applicants: TransAlta Energy Marketing Corporation.

Description: TransAlta Energy Marketing Corporation submits tariff filing per 35.12: TEMC Baseline Tariff Filing to be effective 9/22/2010.

Filed Date: 09/22/2010.

Accession Number: 20100922–5021.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 13, 2010.

Docket Numbers: ER10–2819–000.

Applicants: ALLETE, Inc.

Description: ALLETE, Inc. submits tariff filing per 35.12: FERC Electric Tariff Wholesale Coordination Service Tariff No. 2 to be effective 9/22/2010.

Filed Date: 09/22/2010.

Accession Number: 20100922–5051.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 13, 2010.

Docket Numbers: ER10–2820–000.

Applicants: Louisville Gas and Electric Company.

Description: Louisville Gas and Electric Company submits tariff filing per 35.13(a)(2)(iii): OATT Amendment Filing 09/22/10 to be effective 9/23/2010.

Filed Date: 09/22/2010.

Accession Number: 20100922–5054.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 13, 2010.

Docket Numbers: ER10–2821–000.

Applicants: Stony Creek Wind Farm, LLC.

Description: Stony Creek Wind Farm, LLC submits tariff filing per 35.12: Baseline Tariff Filing For Stony Creek Wind Farm, LLC to be effective 9/22/2010.

Filed Date: 09/22/2010.

Accession Number: 20100922–5057.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 13, 2010.

Docket Numbers: ER10–2822–000.

Applicants: Atlantic Renewable Projects II LLC.

Description: Atlantic Renewable Projects II LLC submits tariff filing per 35.12: Baseline Filing of Market-Based Rate Tariff to be effective 9/22/2010.

Filed Date: 09/22/2010.

Accession Number: 20100922–5058.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 13, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–25087 Filed 10–5–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

September 28, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–1334–000.

Applicants: Honeoye Storage Corporation.

Description: Honeoye Storage Corporation submits tariff filing per 154.203: Honeoye Storage Section 157 Tariff to be effective 9/23/2010.

Filed Date: 09/23/2010.

Accession Number: 20100923–5061.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 5, 2010.

Docket Numbers: RP10–1335–000.

Applicants: Honeoye Storage Corporation.

Description: Honeoye Storage Corporation submits tariff filing per 154.203: Honeoye Storage Corporation, Volume No. 1A to be effective 9/23/2010.

Filed Date: 09/23/2010.

Accession Number: 20100923–5067.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 5, 2010.

Docket Numbers: RP10–1336–000.

Applicants: Equitrans, L.P.

Description: Equitrans, L.P. submits tariff filing per 154.204: Form of Service Agreement Revisions & Tariff Corrections to be effective 10/23/2010.

Filed Date: 09/23/2010.

Accession Number: 20100923–5093.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 5, 2010.

Docket Numbers: RP10–1337–000.

Applicants: Northern Natural Gas Company.

Description: Northern Natural Gas Company submits Tenth Revised Sheet 67 *et al* of its FERC Gas tariff, Fifth Revised Volume 1 effective 10/25/10.
Filed Date: 09/23/2010.
Accession Number: 20100923–0216.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 5, 2010.

Docket Numbers: RP10–1338–000.
Applicants: Wyoming Interstate Company, L.L.C.
Description: Wyoming Interstate Company, L.L.C. submits tariff filing per 154.203: Diamond Mountain Compressor Station Compliance Filing to be effective 10/23/2010.
Filed Date: 09/23/2010.
Accession Number: 20100923–5119.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 5, 2010.

Docket Numbers: RP10–1339–000.
Applicants: Northern Natural Gas Company.
Description: Northern Natural Gas Company submits tariff filing per 154.203: Baseline to be effective 9/24/2010.
Filed Date: 09/24/2010.
Accession Number: 20100924–5034.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 6, 2010.

Docket Numbers: RP10–1340–000.
Applicants: Honeoye Storage Corporation.
Description: Honeoye Storage Corporation submits tariff filing per 154.203: Honeoye Storage Corporation, Volume No. 2 to be effective 9/24/2010.
Filed Date: 09/24/2010.
Accession Number: 20100924–5113.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 6, 2010.

Docket Numbers: RP10–1341–000.
Applicants: Dauphin Island Gathering Partners.
Description: Dauphin Island Gathering Partners submits tariff filing per 154.203: Baseline Tariff to be effective 9/24/2010.
Filed Date: 09/24/2010.
Accession Number: 20100924–5119.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 6, 2010.

Docket Numbers: RP10–1342–000.
Applicants: WTG Hugoton, LP.
Description: WTG Hugoton, LP submits tariff filing per 154.203: WTG Hugoton, LP FERC Gas Tariff First Revised Volume No. 1.
Filed Date: 09/27/2010.
Accession Number: 20100927–5066.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 12, 2010.

Docket Numbers: RP10–1343–000.
Applicants: Energy West Development, Inc.
Description: Energy West Development, Inc. submits tariff filing per 154.202: Energy West Development, Inc. First Revised Volume No. 1 Baseline Tariff to be effective 10/27/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5177.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 12, 2010.

Docket Numbers: RP10–1344–000.
Applicants: Rockies Express Pipeline LLC.
Description: Rockies Express Pipeline LLC submits tariff filing per 154.204: Negative Rate 2010–09–27 MGE to be effective 11/1/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5222.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 12, 2010.

Docket Numbers: RP10–1345–000.
Applicants: Guardian Pipeline, L.L.C.
Description: Guardian Pipeline, L.L.C. submits tariff filing per 154.403: EPC Recovery Surcharge Adjustment to be effective 11/1/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5262.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 12, 2010.

Docket Numbers: RP10–1346–000.
Applicants: Columbia Gas Transmission, LLC.
Description: Columbia Gas Transmission, LLC submits tariff filing per 154.204: Non-Conforming Agreement—Bluestone Energy Partners to be effective 10/1/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5265.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 12, 2010.

Docket Numbers: RP10–1347–000.
Applicants: Western Gas Interstate Company.
Description: Western Gas Interstate Company submits tariff filing per 154.203: Western Gas Interstate FERC Gas Tariff Fifth Revised Volume No. 1 to be effective 9/28/2010.
Filed Date: 09/28/2010.
Accession Number: 20100928–5164.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 12, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2010–25085 Filed 10–5–10; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 2

September 23, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–1089–003.
Applicants: Cheniere Creole Trail Pipeline, L.P.
Description: Cheniere Creole Trail Pipeline, L.P. submits tariff filing per 154.203: 2nd Correction Compliance Filing to be effective 9/30/2010.
Filed Date: 09/22/2010.
Accession Number: 20100922–5127.

Comment Date: 5 p.m. Eastern Time on Monday, October 4, 2010.

Docket Numbers: RP10–1235–001.
Applicants: Empire Pipeline, Inc.
Description: Empire Pipeline, Inc. submits tariff filing per 154.203: Correction to ACA filing to be effective 10/1/2010.
Filed Date: 09/22/2010.
Accession Number: 20100922–5099.
Comment Date: 5 p.m. Eastern Time on Monday, October 4, 2010.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before 5 p.m. Eastern time on the specified comment date. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,
Deputy Secretary.
[FR Doc. 2010–25084 Filed 10–5–10; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

September 21, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–1313–000.
Applicants: National Grid LNG, LP.
Description: National Grid LNG, LP submits tariff filing per 154.203: National Grid LNG, L.P. FERC Gas Tariff Volume No. 1 Baseline Filing to be effective 9/20/2010.
Filed Date: 09/20/2010.
Accession Number: 20100920–5132.
Comment Date: 5 p.m. Eastern Time on Monday, October 4, 2010.

Docket Numbers: RP10–1314–000.
Applicants: Midcontinent Express Pipeline LLC.
Description: Midcontinent Express Pipeline LLC submits tariff filing per 154.203: Compliance Filing in Docket Nos. RP10–687 and RP10–998 to be effective 7/30/2010.
Filed Date: 09/20/2010.
Accession Number: 20100920–5135.
Comment Date: 5 p.m. Eastern Time on Monday, October 4, 2010.

Docket Numbers: RP10–1315–000.
Applicants: Natural Gas Pipeline Company of America.
Description: Natural Gas Pipeline Company of America LLC's Penalty Revenue Crediting Report.
Filed Date: 09/21/2010.
Accession Number: 20100921–5024.
Comment Date: 5 p.m. Eastern Time on Monday, October 4, 2010.

Docket Numbers: RP10–1316–000.
Applicants: Cotton Valley Compression, L.L.C.
Description: Cotton Valley Compression, L.L.C. submits tariff filing per 154.203: Cotton Valley—Baseline eTariff Filing to be effective 9/21/2010.
Filed Date: 09/21/2010.
Accession Number: 20100921–5027.
Comment Date: 5 p.m. Eastern Time on Monday, October 4, 2010.

Docket Numbers: RP10–1317–000.
Applicants: Maritimes & Northeast Pipeline, L.L.C.
Description: Maritimes & Northeast Pipeline, L.L.C. submits tariff filing per 154.204: Clean-up Filing 1 to be effective 8/6/2010.
Filed Date: 09/21/2010.
Accession Number: 20100921–5042.
Comment Date: 5 p.m. Eastern Time on Monday, October 4, 2010.

Docket Numbers: RP10–1318–000.
Applicants: Maritimes & Northeast Pipeline, L.L.C.
Description: Maritimes & Northeast Pipeline, L.L.C. submits tariff filing per 154.204: Clean-up Filing 2 to be effective 11/1/2010.
Filed Date: 09/21/2010.
Accession Number: 20100921–5053.
Comment Date: 5 p.m. Eastern Time on Monday, October 4, 2010.

Docket Numbers: RP10–1319–000.
Applicants: Equitrans, L.P.
Description: Equitrans, L.P. submits tariff filing per 154.204: Non-Conforming and Negotiated Rate Agreement Filing to be effective 10/1/2010.
Filed Date: 09/21/2010.
Accession Number: 20100921–5054.
Comment Date: 5 p.m. Eastern Time on Monday, October 4, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,
Deputy Secretary.
[FR Doc. 2010–25079 Filed 10–5–10; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 2

September 20, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–1257–001.
Applicants: Empire Pipeline, Inc.
Description: Empire Pipeline, Inc. submits tariff filing per 154.203: Correction to NAESB Filing (RP10–1257) to be effective 11/1/2010.
Filed Date: 09/16/2010.
Accession Number: 20100916–5112.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 28, 2010.

Docket Numbers: RP10–1267–001.
Applicants: Energy West Development, Inc.
Description: Energy West Development, Inc submits supplemental filing clarifying the extensions of time.
Filed Date: 09/16/2010.
Accession Number: 20100917–0002.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 28, 2010.

Docket Numbers: RP10–1024–001.
Applicants: Blue Lake Gas Storage Company.
Description: Blue Lake Gas Storage Company submits tariff filing per 154.203: Compliance RP10–1024 to be effective 8/30/2010.
Filed Date: 09/17/2010.
Accession Number: 20100917–5169.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 29, 2010.

Docket Numbers: RP10–1195–001.
Applicants: El Paso Natural Gas Company.
Description: El Paso Natural Gas Company submits tariff filing per 154.203: Order No. 587–U Compliance Errata to be effective 11/1/2010.
Filed Date: 09/17/2010.
Accession Number: 20100917–5168.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 29, 2010.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before 5 p.m. Eastern time on the specified comment date. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–25078 Filed 10–5–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

September 28, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–3075–000.
Applicants: CalPeak Power—Panoche LLC.
Description: CalPeak Power—Panoche LLC submits tariff filing per 35.12: CalPeak Power—Panoche FERC Electric Tariff to be effective 9/28/2010.
Filed Date: 09/28/2010.
Accession Number: 20100928–5198.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 19, 2010.

Docket Numbers: ER10–3076–000.
Applicants: CalPeak Power—Vaca Dixon LLC.
Description: CalPeak Power—Vaca Dixon LLC submits tariff filing per 35.12: CalPeak Power—Vaca Dixon FERC Electric Tariff to be effective 9/28/2010.
Filed Date: 09/28/2010.
Accession Number: 20100928–5204.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 19, 2010.

Docket Numbers: ER10–3077–000.
Applicants: CalPeak Power LLC.
Description: CalPeak Power LLC submits tariff filing per 35.12: CalPeak Power FERC Electric Tariff to be effective 9/28/2010.
Filed Date: 09/28/2010.
Accession Number: 20100928–5207.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 19, 2010.

Docket Numbers: ER10–3078–000.
Applicants: Commonwealth Chesapeake Company LLC.
Description: Commonwealth Chesapeake Company LLC submits tariff filing per 35.12: Commonwealth Chesapeake FERC Electric Tariff to be effective 9/28/2010.
Filed Date: 09/28/2010.
Accession Number: 20100928–5212.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 19, 2010.

Docket Numbers: ER10–3079–000.
Applicants: Tyr Energy LLC.
Description: Tyr Energy LLC submits tariff filing per 35.12: Tyr Energy FERC Electric Tariff to be effective 9/28/2010.
Filed Date: 09/28/2010.
Accession Number: 20100928–5213.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 19, 2010.

Docket Numbers: ER10–3080–000.
Applicants: Benton County Wind Farm LLC.
Description: Benton County Wind Farm LLC submits tariff filing per 35.12: Benton County MBR Baseline to be effective 9/28/2010.
Filed Date: 09/28/2010.
Accession Number: 20100928–5217.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 19, 2010.

Docket Numbers: ER10–3081–000.
Applicants: Equilon Enterprises LLC.
Description: Equilon Enterprises LLC submits tariff filing per 35.12: Equilon Enterprises-Martinez MBR Baseline to be effective 9/28/2010.
Filed Date: 09/28/2010.
Accession Number: 20100928–5218.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 19, 2010.

Docket Numbers: ER10–3082–000.
Applicants: Motiva Enterprises LLC.
Description: Motiva Enterprises LLC submits tariff filing per 35.12: Motiva Enterprises MBR Baseline to be effective 9/28/2010.
Filed Date: 09/28/2010.
Accession Number: 20100928–5219.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 19, 2010.

Docket Numbers: ER10–3083–000.
Applicants: Shell Chemical LP.
Description: Shell Chemical LP submits its Baseline Market-Based Rate Tariff pursuant to Order No. 714, to be effective 9/28/2010.
Filed Date: 09/28/2010.
Accession Number: 20100928–5224.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 19, 2010.

Docket Numbers: ER10–3084–000.
Applicants: Chula Vista Energy Center, LLC.

Description: Chula Vista Energy Center, LLC submits its baseline Market-Based Rate Tariff pursuant to Order No. 714, to be effective 9/28/2010.
Filed Date: 09/28/2010.
Accession Number: 20100928–5225.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 19, 2010.

Docket Numbers: ER10–3085–000.
Applicants: Escondido Energy Center, LLC.
Description: Escondido Energy Center, LLC submits its baseline Market-Based Rate Tariff, to be effective 9/28/2010.
Filed Date: 09/28/2010.
Accession Number: 20100928–5227.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 19, 2010.

Docket Numbers: ER10–3086–000.
Applicants: El Cajon Energy, LLC.
Description: El Cajon Energy, LLC submits tariff filing per 35.12: El Cajon MBR Baseline to be effective 9/28/2010.
Filed Date: 09/28/2010.
Accession Number: 20100928–5228.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 19, 2010.

Docket Numbers: ER10–3087–000.
Applicants: Wellhead Power Panoche, LLC.
Description: Wellhead Power Panoche, LLC submits tariff filing per 35.12: Power Panoche MBR Baseline to be effective 9/28/2010.
Filed Date: 09/28/2010.
Accession Number: 20100928–5234.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 19, 2010.

Docket Numbers: ER10–3088–000.
Applicants: Wellhead Power Gates, LLC.
Description: Wellhead Power Gates, LLC submits tariff filing per 35.12: Power Gates MBR Baseline to be effective 9/28/2010.
Filed Date: 09/28/2010.
Accession Number: 20100928–5240.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 19, 2010.

Docket Numbers: ER10–3089–000.
Applicants: Macquarie Energy LLC.
Description: Macquarie Energy LLC submits tariff filing per 35: Macquarie Energy Revised Reassignment Tariff to be effective 10/1/2010.
Filed Date: 09/28/2010.
Accession Number: 20100928–5248.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 19, 2010.

Docket Numbers: ER10–3090–000.
Applicants: Fresno Cogeneration Partners, L.P.
Description: Fresno Cogeneration Partners, L.P. submits tariff filing per 35.12: Fresno Cogen MBR Baseline to be effective 9/28/2010.
Filed Date: 09/28/2010.
Accession Number: 20100928–5251.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 19, 2010.

Docket Numbers: ER10–3092–000.
Applicants: Solios Power LLC.
Description: Solios Power LLC submits tariff filing per 35.12: Solios Power LLC FERC Electric Tariff No. 1 to be effective 9/28/2010.
Filed Date: 09/28/2010.
Accession Number: 20100928–5253.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 19, 2010.

Docket Numbers: ER10–3093–000.
Applicants: Santa Maria Cogen, Inc.
Description: Santa Maria Cogen, Inc. submits tariff filing per 35.12: Santa Maria Cogen MBR Baseline to be effective 9/28/2010.
Filed Date: 09/28/2010.
Accession Number: 20100928–5254.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 19, 2010.

Docket Numbers: ER10–3094–000.
Applicants: Power Exchange Corporation.
Description: Power Exchange Corporation submits tariff filing per 35.12: Power Exchange MBR Baseline to be effective 9/28/2010.
Filed Date: 09/28/2010.
Accession Number: 20100928–5255.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 19, 2010.

Docket Numbers: ER10–3095–000.
Applicants: Wellhead Power eXchange, LLC.
Description: Wellhead Power eXchange, LLC submits tariff filing per 35.12: Wellhead eXchange MBR Baseline to be effective 9/28/2010.
Filed Date: 09/28/2010.
Accession Number: 20100928–5257.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 19, 2010.

Docket Numbers: ER10–3096–000.
Applicants: Public Service Company of New Mexico.
Description: Public Service Company of New Mexico submits tariff filing per 35.12: WestConnect P-to-P Regional Trans Serv Experiment Tariff to be effective 9/28/2010.
Filed Date: 09/28/2010.
Accession Number: 20100928–5261.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 19, 2010.

Docket Numbers: ER10–3097–000.
Applicants: Bruce Power Inc.
Description: Bruce Power Inc. submits tariff filing per 35.12: Bruce Power Inc. to be effective 9/28/2010.
Filed Date: 09/28/2010.
Accession Number: 20100928–5263.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 19, 2010.

Docket Numbers: ER10–3098–000.
Applicants: The Connecticut Light and Power Company.
Description: The Connecticut Light and Power Company submits tariff filing per 35.13(a)(2)(iii): NUSCO CMEEC 2010 Transmission and Distribution Arrangements to be effective 12/1/2010.
Filed Date: 09/28/2010.
Accession Number: 20100928–5265.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 19, 2010.

Docket Numbers: ER10–3099–000.
Applicants: RC Cape May Holdings, LLC.
Description: RC Cape May Holdings, LLC submits tariff filing per 35.12: Baseline Electronic Tariff Filing to be effective 9/28/2010.
Filed Date: 09/28/2010.
Accession Number: 20100928–5276.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 19, 2010.

Docket Numbers: ER10–3100–000.
Applicants: MPC Generating, LLC.
Description: MPC Generating, LLC submits tariff filing per 35.12: Baseline Filing to be effective 9/28/2010.
Filed Date: 09/28/2010.
Accession Number: 20100928–5286.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 19, 2010.

Docket Numbers: ER10–3101–000.
Applicants: ISO New England Inc.
Description: ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii): NUSCO CMEEC 2010 Transmission and Distribution Arrangements to be effective 12/1/2010.
Filed Date: 09/28/2010.
Accession Number: 20100928–5288.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 19, 2010.

Docket Numbers: ER10–3102–000.
Applicants: Effingham County Power, LLC.
Description: Effingham County Power, LLC submits tariff filing per 35.12: Baseline Filing to be effective 9/28/2010.
Filed Date: 09/28/2010.
Accession Number: 20100928–5289.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 19, 2010.

Docket Numbers: ER10–3103–000.
Applicants: Western Massachusetts Electric Company.
Description: Western Massachusetts Electric Company submits tariff filing per 35.13(a)(2)(iii): NUSCO CMEEC 2010 Transmission and Distribution Arrangements to be effective 12/1/2010.
Filed Date: 09/28/2010.
Accession Number: 20100928–5297.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 19, 2010.

Docket Numbers: ER10–3104–000.

Applicants: Puget Sound Energy, Inc.
Description: Puget Sound Energy, Inc. submits tariff filing per 35.12: Vantage Wind Service Agreement 9/28/2010 to be effective 9/28/2010.
Filed Date: 09/28/2010.
Accession Number: 20100928–5302.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 19, 2010.

Docket Numbers: ER10–3105–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: ISA No 2639 among PJM, Keystone Station Owners and Penelec to be effective 9/17/2010.
Filed Date: 09/28/2010.
Accession Number: 20100928–5318.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 19, 2010.

Docket Numbers: ER10–3106–000.
Applicants: Public Service Company of New Hampshire.
Description: Public Service Company of New Hampshire submits tariff filing per 35.13(a)(2)(iii): NUSCO CMEEC 2010 Transmission and Distribution Arrangements to be effective 12/1/2010.
Filed Date: 09/28/2010.
Accession Number: 20100928–5325.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 19, 2010.

Docket Numbers: ER10–3107–000.
Applicants: Walton County Power, LLC.
Description: Walton County Power, LLC submits tariff filing per 35.12: Baseline Filing to be effective 9/28/2010.
Filed Date: 09/28/2010.
Accession Number: 20100928–5330.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 19, 2010.

Docket Numbers: ER10–3108–000.
Applicants: Panda-Brandywine, L.P.
Description: Panda-Brandywine, L.P. submits tariff filing per 35.12: Reactive Power Tariff to be effective 9/28/2010.
Filed Date: 09/28/2010.
Accession Number: 20100928–5332.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 19, 2010.

Docket Numbers: ER10–3109–000.
Applicants: Washington County Power, LLC.
Description: Washington County Power, LLC submits tariff filing per 35.12: Baseline Filing to be effective 9/28/2010.
Filed Date: 09/28/2010.
Accession Number: 20100928–5339.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 19, 2010.

Docket Numbers: ER10–3110–000.
Applicants: Union Power Partners, L.P.
Description: Union Power Partners, L.P. submits tariff filing per 35.12: Union Power FERC Electric Tariff to be effective 9/28/2010.
Filed Date: 09/28/2010.
Accession Number: 20100928–5343.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 19, 2010.

Docket Numbers: ER10–3111–000.
Applicants: Gila River Power, L.P.
Description: Gila River Power, L.P. submits tariff filing per 35.12: Gila River FERC Electric Tariff to be effective 9/28/2010.
Filed Date: 09/28/2010.
Accession Number: 20100928–5344.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 19, 2010.

Docket Numbers: ER10–3112–000.
Applicants: Xcel Energy Services Inc.
Description: Notice of Termination of Various Service Agreements and Rate Schedules filed by Xcel Energy Services Inc. on behalf of the NSP Companies.
Filed Date: 09/28/2010.
Accession Number: 20100928–5348.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 19, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2010–25096 Filed 10–5–10; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

September 28, 2010.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG10–71–000.
Applicants: Sundevil Power Holdings, LLC.
Description: Sundevil Power Holdings, LLC, Notice of Self-Certification as an Exempt Wholesale Generator.
Filed Date: 09/28/2010.
Accession Number: 20100928–5364.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 19, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER93–3–008.
Applicants: The United Illuminating Company.
Description: United Illuminating submits a revised MBR Tariff making the required change.
Filed Date: 09/27/2010.
Accession Number: 20100928–0206.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER96–719–029; ER97–2801–031; ER07–1236–006; ER99–2156–022.
Applicants: MidAmerican Energy Company; PacifiCorp; Yuma Cogeneration Associates; Cordova Energy Company LLC.
Description: Notice of Change in Status of PacifiCorp.
Filed Date: 09/27/2010.
Accession Number: 20100927–5188.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER98–1643–018.
Applicants: Portland General Electric Company.
Description: Clarification of June 29, 2010 Triennial Market Power Update Filing of Portland General Electric Company.
Filed Date: 09/27/2010.
Accession Number: 20100927–5269.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER99–1005–013; ER09–304–004.
Applicants: Kansas City Power & Light Company, KCP&L Greater Missouri Operations Company.
Description: Supplement to Notice of Non-Material Change in Status of Kansas City Power & Light Company, et al.
Filed Date: 09/27/2010.
Accession Number: 20100927–5191.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–2071–001.
Applicants: Northern States Power Company, a Minnesota Corporation
Description: Northern States Power Company, a Minnesota Corporation submits tariff filing per 35: 2010–09–28 NSPM Amend Concur to be effective 7/30/2010.
Filed Date: 09/28/2010.
Accession Number: 20100928–5283.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 19, 2010.

Docket Numbers: ER10–2075–001.
Applicants: Southwestern Public Service Company.
Description: Southwestern Public Service Company submits tariff filing per 35: 2010–09–28 SPS Amend Concur to be effective 7/30/2010.
Filed Date: 09/28/2010.
Accession Number: 20100928–5287.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 19, 2010.

Docket Numbers: ER10–2622–001.
Applicants: Northern States Power Company, a Minneso.
Description: Northern States Power Company, a Minnesota corporation submits tariff filing per 35.17(b): 2010_09_28 NSP Amendment Rate Schedule 602 to be effective 1/1/2011.
Filed Date: 09/28/2010.
Accession Number: 20100928–5321.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 19, 2010.

Docket Numbers: ER10–2978–001.
Applicants: Pacific Gas and Electric Company.
Description: Pacific Gas and Electric Company submits tariff filing per 35.17(b): Amendment to Filing to Revise CAISO Black Start Agreement to be effective 9/27/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5264
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–3034–000.
Applicants: TC Energy Trading, LLC.
Description: TC Energy Trading, LLC submits tariff filing per 35.12: TC Energy Trading FERC Electric Tariff to be effective 9/27/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5187.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–3035–000.
Applicants: Twin Cities Energy, LLC.
Description: Twin Cities Energy, LLC submits tariff filing per 35.12: Twin Cities Energy FERC Electric Tariff to be effective 9/27/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5189.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–3036–000.
Applicants: WPS Power Development, LLC.
Description: WPS Power Development, LLC submits tariff filing per 35.12: WPS Power Development Market Based Rate Baseline Tariff to be effective 9/27/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5193.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–3037–000.
Applicants: Twin Cities Power, LLC.
Description: Twin Cities Power, LLC submits tariff filing per 35.12: Twin Cities Power FERC Electric Tariff to be effective 9/27/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5196.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–3038–000.
Applicants: WPS Beaver Falls Generation, LLC.
Description: WPS Beaver Falls Generation, LLC submits tariff filing per 35.12: WPS Beaver Falls Market Based Rate Baseline Tariff to be effective 9/27/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5199.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–3039–000.
Applicants: Quest Energy, LLC.
Description: Quest Energy, LLC submits tariff filing per 35.12: Quest Energy Market Based Rate Baseline Tariff to be effective 9/27/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5203.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–3040–000.
Applicants: WPS Syracuse Generation, LLC.
Description: WPS Syracuse Generation, LLC submits tariff filing per 35.12: WPS Syracuse Market Based Rate Baseline Tariff to be effective 9/27/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5215.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–3041–000.
Applicants: WPS Westwood Generation, LLC.
Description: WPS Westwood Generation, LLC submits tariff filing per 35.12: WPS Westwood Gen Market Based Rate Baseline Tariff to be effective 9/27/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5219.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–3042–000.
Applicants: Combined Locks Energy Center, LLC.
Description: Combined Locks Energy Center, LLC submits tariff filing per 35.12: Combined Locks Market Based Rate Baseline Tariff to be effective 9/27/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5220.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–3043–000.
Applicants: New York Independent System Operator, Inc.
Description: New York Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): 205 Filing—ICAP In-City Buyer Side Mitigation Measure 09/27/10 to be effective 9/28/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5221.

Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–3044–000.
Applicants: Williams Flexible Generation, LLC.
Description: Williams Flexible Generation, LLC submits tariff filing per 35.12: Baseline Electronic Tariff Filing to be effective 9/27/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5224.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–3045–000.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corporation submits tariff filing per 35.13(a)(2)(iii): 2010–09–27 CAISO Service Agreement 1464, LGIA for PGE Collinsville Wind Project to be effective 10/9/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5225.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–3046–000.
Applicants: Camp Grove Wind Farm LLC.
Description: Camp Grove Wind Farm LLC submits tariff filing per 35.12: Camp Grove MBR Baseline to be effective 9/27/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5227.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–3048–000.
Applicants: Longview Fibre Paper and Packaging, Inc.
Description: Longview Fibre Paper and Packaging, Inc. submits tariff filing per 35.12: Longview Fibre Paper and Packaging, Inc. Baseline Market-Based Rate Tariff to be effective 9/27/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5243.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–3049–000.
Applicants: Champion Energy Services, LLC.
Description: Champion Energy Services, LLC submits tariff filing per 35.12: MBR application to be effective 9/27/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5244.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–3050–000.
Applicants: Cabazon Wind Partners, LLC.
Description: Cabazon Wind Partners, LLC submits tariff filing per 35.12: Cabazon Wind Partners, LLC MBR Tariff to be effective 9/27/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5247.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–3051–000.
Applicants: Champion Energy, LLC.
Description: Champion Energy, LLC submits tariff filing per 35.12: MBR application to be effective 9/27/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5249.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–3052–000.
Applicants: Rock River I, LLC.
Description: Rock River I, LLC submits tariff filing per 35.12: Rock River I, LLC MBR Tariff to be effective 9/27/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5250.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–3053–000.
Applicants: Whitewater Hill Wind Partners, LLC.
Description: Whitewater Hill Wind Partners, LLC submits tariff filing per 35.12: Whitewater Hill Wind Partners, LLC MBR Tariff to be effective 9/27/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5253.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–3054–000.
Applicants: Peaker LLC.
Description: Peaker LLC submits tariff filing per 35.12: Peaker LLC MBR Tariff to be effective 9/27/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5259.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–3055–000.
Applicants: Eagle Creek Hydro Power, LLC.
Description: Eagle Creek Hydro Power, LLC submits tariff filing per 35.12: Baseline Filing for Eagle Creek MBR Tariff to be effective 9/27/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5260.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–3056–000.
Applicants: Grays Ferry Cogeneration Partners.
Description: Grays Ferry Cogeneration Partners submits tariff filing per 35.12: Grays Ferry Cogeneration Partnership MBR Tariff to be effective 9/27/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5263.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–3057–000.
Applicants: Dow Pipeline Company.
Description: Dow Pipeline Company submits tariff filing per 35.12: DPL Baseline MBR Filing to be effective 9/28/2010.
Filed Date: 09/28/2010.
Accession Number: 20100928–5139.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 19, 2010.

Docket Numbers: ER10–3058–000.
Applicants: Pinelawn Power, LLC.
Description: Pinelawn Power, LLC submits tariff filing per 35.12: Pinelawn Power Market Based Rate Baseline Tariff to be effective 9/28/2010.
Filed Date: 09/28/2010.
Accession Number: 20100928–5140.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 19, 2010.

Docket Numbers: ER10–3059–000.
Applicants: Equus Power I, L.P.
Description: Equus Power I, L.P. submits tariff filing per 35.12: Equus Power I Market Based Rate Baseline Tariff to be effective 9/28/2010.
Filed Date: 09/28/2010.
Accession Number: 20100928–5141.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 19, 2010.

Docket Numbers: ER10–3060–000.
Applicants: Powerex Corp.
Description: Powerex Corp submits the First Revised Rate Schedule No. 5.
Filed Date: 09/27/2010.
Accession Number: 20100928–0205.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–3061–000.
Applicants: Orange Grove Energy, L.P.
Description: Orange Grove Energy, L.P. submits tariff filing per 35.12: Orange Grove Energy Market Based Rate Baseline Tariff to be effective 9/28/2010.
Filed Date: 09/28/2010.
Accession Number: 20100928–5146.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 19, 2010.

Docket Numbers: ER10–3062–000.
Applicants: Maine Public Service Company.
Description: Maine Public Service Co submits notices of cancellation of tariffs and rate schedules.
Filed Date: 09/27/2010.
Accession Number: 20100928–0204.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–3063–000.
Applicants: Green Country Energy, LLC.
Description: Green Country Energy, LLC submits tariff filing per 35.12: Green Country Market Based Rate Baseline Tariff to be effective 9/28/2010.
Filed Date: 09/28/2010.
Accession Number: 20100928–5147.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 19, 2010.

Docket Numbers: ER10–3064–000.
Applicants: Maine Public Service Company.
Description: Maine Public Service Company submits notice of cancellation for certain service agreements.
Filed Date: 09/27/2010.
Accession Number: 20100928–0203.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–3065–000.
Applicants: Shoreham Energy, LLC.
Description: Shoreham Energy, LLC submits tariff filing per 35.12: Shoreham Energy Market Based Rate Baseline Tariff to be effective 9/28/2010.
Filed Date: 09/28/2010.
Accession Number: 20100928–5148.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 19, 2010.

Docket Numbers: ER10–3066–000.
Applicants: Edgewood Energy, LLC.
Description: Edgewood Energy, LLC submits tariff filing per 35.12: Edgewood Energy Market Based Rate Baseline Tariff to be effective 9/28/2010.
Filed Date: 09/28/2010.
Accession Number: 20100928–5149.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 19, 2010.

Docket Numbers: ER10–3067–000.
Applicants: Trigen-St. Louis Energy Corporation.
Description: Trigen-St. Louis Energy Corporation submits tariff filing per 35.12: Trigen-St. Louis Energy Corporation MBR Tariff to be effective 9/28/2010.
Filed Date: 09/28/2010.
Accession Number: 20100928–5151.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 19, 2010.

Docket Numbers: ER10–3068–000.
Applicants: American Transmission Company LLC.
Description: American Transmission Company LLC submits filing to cancel its Open Access Transmission Tariff, FERC Electric Tariff 1.
Filed Date: 09/27/2010.
Accession Number: 20100928–0202
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–3069–000.
Applicants: Alcoa Power Generating Inc.
Description: Alcoa Power Generating Inc. submits tariff filing per 35.12: APGI MBR Baseline Filing to be effective 8/31/2010.
Filed Date: 09/28/2010.
Accession Number: 20100928–5183.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 19, 2010.

Docket Numbers: ER10–3070–000.
Applicants: Alcoa Power Marketing LLC.
Description: Alcoa Power Marketing LLC submits tariff filing per 35.12: APM MBR Baseline Filing to be effective 8/31/2010.
Filed Date: 09/28/2010.
Accession Number: 20100928–5185.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 19, 2010.

Docket Numbers: ER10–3071–000.
Applicants: CalPeak Power—Border LLC.
Description: CalPeak Power—Border LLC submits tariff filing per 35.12: CalPeak Power—Border FERC Electric Tariff to be effective 9/28/2010.
Filed Date: 09/28/2010.
Accession Number: 20100928–5193.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 19, 2010.

Docket Numbers: ER10–3072–000.
Applicants: CalPeak Power—El Cajon LLC.
Description: CalPeak Power—El Cajon LLC submits tariff filing per 35.12: CalPeak Power—El Cajon FERC Electric Tariff to be effective 9/28/2010.
Filed Date: 09/28/2010.
Accession Number: 20100928–5194.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 19, 2010.

Docket Numbers: ER10–3074–000.
Applicants: CalPeak Power—Enterprise LLC.
Description: CalPeak Power—Enterprise LLC submits tariff filing per 35.12: CalPeak Power—Enterprise FERC Electric Tariff to be effective 9/28/2010.
Filed Date: 09/28/2010.
Accession Number: 20100928–5197.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 19, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

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Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

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Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2010–25095 Filed 10–5–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

September 27, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2997–000.

Applicants: Atlantic City Electric Company.
Description: Atlantic City Electric Company submits tariff filing per 35.12: Atlantic City Electric MBR Baseline Tariff to be effective 9/27/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5059.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–2998–000.
Applicants: Klamath Generation LLC.
Description: Klamath Generation LLC submits tariff filing per 35.12: Baseline Filing of Market-Based Rate Tariff to be effective 9/27/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5062.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–2999–000.
Applicants: Klondike Wind Power LLC.
Description: Klondike Wind Power LLC submits tariff filing per 35.12: Baseline Filing of Market-Based Rate Tariff to be effective 9/27/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5063.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–3000–000.
Applicants: Klondike Wind Power II LLC.
Description: Klondike Wind Power II LLC submits tariff filing per 35.12: Baseline Filing of Market-Based Rate Tariff to be effective 9/27/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5064.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–3001–000.
Applicants: Lempster Wind, LLC.
Description: Lempster Wind, LLC submits tariff filing per 35.12: Baseline Filing of Market-Based Rate Tariff to be effective 9/27/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5077.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–3002–000.
Applicants: Locust Ridge Wind Farm, LLC.
Description: Locust Ridge Wind Farm, LLC submits tariff filing per 35.12: Baseline Filing of Market-Based Rate Tariff to be effective 9/27/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5084.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–3003–000.
Applicants: Bethlehem Renewable Energy, LLC.
Description: Bethlehem Renewable Energy, LLC submits tariff filing per 35.12: Bethlehem Renewable Energy MBR Tariff Baseline to be effective 9/27/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5087.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–3004–000.
Applicants: Locust Ridge Wind Farm II, LLC.
Description: Locust Ridge Wind Farm II, LLC submits tariff filing per 35.12: Baseline Filing of Market-Based Rate Tariff to be effective 9/27/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5090.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–3005–000.
Applicants: MinnDakota Wind LLC.
Description: MinnDakota Wind LLC submits tariff filing per 35.12: Baseline Filing of Market-Based Rate Tariff to be effective 9/27/2010.
Filed Date: 09/27/2010
Accession Number: 20100927–5094.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–3006–000.
Applicants: Moraine Wind LLC.
Description: Moraine Wind LLC submits tariff filing per 35.12: Baseline Filing of Market-Based Rate Tariff to be effective 9/27/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5097.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–3007–000.
Applicants: Moraine Wind II LLC.
Description: Moraine Wind II LLC submits tariff filing per 35.12: Baseline Filing of Market-Based Rate Tariff to be effective 9/27/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5098.
Comment Date: 5 p.m.Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–3008–000.
Applicants: Northern Iowa Windpower II LLC.
Description: Northern Iowa Windpower II LLC submits tariff filing per 35.12: Baseline Filing of Market-Based Rate Tariff to be effective 9/27/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5099.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–3009–000.
Applicants: Pebble Springs Wind LLC.
Description: Pebble Springs Wind LLC submits tariff filing per 35.12: Baseline Filing of Market-Based Rate Tariff to be effective 9/27/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5100.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–3010–000.
Applicants: Providence Heights Wind, LLC.
Description: Providence Heights Wind, LLC submits tariff filing per 35.12: Baseline Filing of Market-Based Rate Tariff to be effective 9/27/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5101.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–3011–000.
Applicants: Rugby Wind LLC.
Description: Rugby Wind LLC submits tariff filing per 35.12: Baseline Filing of Market-Based Rate Tariff to be effective 9/27/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5105.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–3012–000.
Applicants: Conectiv Energy Supply, Inc.
Description: Conectiv Energy Supply, Inc. submits tariff filing per 35.12: Conectiv Energy Supply MBR Tariff Baseline to be effective 9/27/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5107.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–3013–000.
Applicants: Star Point Wind Project LLC.
Description: Star Point Wind Project LLC submits tariff filing per 35.12: Baseline Filing of Market-Based Rate Tariff to be effective 9/27/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5109.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–3014–000.
Applicants: Twin Buttes Wind LLC.
Description: Twin Buttes Wind LLC submits tariff filing per 35.12: Baseline Filing of Market-Based Rate Tariff to be effective 9/27/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5110.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–3015–000.
Applicants: Eastern Landfill Gas, LLC.
Description: Eastern Landfill Gas, LLC submits tariff filing per 35.12: Eastern Landfill Market Based Rate Baseline Tariff to be effective 9/27/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5111.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–3016–000.
Applicants: Fauquier Landfill Gas, LLC.
Description: Fauquier Landfill Gas, LLC submits tariff filing per 35.12: Fauquier Landfill Market Based Rate Tariff Baseline to be effective 9/27/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5112.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–3017–000.
Applicants: The Dayton Power and Light Company.
Description: The Dayton Power and Light Company submits tariff filing per 35.12: FERC Rate Schedule No. 49, Village of Eldorado to be effective 9/27/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5113.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–3018–000.
Applicants: Delmarva Power & Light Company.
Description: Delmarva Power & Light Company submits tariff filing per 35.12: Delmarva Power & Light Company Market Based Rate Baseline Tariff to be effective 9/27/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5114.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–3019–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits tariff filing per 35.13(a)(2)(iii): Revised LGIA & Svc Agmt for Wholesale Dist Svc_SCE'S GenBusUnit_ Center Peaker to be effective 11/27/2010.\R10–03019–000 Filing Type: 10.
Filed Date: 09/27/2010.
Accession Number: 20100927–5118.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–3020–000.
Applicants: Public Service Company of Colorado.
Description: Public Service Company of Colorado submits tariff filing per 35.13(a)(2)(iii: 2010–09–27_PSCo Vol 5_cover_281–PSCo to be effective 10/15/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5124.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–3021–000.
Applicants: S. D. Warren Company.
Description: S. D. Warren Company submits tariff filing per 35.12: S.D. Warren Company FERC Electric Tariff to be effective 9/30/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5127.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–3024–000.
Applicants: Pace Global Asset Management, LLC.
Description: Pace Global Asset Management, LLC submits tariff filing per 35.12: FERC Electric Tariff, Original Volume No. 1 Revised to be effective 1/11/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5143.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–3025–000.
Applicants: Integrys Energy Services, Inc.
Description: Integrys Energy Services, Inc. submits tariff filing per 35.12: Integrys Energy Services, Inc. Market Based Rate Tariff Baseline Filing to be effective 9/27/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5144.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–3026–000.
Applicants: Termoelectrica U.S., LLC.
Description: Termoelectrica U.S., LLC submits tariff filing per 35.12: Termoelectrica U.S. LLC FERC Electric Tariff No. 1 Market-Based Rates Tariff to be effective 9/27/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5149.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–3027–000.
Applicants: Integrys Energy Services of New York, Inc.
Description: Integrys Energy Services of New York, Inc. submits tariff filing per 35.12: Integrys Energy Services of New York Market Based Rate Tariff Baseline Filing to be effective 9/27/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5159.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–3028–000.
Applicants: Elk Hills Power, LLC.
Description: Elk Hills Power, LLC submits tariff filing per 35.12: Elk Hills Power, LLC, FERC Electric Tariff No. 1 MBR Tariff baseline filing to be effective 9/27/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5164.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–3029–000.
Applicants: Klondike Wind Power III LLC.
Description: Klondike Wind Power III LLC submits tariff filing per 35.12: Baseline Filing of Market-Based Rate Tariff to be effective 9/27/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5172.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–3030–000.
Applicants: Potomac Electric Power Company.
Description: Potomac Electric Power Company submits tariff filing per 35.12: PEPCO Market Based Rate Tariff Baseline Filing to be effective 9/27/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5174.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–3031–000.
Applicants: Streator-Cayuga Ridge Wind Power LLC.
Description: Streator-Cayuga Ridge Wind Power LLC submits tariff filing per 35.12: Baseline Filing of Market-Based Rate Tariff to be effective 9/27/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5175.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–3032–000.
Applicants: Trimont Wind I LLC.
Description: Trimont Wind I LLC submits tariff filing per 35.12: Baseline Filing of Market-Based Rate Tariff to be effective 9/27/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5176.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–3033–000.
Applicants: Panda-Brandywine, L.P.
Description: Panda-Brandywine, L.P. submits tariff filing per 35.12: Market-Based Rate Tariff to be effective 9/27/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5185.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR10–6–001.
Applicants: North American Electric Reliability Corporation.
Description: North American Electric Reliability Corporation Reconciliation Report Submitted in Accordance with Petition for Approval of Delegation Agreement with Texas Reliability Entity, Inc. and 2010 Business Plan and Budget of Texas Reliability Entity, Inc.
Filed Date: 09/24/2010.
Accession Number: 20100924–5214.
Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–25094 Filed 10–5–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

September 27, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2710–002.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35: 20100927—Dominion Virginia H–16 Errata Filing—Pincus to be effective 9/17/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5184.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–2962–000.
Applicants: Sterling Power Partners, L.P.
Description: Sterling Power Partners, L.P. submits tariff filing per 35.12: Sterling Power Partners Baseline Filing to be effective 9/24/2010.
Filed Date: 09/24/2010.
Accession Number: 20100924–5115.
Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Docket Numbers: ER10–2963–000.
Applicants: Fore River Development, LLC.
Description: Fore River Development, LLC submits tariff filing per 35.12: Market-Based Rate Tariff in Compliance with Order No. 714 to be effective 9/24/2010.
Filed Date: 09/24/2010.
Accession Number: 20100924–5116.
Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Docket Numbers: ER10–2964–000.
Applicants: Selkirk Cogen Partners, L.P.
Description: Selkirk Cogen Partners, L.P. submits tariff filing per 35.12: Selkirk Cogen Partners, L.P. to be effective 9/24/2010.
Filed Date: 09/24/2010.
Accession Number: 20100924–5117.
Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Docket Numbers: ER10–2965–000.
Applicants: Boston Generating, LLC.
Description: Boston Generating, LLC submits tariff filing per 35.12: Market-Based Rate Tariff in Compliance with Order No. 714 to be effective 9/24/2010.
Filed Date: 09/24/2010.
Accession Number: 20100924–5118.
Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Docket Numbers: ER10–2966–000.
Applicants: Rumford Falls Hydro LLC.
Description: Rumford Falls Hydro LLC submits tariff filing per 35.12: Rumford Falls Hydro LLC Baseline Market-Based Rate Tariff to be effective 9/24/2010.
Filed Date: 09/24/2010.
Accession Number: 20100924–5120.
Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Docket Numbers: ER10–2967–000.
Applicants: Seneca Power Partners, L.P.
Description: Seneca Power Partners, L.P. submits their Baseline Filing of FERC Electric Tariff, Ninth Revised Volumen No 1, to be effective 9/24/2010.
Filed Date: 09/24/2010.
Accession Number: 20100924–5123.
Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Docket Numbers: ER10–2968–000.
Applicants: GenConn Energy LLC.
Description: GenConn Energy LLC submits tariff filing per 35.12: GenConn Energy FERC Electric Tariff to be effective 9/24/2010.
Filed Date: 09/24/2010.
Accession Number: 20100924–5130.
Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Docket Numbers: ER10–2969–000.
Applicants: Oswego Harbor Power LLC.
Description: Oswego Harbor Power LLC submits tariff filing per 35.12: Oswego Harbor Power FERC Electric Tariff to be effective 9/24/2010.
Filed Date: 09/24/2010.
Accession Number: 20100924–5134.
Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Docket Numbers: ER10–2970–000.
Applicants: Commerce Energy, Inc.
Description: Commerce Energy, Inc. submits tariff filing per 35.12: Baseline to be effective 9/24/2010.
Filed Date: 09/24/2010.
Accession Number: 20100924–5141.
Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Docket Numbers: ER10–2971–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii): 20100924—Pre-Filing 44 PHP Replacement Capacity Clarification (Flynn) to be effective 11/23/2010.
Filed Date: 09/24/2010.
Accession Number: 20100924–5144.
Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Docket Numbers: ER10–2972–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): Amendment to ATC–LSP GIA to be effective 12/31/9998.
Filed Date: 09/24/2010.
Accession Number: 20100924–5146.
Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Docket Numbers: ER10–2972–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): Amendment to ATC–LSP GIA to be effective 12/31/9998.
Filed Date: 09/24/2010.
Accession Number: 20100924–5147.
Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Docket Numbers: ER10–2973–000.
Applicants: El Dorado Energy, LLC.
Description: El Dorado Energy, LLC submits tariff filing per 35.12: El Dorado Energy, LLC, FERC Electric Tariff No. 1 baseline filing to be effective 9/24/2010.
Filed Date: 09/24/2010.
Accession Number: 20100924–5152.
Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Docket Numbers: ER10–2974–000.
Applicants: Just Energy (U.S.) Corp.
Description: Just Energy (U.S.) Corp. submits tariff filing per 35.12: Baseline to be effective 9/24/2010.
Filed Date: 09/24/2010.
Accession Number: 20100924–5158.
Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Docket Numbers: ER10–2975–000.
Applicants: CSW ENERGY SERVICES, INC.
Description: CSW ENERGY SERVICES, INC. submits tariff filing per 35.12: 20100924—MBR CSW Energy Svcs Baseline to be effective 9/27/2010.
Filed Date: 09/24/2010.
Accession Number: 20100924–5162.
Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Docket Numbers: ER10–2976–000.
Applicants: Tampa Electric Company.
Description: Tampa Electric Company submits tariff filing per 35: Compliance Filing—Sale or Assignment of Transmission Service to be effective 10/1/2010.
Filed Date: 09/24/2010.
Accession Number: 20100924–5169.
Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Docket Numbers: ER10–2977–000.
Applicants: Mesquite Power, LLC.
Description: Mesquite Power, LLC submits tariff filing per 35.12: Mesquite Power, LLC, FERC Electric Tariff No. 1 MBR Tariff baseline filing to be effective 9/24/2010.
Filed Date: 09/24/2010.
Accession Number: 20100924–5172.
Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Docket Numbers: ER10–2978–000.
Applicants: Pacific Gas and Electric Company.
Description: Pacific Gas and Electric Company submits tariff filing per 35.13(a)(2)(iii): Revisions to CAISO Interim Black Start Agreement Schedule 2 to be effective 9/27/2010.
Filed Date: 09/24/2010.
Accession Number: 20100924–5173.
Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Docket Numbers: ER10–2979–000.
Applicants: California Power Holdings, LLC.
Description: California Power Holdings, LLC submits its baseline tariff, FERC Electric Tariff, Volume No 1, to be effective 9/24/2010.
Filed Date: 09/24/2010.
Accession Number: 20100924–5188.
Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Docket Numbers: ER10–2980–000.
Applicants: Castleton Power, LLC.
Description: Castleton Power, LLC submits tariff filing per 35.12: Castleton Power FERC Electric Tariff to be effective 9/24/2010.
Filed Date: 09/24/2010.
Accession Number: 20100924–5191.
Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Docket Numbers: ER10–2981–000.
Applicants: AEP Texas Central Company, Public Service Company of Oklahoma, Southwestern Electric Power Company, AEP Texas North Company.
Description: AEP Texas Central Company submits tariff filing per 35.12: 20100924 MBR CSW Oper Co Baseline to be effective 9/27/2010.
Filed Date: 09/24/2010.
Accession Number: 20100924–5193.
Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Docket Numbers: ER10–2983–000.
Applicants: Castleton Energy Services, LLC.
Description: Castleton Energy Services, LLC submits its baseline tariff, FERC Electric Tariff, Volume No. 1, to be effective 9/24/2010.
Filed Date: 09/24/2010.
Accession Number: 20100924–5200.
Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Docket Numbers: ER10–2984–000.
Applicants: Merrill Lynch Commodities, Inc.
Description: Merrill Lynch Commodities, Inc. submits tariff filing per 35.12: Market-based Rate to be effective 9/24/2010.
Filed Date: 09/24/2010.
Accession Number: 20100924–5204.
Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Docket Numbers: ER10–2985–000.
Applicants: Champion Energy Marketing, LLC.
Description: Champion Energy Marketing, LLC submits tariff filing per 35.12: Baseline to be effective 9/24/2010.
Filed Date: 09/24/2010.
Accession Number: 20100924–5205.
Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Docket Numbers: ER10–2986–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii) 20100924—Pre-Filing 046 Excess Congestion Credit (Flynn) to be effective 9/17/2010.
Filed Date: 09/24/2010.
Accession Number: 20100924–5207.
Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Docket Numbers: ER10–2987–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits tariff filing per 35.13(a)(2)(iii): SGIA & Service Agmt for Wholesale Distrib Serv with Greenpower Williams LLC to be effective 9/28/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5000.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–2988–000.
Applicants: Thompson River Power, LLC.
Description: Thompson River Power, LLC submits tariff filing per 35.12: Thompson River Power FERC Electric Tariff to be effective 9/24/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5039.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–2989–000.
Applicants: Solios Power Trading LLC.
Description: Solios Power Trading LLC submits tariff filing per 35.12: Solios Power Trading LLC, FERC Electric Tariff Original Volume No. 1 to be effective 9/27/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5040.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–2990–000.
Applicants: Potomac Power Resources, Inc.
Description: Potomac Power Resources, Inc. submits tariff filing per 35.12: Potomac Power Market Based Rate Tariff Baseline Filing to be effective 9/27/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5042.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–2991–000.
Applicants: Solios Power Mid-Atlantic Trading, LLC.
Description: Solios Power Mid-Atlantic Trading, LLC submits tariff filing per 35.12: Solios Power Mid-Atlantic Trading LLC, FERC Elec Trf Orig Vol #1 to be effective 9/27/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5043.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–2992–000.
Applicants: Pepco Energy Services, Inc.
Description: Pepco Energy Services, Inc. submits tariff filing per 35.12: Pepco Energy Services Market Based Rate Tariff Baseline Filing to be effective 9/27/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5044.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–2993–000.
Applicants: Solios Power Midwest Trading LLC.
Description: Solios Power Midwest Trading LLC submits tariff filing per 35.12: Solios Power Midwest Trading LLC, FERC Electric Tariff, Original Vol. No. 1 to be effective 9/27/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5045.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–2994–000.
Applicants: Iberdrola Renewables, Inc.
Description: Iberdrola Renewables, Inc. submits tariff filing per 35.12: Baseline Filing of Market-Based Rate Tariff to be effective 9/27/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5046.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–2995–000.
Applicants: Juniper Canyon Wind Power LLC.
Description: Juniper Canyon Wind Power LLC submits tariff filing per 35.12: Baseline Filing of Market-Based Rate Tariff to be effective 9/27/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5049.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER10–2996–000.
Applicants: Klamath Energy LLC.
Description: Klamath Energy LLC submits tariff filing per 35.12: Baseline Filing of Market-Based Rate Tariff to be effective 9/27/2010.
Filed Date: 09/27/2010.
Accession Number: 20100927–5053.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

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Nathaniel J. Davis, Sr.,
Deputy Secretary.
[FR Doc. 2010–25093 Filed 10–5–10; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 1

September 20, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–1305–000.
Applicants: Venice Gathering System, L.L.C.
Description: Venice Gathering System, L.L.C. submits tariff filing per 154.203: NAESB 1.9 Compliance Filing to be effective 11/1/2010.
Filed Date: 09/15/2010.
Accession Number: 20100915–5212.
Comment Date: 5 p.m. Eastern Time on Monday, September 27, 2010.

Docket Numbers: RP10–1306–000.
Applicants: Black Marlin Pipeline Company.
Description: Black Marlin Pipeline Company submits tariff filing per 154.203: Baseline Tariff Resubmittal to be effective 8/26/2010.

Filed Date: 09/16/2010.
Accession Number: 20100916–5133.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 28, 2010.

Docket Numbers: RP10–1307–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: Transcontinental Gas Pipe Line Company, LLC submits tariff filing per 154.403: Interim TEP Tracker Filing to be effective 10/17/2010.
Filed Date: 09/16/2010.
Accession Number: 20100916–5137.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 28, 2010.

Docket Numbers: RP10–1308–000.
Applicants: National Grid LNG, LP.
Description: National Grid LNG, LP submits First Revised Sheet No. 31 *et al.* to FERC Gas Tariff, Fourth Revised Volume No. 1, effective 11/1/10.
Filed Date: 09/16/2010.
Accession Number: 20100917–0201.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 28, 2010.

Docket Numbers: RP10–1309–000.
Applicants: Dominion Cove Point LNG, LP.
Description: Dominion Cove Point LNG, LP submits tariff filing per 154.203: DCP—Revenue Crediting Report to be effective N/A.
Filed Date: 09/17/2010.
Accession Number: 20100917–5087.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 29, 2010.

Docket Numbers: RP10–1310–000.
Applicants: Tennessee Gas Pipeline Company.
Description: Tennessee Gas Pipeline Company submits tariff filing per 154.204: Exhibit A Filing to be effective 9/22/2010.
Filed Date: 09/17/2010.
Accession Number: 20100917–5150.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 29, 2010.

Docket Numbers: RP10–1311–000.
Applicants: El Paso Natural Gas Company.
Description: El Paso Natural Gas Company submits tariff filing per 154.204: Non-Conforming Agreements to be effective 10/18/2010.
Filed Date: 09/17/2010.
Accession Number: 20100917–5171.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 29, 2010.

Docket Numbers: RP10–1312–000.
Applicants: KO Transmission Company.
Description: KO Transmission Company submits tariff filing per 154.203: Baseline Filing to be effective 9/20/2010.
Filed Date: 09/20/2010.
Accession Number: 20100920–5047.
Comment Date: 5 p.m. Eastern Time on Monday, October 04, 2010.

Docket Numbers: CP10–500–000.
Applicants: Enbridge Offshore Pipelines (UTOS) LLC.
Description: Application for Abandonment of Rate Schedule X–1 of Enbridge Offshore Pipelines (UTOS) LLC.
Filed Date: 09/17/2010.
Accession Number: 20100917–5146.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 29, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2010–25077 Filed 10–5–10; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

September 9, 2010.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG10–67–000.
Applicants: Chestnut Flats Wind, LLC.
Description: Self-Certification of Exempt Wholesale Generator of Chestnut Flats Wind, LLC.
Filed Date: 09/09/2010.
Accession Number: 20100909–5062.
Comment Date: 5 p.m. Eastern Time on Thursday, September 30, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER06–1331–006.
Applicants: CalPeak Power LLC, CalPeak Power—Panoche LLC, CalPeak Power—Vaca Dixon LLC, CalPeak Power—El Cajon LLC, CalPeak Power—Enterprise LLC, CalPeak Power—Border LLC, Tyr Energy LLC.
Description: CalPeak Power LLC submits supplemental information.
Filed Date: 08/24/2010.
Accession Number: 20100824–5134.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–566–001; ER08–1255–003; ER07–1106–009; ER08–1255–004.
Applicants: ArcLight Energy Marketing, LLC, Oak Creek Wind Power, LLC, Coso Geothermal Power Holdings, LLC.
Description: Coso Geothermal Power Holdings, LLC and Oak Creek Wind Power, LLC submits Supplement to Updated Market Power Analysis for the Southwest Region.
Filed Date: 09/08/2010.
Accession Number: 20100908–5162.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 29, 2010.

Docket Numbers: ER10–1816–001.
Applicants: The Dayton Power and Light Company.
Description: The Dayton Power and Light Company submits tariff filing per 35: FERC Rate Schedule No. 42, Village of Arcanum to be effective 9/9/2010.

Filed Date: 09/09/2010.
Accession Number: 20100909–5149.
Comment Date: 5 p.m. Eastern Time on Thursday, September 30, 2010.

Docket Numbers: ER10–2453–000.
Applicants: Icetec.
Description: Icetec, Inc submits Petition for Acceptance of Initial Tariff, Waivers and Blanket Authority.
Filed Date: 08/30/2010.
Accession Number: 20100830–0205.
Comment Date: 5 p.m. Eastern Time on Monday, September 20, 2010.

Docket Numbers: ER10–2454–000.
Applicants: Westar Energy, Inc.
Description: Western Resources, Inc submits Notice of Cancellation of Non-Firm Point-to-Point Transmission Service Agreements.
Filed Date: 08/30/2010.
Accession Number: 20100830–0204.
Comment Date: 5 p.m. Eastern Time on Monday, September 20, 2010.

Docket Numbers: ER10–2456–000.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corporation submits tariff filing per 35: 2010–08–30 CAISO Financial Security Deposit Compliance EL10–15 to be effective 7/1/2010.
Filed Date: 08/30/2010.
Accession Number: 20100830–5145.
Comment Date: 5 p.m. Eastern Time on Monday, September 20, 2010.

Docket Numbers: ER10–2550–000.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corporation submits tariff filing per 35.13(a)(2)(iii): 2010–09–07 Amd 2 to CAISO Service Agreement 798 to be effective 9/28/2010.
Filed Date: 09/07/2010.
Accession Number: 20100907–5134.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 28, 2010.

Docket Numbers: ER10–2551–000.
Applicants: Baldwin Wind, LLC.
Description: Baldwin Wind, LLC submits tariff filing per 35.12: Baldwin Wind, LLC MBR Application FINAL to be effective 10/15/2010.
Filed Date: 09/07/2010.
Accession Number: 20100907–5136.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 28, 2010.

Docket Numbers: ER10–2565–000.
Applicants: MidAmerican Energy Company.
Description: MidAmerican Energy Company submits a Notice of Cancellation of the Partial Requirements Wholesale Service Agreement.
Filed Date: 09/08/2010.
Accession Number: 20100909–0202.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 29, 2010.

Docket Numbers: ER10–2566–000.
Applicants: Duke Energy Carolinas, LLC.
Description: Duke Energy Carolinas, LLC submits tariff filing per 35.12: DEC Baseline Filing to be effective 9/9/2010.
Filed Date: 09/09/2010.
Accession Number: 20100909–5016.
Comment Date: 5 p.m. Eastern Time on Thursday, September 30, 2010.

Docket Numbers: ER10–2567–000.
Applicants: Kit Carson Windpower, LLC.
Description: Kit Carson Windpower, LLC submits tariff filing per 35.12: Market Based Rate Application to be effective 10/1/2010.
Filed Date: 09/09/2010.
Accession Number: 20100909–5037.
Comment Date: 5 p.m. Eastern Time on Thursday, September 30, 2010.

Docket Numbers: ER10–2568–000.
Applicants: Chestnut Flats Wind, LLC.
Description: Chestnut Flats Wind, LLC submits tariff filing per 35.12: Market-Based Rate Tariff to be effective 11/15/2010.
Filed Date: 09/09/2010.
Accession Number: 20100909–5052.
Comment Date: 5 p.m. Eastern Time on Thursday, September 30, 2010.

Docket Numbers: ER10–2569–000.
Applicants: New York Independent System Operator, Inc.
Description: New York Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): 205 Filing—RS 1 provisions—Messonnier/Lampi 09/09/10 to be effective 11/8/2010.
Filed Date: 09/09/2010.
Accession Number: 20100909–5075.
Comment Date: 5 p.m. Eastern Time on Thursday, September 30, 2010.

Docket Numbers: ER10–2570–000.
Applicants: Shady Hills Power Company LLC.
Description: Shady Hills Power Company LLC submits tariff filing per 35.12: Shady Hills Power Company LLC Market Based Rate Tariff to be effective 9/9/2010.
Filed Date: 09/09/2010.
Accession Number: 20100909–5096.
Comment Date: 5 p.m. Eastern Time on Thursday, September 30, 2010.

Docket Numbers: ER10–2571–000.
Applicants: Wisconsin Electric Power Company.
Description: Wisconsin Electric Power Company submits tariff filing per 35: Coordination Sales Tariff Baseline Filing to be effective 9/9/2010.
Filed Date: 09/09/2010.
Accession Number: 20100909–5101.
Comment Date: 5 p.m. Eastern Time on Thursday, September 30, 2010.

Docket Numbers: ER10–2572–000.
Applicants: Wisconsin Electric Power Company.
Description: Wisconsin Electric Power Company submits tariff filing per 35: Tariff for Sales of Ancillary Services Baseline Filing to be effective 9/9/2010.
Filed Date: 09/09/2010.
Accession Number: 20100909–5132.
Comment Date: 5 p.m. Eastern Time on Thursday, September 30, 2010.

Docket Numbers: ER10–2573–000.
Applicants: Portland General Electric Company.
Description: Portland General Electric Company submits tariff filing per 35.12: Baseline Filing of PGE's OATT Fourth Revised Volume No. 8 to be effective 9/10/2010.
Filed Date: 09/09/2010.
Accession Number: 20100909–5146.
Comment Date: 5 p.m. Eastern Time on Thursday, September 30, 2010.

Docket Numbers: ER10–2574–000.
Applicants: BP West Coast Products LLC.
Description: BP West Coast Products LLC submits tariff filing per 35.12: Baseline MBR Tariff Filing of BP West Coast Products LLC to be effective 9/10/2010.
Filed Date: 09/09/2010.
Accession Number: 20100909–5147.
Comment Date: 5 p.m. Eastern Time on Thursday, September 30, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do

not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–25059 Filed 10–5–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–2750–000]

The Order of St. Benedict of New Hampshire; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

September 22, 2010.

This is a supplemental notice in the above-referenced proceeding of The Order of St. Benedict of New Hampshire's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 12, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–25080 Filed 10–5–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–2836–000]

WFM Intermediary New England, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

September 27, 2010.

This is a supplemental notice in the above-referenced proceeding of WFM Intermediary New England, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 18, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a

document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–25090 Filed 10–5–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–2720–000]

Minco Wind, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

September 21, 2010.

This is a supplemental notice in the above-referenced proceeding of Minco Wind, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 12, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–25086 Filed 10–5–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–2833–000]

East Avenue Energy, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

September 27, 2010.

This is a supplemental notice in the above-referenced proceeding of East Avenue Energy, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 18, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–25098 Filed 10–5–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–2829–000]

Athens Energy, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

September 27, 2010.

This is a supplemental notice in the above-referenced proceeding of Athens Energy, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 18, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–25097 Filed 10–5–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–2779–000]

Westerly Hospital Energy Company, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

September 22, 2010.

This is a supplemental notice in the above-referenced proceeding of Westerly Hospital Energy Company, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 12, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–25082 Filed 10–5–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–2754–000]

New England Wire Technologies Corp; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

September 22, 2010.

This is a supplemental notice in the above-referenced proceeding of New England Wire Technologies Corp's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 12, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a

document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–25081 Filed 10–5–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–2803–000]

Discount Energy Group, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

September 22, 2010.

This is a supplemental notice in the above-referenced proceeding of Discount Energy Group, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 12, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–25075 Filed 10–5–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–2780–000]

Union Leader Corporation; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

September 22, 2010.

This is a supplemental notice in the above-referenced proceeding of Union Leader Corporation's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 12, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–25074 Filed 10–5–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13835–000]

Coffin Butte Energy Park, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

September 21, 2010.

On August 25, 2010, Coffin Butte Energy Park, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Coffin Butte Pumped Storage Water Power Project (Coffin Butte Project) to be located in Wheatland County, Montana. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project will consist of the following: (1) A 5,700-foot-long, 60-foot-high triangular earth and roller compacted concrete embankment; creating a 50-acre upper reservoir with a storage capacity of 2,500-acre-foot at an elevation of 6,420 feet National Geodetic Vertical Datum 1929 (NGVD 29); (2) a 6,300-foot-long, 60-foot-high oval earth and roller compacted concrete embankment; creating a 50-acre lower reservoir with a storage capacity of 2,500-acre-foot at an elevation of 5,200 feet NGVD 29; (3) an 18-foot-diameter, 5,000-foot-long steel-lined tunnel connecting the two reservoirs; (4) a powerhouse located on the steel-lined tunnel containing two reversible 125-megawatt (MW) turbine/generator units, for a total installed capacity of 250 MW; (5) a temporary earthen/rock diversion with a pump and 2-foot-diameter pipeline to bring initial fill water to the lower reservoir from Miller Creek; (6) a 2-foot-diameter well to bring groundwater to the project to make up evaporation and seepage losses; (7) an approximately 2-mile-long, 500-kilovolt (kV) transmission line connecting the powerhouse to an existing 500-kV transmission line in the area or a 7-mile-long, 230-kV transmission line connecting the powerhouse to the Two Dot substation; and (8) appurtenant facilities. The estimated annual generation of the Coffin Butte Project would be 880,000 megawatt-hours.

Applicant Contact: Carl Borquist, Coffin Butte Energy Park, LLC, 1970 Stadium Drive, Suite 3, Bozeman, MN 59715; phone: (406) 585–3006.

FERC Contact: Jennifer Harper (202) 502–6136.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13835–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–25101 Filed 10–5–10; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2010–0797' FRL–9211–1]

Human Studies Review Board; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA or Agency) Office of the Science Advisor (OSA) announces a public meeting of the Human Studies Review Board (HSRB) to advise the Agency on EPA's scientific and ethical reviews of research with human subjects.

DATES: This public meeting will be held on October 27–28, 2010, from approximately 11 a.m. on October 27, 2010 to approximately 5:30 p.m. on October 28, 2010, Eastern Time.

Location: Environmental Protection Agency, Conference Center—Lobby Level, One Potomac Yard (South Bldg.), 2777 S. Crystal Drive, Arlington, VA 22202.

Meeting Access: Seating at the meeting will be on a first-come basis. To request accommodation of a disability, please contact the persons listed under **FOR FURTHER INFORMATION CONTACT** at least 10 business days prior to the meeting, to allow EPA as much time as possible to process your request.

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral comments for the HSRB to consider during the advisory process. Additional information concerning submission of relevant written or oral comments is provided in section I., under subsection D., "**SUPPLEMENTARY INFORMATION**" of this notice.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wishes to receive further information should contact Jim Downing, at *telephone number:* (202) 564–2468; fax: (202) 564–2070; *e-mail address: downing.jim@epa.gov,* or Lu-Ann Kleibacker, at *telephone number:* (202) 564–7189; *fax:* 202–564–2070; *e-mail address: kleibacker.lu-ann@epa.gov;* mailing address: Environmental Protection Agency, Office of the Science Advisor, (8105R), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. General information concerning the EPA HSRB can be found on the EPA Web site at *http://www.epa.gov/osa/hsrb/.*

ADDRESSES: Submit your written comments, identified by Docket ID No. EPA–HQ–ORD–2010–0797, by one of the following methods:

Internet: http://www.regulations.gov: Follow the on-line instructions for submitting comments.

E-mail: ord.docket@epa.gov.

Mail: Environmental Protection Agency, EPA Docket Center (EPA/DC), ORD Docket, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

Hand Delivery: The EPA/DC Public Reading Room is located in the EPA Headquarters Library, Room Number 3334 in the EPA West Building, located at 1301 Constitution Ave., NW., Washington, DC 20460. The hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Time, Monday through Friday, excluding Federal holidays. Please call (202) 566–1744 or e-mail the ORD Docket at *ord.docket@epa.gov* for instructions. Updates to Public Reading Room access are available on the Web site (*http://www.epa.gov/epahome/dockets.htm*).

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2010–0797. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through *http://*

www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

SUPPLEMENTARY INFORMATION:

I. Public Meeting

A. Does this action apply to me?

This action is directed to the public in general. This action may, however, be of particular interest to persons who conduct or assess human studies, especially studies on substances regulated by EPA, or to persons who are, or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA) or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult Jim Downing or Lu-Ann Kleibacker listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I access electronic copies of this document and other related information?

In addition to using regulations.gov, you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the ORD Docket, EPA/DC, Public Reading Room. The EPA/DC Public Reading Room is located in the EPA Headquarters Library, Room Number 3334 in the EPA West Building, located at 1301 Constitution Ave., NW., Washington, DC 20460. The hours of operation are 8:30 a.m. to 4:30 p.m. EST, Monday through Friday, excluding Federal holidays. Please call (202) 566–1744 or e-mail the ORD Docket at *ord.docket@epa.gov* for instructions. Updates to Public Reading Room access are available on the Web site (*http://www.epa.gov/epahome/dockets.htm*).

EPA's position paper(s), charge/questions to the HSRB, and the meeting agenda will be available by early October 2010. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the regulations.gov Web site and the EPA HSRB Web site at *http://www.epa.gov/osa/hsrb/.* For questions on document availability, or if you do not have access to the Internet, consult either Jim Downing or Lu-Ann Kleibacker listed under **FOR FURTHER INFORMATION CONTACT.**

C. What should I consider as I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data that you used to support your views.
4. Provide specific examples to illustrate your concerns and suggest alternatives.
5. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

D. How may I participate in this meeting?

You may participate in this meeting by following the instructions in this section. To ensure proper receipt by EPA, it is imperative that you identify docket ID number EPA–HQ–ORD–2010–0797 in the subject line on the first page of your request.

1. Oral comments. Requests to present oral comments will be accepted up to Thursday, October 21, 2010. To the extent that time permits, interested persons who have not pre-registered may be permitted by the Chair of the HSRB to present oral comments at the meeting. Each individual or group wishing to make brief oral comments to the HSRB is strongly advised to submit their request (preferably via e-mail) to Jim Downing or Lu-Ann Kleibacker, **FOR FURTHER INFORMATION CONTACT**, no later than noon, Eastern Time, Thursday, October 21, 2010, in order to be included on the meeting agenda and to provide sufficient time for the HSRB Chair and HSRB Designated Federal Official (DFO) to review the meeting agenda to provide an appropriate public comment period. The request should identify the name of the individual making the presentation and the organization (if any) the individual will represent. Oral comments before the HSRB are generally limited to five minutes per individual or organization. Please note that this includes all individuals appearing either as part of, or on behalf of, an organization. While it is our intent to hear a full range of oral comments on the science and ethics issues under discussion, it is not our intent to permit organizations to expand the time limitations by having numerous individuals sign up separately to speak on their behalf. If additional time is available, further public comments may be possible.

2. Written comments. Submit your written comments prior to the meeting. For the HSRB to have the best opportunity to review and consider your comments as it deliberates on its report, you should submit your comments at least five business days prior to the beginning of this meeting. If you submit comments after this date, those comments will be provided to the Board members, but you should recognize that the Board members may not have adequate time to consider those comments prior to making a decision. Thus, if you plan to submit written comments, the Agency strongly encourages you to submit such comments no later than noon, Eastern Time, October 21, 2010. You should submit your comments using the instructions in section I., under subsection C., "What Should I Consider as I Prepare My Comments for EPA?" In addition, the Agency also requests that persons submitting comments directly to the docket also provide a copy of their comments to Jim Downing or Lu-Ann Kleibacher listed under **FOR FURTHER INFORMATION CONTACT**. There is no limit on the length of written comments for consideration by the HSRB.

E. Background

1. Topics for discussion. At its meeting on October 27–28, 2010 EPA's Human Studies Review Board will

consider scientific and ethical issues surrounding these topics:

a. A proposal for new research to be conducted by Carroll-Loye Biological Research to evaluate in the field the repellent efficacy against mosquitoes of a registered product containing 16% para-methane-3,8-diol and 2% lemongrass oil. EPA requests the advice of the HSRB concerning whether, if the protocol is revised as suggested in EPA's review and if it is performed as described, this research is likely to generate scientifically reliable data, useful for assessing the efficacy of the tested material in repelling mosquitoes, and to meet the applicable requirements of 40 CFR part 26, subparts K and L.

b. A new scenario design and associated protocol from the Agricultural Handler Exposure Task Force (AHETF) describing proposed research to measure dermal and inhalation exposure to applicators who use backpack sprayers or hand gun sprayers to apply pesticides in utility rights-of-way. EPA requests the advice of the HSRB concerning whether, if it is revised as suggested in EPA's review and if it is performed as described, this research is likely to generate scientifically reliable data, useful for assessing the exposure of those who apply pesticides in utility rights-of-way with backpack sprayers or hand gun sprayers, and to meet the applicable requirements of 40 CFR part 26, subparts K and L.

c. A revised scenario design and associated protocol from the Agricultural Handler Exposure Task Force (AHETF) describing proposed research to monitor exposure of workers who mix and load pesticides formulated as wettable powders in water-soluble packaging. This scenario was previously reviewed favorably by the HSRB in June 2009, but has since been revised to use different surrogate chemicals. These changes forced other revisions in turn; the proposed changes, taken together, are significant enough to warrant a new review by the HSRB. EPA requests the advice of the HSRB concerning whether, if it is revised as suggested in EPA's review and if it is performed as described, this research is likely to generate scientifically reliable data, useful for assessing the exposure of those who mix and load pesticides formulated as wettable powders in water-soluble packaging, and to meet the applicable requirements of 40 CFR part 26, subparts K and L.

d. The report of a completed scenario monograph and study report from the Antimicrobial Exposure Assessment Task Force II (AEATF–II) in which the dermal and inhalation exposure of professional janitorial workers was monitored as they applied liquid antimicrobial products to indoor floors using a bucket and mop. EPA seeks the advice of the HSRB on the scientific soundness of this completed research and on its appropriateness for use in estimating the exposure of professional janitorial workers who apply antimicrobial floor-cleaning products with mops, and on whether available information supports a determination that the study was conducted in substantial compliance with subparts K and L of 40 CFR Part 26.

2. Meeting minutes and reports. Minutes of the meeting, summarizing the matters discussed and recommendations, if any, made by the advisory committee regarding such matters, will be released within 90 calendar days of the meeting. Such minutes will be available at *http://www.epa.gov/osa/hsrb/* and *http://www.regulations.gov.* In addition, information concerning a Board meeting report, if applicable, can be found at *http://www.epa.gov/osa/hsrb/* or from the person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: September 29, 2010.

Paul T. Anastas,

EPA Science Advisor.

[FR Doc. 2010–25126 Filed 10–5–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0778; FRL–8847–9]

Chloroneb; Product Cancellation Order for Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's cancellation order for products containing the pesticide chloroneb, pursuant to section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This cancellation order announces the October 31, 2010, expiration of certain chloroneb time-limited registrations. These are not the last products containing this pesticide registered for use in the United States. Any distribution, sale, or use of the products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stock provisions.

DATES: The expirations occur on October 31, 2010.

FOR FURTHER INFORMATION CONTACT: Wilhelmena Livingston, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0000; telephone number: (703) 308–8025; fax number: (703) 308–8005; e-mail address: *livingston.wilhelmena@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, agricultural advocates, the chemical industry, pesticide users, and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2010–0778. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility's telephone number is (703) 305–5805.

II. What Action Is the Agency Taking?

This notice announces the October 31, 2010, expiration of certain chloroneb products registered under section 3 of FIFRA. This notice serves as a cancellation order to provide for existing stocks of affected products. These registrations are listed in sequence by registration number in Table 1 of this unit.

TABLE 1—CHLORONEB PRODUCT CANCELLATIONS

EPA Registration No.	Product name
73782–1	Chloroneb Fungicide Technical.

TABLE 1—CHLORONEB PRODUCT CANCELLATIONS—Continued

EPA Registration No.	Product name
73782–3	Terraneb SP Turf Fungicide.
73782–4	Terraneb SP Flowable Turf and Ornamental Fungicide.

Table 2 of this unit includes the name and address of record for the registrant of the products in Table 1 of this unit, by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in Table 1 of this unit.

TABLE 2—REGISTRANT OF CANCELED CHLORONEB PRODUCTS

EPA company No.	Company name and address
73782	Kincaid, Inc., P.O. Box 490, Athens, TN 37371.

III. Cancellation Order

Pursuant to FIFRA section 3, EPA hereby announces the expiration of chloroneb registrations identified in Table 1 of Unit II. This cancellation order announces the October 31, 2010, expiration of certain time-limited registrations. These registrations expire on October 31, 2010, because the technical registrant, Kincaid, Inc., failed to meet the terms and conditions of registration as requested in correspondence dated September 26, 2005, and subsequently granted by the Agency. The Agency considers the expiration of a time-limited registration to be a cancellation under section 3 of FIFRA, for purposes of section 6(a)(1) of FIFRA. Any distribution, sale, or use of existing stocks of the canceled products identified in Table 1 of Unit II. in a manner inconsistent with any of the Provisions for Disposition of Existing Stocks set forth in Unit IV., will be considered a violation of FIFRA.

IV. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products that are currently in the United States and were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. The cancellation order issued in this notice includes the following existing stock provisions.

The registrant may continue to sell or distribute existing stocks of chloroneb products identified in Table 1 of Unit II. until October 31, 2011, which is 1 year after the expiration of the time-limited registrations. Thereafter, the registrant is prohibited from selling or distributing products listed in Table 1 of Unit II., except for export in accordance with FIFRA section 17 or for proper disposal.

Persons other than the registrant may continue to sell, distribute, or use existing stocks of canceled products until supplies are exhausted, provided that the sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: September 24, 2010.

Richard P. Keigwin, Jr.

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2010–24803 Filed 10–5–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9210–7]

National Drinking Water Advisory Council: Request for Nominations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA or Agency) invites all interested persons to nominate qualified individuals to serve a three-year term as members of the National Drinking Water Advisory Council (Council). This 15-member Council was established by the Safe Drinking Water Act (SDWA) to provide practical and independent advice, consultation and recommendations to the Agency on the activities, functions, policies, and regulations required by the SDWA. Each year the terms of five (5) members expire. To maintain the representation required in the statute, nominees for the 2011 Council should represent: State and local officials concerned with public water supply and public health protection (2 vacancies), the general public (1 vacancy) and organizations or groups demonstrating an active interest in the field of public water supply and public health protection (2 vacancies). All nominations will be fully considered, but applicants need to be aware of the specific representation needed as well as geographical balance so that all major areas of the U.S. (East, Mid-West, South, Mountain, South-West, and West) will be represented. The current list of members is available on the EPA Web site at: *http://water.epa.gov/aboutow/ogwdw/ndwac/index.cfm.*

DATES: Submit nominations on or before October 31, 2010.

ADDRESSES: The preferred form of communication is via e-mail to Eric Bissonette, Alternate Designated Federal Officer, National Drinking Water Advisory Council, @ *bissonette.eric@epa.gov.* The mailing address is Eric Bissonette, Alternate Designated Federal Officer, U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water (Mail Code 4601–M), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: E-mail your questions to Jacquelyn Springer, @ *springer.jacquelyn@epa.gov* or call 202–564–9904.

SUPPLEMENTARY INFORMATION:

National Drinking Water Advisory Council: The Council consists of 15 members, including a Chairperson, appointed by the Deputy Administrator. Five members represent the general public; five members represent appropriate State and local agencies concerned with public water supply and public health protection; and five members represent private organizations or groups demonstrating an active interest in the field of public water supply and public health protection. SDWA requires that at least two members of the Council represent small, rural public water systems. Additionally, members may be asked to serve on one of the Council's workgroups that are established on an as-needed basis to assist EPA in addressing specific program issues. This notice solicits nominations to fill five new vacancies through April 15, 2014. Persons selected for membership will receive compensation for travel and a nominal daily compensation (if appropriate) while attending meetings. The Council holds two face-to-face meetings each year, generally in the spring and fall. Conference calls will be scheduled if needed.

Nomination of a Member: Any interested person or organization may nominate qualified individuals for membership. Self-nominations are also welcome. EPA values and welcomes diversity. In an effort to obtain nominations of diverse candidates, EPA encourages nominations of women and men of all racial and ethnic groups. Nominees should be identified by name, occupation, position, address and telephone number. To be considered, all nominations must include a current resume, providing the nominee's

background, experience and qualifications. Prospective candidates will be required to fill out the "Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency" (EPA Form 3110–48). This confidential form allows Government officials to determine whether there is a statutory conflict between that person's public responsibilities (which includes membership on an EPA Federal advisory committee) and private interests and activities, or the appearance of a lack of impartiality, as defined by Federal regulation.

Dated: September 30, 2010.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 2010–25125 Filed 10–5–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[AU Docket No. 10–183; DA 10–1711]

Auction of FM Broadcast Construction Permits Scheduled for March 29, 2011; Comment Sought on Competitive Bidding Procedures for Auction 91

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the auction of certain FM construction permits scheduled to commence on March 29, 2011 (Auction 91). This document also seeks comment on competitive bidding procedures for Auction 91.

DATES: Comments are due on or before October 13, 2010, and reply comments are due on or before October 27, 2010.

ADDRESSES: You may submit comments, identified by AU Docket No. 10–183, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, *Attn:* WTB/ASAD, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by *e-mail: FCC504@fcc.gov* or *telephone:* 202–418–0530 or TTY: 202–418–0432.
- The Wireless Telecommunications Bureau requests that a copy of all comments and reply comments be submitted electronically to the following address: *auction91@fcc.gov.*
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by *e-mail: FCC504@fcc.gov* or phone: 202–418–0530 or *TTY:* 202–418–0432.

FOR FURTHER INFORMATION CONTACT: *Wireless Telecommunications Bureau, Auctions and Spectrum Access Division:* For auction legal questions: Lynne Milne or Howard Davenport at (202) 418–0660; for general auction questions: Roy Knowles or Linda Sanderson at (717) 338–2868. *Media Bureau, Video Division:* for service rules questions: Lisa Scanlan or Tom Nessinger at (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction 91 Comment Public Notice* released on September 21, 2010. The complete text of the *Auction 91 Comment Public Notice,* including an attachment and related Commission documents, is available for public inspection and copying from 8 a.m. to 4:30 p.m. ET Monday through Thursday or from 8:00 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The *Auction 91 Comment Public Notice* and related Commission documents also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, fax 202–488–5563, or you may contact BCPI at its Web site: *http://www.BCPIWEB.com.* When ordering documents from BCPI, please provide the appropriate FCC document number, for example, DA 10–1711. The *Auction 91 Comment Public Notice* and related documents also are available on the Internet at the Commission's Web site: *http://wireless.fcc.gov/auctions/91/,* or by using the search function for AU Docket No.10–183 on the ECFS Web page at *http://www.fcc.gov/cgb/ecfs/.*

I. Introduction

1. The Wireless Telecommunications and the Media Bureaus (the Bureaus) announce an auction of certain FM Broadcast construction permits. This auction, which is designated Auction 91, is scheduled to commence on March 29, 2011.

II. Construction Permits In Auction 91

2. Auction 91 will offer 147 construction permits in the FM broadcast service. The construction permits to be auctioned are for 147 new FM allotments, including 37 construction permits that were offered but not sold in Auction 79. Specifically, the vacant FM allotments for which construction permits are being offered are listed in Attachment A of the *Auction 91 Comment Public Notice* along with the reference coordinates for each vacant FM allotment. If two or more short-form applications specify the same FM allotment, they will be considered mutually exclusive, and the construction permit for that FM allotment will be awarded by competitive bidding procedures.

III. Due Diligence

3. Potential bidders are reminded that they are solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the construction permits for broadcast facilities they are seeking in this auction. Bidders are responsible for assuring themselves that, if they win a construction permit, they will be able to build and operate facilities in accordance with the Commission's rules. The FCC makes no representations or warranties about the use of this spectrum for particular services.

4. Applicants should perform their due diligence research and analysis before proceeding, as they would with any new business venture. In particular, potential bidders are strongly encouraged to review all underlying Commission orders. Additionally, potential bidders should perform

technical analyses and/or refresh any previous analyses to assure themselves that, should they be a winning bidder for any Auction 91 construction permit, they will be able to build and operate facilities that will fully comply with the Commission's current technical and legal requirements.

5. Applicants are strongly encouraged to conduct their own research prior to Auction 91 in order to determine the existence of pending administrative or judicial proceedings, including pending allocations rulemaking proceedings that might affect their decisions regarding participation in the auction.

6. Participants in Auction 91 are strongly encouraged to continue such research throughout the auction. The due diligence considerations mentioned in the *Auction 91 Comment Public Notice* does not comprise an exhaustive list of steps that should be undertaken prior to participating in this auction. As always, the burden is on the potential bidder to determine how much research to undertake, depending upon specific facts and circumstances.

IV. Bureaus Seek Comment on Auction Procedures

A. Auction Structure

i. Simultaneous Multiple-Round Auction Design

7. The Bureaus propose to auction all construction permits included in Auction 91 using the Commission's standard simultaneous multiple-round auction format. This type of auction offers every construction permit for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids on individual construction permits. Typically, bidding remains open on all construction permits until bidding stops on every construction permit. The Bureaus seek comment on this proposal.

ii. Bidding Rounds

8. Auction 91 will consist of sequential bidding rounds, each followed by the release of round results. The initial bidding schedule will be announced in a public notice to be released at least one week before the start of the auction. Details on viewing round results, including the location and format of downloadable round results files, will be included in the same public notice.

9. The Commission will conduct Auction 91 over the Internet, and telephonic bidding will be available as well. The toll-free telephone number for the Auction Bidder Line will be provided to qualified bidders.

10. The Bureaus propose to retain the discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. Under this proposal, the Bureaus may change the amount of time for the bidding rounds, the amount of time between rounds, or the number of rounds per day, depending upon bidding activity and other factors. The Bureaus seek comment on this proposal. Commenters may wish to address the role of the bidding schedule in managing the pace of the auction and the tradeoffs in managing auction pace by bidding schedule changes, by changing the activity requirements or bid amount parameters, or by using other means.

iii. Stopping Rule

11. For Auction 91 the Bureaus propose to employ a simultaneous stopping rule approach. A simultaneous stopping rule means that all construction permits remain available for bidding until bidding closes simultaneously on all construction permits. More specifically, bidding will close simultaneously on all construction permits after the first round in which no bidder submits any new bids, applies a proactive waiver, or withdraws any provisionally winning bids (if bid withdrawals are permitted in this auction). Thus, unless the Bureaus announce alternative procedures, bidding will remain open on all construction permits until bidding stops on every construction permit. Consequently, it is not possible to determine in advance how long the auction will last.

12. Further, the Bureaus propose to retain the discretion to exercise any of the following options during Auction 91: (a) Use a modified version of the simultaneous stopping rule that would close the auction for all construction permits after the first round in which no bidder applies a waiver, withdraws a provisionally winning bid (if withdrawals are permitted in this auction), or places any new bids on any construction permit for which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule; (b) Use a modified version of the simultaneous stopping rule that would close the auction for all construction permits after the first round in which no bidder applies a waiver, withdraws a provisionally winning bid (if withdrawals are permitted in this auction), or places any new bids on any construction permit that is not FCC held. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit that does not already have a provisionally winning bid (an FCC-held construction permit) would not keep the auction open under this modified stopping rule; (c) Use a modified version of the simultaneous stopping rule that combines (a) and (b); (d) Declare that the auction will end after a specified number of additional rounds (special stopping rule). If the Bureaus invoke this special stopping rule, they will accept bids in the specified final round(s), after which the auction will close; and (e) Keep the auction open even if no bidder places any new bids, applies a waiver, or withdraws any provisionally winning bids (if withdrawals are permitted in this auction). In this event, the effect will be the same as if a bidder had applied a waiver. The activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use a waiver.

13. The Bureaus propose to exercise these options only in certain circumstances, for example, where the auction is proceeding unusually slowly or quickly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time or will close prematurely. Before exercising these options, the Bureaus are likely to attempt to change the pace of the auction by, for example, changing the number of bidding rounds per day and/or changing minimum acceptable bids. The Bureaus propose to retain the discretion to exercise any of these options with or without prior announcement during the auction. The Bureaus seek comment on these proposals.

iv. Information Relating to Auction Delay, Suspension, or Cancellation

14. For Auction 91, the Bureaus propose that, by public notice or by announcement during the auction, the Bureaus may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such cases, the Bureaus, in their sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous

round, or cancel the auction in its entirety. Network interruption may cause the Bureaus to delay or suspend the auction. The Bureaus emphasize that exercise of this authority is solely within the discretion of the Bureaus, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers. The Bureaus seek comment on this proposal.

B. Auction Procedures

i. Upfront Payments and Bidding Eligibility

15. For Auction 91, the Bureau proposes to make the upfront payments equal to the minimum opening bids. The specific upfront payments for each license are listed in Attachment A of the *Auction 91 Comment Public Notice.* The Bureau seeks comment on this proposal.

16. The Bureaus further propose that the amount of the upfront payment submitted by a bidder will determine the bidder's initial bidding eligibility in bidding units. The Bureaus propose that each construction permit be assigned a specific number of bidding units equal to the upfront payment listed in Attachment A of the *Auction 91 Comment Public Notice,* on a bidding unit per dollar basis. The number of bidding units for a given construction permit is fixed and does not change during the auction as prices change. A bidder may place bids on multiple construction permits, provided that the total number of bidding units associated with those construction permits does not exceed the bidder's current eligibility.

17. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Thus, in calculating its upfront payment amount and hence its initial bidding eligibility, an applicant must determine the maximum number of bidding units on which it may wish to bid (or hold provisionally winning bids) in any single round, and submit an upfront payment amount covering that total number of bidding units. Provisionally winning bids are bids that would become final winning bids if the auction were to close in that given round. The Bureaus request comment on these proposals.

ii. Activity Rule

18. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. A bidder's activity in a round will be the sum of the bidding units associated with any construction permits upon which it places bids during the current round and the bidding units associated with any construction permits for which it holds provisionally winning bids. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction. The Bureaus seek comment on this proposal.

19. The Bureaus propose to divide the auction into at least two stages, each characterized by a different activity requirement. The auction will start in Stage One. The Bureaus propose to advance the auction to the next stage by announcement during the auction. In exercising this discretion, the Bureaus will consider a variety of measures of auction activity, including but not limited to the percentage of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the increase in revenue. The Bureaus seek comment on these proposals.

20. The Bureaus propose the following activity requirements, while noting again that the Bureaus retain the discretion to change stages unilaterally by announcement during the auction. In each round of the first stage of the auction (Stage One), a bidder desiring to maintain its current bidding eligibility is required to be active on licenses representing at least 75 percent of its current bidding eligibility. Failure to maintain the required activity level will result in the use of an activity rule waiver or a reduction in the bidder's bidding eligibility for the next round of bidding. During Stage One, a bidder's reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity by four-thirds ($4/3$). In each round of the second stage (Stage Two), a bidder desiring to maintain its current bidding eligibility is required to be active on 95 percent of its current bidding eligibility. Failure to maintain the required activity level will result in the use of an activity rule waiver or a reduction in the bidder's bidding eligibility for the next round of bidding. During Stage Two, a bidder's reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity by twenty-nineteenths ($20/19$).

21. The Bureaus request comment on these activity requirements. Under this proposal, the Bureaus will retain the discretion to change the activity requirements during the auction. For example, the Bureaus could decide to add an additional stage with a higher activity requirement, not to transition to Stage Two if they believe the auction is progressing satisfactorily under the Stage One activity requirement, or to transition to Stage Two with an activity requirement that is higher or lower than the 95 percent proposed herein. If the Bureaus exercise this discretion, they will alert bidders by announcement in the FCC Auction System.

iii. Activity Rule Waivers and Reducing Eligibility

22. Use of an activity rule waiver preserves the bidder's eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding, not to a particular construction permit. Activity rule waivers can be either proactive or automatic and are principally a mechanism for auction participants to avoid the loss of bidding eligibility in the event that exigent circumstances prevent them from bidding in a particular round.

23. The FCC Auction System assumes that a bidder that does not meet the activity requirement would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver at the end of any bidding round in which a bidder's activity level is below the minimum required unless: (1) The bidder has no activity rule waivers remaining; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the activity requirement. If a bidder has no waivers remaining and does not satisfy the required activity level, its current eligibility will be permanently reduced, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

24. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding round by using the reduce eligibility function in the FCC Auction System. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rule. Reducing eligibility is an irreversible action; once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility, even if the round has not yet closed.

25. Under the proposed simultaneous stopping rule, a bidder may apply an activity rule waiver proactively as a means to keep the auction open without

placing a bid. If a bidder proactively applies an activity rule waiver (using the apply waiver function in the FCC Auction System) during a bidding round in which no bids are placed or withdrawn (if bid withdrawals are permitted in this auction), the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver applied by the FCC Auction System in a round in which there are no new bids, withdrawals (if bid withdrawals are permitted in this auction), or proactive waivers will not keep the auction open. A bidder cannot apply a proactive waiver after bidding in a round, and applying a proactive waiver will preclude a bidder from placing any bids in that round. Applying a waiver is irreversible; once a proactive waiver is submitted, that waiver cannot be unsubmitted, even if the round has not yet closed.

26. The Bureaus propose that each bidder in Auction 91 be provided with three activity rule waivers that may be used as set forth above at the bidder's discretion during the course of the auction. The Bureaus seek comment on this proposal.

iv. Reserve Price or Minimum Opening Bids

27. A reserve price is an absolute minimum price below which an item will not be sold in a given auction. Reserve prices can be either published or unpublished. A minimum opening bid, on the other hand, is the minimum bid price set at the beginning of the auction below which no bids are accepted. It is generally used to accelerate the competitive bidding process. It is possible for the minimum opening bid and the reserve price to be the same amount.

28. The Bureaus propose to establish minimum opening bid amounts for Auction 91. The Bureaus believe a minimum opening bid amount, which has been used in other broadcast auctions, is an effective bidding tool for accelerating the competitive bidding process. The Bureaus do not propose to establish a separate reserve price for the construction permits to be offered in Auction 91.

29. For Auction 91, the Bureaus propose minimum opening bid amounts determined by taking into account the type of service and class of facility offered, market size, population covered by the proposed broadcast facility, and recent broadcast transaction data. The proposed minimum opening bid amount for each construction permit available in Auction 91 is set forth in Attachment A of the *Auction 91 Comment Public Notice.* The Bureaus seek comment on these proposals.

30. If commenters believe that these minimum opening bid amounts will result in unsold construction permits, are not reasonable amounts, or should instead operate as reserve prices, they should explain why this is so and comment on the desirability of an alternative approach. Commenters are advised to support their claims with valuation analyses and suggested amounts or formulas for reserve prices or minimum opening bids. In establishing the minimum opening bid amounts, the Bureaus particularly seek comment on factors that could reasonably have an impact on valuation of the broadcast spectrum, including the type of service and class of facility offered, market size, population covered by the proposed FM broadcast facility and any other relevant factors.

v. Bid Amounts

31. The Bureaus propose that, in each round, eligible bidders be able to place a bid on a given construction permit in any of up to nine different amounts. Under this proposal, the FCC Auction System interface will list the acceptable bid amounts for each construction permit.

32. For Auction 91, the Bureaus propose to use a minimum acceptable bid percentage of 10 percent. This means that the minimum acceptable bid amount for a construction permit will be approximately 10 percent greater than the provisionally winning bid amount for the construction permit. To calculate the additional acceptable bid amounts, the Bureaus propose to use a bid increment percentage of 5 percent.

33. The Bureaus retain the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid percentage, the bid increment percentage, and the number of acceptable bid amounts if the Bureaus determine that circumstances so dictate. Further, the Bureaus retain the discretion to do so on a construction permit-by-construction permit basis. The Bureaus also retain the discretion to limit (a) the amount by which a minimum acceptable bid for a construction permit may increase compared with the corresponding provisionally winning bid, and (b) the amount by which an additional bid amount may increase compared with the immediately preceding acceptable bid amount. For example, the Bureaus could set a $10,000 limit on increases in minimum acceptable bid amounts over provisionally winning bids. Thus, if calculating a minimum acceptable bid using the minimum acceptable bid percentage results in a minimum acceptable bid amount that is $12,000 higher than the provisionally winning bid on a construction permit, the minimum acceptable bid amount would instead be capped at $10,000 above the provisionally winning bid. The Bureaus seek comment on the circumstances under which the Bureaus should employ such a limit, factors the Bureaus should consider when determining the dollar amount of the limit, and the tradeoffs in setting such a limit or changing other parameters, such as changing the minimum acceptable bid percentage, the bid increment percentage, or the number of acceptable bid amounts. If the Bureaus exercise this discretion, they will alert bidders by announcement in the FCC Auction System during the auction. The Bureaus seek comment on these proposals.

vi. Provisionally Winning Bids

34. Provisionally winning bids are bids that would become final winning bids if the auction were to close in that given round. At the end of a bidding round, a provisionally winning bid for each construction permit will be determined based on the highest bid amount received for the construction permit. In the event of identical high bid amounts being submitted on a construction permit in a given round (*i.e.,* tied bids), the Bureaus will use a random number generator to select a single provisionally winning bid from among the tied bids. (Each bid is assigned a random number, and the tied bid with the highest random number wins the tiebreaker.) The remaining bidders, as well as the provisionally winning bidder, can submit higher bids in subsequent rounds. However, if the auction were to end with no other bids being placed, the winning bidder would be the one that placed the provisionally winning bid. If any bids are received on the construction permit in a subsequent round, the provisionally winning bid again will be determined by the highest bid amount received for the construction permit.

35. A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the construction permit at the close of a subsequent round, unless the provisionally winning bid is withdrawn. Bidders are reminded that provisionally winning bids count toward activity for purposes of the activity rule.

vii. Bid Removal and Bid Withdrawal

36. For Auction 91, the Bureaus propose and seek comment on the following bid removal procedures. Before the close of a bidding round, a

bidder has the option of removing any bid placed in that round. By removing selected bids in the FCC Auction System, a bidder may effectively undo any bid placed within that round. In contrast to the bid withdrawal provisions a bidder removing a bid placed in the same round is not subject to a withdrawal payment. Once a round closes, a bidder may no longer remove a bid.

37. The Bureaus also seek comment on whether bid withdrawals should be permitted in Auction 90. When permitted in an auction, bid withdrawals provide a bidder with the option of withdrawing bids placed in prior rounds that have become provisionally winning bids. A bidder may withdraw its provisionally winning bids using the withdraw bids function in the FCC Auction System. A bidder that withdraws its provisionally winning bid(s), if permitted, is subject to the bid withdrawal payment provisions of the Commission rules.

38. For Auction 91 the Bureaus propose to prohibit bidders from withdrawing any bids after the round in which bids were placed has closed. This proposal is made in recognition of the site-specific nature and wide geographic dispersion of the permits available in this auction which suggests that potential applicants for this auction may have fewer incentives to aggregate permits through the auction process (as compared with bidders in many auctions of wireless licenses). The Bureaus are also mindful that bid withdrawals, particularly those made late in this auction, could result in delays in licensing new FM stations and attendant delays in the offering of new broadcast service to the public. The Bureaus seek comment on this approach.

C. Post-Auction Payments

i. Interim Withdrawal Payment Percentage

39. In the event that the Bureaus allow bid withdrawals in Auction 91, the Bureaus propose that the interim bid withdrawal payment be 20 percent of the withdrawn bid. A bidder that withdraws a bid during an auction is subject to a withdrawal payment equal to the difference between the amount of the withdrawn bid and the amount of the winning bid in the same or a subsequent auction. If a construction permit for which a bid has been withdrawn does not receive a subsequent higher bid or winning bid in the same auction, the final withdrawal payment cannot be calculated until a corresponding construction permit receives a higher bid or winning bid in a subsequent auction. When that final payment cannot yet be calculated, the bidder responsible for the withdrawn bid is assessed an interim bid withdrawal payment, which will be applied toward any final bid withdrawal payment that is ultimately assessed.

40. The amount of the interim bid withdrawal payment may range from three percent to 20 percent of the withdrawn bid amount, with the percentage generally being higher where there is greater risk of bid withdrawals being used for anti-competitive purposes, such as when there is little need for bidders to aggregate permits. The Bureaus therefore believe that the maximum interim bid withdrawal payment percentage allowed by 47 CFR 1.2104(g)(1) is justified, in the event bid withdrawals are allowed. Commenters advocating the use of bid withdrawals should also address the percentage of the interim bid withdrawal payment.

ii. Additional Default Payment Percentage

41. Any winning bidder that defaults or is disqualified after the close of an auction (*i.e.,* fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) is liable for a default payment under 47 CFR 1.2104(g)(2). This payment consists of a deficiency payment, equal to the difference between the amount of the bidder's bid and the amount of the winning bid the next time a construction permit covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less.

42. The Commission's rules provide that, in advance of each auction, a percentage shall be established between three percent and twenty percent of the applicable bid to be assessed as an additional default payment. As the Commission has indicated, the level of this payment in each case will be based on the nature of the service and the construction permits being offered.

43. For Auction 91, the Bureaus propose to establish an additional default payment of twenty percent. As previously noted by the Commission, defaults weaken the integrity of the auction process and may impede the deployment of service to the public, and an additional default payment of more than the previous three percent will be more effective in deterring defaults. In light of these considerations for Auction 91, the Bureaus propose an additional default payment of twenty percent of the relevant bid. The Bureaus seek comment on this proposal.

V. Deadlines and Filing Procedures

44. Comments are due on or before October 13, 2010, and reply comments are due on or before October 27, 2010. All filings related to procedures for Auction 91 must refer to AU Docket No. 10–183. Comments may be submitted using the Commission's Electronic Comment Filing System or by filing paper copies. The Bureaus strongly encourage interested parties to file comments electronically.

45. This proceeding has been designated as a permit-but-disclose proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in 47 CFR 1.1206(b).

Federal Communications Commission.

Gary D. Michaels,

Deputy Chief, Auctions and Spectrum Access Division, WTB.

[FR Doc. 2010–25195 Filed 10–5–10; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[IB Docket No. 04–286; DA 10–1884]

Sixth Meeting of the Advisory Committee for the 2012 World Radiocommunication Conference

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, this notice advises interested persons that the sixth meeting of the WRC–12 Advisory Committee will be held at the Federal Communications Commission. The purpose of the meeting is to continue preparations for the 2012 World Radiocommunication Conference. The WRC–12 Advisory Committee will consider any preliminary views and draft proposals introduced by the WRC–12 Advisory Committee's Informal Working Groups.

DATES: October 26, 2010, 11 a.m. to 12 noon.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–C305, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Alexander Roytblat, Designated Federal Official, WRC–12 Advisory Committee, FCC International Bureau, Strategic Analysis and Negotiations Division, at (202) 418–7501.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission established the WRC–12 Advisory Committee to provide advice, technical support and recommendations relating to the preparation of United States proposals and positions for the 2012 World Radiocommunication Conference (WRC–12).

In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the sixth meeting of the WRC–12 Advisory Committee. The WRC–12 Advisory Committee has an open membership. All interested parties are invited to participate in the WRC–12 Advisory Committee and to attend its meetings. The proposed agenda for the sixth meeting is as follows:

Agenda

Sixth Meeting of the WRC–12 Advisory Committee, Federal Communications Commission, 445 12th Street, SW., Room TW–C305, Washington, DC 20554, October 26, 2010, 11 a.m. to 12 noon.

1. Opening Remarks.
2. Approval of Agenda.
3. Approval of the Minutes of the Fifth Meeting.
4. Informal Working Group Reports and Documents Relating to Preliminary Views and Draft Proposals.
5. Future Meetings.
6. Other Business.

Federal Communications Commission.

Roderick K. Porter,

Deputy Chief, International Bureau.

[FR Doc. 2010–25196 Filed 10–5–10; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*http://www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 011611–002.

Title: MOL/APL Slot Transfer Agreement.

Parties: American President Lines, Ltd.; APL Co. PTE, Ltd.; and Mitsui O.S.K. Lines, Ltd.

Filing Party: David B. Cook, Esq.; Goodwin Procter LLP; 901 New York Ave., NW., Washington, DC 20001.

Synopsis: The modification deletes the Trans-Atlantic trades from the agreement and expands the agreement in the Latin America trades to include ports on the U.S. Atlantic Coast and the Pacific Coasts of Central America and South America.

Agreement No.: 012071–001.

Title: APL/Hanjin Reciprocal Space Charter Agreement.

Parties: American President Lines, Ltd.; APL Co. Pte, Ltd.; and Hanjin Shipping Co., Ltd.

Filing Party: Eric. C. Jeffrey, Esq.; Counsel for APL; Goodwin Procter LLP; 901 New York Avenue, NW., Washington, DC 20001.

Synopsis: The amendment updates APL's corporate address.

Agreement No.: 201203–003.

Title: Port of Oakland/Oakland Marine Terminal Operator Agreement.

Parties: Eagle Marine Services, Ltd.; Ports of America Outer Harbor Terminal, LLC; Port of Oakland; Seaside Transportation Service LLC; SSA Terminals (Oakland), LLC; Total Terminals International, LLC; and Trapac, Inc.

Filing Party: Wayne Rohde, Esq.; Cozen O'Connor; 1627 I Street, NW., Suite 1100, Washington, DC 20006.

Synopsis: The amendment adds the authority for the parties to discuss Cold-Ironing; changes the address of one of the parties, and deletes Transbay Container Terminal, Inc. as a party to the Agreement.

By Order of the Federal Maritime Commission.

Dated: October 1, 2010.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2010–25165 Filed 10–5–10; 8:45 am]

BILLING CODE P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for a license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF)—Ocean Transportation Intermediary (OTI) pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR 515). Notice is also hereby given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a license.

Interested persons may contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Excel Express Cargo Corp. (NVO & OFF), 8430 N.W. 66th Street, Miami, FL 33166. *Officers:* Karime Zawady, Vice President (Qualifying Individual), Alexander Parra, President. Application Type: QI Change.

Hansol Goldpoint LLC (NVO & OFF), 9287 Airway Road, San Diego, CA 92154. *Officers:* Jae H. Kwon, Manager (Qualifying Individual), Jinho Um, CFO. Application Type: New NVO & OFF License.

Junction Int'l Logistics, Inc. (NVO), 17870 Castleton Street, Suite 107, City of Industry, CA 91748. *Officers:* Charles Kuo, Secretary (Qualifying Individual), Xingwang Chen, Director. Application Type: New NVO License.

Linsan.Tex Investments, L.L.C. (OFF), 8404 Endicott Lane, Dallas, TX 75227. *Officers:* Franklin E. Aigbuza, Secretary/Member (Qualifying Individual), Roseline A. Izedonmwen, CEO/Member. Application Type: New OFF License.

Prime Air Cargo, Inc. dba Prime Air & Ocean Cargo (NVO & OFF), 1316 NW 78th Avenue, Miami, FL 33126. *Officers:* Omar A. Zambrano-Oviedo, General Manager/Secretary (Qualifying Individual), Roger A. Paredes, President/Treasurer. Application Type: New NVO & OFF License.

Red Arrow Consulting, Inc. dba Red Arrow Logistics (OFF), 14925 SE Allen Road, #203–B, Bellevue, WA 98006. *Officer:* Lorraine ("Liz") E. Lasater, President/CEO/Secretary (Qualifying Individual). Application Type: New OFF License.

Sea Cargo Inc. (NVO), 19130 Figueroa Street, Carson, CA 90248. *Officers:* Joseph E. Kennedy, CFO (Qualifying Individual), Andrei V. Pilipenko,

CEO. Application Type: New NVO License.

Skybox Cargo Consolidators, LLC (NVO), 2073 N. Arbor Lane, Chandler, AZ 85225. *Officers:* Michael Ramos, Member (Qualifying Individual), Arnel E. Jabile, Member. Application Type: New NVO License.

Source Consulting, LLC (NVO & OFF), 217 Lucas Street, #L, Mount Pleasant, SC 29464. *Officer:* Christopher F. Findlay, CEO/President (Qualifying Individual). Application Type: New NVO & OFF License.

Tillicum Global Networks, Inc. (NVO), 7511 Zircon Drive SW., Lakewood, WA 98498. *Officer:* Eun (AKA Michelle) K. Han, President/Secretary/Treasurer. Application Type: New NVO License.

Dated: October 1, 2010.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2010–25163 Filed 10–5–10; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR Part 515, effective on the corresponding date shown below:

License Number: 3106F.
Name: I.T.E.C., Inc.
Address: 165 Harrington Avenue, Warwick, RI 02888.
Date Revoked: September 2, 2010.
Reason: Failed to maintain a valid bond.

License Number: 3565F.
Name: B.A. International Forwarding Inc.
Address: 360 Sylvan Avenue, Englewood Cliffs, NJ 07362.
Date Revoked: September 25, 2010.
Reason: Failed to maintain a valid bond.

License Number: 4481F.
Name: JFJ Freight Forwarders Inc.
Address: 13100 NW 113th Avenue Road, Miami, FL 33178.
Date Revoked: September 16, 2010.
Reason: Failed to maintain a valid bond.

License Number: 8655N.
Name: Carpe Air & Sea Shipping, Inc.
Address: 360 Sylvan Avenue, Englewood Cliffs, NJ 07632.
Date Revoked: September 25, 2010.
Reason: Failed to maintain a valid bond.

License Number: 13853N.
Name: Unitas Shipping Inc.
Address: 177–25 Rockaway Blvd., Suite 203, Jamaica, NY 11434.
Date Revoked: September 10, 2010.
Reason: Failed to maintain a valid bond.

License Number: 020298NF.
Name: A A Shipping Incorporated.
Address: 11526 Harwin Drive, Houston, TX 77072.
Date Revoked: September 27, 2010.
Reason: Failed to maintain valid bonds.

License Number: 020634NF.
Name: Sofilink Continental, Inc.
Address: 6313 NW 99th Avenue, Miami, FL 33178.
Date Revoked: September 23, 2010.
Reason: Failed to maintain valid bonds.

License Number: 021509N.
Name: Apex Maritime Co. (PDX) Inc.
Address: 11818 SE Mill Plain Blvd., Suite 309, Vancouver, WA 98684.
Date Revoked: September 16, 2010.
Reason: Failed to maintain a valid bond.

License Number: 021520NF.
Name: GFS Global Logistics, LLC.
Address: 1691 Phoenix Blvd., Suite 170, Atlanta, GA 30349.
Date Revoked: October 1, 2010.
Reason: Surrendered license voluntarily.

License Number: 021953F.
Name: Express Shipping Company of Illinois.
Address: 670 E. Northwest Hwy., 2nd Floor, Arlington Heights, IL 60004.
Date Revoked: September 2, 2010.
Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 2010–25156 Filed 10–5–10; 8:45 am]

BILLING CODE P

FINANCIAL STABILITY OVERSIGHT COUNCIL

Public Input for the Study Regarding the Implementation of the Prohibitions on Proprietary Trading and Certain Relationships With Hedge Funds and Private Equity Funds

AGENCY: Financial Stability Oversight Council.

ACTION: Notice and request for information.

SUMMARY: The Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") prohibits banking entities from engaging in proprietary trading and from maintaining certain relationships with hedge funds and private equity funds. These prohibitions, commonly known as the "Volcker Rule," are contained in Section 619 of the Dodd-Frank Act. Section 619 of the Dodd-Frank Act requires the Financial Stability Oversight Council ("FSOC") to study and make recommendations on implementing the Volcker Rule. Under Section 619, the Office of the Comptroller of the Currency ("OCC"), the Federal Deposit Insurance Corporation ("FDIC"), the Board of Governors of the Federal Reserve System ("Board"), the Securities and Exchange Commission ("SEC") and the Commodity Futures Trading Commission ("CFTC") must consider the recommendations of the FSOC study in developing and adopting regulations to implement the Volcker Rule. To assist the FSOC in conducting the study and formulating its recommendations, the FSOC is issuing this request for information through public comment.

DATES: *Comment Due Date:* November 5, 2010.

ADDRESSES: Interested persons are invited to submit comments regarding this notice according to the instructions for "Electronic Submission of Comments" below. All submissions must refer to the document title and one of the above docket numbers. The FSOC encourages the early submission of comments.

Electronic Submission of Comments. Interested persons must submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt, and enables the FSOC to make them available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through the method specified above. Again, all submissions must refer to the docket number and title of the notice.

Public Inspection of Public Comments. All properly submitted comments will be available for

inspection and downloading at *http://www.regulations.gov.*

Additional Instructions. Please note the number of the question to which you are responding at the top of each response. Though the responses will be screened for obscenities and appropriateness, in general comments received, including attachments and other supporting materials, are part of the public record and are immediately available to the public. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: For further information regarding this interim final rule contact the Office of Domestic Finance, Treasury, at (202) 622–1703. All responses to this Notice and Request for Information should be submitted via *http://www.regulations.gov* to ensure consideration.

SUPPLEMENTARY INFORMATION:

I. Background

The Dodd-Frank Act was enacted on July 21, 2010.[1] Under section 619 of the Dodd-Frank Act, banking entities [2] are prohibited from engaging in proprietary trading and from maintaining certain relationships with hedge funds and private equity funds. These prohibitions and other provisions of section 619 are commonly known, and referred to herein, as the "Volcker Rule." Section 619 of the Dodd-Frank Act requires the FSOC to study and make recommendations on implementing the Volcker Rule. Under Section 619, the OCC, the Board, the FDIC, the SEC and the CFTC must consider the findings of the FSOC study in developing and adopting regulations to carry out the Volcker Rule.

Section 619(b) provides certain specific guidance with respect to the FSOC study and recommendations, stating as follows:

"(1) STUDY.—Not later than 6 months after the date of enactment of this section, the Financial Stability Oversight Council shall study and make recommendations on implementing the provisions of this section so as to—

"(A) promote and enhance the safety and soundness of banking entities;

"(B) protect taxpayers and consumers and enhance financial stability by minimizing the risk that insured depository institutions and the affiliates of insured depository institutions will engage in unsafe and unsound activities;

"(C) limit the inappropriate transfer of Federal subsidies from institutions that benefit from deposit insurance and liquidity facilities of the Federal Government to unregulated entities;

"(D) reduce conflicts of interest between the self-interest of banking entities and nonbank financial companies supervised by the Board, and the interests of the customers of such entities and companies;

"(E) limit activities that have caused undue risk or loss in banking entities and nonbank financial companies supervised by the Board, or that might reasonably be expected to create undue risk or loss in such banking entities and nonbank financial companies supervised by the Board;

"(F) appropriately accommodate the business of insurance within an insurance company, subject to regulation in accordance with the relevant insurance company investment laws, while protecting the safety and soundness of any banking entity with which such insurance company is affiliated and of the United States financial system; and

"(G) appropriately time the divestiture of illiquid assets that are affected by the implementation of the prohibitions under subsection (a)."

II. Solicitation for Comments on the Volcker Rule Study

To assist the FSOC in conducting the study and formulating its recommendations concerning the Volcker Rule, the FSOC seeks public comment on the following questions:

1. Commenters are invited to submit views on ways in which the implementation of the Volcker Rule can best serve to:

(i) Promote and enhance the safety and soundness of banking entities;

(ii) Protect taxpayers and consumers and enhance financial stability by minimizing the risk that insured depository institutions and the affiliates of insured depository institutions will engage in unsafe and unsound activities;

(iii) Limit the inappropriate transfer of federal subsidies from institutions that benefit from deposit insurance and liquidity facilities of the federal government to unregulated entities;

(iv) Reduce conflicts of interest between the self-interest of banking entities and nonbank financial companies supervised by the Board,[3] and the interests of the customers of such entities and companies;

(v) Limit activities that have caused undue risk or loss in banking entities and nonbank financial companies supervised by the Board, or that might reasonably be expected to create undue risk or loss in such banking entities and nonbank financial companies supervised by the Board;

(vi) Appropriately accommodate the business of insurance within an insurance company, subject to regulation in accordance with the relevant insurance company investment laws, while protecting the safety and soundness of any banking entity with which such insurance company is affiliated and of the United States financial system; and

(vii) Appropriately time the divestiture of illiquid assets that are affected by the implementation of the prohibitions under the Volcker Rule.

2. What are the key factors and considerations that should be taken into account in making recommendations on implementing the proprietary trading provisions of the Volcker Rule?

3. What are the key factors and considerations that should be taken into account in making recommendations on implementing the provisions of the Volcker Rule that restrict the ability of banking entities to invest in, sponsor or have certain other covered relationships with private equity and hedge funds?

4. With respect to proprietary trading and hedge fund and private equity fund activities, what factors and considerations should inform decisions on the definitions of:

(i) "Banking entity" [§ 619(h)(1)];

(ii) "Hedge fund" [§ 619(h)(2)];

(iii) "Private equity fund" [§ 619(h)(2)];

(iv) "Such similar funds" [§ 619(h)(2)];

(v) "Proprietary trading" [§ 619(h)(4)];

(vi) "Sponsor" [§ 619(h)(5)];

(vii) "Trading account" [§ 619(h)(6)];

(viii) "Short term" [§ 619(h)(6)];

(ix) "Illiquid fund" [§ 619(h)(7)];

(x) A transaction "in connection with underwriting or market making related activities * * * designed not to exceed the reasonably expected near-term demands of clients, customers or counterparties" [§ 619(d)(1)(B)];

(xi) "Risk-mitigating hedging activities" [§ 619(d)(1)(C)];

(xii) "The purchase, sale, acquisition, disposition of securities or other instruments 'on behalf of customers'" [§ 619(d)(1)(D)];

(xiii) Investments in "small business investment companies" and certain "public welfare" investments [§ 619(d)(1)(E)];

(xiv) A permitted activity by an insurance company [§ 619(d)(1)(F)]; and

[1] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law No. 111–203, 124 Stat. 1376 (2010).

[2] The term "banking entity" is defined in section 13(h)(1) of the Bank Holding Company Act, as amended by section 619 of the Dodd-Frank Act. The term generally means any insured depository institution, any company that controls an insured depository institution, any company that is treated as a bank holding company for the purposes of section 8 of the International Banking Act of 1978, and any affiliate or subsidiary of any such entity.

[3] The term "nonbank financial companies supervised by the Board" refers to those nonbank financial companies that may be designated by the FSOC under section 113 of the Act to be supervised by the Board and subject to enhanced prudential standards.

(xv) Such other activities as "would promote and protect the safety and soundness of banking entities and the financial stability of the United States" [§ 619(d)(1)(J)];?

5. With respect to proprietary trading and hedge fund and private equity fund activities, what factors and considerations should be taken into account as indicative that a transaction, class of transactions or activity:

(i) Would involve or result in a material conflict of interest between a banking entity (or a nonbank financial company supervised by the Board) and its clients, customers or counterparties;

(ii) Would result, directly or indirectly, in a material exposure by a banking entity (or a nonbank financial company supervised by the Board) to high-risk assets or high-risk trading strategies; or

(iii) Would pose a threat to the safety and soundness of a banking entity (or a nonbank financial company supervised by the Board)?

6. What factors and considerations should be taken into account in making recommendations on whether additional capital and quantitative limitations are appropriate to protect the safety and soundness of banking entities or nonbank financial companies supervised by the Board engaged in activities permitted under the Volcker Rule?

7. With respect to proprietary trading and hedge fund and private equity fund activities, which practices, types of transactions or corporate structures in general have historically accounted for or involved increased risks or may account for or involve increased risks in the future?

8. With respect to proprietary trading and hedge fund and private equity fund activities, what practices, policies or procedures have historically been utilized that may have mitigated or exacerbated risks or losses? What practices, policies or procedures might be useful in limiting undue risk or loss in the future?

9. What factors and considerations should be taken into account in making recommendations to safeguard against evasion of the Volcker Rule?

10. How should the international context be considered when implementing the Volcker Rule? Are there any factors or considerations that should be taken into account regarding the application of the Volcker Rule to banking entities or nonbank financial companies that operate outside the United States? What issues does implementation of the Volcker Rule present with respect to the following:

(i) Domestic banking entities that have access to foreign exchanges,

(ii) foreign affiliates of domestic banking entities, and

(iii) foreign non-bank financial companies

11. What timing issues are raised in connection with the divestiture of illiquid assets affected by the prohibitions of the Volcker Rule, and how might such issues be appropriately addressed?

12. Commenters are generally invited to submit views with respect to any qualitative or quantitative factors that should be considered in connection with the Council's study of the Volcker Rule, as well as any analogous areas of law, economics, or industry practice, and any factors specific to the commenter's experience. Please comment generally and specifically, and please include empirical data and other information in support of such comments, where appropriate and available.

Dated: October 1, 2010.

Alastair Fitzpayne,

Deputy Chief of Staff and Executive Secretary, Department of the Treasury.

[FR Doc. 2010–25320 Filed 10–4–10; 4:15 pm]

BILLING CODE 4810–25–P–P

GOVERNMENT PRINTING OFFICE

Depository Library Council to the Public Printer; Meeting

The Depository Library Council to the Public Printer (DLC) will meet on Monday, October 18, 2010, through Wednesday, October 20, 2010, in Arlington, Virginia. The sessions will take place from 8 a.m. to 5:30 p.m. on Monday through Tuesday, and Wednesday, 8 a.m. to 12 p.m. The meeting will be held at the Doubletree Hotel Crystal City, located at 300 Army Navy Drive, Arlington, VA. The purpose of this meeting is to discuss the Federal Depository Library Program. All sessions are open to the public. The sleeping rooms available at the Doubletree Hotel will be at the Government rate of $229.00 (plus applicable state and local taxes, currently 10.25%) a night for a single or double. The Doubletree is in compliance with the requirements of Title III of the Americans with Disabilities Act and meets all Fire Safety Act regulations.

Robert C. Tapella,

Public Printer of the United States.

[FR Doc. 2010–25047 Filed 10–5–10; 8:45 am]

BILLING CODE 1520–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Amendment of the Charter for the President's Council on Physical Fitness and Sports and Establishment of the President's Council on Fitness, Sports, and Nutrition

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of the Assistant Secretary for Health.

ACTION: Notice.

AUTHORITY: Executive Order 13265, dated June 6, 2002, as amended by Executive Order 13545, dated June 22, 2010. The President's Council on Fitness, Sports, and Nutrition (formerly the President's Council on Physical Fitness and Sports) is governed by provisions of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App.), which sets forth standards for the formation and use of advisory committees.

SUMMARY: The U.S. Department of Health and Human Services announces amendment of the charter for the President's Council on Physical Fitness and Sports to establish the President's Council on Fitness, Sports, and Nutrition, as directed by Executive Order 13545.

FOR FURTHER INFORMATION CONTACT: Ms. Shellie Pfohl, Executive Director, President's Council on Fitness, Sports, and Nutrition, Tower Building, 1101 Wootton Parkway, Suite 560, Rockville, MD 20852, (240) 276–9857. Information about PCFSN, also can be obtained at *http://www.fitness.gov* and/or by calling (240) 276–9866.

SUPPLEMENTARY INFORMATION: Executive Order 13545 was issued by the President on June 22, 2010, to amend Executive Order 13265, dated June 6, 2002. The President issued Executive Order 13545 to recognize that good nutrition goes hand in hand with fitness and sports participation. Executive Order 13545 directs that the title, scope, function, and structure of the President's Council on Physical Fitness and Sports shall be revised. The new title shall be the President's Council on Fitness, Sports, and Nutrition.

To comply with stipulations in the authorizing directive and guidelines under the Federal Advisory Committee Act, an amended charter has been filed for the President's Council on Physical Fitness and Sports. The amended charter has been filed with the Committee Management Secretariat in the General Services Administration (GSA), the appropriate committees in

the Senate and U.S. House of Representatives, and the Library of Congress to establish the President's Council on Fitness, Sports, and Nutrition (Council) as a non-discretionary Federal advisory committee. The amended charter was filed on September 10, 2010.

Objective and Scope of Activities. Under Executive Order 13545, the Secretary of Health and Human Services (Secretary) is directed to develop and coordinate a national program to enhance physical activity, fitness, sports participation, and good nutrition. The Secretary is directed to carry out this national program in consultation with the Secretaries of Agriculture and Education. In implementing the provisions of Executive Order 13545, the Secretary shall be guided by the science-based Federal Dietary Guidelines for Americans and the Physical Activity Guidelines for Americans. The Secretary shall undertake nutrition-related activities under Executive Order 13545 in coordination with the Secretary of Agriculture.

Under Executive Order 13545, the President's Council on Fitness, Sports, and Nutrition shall function (a) To advise the President, through the Secretary, concerning progress made in carrying out the provisions of Executive Order 13545 and shall recommend to the President, through the Secretary, actions to accelerate progress; (b) to advise the Secretary on ways to promote regular physical activity, fitness, sports participation, and good nutrition; (c) as a liaison to relevant State, local, and private entities in order to advise the Secretary about programs and services at the local, State, and national levels; and (d) to monitor the need to enhance programs and educational and promotional materials sponsored, overseen, or disseminated by the Council. In performing its functions, the Council shall take into account the Federal Dietary Guidelines for Americans and the Physical Activity Guidelines for Americans.

Membership and Designation. The President's Council on Fitness, Sports, and Nutrition shall be composed of up to 25 members appointed by the President. The President may designate one or more members as Chair or Vice Chair. Members of the Council shall serve for a term of two years, shall be eligible for reappointment, and may continue to serve after the expiration of their terms until the appointment of a successor. The members of the Council shall be classified as special Government employees (SGEs).

Administrative Management and Support. The Secretary shall appoint an Executive Director of the Council who shall serve as a liaison to the Secretary and the White House on matters and activities pertaining to the Council. HHS will provide funding and administrative support for the Council to the extent permitted by law within existing appropriations. Staff will be assigned to support the activities of the Council. Each executive department and agency shall, to the extent permitted by law and subject to the availability of funds, furnish such information and assistance to the Secretary and the Council as they may request. Management and oversight for support services provided to the Council will be the responsibility of the Office of the Assistant Secretary for Health, which is a staff division within the Office of the Secretary, HHS.

A copy of the charter for the Council can be obtained from the designated contacts or by accessing the FACA database that is maintained by the GSA Committee Management Secretariat. The Web site for the FACA database is *http://fido.gov/facadatabase.*

Dated: September 30, 2010.

Shannon Feaster,

Director, Communications and Public Affairs, President's Council on Fitness, Sports, and Nutrition.

[FR Doc. 2010–25112 Filed 10–5–10; 8:45 am]

BILLING CODE 4150–35–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Quality Subcommittee Meeting.

Time and Date:

October 18, 2010 10 a.m.–5:30 p.m. EST.

October 19, 2010 9 a.m.–3 p.m. EST.

Place: National Center for Health Statistics, 3311 Toledo Road, Auditorium A&B, Hyattsville, MD 20782.

Status: Open.

Purpose: The purpose of this meeting is to gain perspectives on the current activities necessary to support anticipated data needs in the medium term (3–5 year) of healthcare stakeholders—specifically consumers, providers, payers and regulators—to support quality measurement and improvement initiatives and their impact on both a population and individual level. The meeting will seek to identify critical path activities needed to advance quality measurement, including but not limited to future information needs and data sources.

Contact Person for More Information: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Debbie Jackson, lead staff for Standards Subcommittee, NCVHS, Centers for Disease Control and Prevention, National Center for Health Statistics, 3311 Toledo Road, Room 2339, Hyattsville, Maryland, 20782, telephone (301) 458–4614 or Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 2402, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of the HHS Web site: *http://www.ncvhs.hhs.gov/*, where further information including an agenda will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458–4EEO (4336) as soon as possible.

Dated: September 28, 2010.

James Scanlon,

Deputy Assistant Secretary for Planning and Evaluation (Science and Data Policy), Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 2010–25192 Filed 10–5–10; 8:45 am]

BILLING CODE 4151–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Renewal of Charter for the Chronic Fatigue Syndrome Advisory Committee

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of the Assistant Secretary for Health.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, as amended (5 U.S.C. App), the U.S. Department of Health and Human Services is hereby announcing renewal of the charter for the Chronic Fatigue Syndrome Advisory Committee (CFSAC).

FOR FURTHER INFORMATION CONTACT: Wanda K. Jones, Dr.P.H.; Department of Health and Human Services; c/o Office on Women's Health; 200 Independence Avenue, SW., Room 712E; Washington,

DC 20201. Please refer all inquires to *cfsac@hhs.gov.*

SUPPLEMENTARY INFORMATION: CFSAC was established on September 5, 2002. The Committee was established to advise, consult with, and make recommendations to the Secretary, through the Assistant Secretary for Health, on a broad range of topics including (1) the current state of knowledge and research about the epidemiology and risk factors relating to chronic fatigue syndrome, and identifying potential opportunities in these areas; (2) current and proposed diagnosis and treatment methods for chronic fatigue syndrome; and (3) development and implementation of programs to inform the public, health care professionals, and the biomedical, academic, and research communities about chronic fatigue syndrome advances.

Since CFSAC was established, renewal of the Committee charter has been carried out at the appropriate intervals as stipulated by FACA. The previous Committee charter was scheduled to expire on September 5, 2010. On August 19, 2010, the Secretary of Health and Human Services approved for the Committee charter to be renewed. The new charter was effected and filed with the appropriate congressional offices and Library of Congress on September 5, 2010. Renewal of the CFSAC charter provides authorization for the Committee to operate until September 5, 2012.

A copy of the Committee charter is available on the CFSAC Web site at *http://www.hhs.gov/advcomcfs.* A copy of the Committee charter also can be obtained by accessing the FACA database that is maintained by the Committee Management Secretariat under the General Services Administration. The Web site address for the FACA database is *http://fido.gov/facadatabase*.

Dated: September 30, 2010.

Wanda K. Jones,

Designated Federal Officer, Chronic Fatigue Syndrome Advisory Committee.

[FR Doc. 2010–25111 Filed 10–5–10; 8:45 am]

BILLING CODE 4150–42–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–10–10HC]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 or send comments to Maryam Daneshvar, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

HIV/AIDS Awareness Day Programs—New—National Center for HIV/AIDS, Viral Hepatitis, STD, and Tuberculosis Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC is requesting OMB approval to administer surveys to respondents who plan HIV/AIDS day awareness activities during the next 3 years. The name and dates for the annual HIV/AIDS awareness day events are: National Black HIV Awareness Day—February 7th; National Native HIV/AIDS Awareness Day—March 20th; National Asian and Pacific Islander HIV/AIDS Awareness Day—May 19th; and National Latino AIDS Awareness Day—October 15th. The purpose of the surveys is to assess the number and types of HIV/AIDS prevention activities planned and implemented in observance of each of the four noted HIV/AIDS awareness day events.

After the date that each event occurs, the event planners will be asked to respond to a computer-based survey to collect qualitative data. Event planners will access the designated website to enter information about their particular event and identify the kind of events they planned. The survey results are necessary to understand how and where HIV/AIDS awareness activities are planned and implemented.

These survey results will provide important information that will be used to develop HIV/AIDS prevention activities. The computer-based surveys take up to one hour. The surveys are a single activity and will not require a follow-up. There is no cost to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
African-American HIV/AIDS awareness day activity planners.	National Black HIV/AIDS Awareness Day Evaluation Report.	200	1	1	200
Asian and Pacific Islander HIV/AIDS awareness day activity planners.	National Asian & Pacific Islander HIV/AIDS Awareness Day Evaluation Report.	15	1	1	15
Latino HIV/AIDS awareness day activity planners.	National Latino AIDS Awareness Day Evaluation Report.	125	1	1	125
Native HIV/AIDS awareness day activity planners.	National Native HIV/AIDS Awareness Day Evaluation Report.	35	1	1	35
Total					375

Dated: September 30, 2010.

Carol Walker,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–25198 Filed 10–5–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission of OMB Review; Comment Request; Drug Accountability Record (Form NIH 2564) (NCI)

SUMMARY: In compliance with the requirement of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute, the National Cancer Institute (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collected below. This proposed information collection was previously published in the **Federal Register** on August 4, 2010 (75 FR 46945) and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after March 1, 2011, unless it displays a valid OMB control number.

Proposed Collection: Title: Drug Accountability Record (NCI) (Form NIH 2564) (OMB No.0925–0240). *Type of Information Collection Request:* Extension with changes. *Need and Use of Information Collection:* Food and Drug Administration (FDA) regulations require investigators to establish a record of the receipt, use and disposition of all investigational agents. The National Cancer Institute (NCI), as a sponsor of investigational drug trials, has the responsibility to assure the FDA that investigators in its clinical trials program are maintaining systems for drug accountability. In order to fulfill these requirements, a standard Investigational Drug Accountability Report Form (NIH 2564) was designed to account for drug inventories and usage by protocols. The data obtained from the drug accountability record will be used to keep track of the dispensing of investigational anticancer agents to patients. It is used by NCI management to ensure that investigational drug supplies are not diverted for inappropriate protocol or patient use. The information is also compared to patient flow sheets (protocol reporting forms) during site visits conducted for each investigator once every three years. All comparisons are done with the intention of ensuring protocol, patient and drug compliance for patient and drug compliance for patient safety and protections. *Frequency of Response:* Approximately 16 times per year. *Affected Public:* Private sector including businesses, other for-profit organizations, and non-profit institutions. *Type of Respondents:* Investigators, pharmacists, nurses, pharmacy technicians, and data managers. The annualized respondents' burden is estimated to require 6,714 hours (Table 1). There are no capital costs, operating costs, and maintenance cost to report.

TABLE 1—ESTIMATES OF ANNUAL BURDEN HOURS

Type of respondents	Number of respondents	Frequency of response	Average time per response	Annnual burden hours
Investigators, or Designees	4,196	16	6/60 (0.1)	6,714

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.

Direct Comments to OMB: Written comments or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response times, should be directed to the Attention: NIH Desk Officer, Office of Management and Budget, at *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Charles L. Hall, Jr., Chief, Pharmaceutical Management Branch, Cancer Therapy Evaluation Program, Division of the Cancer Treatment and Diagnosis, and Centers, National Cancer Institute, Executive Plaza North, Room 7148, 9000 Rockville Pike, Bethesda, MD 20892 or call non-toll-free number 301–496–5725 or e-mail your request, including your address to: *Hallch@mail.nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days following the date of this publication.

Dated: September 27, 2010.

Vivian Horovitch-Kelley,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 2010–25190 Filed 10–5–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; NCCAM Office of Communications and Public Liaison Communications Program Planning and Evaluation Research

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Center for Complementary and Alternative Medicine (NCCAM), the National Institutes of Health (NIH), has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection

listed below. This proposed information collection was previously published in the **Federal Register** on August 25, 2010 (Vol. 75, No. 164, p. 52349) and allowed 60 days for public comment. There was one public comment received during this time. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: NCCAM Office of Communications and Public Liaison Communications Program Planning and Evaluation Research. *Type of Information Collection Request:* Extension.

Need and Use of Information Collection: To carry out NCCAM's legislative mandate to educate and disseminate information about complementary and alternative medicine (CAM) to a wide variety of audiences and organizations, the NCCAM Office of Communications and Public Liaison (OCPL) requests clearance to carry out (1) formative and (2) evaluative research of a variety of print and online materials, outreach activities, and messages to maximize their impact and usefulness.

OCPL wishes to continue to carry out formative research to further understand the knowledge, attitudes, and behaviors of its core constituent groups: Members of the general public, researchers, and providers of both conventional and CAM health care. In addition, it seeks to test newly formulated messages and identify barriers and impediments to the effective communication of those messages. With this formative audience research, OCPL tests audience responses to NCCAM's fact sheets, Web content, and other materials and messages.

Clearance is also requested to continue evaluative research on existing materials and messages, as part of OCPL's ongoing effort to develop a comprehensive program of testing and evaluation of all of its communications strategies. This evaluative research will include pilot testing of recently developed messages and information products such as consumer fact sheets and brochures. It will address the need to evaluate the processes by which new materials and messages were developed, the effectiveness of an outreach activity or the extent to which behaviors were changed by the message, and the impact of a message on health knowledge and behaviors.

The tools to collect this information have been selected to minimize burden on NCCAM's audiences, produce or refine messages that have the greatest potential to influence target audience attitudes and behavior in a positive manner, and to use Government resources efficiently. They may include individual in-depth interviews, focus group interviews, intercept interviews, self-administered questionnaires, gatekeeper reviews, and omnibus surveys.

The data will enhance OCPL's understanding of the unique information needs and distinct health-information-seeking behaviors of its core constituencies, and the segments within these constituencies with special information needs (for example, among the general public these segments include cancer patients, the chronically ill, minority and ethnic populations, the elderly, users of dietary supplements, and patients integrating complementary therapies with conventional medical treatments).

Frequency of Response: On occasion. *Affected Public:* Individuals and households; non-profit institutions; Federal Government; State, Local, or Tribal Government. *Type of Respondents:* Adult patients; members of the public; health care professionals; organizational representatives. The annual reporting burden is as follows: *Estimated Number of Respondents:* 2,500; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours per Response:* 0.58; and *Estimated Total Burden Hours Requested:* 2,109 for the 3-year clearance period (approximately 703 hours annually). The annualized cost to respondents is estimated at $18,123. There are no Capital Costs, Operating Costs, or Maintenance Costs to report.

TABLE 1—ANNUAL BURDEN HOURS

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
In-depth interviews with general public	30	1	.75	23
Focus groups	20	1	1.5	30
Omnibus surveys	1,900	1	0.25	475
Intercept interviews with public and healthcare professionals	300	1	0.25	75
In-depth interviews with health professionals	50	1	.50	25
Self-administered questionnaires with health professionals	200	1	.25	50
TOTAL	2,500			678

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.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Attention: NIH Desk Officer, Office of Management and Budget, at *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Christy Thomsen, Director, Office of Communications and Public Liaison, NCCAM, 31 Center Drive, Room 2B11,

Bethesda, MD 20892, or fax your request to 301–402–4741, or e-mail *thomsenc@mail.nih.gov.* Ms. Thomsen can be contacted by telephone at 301–451–8876.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: September 29, 2010.

Christy Thomsen,

Director, Office of Communications and Public Liaison, National Center for Complementary and Alternative Medicine, National Institutes of Health.

[FR Doc. 2010–25170 Filed 10–5–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Correction in Burden Table.

SUMMARY: The Health Resources and Services Administration published an Agency Information Collection document in the **Federal Register** of September 17, 2010 (FR Doc. 201–023260), on page 57037, regarding the Black Lung Clinics Program Database (OMB No. 0915–0292). In the burden table, the Total responses, Hours per response and Total burden hours are incorrect.

Correction

In the **Federal Register** issue of September 17, 2010, FR Doc. 201–023260, on page 57037, correct the Total responses, Hours per response and Total burden hours as follows:

Instrument	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Database	15	1	15	20	300

Dated: September 28, 2010.

Sahira Rafiullah,

Director, Division of Policy and Information Coordination.

[FR Doc. 2010–25113 Filed 10–5–10; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Diabetes, Endocrinology and Metabolic Diseases B Subcommittee, October 20, 2010, 5 p.m. to October 22, 2010, 5 p.m., Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814 which was published in the **Federal Register** on September 15, 2010, 75 FR 56117.

The meeting has been changed to October 20, 2010, 5 p.m. to October 21, 2010, 5 p.m. The location remains the same. The meeting is partially closed to the public.

Dated: September 30, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–25175 Filed 10–5–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Eunice Kennedy Shriver National Institute of Child Health and Human Development Special Emphasis Panel; "Reproductive Panel".

Date: November 3–5, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, Montgomery County Conference Center Facility, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Dennis E. Leszczynski, PhD, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–435–6884, *leszczyd@mail.nih.gov.* (Catalogue of Federal Domestic Assistance Program Nos.93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: September 30, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–25178 Filed 10–5–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; 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 Environmental Health Sciences Special Emphasis Panel, Superfund Research and Training Program.

Date: October 26–28, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Raleigh-Durham Airport at RTP, 4810 Page Creek Lane, Durham, NC 27703.

Contact Person: Sally Eckert-Tilotta, PhD, Scientific Review Officer, Nat. Institute of Environmental Health Sciences, Office of Program Operations, Scientific Review Branch, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–1446, *eckertt1@niehs.nih.gov.*

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Superfund Hazardous Substance/Remediation Program Review.

Date: October 28, 2010.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Raleigh-Durham Airport at RTP, 4810 Page Creek Lane, Durham, NC 27703.

Contact Person: Leroy Worth, PhD, Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30/ Room 3171, Research Triangle Park, NC 27709, (919) 541–0670, *worth@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS).

Dated: September 28, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–25187 Filed 10–5–10; 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, Member Conflicts: Bacterial Pathogenesis.

Date: October 25–26, 2010.

Time: 8: a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)

Contact Person: Guangyong Ji, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3211, MSC 7808, Bethesda, MD 20892, 301–435–1146, *jig@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Child Psychopathology and Developmental Disabilities.

Date: October 25, 2010.

Time: 9 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Melissa Gerald, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, (301) 408–9107, *geraldmel@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: GHD and GCAT.

Date: November 11–12, 2010.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)

Contact Person: Michael M. Sveda, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892, 301–435–3565, *svedam@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: *September 30, 2010.*

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–25185 Filed 10–5–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Cartilage Aging and Osteoarthritis.

Date: October 28, 2010.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: Elaine Lewis, PhD, Scientific Review Branch, National Institute on Aging, Gateway Building, Suite 2C212, MSC–9205, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–7707, *elainelewis@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: September 30, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–25183 Filed 10–5–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed 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 Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Liver PPG Application.

Date: December 3, 2010.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Maria E. Davila-Bloom, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 758, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Nutrition Obesity Research Centers.

Date: December 7–8, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: Thomas A. Tatham, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 760, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–3993, *tathamt@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS).

Dated: September 30, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–25181 Filed 10–5–10; 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, Member Conflict: Neuroscience.

Date: November 3–4, 2010.

Time: 7 a.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)

Contact Person: Bernard F Driscoll, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, (301) 435–1242, *driscolb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Biobehavioral and Behavioral Processes Across the Lifespan.

Date: November 4–5, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Palomar, 2121 P Street, NW., Washington, DC 20037.

Contact Person: Biao Tian, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3089B, MSC 7848, Bethesda, MD 20892, (301) 402–4411, *tianbi@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS-associated Opportunistic Infections and Cancer Study Section.

Date: November 8, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz Carlton Hotel, 1150 22nd Street, NW., Washington, DC 20037.

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: AIDS and Related Research Integrated Review Group, Behavioral and Social Consequences of HIV/AIDS Study Section.

Date: November 9–10, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance M Street Hotel, 1143 New Hampshire Avenue, NW., Washington, DC 20037.

Contact Person: Mark P Rubert, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–806–6596, *rubertm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Oral, Dental and Craniofacial Small Business.

Date: November 10–11, 2010.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)

Contact Person: Yi-Hsin Liu, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, 301–435–1781, *liuyh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Cardiovascular Development.

Date: November 10, 2010.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Olga A. Tjurmina, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7814, Bethesda, MD 20892, (301) 451–1375, *ot3d@nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group, Behavioral and Social Science Approaches to Preventing HIV/AIDS Study Section.

Date: November 15–16, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Wardman Park Washington DC Hotel, 2660 Woodley Road, NW., Washington, DC 20008.

Contact Person: Jose H Guerrier, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, 301–435–1137, *guerriej@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS Molecular and Cellular Biology Study Section.

Date: November 22, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz Carlton Hotel, 1150 22nd Street, NW., Washington, DC 20037.

Contact Person: Kenneth A Roebuck, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5214, MSC 7852, Bethesda, MD 20892, (301) 435–1166, *roebuckk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Special: Signal Transduction and Drug Discovery in Myeloid Leukemia.

Date: November 22, 2010.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Cathleen L Cooper, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7812, Bethesda, MD 20892, 301–443–4512, *cooperc@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: September 30, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–25180 Filed 10–5–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel;

Date: November 2–4, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Atlanta Hotel, 165 Courtland Street, NE., Atlanta, GA 30303.

Contact Person: Martha F Matocha, PhD, Scientific Review Officer, Office of Review, National Center for Research Resources, National Institutes of Health, 6701 Democracy Blvd., 1 Democracy Plaza, Rm. 1070, Bethesda, MD 20892, 301–435–0810, *matocham@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333; 93.702, ARRA Related Construction Awards., National Institutes of Health, HHS).

Dated: September 30, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–25176 Filed 10–5–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed 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 Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, NIDDK KUH-Fellowship Review.

Date: October 28, 2010.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Xiaodu Guo, M.D., PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 761, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4719, *guox@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Arteriovenous Fistula.

Date: November 5, 2010.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892.

Contact Person: Michael W. Edwards, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 750, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8886, *edwardsm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS).

Dated: September 30, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–25173 Filed 10–5–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Commission on Childhood Vaccines; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: Advisory Commission on Childhood Vaccines (ACCV).

Date and Time: October 28, 2010, 9 a.m. to 5 p.m. EDT.

Place: Parklawn Building (and via audio conference call), Conference Rooms G & H, 5600 Fishers Lane, Rockville, MD 20857.

The ACCV will meet on Thursday, October 28 from 9 a.m. to 5 p.m. (EDT). The public can join the meeting via audio conference call by dialing 1–877–784–3230 on October 28 and providing the following information:

Leader's Name: Dr. Geoffrey Evans.

Password: ACCV.

Agenda: The agenda items for the October meeting will include, but are not limited to: Updates from the Division of Vaccine Injury Compensation (DVIC), Department of Justice (DOJ), National Vaccine Program Office, Immunization Safety Office (Centers for Disease Control and Prevention), National Institute of Allergy and Infectious Diseases (National Institutes of Health), Center for Biologics, Evaluation and Research (Food and Drug Administration), a discussion on the VICP outreach efforts, and a review of Vaccine Information Statements (VISs). A draft agenda and additional meeting materials will be posted on the ACCV Web site (*http://www.hrsa.gov/vaccinecompensation/accv.htm*) prior to the meeting. Agenda items are subject to change as priorities dictate.

Public Comment: Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation to: Annie Herzog, DVIC, Healthcare Systems Bureau (HSB), Health Resources and

Services Administration (HRSA), Room 11C–26, 5600 Fishers Lane, Rockville, Maryland 20857 or e-mail: *aherzog@hrsa.gov*. Requests should contain the name, address, telephone number, e-mail address, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. DVIC will notify each presenter by e-mail, mail or telephone of their assigned presentation time. Persons who do not file an advance request for a presentation, but desire to make an oral statement, may announce it at the time of the comment period. Public participation and ability to comment will be limited to space and time as it permits.

FOR FURTHER INFORMATION CONTACT: Anyone requiring information regarding the ACCV should contact Annie Herzog, DVIC, HSB, HRSA, Room 11C–26, 5600 Fishers Lane, Rockville, MD 20857; telephone (301) 443–6593 or e-mail: *aherzog@hrsa.gov*.

Dated: September 27, 2010.

Sahira Rafiullah,

Director, Division of Policy and Information Coordination.

[FR Doc. 2010–25115 Filed 10–5–10; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel.

Date: December 13, 2010.

Time: 12:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Dem II, 6707 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Manana Sukhareva, PhD, Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, 6707 Democracy Boulevard, Suite 959, Bethesda, MD 20892, 301–451–3397, *sukharem@mail.nih.gov.*

Dated: September 30, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–25172 Filed 10–5–10; 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, October 29, 2010, 2 p.m. to October 29, 2010, 4 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on September 23, 2010, 75 FR 57965–57967.

The meeting times have been changed to 8:30 a.m. to 10:30 a.m. on October 29, 2010. The meeting date and location remain the same. The meeting is closed to the public.

Dated: September 29, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–25171 Filed 10–5–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–912, New Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Form I–912, Request for Fee Waiver; OMB Control No. 1615–New.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on July 14, 2010, at 75 FR 40846, allowing for a 60-day public comment period. USCIS received 30 comments from members of the public for this information collection. These comments have been addressed in item 8 of the supporting statement which will be posted to *http://www.regulations.gov.*

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until November 5, 2010. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Products Division, 20 Massachusetts Avenue, Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov,* and to the OMB USCIS Desk Officer via facsimile at 202–395–5806 or via e-mail at *oira_submission@omb.eop.gov.* When submitting comments by e-mail please make sure to add OMB Control Number 1615–New in the subject box. Written comments and suggestions from the public and affected agencies 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 or other forms of information technology,

e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New information collection.

(2) *Title of the Form/Collection:* Request for Fee Waiver.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–912; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households.* The collection of information on Form I–912 is necessary in order for U.S. Citizenship and Immigration Services (USCIS) to make a determination that the applicant is unable to pay the application fee for certain immigration benefits.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 85,000 responses at 1 hour and 10 minutes (1.166 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 99,110 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov.*

We may also be contacted at: USCIS, Regulatory Products Division, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020; Telephone 202–272–8377.

Dated: September 30, 2010.

Stephen Tarragon,

Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2010–25066 Filed 10–5–10; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Availability of the Final Programmatic Environmental Assessment and Finding of No Significant Impact for the Deployment and Operation of High Energy X–Ray Inspection Systems at Sea and Land Ports of Entry

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of availability.

SUMMARY: A final Programmatic Environmental Assessment (PEA) and a Finding of No Significant Impact (FONSI) for High Energy X–Ray Inspection Systems (HEXRIS) at sea and land ports of entry has been prepared and is available for public review. The final PEA documents a review of the potential environmental effects of the deployment and operation of HEXRIS at various sea and land ports of entry. Based on the final PEA, a determination was made that the proposed action will not significantly affect the human environment such that further analysis is required. Therefore, a FONSI was issued, and no Environmental Impact Statement (EIS) is required.

DATES: The final PEA and FONSI are available for review through November 5, 2010.

ADDRESSES: Copies of the final PEA and FONSI may be obtained by accessing the following Internet address: *http://ecso.swf.usace.army.mil/Pages/Publicreview.cfm,* or by contacting Guy Feyen of CBP by telephone (202–344–1531), by fax (202–344–1418), by e-mail to *guy.feyen@dhs.gov,* or by writing to: CBP, *Attn:* Guy Feyen, 1300 Pennsylvania Avenue, NW., Suite 1575, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Antoinette DiVittorio, Environmental and Energy Division, U.S. Customs and Border Protection, telephone (202) 344–3131.

SUPPLEMENTARY INFORMATION: High energy X-ray inspection is a non-intrusive inspection technology that is used to scan high-density cargo containers for contraband such as illicit drugs, currency, guns, and weapons of mass destruction. To assist U.S. Customs and Border Protection (CBP) in meeting its mission requirements of securing the borders of the United States while simultaneously facilitating legitimate trade and travel, High Energy X–Ray Inspection Systems (HEXRIS) are proposed to be deployed and operated at both sea and land ports of entry across the United States and Puerto Rico. HEXRIS fill a unique niche in the types of inspection tools used by CBP at the Nation's ports of entry. HEXRIS are capable of penetrating dense cargo loads that cannot otherwise be examined with other technologies such as gamma imaging systems or low-energy X-ray systems. HEXRIS will also assist in fulfilling the requirement for the 100% scanning of containers entering the United States as directed in the Security and Accountability for Every (SAFE) Port Act of 2006. Public Law 109–347 (Oct. 13, 2006).

The NEPA Process

The National Environmental Policy Act of 1969 (NEPA) requires an agency to evaluate the environmental implications of any proposed major action that could significantly affect the quality of the human environment. Generally, to meet the NEPA requirements, an agency prepares an Environmental Assessment (EA) to determine whether a more thorough analysis of the environmental implications is necessary. If such an analysis is necessary, the agency will produce an Environmental Impact Statement (EIS). If additional analysis is not necessary, the agency will issue a Finding of No Significant Impact (FONSI). A Programmatic Environmental Assessment (PEA) is an EA that evaluates a major action on a broad, programmatic basis. Environmental evaluations at specific project locations are conducted later.

HEXRIS PEA

On May 25, 2010, CBP published a notice in the **Federal Register** (75 FR 29357). entitled: "Notice of Availability of the Draft Programmatic Environmental Assessment for the Deployment and Operation of High Energy X–Ray Inspection Systems at Sea and Land Ports of Entry." This notice announced that a draft PEA concerning HEXRIS had been prepared and made available to the public in accordance with NEPA, the Council on Environmental Quality Regulations for Implementing the NEPA (40 CFR parts 1500–1508), and Department of Homeland Security Directive 023–01 (renumbered from 5100.1), *Environmental Planning Program of April 19, 2006.* The notice informed the public on how to obtain a copy of the draft PEA and requested comments from the public about the draft PEA. The draft PEA addressed the potential environmental effects from the installation and operation of HEXRIS at various ports throughout the United States. CBP conducted evaluations on various resources present at the ports, including: Climate, soils, water quality, air quality, vegetation, wildlife, noise, infrastructure, aesthetics, and radiological heath and safety, which were discussed in the draft PEA. The draft was made available for a 30 day public comment period, beginning on the date of the publication of the notice. The comment period ended on June 24, 2010. Two comments were received.

CBP has now prepared the final PEA for the deployment and operation of HEXRIS. The comments received on the draft PEA have been reviewed and are

included in the final PEA document. On the basis of the final PEA, CBP determined that the installation and operation of HEXRIS will have no significant impact on human health or the environment and that preparation of an EIS is not warranted. A FONSI was issued on August 3, 2010. The environmental implications for individual ports will be considered as HEXRIS are installed. Any relevant documents will be made available for public review via publication of notices in the **Federal Register**.

Dated: October 1, 2010.

Gregory Giddens,

Executive Director, Facilities Management and Engineering, Office of Administration.

[FR Doc. 2010–25116 Filed 10–5–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2009–0168]

Notice of Public Availability of Navigation and Vessel Inspection Circular (NVIC) 2–10, "Guidance for Implementation and Enforcement of the Salvage and Marine Firefighting Regulations for Vessel Response Plans"

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability.

SUMMARY: The Coast Guard announces the availability of NVIC 2–10, Guidance for Implementation and Enforcement of the Salvage and Marine Firefighting Regulations for Vessel Response Plans. The guidance contained in the NVIC provides details regarding the application and enforcement of the final rule, "Salvage and Marine Firefighting Requirements; Vessel Response Plans for Oil," as published in the **Federal Register** on December 31, 2008 (73 CFR 80618). Regulators and industry have a need for further guidance in order to facilitate a better understanding of, and compliance with, the final rule. An electronic copy of NVIC 2–10 can be downloaded at *http://www.uscg.mil/hq/cg5/nvic/default.asp* or by searching the docket number above at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or e-mail LCDR Ryan Allain, Office of Vessel Activities (CG–5431), U.S. Coast Guard; telephone 202–372–1226, e-mail *ryan.d.allain@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:

Background and Purpose

We published a final rule in the **Federal Register** on December 31, 2008, requiring the identification of salvage and marine firefighting services in vessel response plans (73 FR 80618). The regulation requires appropriate salvage and marine firefighting resources to be identified, contracted for, and capable of responding to incidents up to and including the worst case discharge scenario. The rulemaking sets new response planning timeframes for each of the required salvage and marine firefighting services.

On August 31, 2009, the Coast Guard published another final rule concerning vessel response plans that deferred the implementation date for the salvage and marine firefighting requirements from June 1, 2010 to February 22, 2011 (Vessel and Facility Response Plans for Oil: 2003 Removal Equipment Requirements and Alternative Technology Revisions, 74 FR 45004). As a result, pursuant to 33 CFR 155.4020(a), tank vessel response plans incorporating salvage and firefighting changes must be submitted by February 22, 2011.

NVIC 2–10 provides voluntary guidance to vessel owners and operators, salvage and marine firefighting resource providers, and other members of the maritime industry for preparing and submitting the necessary information to comply with the requirements contained in the Salvage and Marine Firefighting Requirements; Vessel Response Plans for Oil, 33 CFR part 155, subpart I. The NVIC also contains an extensive list of frequently asked questions and job aids to assist affected industry in submitting the required updates to their vessel response plans.

This notice is issued under authority of 5 U.S.C. 552, and 33 CFR 1.05–15.

Dated: September 27, 2010.

Kevin S. Cook,

Rear Admiral, U.S. Coast Guard, Director of Prevention Policy.

[FR Doc. 2010–25071 Filed 10–5–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Exxon Valdez Oil Spill Trustee Council; Renewal of the Public Advisory Committee

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Notice of reestablishment.

In accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C., App. 2), following the recommendation and approval of the *Exxon Valdez* Oil Spill Trustee Council, and in consultation with the General Services Administration the Secretary of the Interior hereby renews the charter for the *Exxon Valdez* Oil Spill Public Advisory Committee.

SUPPLEMENTARY INFORMATION: The Court Order establishing the Exxon Valdez Oil Spill Trustee Council also requires a public advisory committee. The Public Advisory Committee was established to advise the Trustee Council, and began functioning in October 1992. The Public Advisory Committee consists of 10 members representing the following principal interests: Sport hunting and fishing, conservation and environmental, public-at-large, recreation users, commercial tourism, science/technical, subsistence, commercial fishing, aquaculture and mariculture, and Native landowners.

In order to ensure that a broad range of public viewpoints continues to be available to the Trustee Council, and in keeping with the settlement agreement, the continuation of the Public Advisory Committee is recommended.

FOR FURTHER INFORMATION CONTACT: Douglas Mutter, Department of the Interior, Office of Environmental Policy and Compliance, 1689 "C" Street, Room 119, Anchorage, Alaska, (907) 271–5011.

Certification

I hereby certify that the renewal of the Charter of the Public Advisory Committee is necessary and in the public interest in connection with the performance of duties mandated by the settlement of *United States* v. *State of Alaska,* No. A91–081 CV, and is in accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended and supplemented.

Ken Salazar,

Secretary of the Interior.

[FR Doc. 2010–25117 Filed 10–5–10; 8:45 am]

BILLING CODE 4310–RG–P

DEPARTMENT OF THE INTERIOR

National Park Service

Meeting of the Paterson Great Falls National Historical Park Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1,10), notice is hereby given of the meeting of the Paterson Great Falls National Historical Park Advisory Commission.

DATES: The Commission will meet on Tuesday, October 26, 2010 at 9 a.m. until 5 p.m.

ADDRESSES: This meeting will be held at the Paterson Museum at 2 Market Street (intersection of Spruce Street) in Paterson, New Jersey.

FOR FURTHER INFORMATION CONTACT: Bill Bolger, Project Director, Paterson Great Falls National Historical Park National Park Service, 200 Chestnut Street, Philadelphia, PA 19106: 215–597–1649.

SUPPLEMENTARY INFORMATION: The Paterson Great Falls NHP Federal Advisory Commission was authorized by Congress and signed by the President on March 30, 2009 (Pub. L. 111–11, Title VII, Subtitle A, Section 7001, Subsection e) "to advise the Secretary in the development and implementation of the management plan." The agendas for these meetings will be published by press release.

This meeting will be open to the public and time will be reserved for public comment. Oral comments will be summarized for the record. If individuals wish to have their comments recorded verbatim they must submit them in writing. Written comments and requests for agenda items may be submitted electronically to *bill_bolger@nps.gov.* Alternatively, comments and requests may be sent to: Bill Bolger, National Park Service, 200 Chestnut Street, Philadelphia, PA 19106. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: September 24, 2010.

William C. Bolger,

Project Director, Paterson Great Falls NHP and Designated Federal official for the Commission.

[FR Doc. 2010–25160 Filed 10–5–10; 8:45 am]

BILLING CODE 4310–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1082 and 1083 (Review)]

Chlorinated Isocyanurates From China and Spain; Determinations

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the antidumping duty orders on chlorinated isocyanurates from China and Spain would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[2]

Background

The Commission instituted these reviews on May 3, 2010 (75 FR 23303) and determined on August 6, 2010 that it would conduct expedited reviews (75 FR 51113, August 18, 2010).

The Commission transmitted its determinations in these reviews to the Secretary of Commerce on September 30, 2010. The views of the Commission are contained in USITC Publication 4184 (September 2010), entitled *Chlorinated Isocyanurates from China and Spain: Investigation Nos. 731–TA–1082 and 1083 (Review).*

By order of the Commission.

Issued: September 30, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–25099 Filed 10–5–10; 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)).

[2] Commissioner Daniel R. Pearson determines that revocation of the antidumping duty order on chlorinated isocyanurates from Spain would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–470–471 and 731–TA–1169–1170 (Final)]

Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From China and Indonesia

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigations.

DATES: *Effective Date:* September 28, 2010.

FOR FURTHER INFORMATION CONTACT: Christopher J. Cassise (202–708–5408), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: Effective May 6, 2010, the Commission established a schedule for the conduct of the final phase of the subject investigations (75 FR 29364, May 25, 2010). The Commission has decided to revise its schedule with respect to the following dates: (1) The deadline for filing posthearing briefs by the parties, (2) the closing of the Commission's record, and (3) the deadline for filing of final comments by parties.

The revised deadline for filing posthearing briefs is October 1, 2010. The Commission's record will close on October 18, 2010. The revised deadline for filing of final comments is October 20, 2010.

For further information concerning these investigations see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: September 30, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–25157 Filed 10–5–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *In Re Certain Video Game Systems and Controllers,* DN 2756; the Commission is soliciting comments on any public interest issues raised by the complaint.

FOR FURTHER INFORMATION CONTACT: Marilyn R. Abbott, Secretary to the Commission, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint filed on behalf of Motiva, Inc. on October 1, 2010. The complaint alleges violations of section 337 of the Tariff Act of 1930 (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 video game systems and controllers. The complaint names as respondents Nintendo Co., Ltd. of Minami-ku, Kyoto, Japan and Nintendo of America, Inc. of Redmond, WA.

The complainant, proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five pages in length, on any public interest issues raised by the complaint. Comments should address whether issuance of an exclusion order and/or a cease and desist order in this investigation would negatively affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the potential orders;

(iii) Indicate the extent to which like or directly competitive articles are produced in the United States or are otherwise available in the United States, with respect to the articles potentially subject to the orders; and

(iv) Indicate whether Complainant, Complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to an exclusion order and a cease and desist order within a commercially reasonable time.

Written submissions must be filed no later than by close of business, five business days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Submissions should refer to the docket number ("Docket No. 2756") in a prominent place on the cover page and/or the first page. The Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.50(a)(4) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.50(a)(4)).

By order of the Commission.

Issued: October 1, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–25167 Filed 10–5–10; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree

Notice is hereby given that on September 23, 2010, a proposed Consent Decree was lodged with the United States District Court for the Central District of California. The Consent Decree was lodged in the case *United States* v. *Air Distribution Products, et al.,* Civil Action No. 2:10–cv–07056–GW (C.D. Cal.).

The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), and the California Department of Toxic Substances Control ("Department") filed a complaint pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9607, seeking reimbursement of response costs incurred or to be incurred for response actions taken in connection with the release or threatened release of hazardous substances at the South El Monte Operable Unit of the San Gabriel Valley Area 1 Superfund Site in South El Monte, Los Angeles County, California (the "South El Monte O.U.").

Under the proposed Consent Decree, 15 potentially responsible parties with respect to the South El Monte O.U. will pay a total of about $2,007,095 (collectively). The settlement amounts are based on each settling defendant's ability to pay. In exchange for the payment, the plaintiffs covenant not to sue each settling defendant under Section 106 or 107 of CERCLA.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decrees. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to: *United States* v. *Air Distribution Products, et al.,* (C.D. Cal.), D.J. Ref. 90–11–2–09121/4.

The proposed Consent Decree may be examined at EPA's Regional Office, 75 Hawthorne Street, San Francisco, California 94105. During the public comment period, the Consent Decrees may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the proposed Consent Decrees may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation no. (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check payable to the "U.S. Treasury" or, if by email or fax, forward a check in that amount to the Consent Decree Library at the stated address, in the following amount (25 cents per page reproduction cost): $11.25 for the Consent Decree in *Air Distribution Products* (without attachments).

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2010–25123 Filed 10–5–10; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Proposed Consent Decree Under the Clean Air Act

Notice is hereby given that on September 28, 2010, a proposed Consent Decree in *United States, et al.* v. *Murphy Oil USA, Inc.,* Civil Action No. 3:10–cv–00563–bbc, was lodged with the United States District Court for the Western District of Wisconsin.

The Consent Decree in this Clean Air Act enforcement actions against Murphy Oil USA, Inc. ("Murphy") resolves allegations by the Environmental Protection Agency, the State of Wisconsin and the State of Louisiana asserted in a complaint filed together with the Consent Decree, under Section 113(b) of the Clean Air Act, 42 U.S.C. 7413(b), for alleged environmental violations at Murphy's petroleum refineries in Superior, Wisconsin and Meraux, Louisiana.

This Consent Decree is one of numerous national settlements reached as part of the EPA's Clean Air Act Petroleum Refinery Initiative. Consistent with the objectives of EPA's national initiative, in addition to the payment of $1.25 million in civil penalties, the settlement requires Murphy to perform injunctive relief at both of Murphy's refineries in Superior, Wisconsin and Meraux, Louisiana to reduce emissions of nitrogen oxides, sulfur dioxide, volatile organic compounds, and benzene, and to spend no less than $1.5 million to perform a supplemental environmental project to further reduce emissions of volatile organic compounds at the Meraux refinery.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to the matter as *United States, et al.* v. *Murphy Oil USA, Inc.,* DOJ Ref. No. 90–5–2–1–09186.

The Consent Decree may be examined at the following Regional Offices of the United States Environmental Protection Agency: Region 5, 77 West Jackson Blvd., Chicago, IL 60604; and Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202.

During the public comment period, the proposed agreements may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* Copies of the proposed agreements may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting from the Consent Decree Library a copy of the consent decree for *United States et al.* v. *Murphy Oil USA, Inc.,* Civil Action No. 3:10–cv–00563–bbc (W.D. Wis.), please enclose a check in the amount of $29.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2010–25121 Filed 10–5–10; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

National Institute of Corrections

Advisory Board Meeting

Time and Date:

8 a.m. to 4:30 p.m. on Monday, November 8, 2010;

8 a.m. to 4:30 p.m. on Tuesday, November 9, 2010.

Place: National Institute of Corrections, 500 First Street, NW., Washington, DC 20534, 1(800)995–6423.

Status: Open.

Matters To Be Considered: Welcome New Advisory Board Members; NIC Orientation; Briefing on NIC Reports; Agency Reports; Quarterly Report by Office of Justice Programs.

Contact Person for More Information: Thomas Beauclair, Deputy Director, 202–307–3106, ext. 44254.

Morris L. Thigpen,

Director.

[FR Doc. 2010–24854 Filed 10–5–10; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Annual Refiling Survey Forms

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) hereby announces the submission of the information collection request (ICR) sponsored by the Bureau of Labor Statistics (BLS) titled, "Annual Refiling Survey Forms," to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Submit comments on or before November 5, 2010.

ADDRESSES: A copy of this ICR, with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden

may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain* or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an e-mail to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, *Attn:* OMB Desk Officer for the Department of Labor, Bureau of Labor Statistics, Office of Management and Budget, Room 10235, Washington, DC 20503, *Telephone:* 202–395–7314/*Fax:* 202–395–7245 (these are not toll-free numbers), e-mail: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by e-mail at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The DOL is seeking OMB reauthorization of the Annual Refiling Survey (ARS) information collection. While the primary purpose of the ARS is to verify or to correct the North American Industry Classification System (NAICS) code assigned to establishments, there are other important purposes of the ARS. The ARS seeks accurate mailing and physical location addresses of establishments as well as geographic codes such as county and township (independent city, parish, or island in some States).

The ARS constitutes an information collection within the meaning of the PRA. Under the PRA, a Federal agency generally cannot conduct or sponsor a collection of information unless it is currently approved by the OMB under the PRA and displays a currently valid OMB control number. Furthermore, the public is generally not required to respond to a collection of information unless it displays a currently valid OMB control number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1220–0032. The current OMB approval is scheduled to expire on October 31, 2010. For additional information, see the related notice published in the **Federal Register** on May 27, 2010 (75 FR 29782).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference OMB Control Number 1220–0032. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Bureau of Labor Statistics.

Type of Review: Extension without change of currently approved collection.

Title of Collection: Annual Refiling Survey Forms.

Form Numbers: Forms BLS–3023–(NVS), BLS–3023–(NVM), and BLS–3023–NCA.

OMB Control Number: 1220–0032.

Affected Public: Business or other for-profit; Not-for-profit institutions, and farms.

Total Estimated Number of Respondents: 1,296,334.

Total Estimated Number of Responses: 1,296,334.

Total Estimated Annual Burden Hours: 128,838.

Total Estimated Annual Costs Burden: $0.

Dated: September 30, 2010.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2010–25106 Filed 10–5–10; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Exemptions From Certain Prohibited Transaction Restrictions

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). This notice includes the following: 2010–28, John D. Simmons Individual Retirement Act (the IRA), D–11597; and 2010–29, Boston Carpenters Apprenticeship and Training Fund (the Fund), L–11624.

SUPPLEMENTARY INFORMATION: 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.

John D. Simmons Individual Retirement Account (the IRA) Located in West Chester, PA

[Prohibited Transaction Exemption 2010–28; Exemption Application No. D–11597]

Exemption

The sanctions resulting from the application of section 4975(c)(1)(A)–(E) of the Code, shall not apply to the sale (the Sale) by the IRA to John D. Simmons, a disqualified person with respect to the IRA,* of a 50 percent interest (the Interest) in a condominium, provided that the following conditions are satisfied:

(a) The terms and conditions of the Sale are at least as favorable to the IRA as those obtainable in an arm's length transaction with an unrelated party;

(b) The Sale is a one-time transaction for cash;

(c) As consideration, the IRA receives the fair market value of the Interest as determined by a qualified, independent appraiser in an updated appraisal on the date of Sale; and

(d) The IRA pays no commissions, costs, fees, or other expenses with respect to the Sale.

Written Comment

In the notice of proposed exemption, the Department invited all interested persons to submit written comments and requests for a hearing within 30 days from the date of publication of the notice of proposed exemption in the **Federal Register**. All comments and requests for a hearing were due by September 5, 2010. Although the Department received no comments or requests for a hearing during the comment period, the Department noticed that Condition (c) of the proposal needed to be revised for technical accuracy.

As drafted in the proposal, Condition (c) states that as consideration for the Sale of the Interest, the IRA will receive the lesser of $192,500 or the fair market value of the Interest as determined by a qualified, independent appraiser in an updated appraisal on the date of the Sale. The Department intended that the IRA should receive the fair market value for the Interest on the date of the Sale. Therefore, it has deleted the words "the lesser of $192,500 or" in Condition (c) of the final exemption and notes a corresponding change in Representation 11(b) in the notice of proposed exemption. The revised condition now reads as follows:

(c) As consideration, the IRA receives the fair market value of the Interest as determined by a qualified, independent appraiser in an updated appraisal on the date of the Sale;

After giving full consideration to the entire record, the Department has decided to grant the exemption. The complete application file is made available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

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 6, 2010 at 75 FR 47642.

FOR FURTHER INFORMATION CONTACT: Mr. Anh-Viet Ly of the Department at (202) 693–8648. (This is not a toll-free number.)

Boston Carpenters Apprenticeship and Training Fund (the Fund) Located in Boston, Massachusetts

[Prohibited Transaction Exemption No. PTE 2010–29; Exemption Application No. L–11624]

Exemption

The restrictions of 406(b)(1), and 406(b)(2) of the Act shall not apply effective for the period from January 29, 2010, through June 30, 2010, to the lease (the Lease) by the Fund from the NERCC, LLC (the Building Corporation), a party in interest with respect to the Fund, of a condominium unit (the Condo) in a building (the Building) owned by the Building Corporation, where the New England Regional Council of Carpenters (the Union), also a party in interest with respect to the Fund, indirectly owns the only other condominium unit in the Building; provided that, at the time the transaction was entered into, the following conditions were satisfied:

(a) The exemption is conditioned upon satisfaction at all times of the terms and conditions of this exemption, and upon adherence to the material facts and representations, as described in the Notice of Proposed Exemption (the Notice), and, as set forth in application D–11624, and in application D–11558, including those representations that are required by 29 CFR 2570.34 and 29 CFR 2570.35 of the Department's regulations;

(b) Prior to entering into the Lease, the Fund sought legal advice from Aaron D. Krakow, Esq. (Mr. Krakow), acting as legal counsel on behalf of the Fund, who advised the Fund that it was permissible for the Fund to enter into a short term lease with the Building Corporation, and the Board of Trustees of the Fund (the Board) relied on Mr. Krakow's advice;

(c) The Lease which is the subject of this exemption and any other leasing arrangement of the Condo between the Fund and the Building Corporation and/or the Union terminated on June 30, 2010; and the Fund shall have no obligation to pay rent to the Union or to the Building Corporation after the date of such termination;

(d) Before the Fund entered into the Lease of the Condo, James F. Grosso, Esq. (Mr. Grosso), of O'Reilly, Grosso & Gross, PC, acting as attorney for the Fund, assisted in the negotiation of the terms of the Lease, reviewed and approved the terms of such Lease to ensure that such terms were at least as favorable to the Fund as an arm's length transaction with an unrelated party, determined that such terms were fair and reasonable, and selected an independent, qualified appraiser to determine the fair market rental value of the Condo;

(e) Mr. Grosso was responsible throughout the duration of the Lease for: (i) Monitoring the rent payments made by the Fund to ensure that such payments were consistent with the amount of rental specified under the terms of such Lease, (ii) monitoring the payments of the Fund's share of the expenses for taxes, insurance, and operating expenses (including repairs) to ensure that such payments represent a fair apportionment of such expenses; and (iii) determining that the Fund had sufficient assets to pay the rental amount and its portion of taxes, insurance, and operating expenses (including repairs);

(f) Throughout the duration of the Lease, the terms of the Lease of the Condo between the Fund and the Building Corporation were at all times satisfied;

(g) The rent paid by the Fund for the Condo under the terms of the Lease was at no time greater than the fair market rental value of the Condo, as determined by an independent, qualified appraiser selected by Mr. Grosso;

(h) Under the provisions of the Lease, the subject transaction was on terms and at all times remained on terms that were at least as favorable to the Fund as those that would have been negotiated under similar circumstances at arm's length with an unrelated third party;

(i) The transaction was appropriate and helpful in carrying out the purposes for which the Fund is established or maintained;

(j) The Board maintains, or causes to be maintained within the United States for a period of six (6) years in a manner that is convenient and accessible for

* Pursuant to 29 CFR 2510.3–2(d), the IRA is not within the jurisdiction of Title I of the Employee Retirement Income Security Act of 1974 (the Act). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

audit and examination, such records as are necessary to enable the persons described, below, in paragraph (k)(1) of this exemption to determine whether the conditions of this exemption have been met; except that—

(1) If the records necessary to enable the persons described, below, in paragraph (k)(1) of this exemption to determine whether the conditions of this exemption have been met are lost or destroyed, due to circumstances beyond the control of the Board, then no prohibited transaction will be considered to have occurred solely on the basis of the unavailability of those records; and

(2) No party in interest, other than the Board shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (j) of this exemption; and

(k)(1) Except as provided, below, in paragraph (k)(2) of this exemption and notwithstanding any provisions of sections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (j) of this 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 any other applicable federal or state regulatory agency;

(B) Any fiduciary of the Fund, or any duly authorized representative of such fiduciary;

(C) Any contributing employer to the Fund and any employee organization whose members are covered by the Fund, or any duly authorized employee or representative of these entities; or

(D) Any participant or beneficiary of the Fund, or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described, above, in paragraph (k)(1)(B)–(D) of this exemption are authorized to examine trade secrets or commercial or financial information that is privileged or confidential.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on June 11, 2010, at 75 FR 33350.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 693–8551 (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 1st day of October 2010.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2010–25119 Filed 10–5–10; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (10–119)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, 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 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Lori Parker, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Lori Parker, NASA Clearance Officer, NASA Headquarters, 300 E Street SW., JF0000, Washington, DC 20546, (202) 358–1351, *Lori.Parker@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

NASA Johnson Space Center (JSC) regularly employs cooperative (Co-op) and Intern employees. This information is collected from public citizens (landlords) in and around the JSC area, who may have rooms, residences, or apartments available for rent by the co-ops and interns. Contact information for these landlords is compiled and made available to co-ops and interns who are travelling into the JSC area from distant Texas cities or from out-of-state. Access to this information, prior to co-op and intern arrival, would facilitate advance housing arrangements, and ease the burden of securing housing after arrival.

II. Method of Collection

NASA does not prescribe a format for submission, though encourages the use of computer technology for submission.

III. Data

Title: JSC Cooperative Education Program—Housing Availability.

OMB Number: 2700-xxxx.

Type of review: Existing Collection in use w/o an OMB number.

Affected Public: Individuals/households.

Estimated Number of Respondents: 101.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 8.4 hours.

Estimated Total Annual Cost: $0.00.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of

NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Lori Parker,

NASA PRA Clearance Officer.

[FR Doc. 2010–25191 Filed 10–5–10; 8:45 am]

BILLING CODE P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (10–118)]

NASA Advisory Council; Science Committee; Astrophysics Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Astrophysics Subcommittee of the NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The Meeting will be held for the purpose of soliciting from the scientific community and other persons scientific and technical information relevant to program planning.

DATES: Friday, October 29, 2010, 1 p.m. to 3 p.m. Local Time.

ADDRESSES: This meeting will take place telephonically and by WebEx. Any interested person may call the USA toll free conference call number 800–779–1474, pass code APS, to participate in this meeting by telephone. The WebEx link is *https://nasa.webex.com/nasa/j.php?ED=137482372&UID=0&PW=NNTQ4NTM2NWMy&RT=MiMxMQ%3D%3D, meeting number 998 634 250, and password APS_Oct2010.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. The agenda for the meeting includes the following topics:

—Update on the James Webb Space Telescope.

—Update on the Agency's Near-Term Plans for Responding to the Astro2010 Decadal Survey.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: September 30, 2010.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2010–25103 Filed 10–5–10; 8:45 am]

BILLING CODE P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB Review; Comment Request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. This is the **second notice** for public comment; the first was published in the **Federal Register** at 75 FR 47645, and no comments were received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. The full submission may be found at: *http://www.reginfo.gov/public/do/PRAMain.* Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725–17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to *splimpto@nsf.gov.* Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–292–7556.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton at (703) 292–7556 or send e-mail to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: Quantitative Evaluation of the ADVANCE Program.

OMB Control No.: 3145–0209.

Abstract

Abstract: The ADVANCE Program was established by the National Science Foundation in 2001 to address the underrepresentation and inadequate advancement of women on STEM (Science, Technology, Engineering, and Mathematics) faculties at postsecondary institutions. The evaluation being conducted by the Urban Institute focuses on the implementation of ADVANCE projects at institutions throughout the nation. The three major funding components—institutional transformation, leadership, and partnership awards—as well as all cohorts funded that completed their funding cycles will be included. The study will rely on a thorough review of project documents, telephone interviews with all grantees, and detailed case studies at selected sites. The goal of the evaluation will be to identify models of implementation and, depending on outcomes by model, conduct case studies at selected institutions to understand how ADVANCE models operate and may be effective in differing settings.

Respondents: Faculty and staff at institutions of higher education awarded an ADVANCE grant from NSF.

Estimated Number of Annual Respondents: 151 (total).

1. Site visit interviews. Conduct interviews in 6 sites selected for case studies. Interview project staff, administrators and faculty. Burden calculated as follows: approximately 8 interviews in each site + interview recipients of leadership awards at case study sites (if any).

Total respondents: 48 estimated interviewees + 7 leadership and PAID award recipients = 55.

2. Site visit focus groups with faculty: 2 per site; 6 sites; 6–8 faculty in each; total = 96.

Burden on the Public: 149 hours (maximum).

Calculated as follows:

1. Site visit interviews: 48 interviews of 1 hour duration = 48 hours and 7 interviews of 45 minutes duration = 5.25 hours (53).

2. Focus groups: 96 participants of 1 hour duration = 96 hours.

Dated: October 1, 2010.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2010–25120 Filed 10–5–10; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

National Science Board: Sunshine Act Meetings; Notice

The National Science Board's Committee on Programs and Plans, 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 a meeting for the transaction of National Science Board business and other matters specified, as follows:

DATE AND TIME: October 13, 2010, 1:30 p.m. to 3 p.m.

SUBJECT MATTER: Review of *NSB Action Item (NSB/CPP–10–63)* (Deep Underground Science and Engineering Laboratory (DUSEL)) and an update on University of Illinois Urbana-Champaign High Performance Computing Award.

STATUS: Closed.

LOCATION: This meeting will be held at National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

UPDATES AND POINT OF CONTACT: Please refer to the National Science Board Web site *http://www.nsf.gov/nsb* for additional information and schedule updates (time, place, subject matter or status of meeting) may be found at *http://www.nsf.gov/nsb/notices/.* Point of contact for this meeting is: Elizabeth Strickland, National Science Board Office, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–7000.

Daniel A. Lauretano,

Counsel to the National Science Board.

[FR Doc. 2010–25312 Filed 10–4–10; 4:15 pm]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–244; NRC–2010–0317]

R.E. Ginna Nuclear Power Plant, LLC; R.E. Ginna Nuclear Power Plant Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering changes to the Emergency Plan, pursuant to 10 CFR 50.54, "Conditions of licenses," paragraph (q), for Facility Operating License No. DPR–18, issued to R.E. Ginna Nuclear Power Plant, LLC (the licensee), for operation of the R.E. Ginna Nuclear Power Plant (Ginna), located in Ontario, New York. In accordance with 10 CFR 51.21, the NRC performed an environmental assessment. Based on the results of the environmental assessment, the NRC is issuing a finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would upgrade selected Emergency Action Levels (EALs) based on NEI 99–01, Revision 5, "Methodology for Development of Emergency Action Levels," using the guidance of NRC Regulatory Issue Summary 2003–18, Supplement 2, "Use of Nuclear Energy Institute (NEI) 99–01, Methodology for Development of Emergency Action Levels."

The proposed action is in accordance with the licensee's application dated November 30, 2009 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML093370215), as supplemented by letter dated May 14, 2010 (ADAMS Accession No. ML101400133).

The Need for the Proposed Action

The current Ginna NUMARC/NESP–007 based Emergency Plan EALs were developed in 1994 and approved by the NRC in February 1995. Currently, loss of annunciators to a single control room panel requires the licensee to declare a Notice of Unusual Event (NOUE), as experienced in 2007 and 2009. Improvements have since been made to the Ginna control room indication and annunciation systems and the licensee has determined that the current EALs are more conservative than the intent of NEI 99–01. Overly conservative criteria could lead to the premature declaration of an NOUE. The licensee has requested NRC approval of EALs based on NEI 99–01 to match the level of EAL conservatism with the industry standard.

The NRC has completed its evaluation of the proposed action and concludes that the proposed changes to the Ginna EALs meet the guidance of NEI 99–01, which the staff considers to be an acceptable alternative for development of an EAL scheme that meets regulatory requirements. Based on this, the staff concludes that the proposed EALs meet the standards of 10 CFR 50.47(b) and the requirements of Appendix E to 10 CFR Part 50 and provide reasonable assurance that the licensee will take adequate protective measures in a radiological emergency.

Environmental Impacts of the Proposed Action

The NRC has completed its environmental assessment of the proposed EAL changes to the R.E. Ginna Nuclear Power Plant. The staff has concluded that the changes would not significantly affect plant safety and would not have a significant adverse effect on the probability of an accident occurring. The proposed action would not result in an increased radiological hazard beyond those previously analyzed in the Updated Final Safety Analysis Report. There will be no change to radioactive effluents that affect radiation exposures to plant workers and members of the public. No changes will be made to plant buildings or the site property. Therefore, no changes or different types of radiological impacts are expected as a result of the proposed changes.

The proposed action does not result in changes to land use or water use, or result in changes to the quality or quantity of non-radiological effluents. No changes to the National Pollution Discharge Elimination System permit are needed. No effects on the aquatic or terrestrial habitat in the vicinity or the plant, or to threatened, endangered, or protected species under the Endangered Species Act, or impacts to essential fish habitat covered by the Magnuson-Stevens Act are expected. There are no impacts to the air or ambient air quality. There are no impacts to historical and cultural resources. There would be no noticeable effect on socioeconomic conditions in the region. Therefore, no changes or different types of non-radiological environmental impacts are

expected as a result of the proposed action. Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

The details of the staff's safety evaluation will be provided with the license amendment that will be issued to the licensee approving the EAL changes.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.,* the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for the R.E. Ginna Nuclear Power Plant, dated December 1973, and Supplement 14 to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants (NUREG–1437) dated January 2004.

Agencies and Persons Consulted

In accordance with its stated policy, on August 17, 2010, the staff consulted with the New York State official, Alyse Peterson, P.E., of the New York State Energy Research and Development Authority, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated November 30, 2009, as supplemented by letter dated May 14, 2010. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or send an e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 28th day of September 2010.

For the Nuclear Regulatory Commission.

Douglas V. Pickett,

Senior Project Manager, Plant Licensing Branch I–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–25158 Filed 10–5–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes: Meeting Notice

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of meeting.

SUMMARY: NRC will convene a meeting of the Advisory Committee on the Medical Uses of Isotopes (ACMUI) on October 20–21, 2010. A sample of agenda items to be discussed during the public session includes: (1) A presentation from the Conference of Radiation Control Program Directors on a national medical events database; (2) a discussion on the Title 10 of the *Code of Federal Regulations* (CFR) part 35 medical event rule implementation plan; (3) updates on permanent prostate brachytherapy medical events that occurred at the Veteran's Affairs Medical Center in Philadelphia; (4) a subcommittee report on permanent implant brachytherapy; (5) a discussion of patients' rights advocate responsibilities; (6) a discussion on emerging technology and medical isotope production; (7) updates on 10 CFR part 37 Rule and Guidance; (8) discussion on the draft policy statement on protection of cesium chloride radiation sources; (9) a subcommittee report on the issue of patient release following administration of iodine-131; (10) a discussion on the potential changes to NRC's Radiation Protection Program; and (11) a discussion on medical-related events. A copy of the agenda will be available at *http://www.nrc.gov/reading-rm/doc-collections/acmui/agenda* or by e-mailing Ms. Ashley Cockerham at the contact information below.

Purpose: Discuss issues related to 10 CFR part 35 Medical Use of Byproduct Material.

Date and Time for Closed Session: October 20, 2010, from 8 a.m. to 9 a.m. and October 21, 2010, from 8 a.m. to 11 a.m. The first session will be closed so that ACMUI members can prepare for the Commission briefing. The second session will be closed so that ACMUI members can undergo NRC training, enroll for and activate new badges, and discuss ACMUI interactions with staff for major medical policy.

Date and Time for Open Sessions: October 20, 2010, from 9 a.m. to 5:30 p.m. and October 21, 2010, from 11 a.m. to 4:30 p.m.

Address for Public Meeting: U.S. Nuclear Regulatory Commission, Two White Flint North Building, Room T2–B3, 11545 Rockville Pike, Rockville, Maryland 20852.

Public Participation: Any member of the public who wishes to participate in the meeting in person or via phone should contact Ms. Cockerham using the information below. The meeting will also be webcast live: *http://www.nrc.gov/public-involve/public-meetings/webcast-live.html.*

Contact Information: Ashley M. Cockerham, e-mail: *ashley.cockerham@nrc.gov*, telephone: (240) 888–7129.

Conduct of the Meeting

Leon S. Malmud, M.D., will chair the meeting. Dr. Malmud will conduct the meeting in a manner that will facilitate the orderly conduct of business. The following procedures apply to public participation in the meeting:

1. Persons who wish to provide a written statement should submit an electronic copy to Ms. Cockerham at the contact information listed above. All submittals must be received by October 13, 2010, and must pertain to the topic on the agenda for the meeting.

2. Questions and comments from members of the public will be permitted during the meeting, at the discretion of the Chairman.

3. The draft transcript will be available on ACMUI's Web site (*http://www.nrc.gov/reading-rm/doc-collections/acmui/tr/*) on or about November 26, 2010. A meeting summary will be available on ACMUI's Web site (*http://www.nrc.gov/reading-rm/doc-collections/acmui/meeting-summaries/*) on or about December 6, 2010.

4. Persons who require special services, such as those for the hearing impaired, should notify Ms. Cockerham of their planned attendance.

This meeting will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily Section 161a); the Federal Advisory Committee Act (5 U.S.C. App); and the Commission's regulations in 10 CFR part 7.

Dated at Rockville, Maryland, this 29th day of September 2010.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 2010–24913 Filed 10–5–10; 8:45 am]

BILLING CODE P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Planning and Procedures

The ACRS Subcommittee on Planning and Procedures will hold a meeting on November 3, 2010, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b (c)(2) and (6) to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, November 3, 2010, 12 p.m.–1 p.m.

The Subcommittee will discuss proposed ACRS activities and related matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Cayetano Santos (Telephone 301–415–7270 or e-mail *Cayetano.Santos@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 14, 2009, (74 FR 58268–58269).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the website cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

Dated: September 30, 2010.

Cayetano Santos,

Chief, Reactor Safety Branch A Advisory Committee on Reactor Safeguards.

[FR Doc. 2010–25155 Filed 10–5–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Reliability and PRA

The ACRS Subcommittee on Reliability and Probabilistic Risk Assessment (PRA) will hold a meeting on November 3, 2010, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, November 3, 2010—1:30 p.m. Until 5 p.m.

The Subcommittee will review an update on NRC's proposed policy statement on Safety Culture. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, the Nuclear Energy Institute (NEI), and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Derek Widmayer (Telephone 301–415–7366 or e-mail *Derek.Widmayer@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be e-mailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 14, 2009, (74 FR 58268–58269).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

Dated: *September 30, 2010.*

Antonio Dias,

Chief, Reactor Safety Branch B, Advisory Committee on Reactor Safeguards.

[FR Doc. 2010–25151 Filed 10–5–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) Meeting of the Subcommittee on Plant License Renewal

The ACRS Subcommittee on Plant License Renewal will hold a meeting on November 3, 2010, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, November 3, 2010—1:30 p.m. until 5 p.m.

The Subcommittee will review the License Renewal Application and associated Safety Evaluation Report (SER) with open items for Hope Creek. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, Public Service Enterprise Group (PSEG) Nuclear LLC, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Michael Benson (Telephone 301–415–6396 or e-mail *Michael.Benson@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO 30 minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least 30 minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 14, 2009 (74 FR 58268–58269).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the website cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

Dated: September 30, 2010.

Cayetano Santos,

Chief, Reactor Safety Branch A, Advisory Committee on Reactor Safeguards.

[FR Doc. 2010–25143 Filed 10–5–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) Meeting of the ACRS Subcommittee on AP1000

The ACRS Subcommittee on AP1000 will hold a meeting on November 2–3, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance, with the exception of a portion that may be closed to protect information designated as proprietary to Westinghouse Electric Company and its contractors, pursuant to 5 U.S.C. 552b(c)(3)(4), and unclassified safeguards information, pursuant to 5 U.S.C. 552b(c)(3).

The agenda for the subject meeting shall be as follows:

Tuesday, November 2, 2010—8:30 a.m. until 5 p.m. and Wednesday, November 3, 2010—8:30 a.m. until 12 p.m.

The Subcommittee will review Chapters 9 and 19, which includes Aircraft Impact Assessment (AIA), of the Final Safety Evaluation Report (FSER) associated with revisions to the AP1000 Design Control Document (DCD). The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, Westinghouse, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Weidong Wang (Telephone 301–415–6279 or e-mail *Weidong.Wang@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be e-mailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 14, 2009 (74 FR 58268–58269).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

Dated: September 30, 2010.

Antonio Dias,

Chief, Reactor Safety Branch B, Advisory Committee on Reactor Safeguards.

[FR Doc. 2010–25150 Filed 10–5–10; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Review of a Revised Information Collection: (OMB Control No. 3206–0128; Standard Form 2802 and Standard Form 2802A)

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for review of a revised information collection. This information collection, "Application for Refund of Retirement Deductions, Civil Service Retirement System" (OMB Control No. 3206–0128; Standard Form 2802) is used to support the payment of monies from the Retirement Fund. It identifies the applicant for refund of retirement deductions. "Current/Former Spouse's Notification of Application for Refund of Retirement Deductions" (OMB Control No. 3206–0128; Standard Form 2802A), is used to comply with the legal requirement that any spouse or former

spouse of the applicant has been notified that the former employee is applying for a refund.

Approximately 3,741 SF 2802 forms are completed annually. We estimate it takes approximately one hour to complete the form. The annual estimated burden is 3,741 hours. Approximately 3,389 SF 2802A forms are processed annually. We estimate it takes approximately 15 minutes to complete this form. The annual burden is 847 hours. The total annual burden is 4,588 hours.

For copies of this proposal, contact Cyrus S. Benson on (202) 606–4808, FAX (202) 606–0910 or via E-mail to *Cyrus.Benson@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received by November 5, 2010.

ADDRESSES: Send or deliver comments to—

James K. Freiert, (Acting) Deputy Associate Director, Retirement Operations, Retirement and Benefits, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3305, Washington, DC 20415–3500;

and

OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Room 10235, Washington, DC 20503.

For information regarding administrative coordination contact: Cyrus S. Benson, Team Leader, Publications Team, RB/RM/ Administrative Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 4H28, Washington, DC 20415, (202) 606–4808.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2010–25031 Filed 10–5–10; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Request For Comments On A Revised Information Collection: (OMB Control No. 3206–0144; Form RI 38–45)

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of a revised information collection. This information collection, "We Need the Social Security Number of the Person Named Below" (OMB Control No. 3206–0144; Form RI 38–45), is used by the Civil Service Retirement System and the Federal Employee Retirement System to identify the records of individuals with similar or the same names. It is also needed to report payments to the Internal Revenue Service.

Comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 3,000 RI 38–45 forms will be completed annually. We estimate it takes approximately 5 minutes to complete the form. The estimated annual burden is 250 hours.

For copies of this proposal, contact Cyrus S. Benson on (202) 606–4808, FAX (202) 606–0910 or via E-mail to *Cyrus.Benson@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received within December 6, 2010.

ADDRESSES: Send or deliver comments to—James K. Freiert (Acting), Deputy Associate Director, Retirement Operations, Retirement and Benefits, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3305, Washington, DC 20415–3500.

For information regarding administrative coordination contact: Cyrus S. Benson, Team Leader, Publications Team, RB/RM/ Administrative Services, U.S. Office of Personnel Management, 1900 E Street, NW—Room 4H28, Washington, DC 20415, (202) 606–4808.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2010–25035 Filed 10–5–10; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Request for Comments on a Revised Information Collection: (OMB Control No. 3206–0233; Form RI 25–51)

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995 and 5 CFR 1320), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for comments on a revised information collection. This information collection, "Civil Service Retirement System (CSRS) Survivor Annuitant Express Pay Application for Death Benefits" (OMB Control No. 3206–0233; Form RI 25–51), will be used by the Civil Service Retirement System solely to pay benefits to the widow(er) of an annuitant. This application is intended for use in immediately authorizing payments to an annuitant's widow or widower, based on the report of death, when our records show the decedent elected to provide benefits for the applicant.

Approximately 34,800 RI 25–51 forms are completed annually. The form takes approximately 30 minutes to complete. The annual estimated burden is 17,400 hours.

For copies of this proposal, contact Cyrus S. Benson on (202) 606–4808, FAX (202) 606–0910 or e-mail to *Cyrus.Benson@opm.gov.* Please include your mailing address with your request.

DATES: Comments on this proposal should be received within November 5, 2010.

ADDRESSES: Send or deliver comments to—

James K. Freiert (Acting), Deputy Associate Director, Retirement Operations, Retirement and Benefits, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3305, Washington, DC 20415–3500; and

OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Room 10235, Washington, DC 20503.

For information regarding administrative coordination contact:

Cyrus S. Benson, Team Leader, Publications Team, RB/RM/ Administrative Services, U.S. Office of Personnel Management, 1900 E

Street, NW., Room 4H28, Washington, DC 20415, (202) 606–4808.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2010–25029 Filed 10–5–10; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Request for Comment on a New Information Collection: (OMB Control No. 3206–XXXX; Form RI 20–123)

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 10413, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for review of a new information collection. "Request for Case Review for Enhanced Disability Annuity Benefit" (OMB Control No. 3206–XXXX). Due to recent court orders, the Office of Personnel Management (OPM) must compute, or re-compute as applicable, the disability annuities for individuals who performed service as law enforcement officers, firefighters, nuclear materials carriers, Customs and Border Patrol officers, members of the Capitol and the Supreme Court police, Congressional employees, members of Congress, and air traffic controllers. Because these court orders were handed down long after some of the affected individuals retired and/or died and they are not identified in the OPM computer systems, it is necessary for these individuals to self-identify. Form RI 20–123 is needed on the OPM website so these individuals and their survivors can make the request.

We estimate that we will receive 720 responses a year and the time it takes to respond is estimated to be 5 minutes. The annual burden is estimated to be 60 hours.

For copies of this proposal, contact Cyrus S. Benson on (202) 606–4808, FAX (202) 606–0910 or via E-mail to *Cyrus.Benson@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received within November 5, 2010.

ADDRESSES: Send or deliver comments to—

James K. Freiert (Acting), Deputy Associate Director, Retirement Operations, Retirement & Benefits, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3305, Washington, DC 20415–3500;

and

OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Room 10235, Washington, DC 20503.

For information regarding administrative coordination contact: Cyrus S. Benson, Team Leader, Publications Team, Retirement & Benefits/Resource Management, Office of Personnel Management, 1900 E Street, NW., Room 4H28, Washington, DC 20415, (202) 606–4808.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2010–25032 Filed 10–5–10; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Request for Comments On An Existing Information Collection: (OMB Control No. 3206–0190; Form RI 92–19)

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for comments on an existing information collection. This information collection, "Application for Deferred or Postponed Retirement: Federal Employees Retirement System (FERS)" (OMB Control No. 3206–0190; Form RI 92–19), is used by separated employees to apply for either a deferred or a postponed FERS annuity benefit.

Comments are particularly invited on: Whether this information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 1,693 forms are completed annually. We estimate it takes approximately 60 minutes to complete the form. The annual estimated burden is 1,693 hours.

For copies of this proposal, contact Cyrus S. Benson on (202) 606–4808, FAX (202) 606–0910 or via E-mail to *Cyrus.Benson@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received within December 6, 2010.

ADDRESSES: Send or deliver comments to—James K. Freiert (Acting), Deputy Associate Director, Retirement Operations, Retirement and Benefits, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3305, Washington, DC 20415–3500.

For information regarding administrative coordination contact: Cyrus S. Benson, Team Leader, Publications Team, RB/RM/Administrative Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 4H28, Washington, DC 20415, (202) 606–4808,

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2010–25033 Filed 10–5–10; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

[OMB Control No. 3206–0187; Form RI 38–31]

Proposed Collection; Comment Request for Review of a Revised Information Collection

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of a revised information collection. This information collection, "Request for Information About Your Missing Payment" (OMB Control No. 3206–0187; Form RI 38–31), is sent in response to a notification by an individual of the loss or non-receipt of a payment from the Civil Service Retirement and Disability Fund. This form requests the information needed to enable OPM to trace and/or reissue payment. Missing payments may also be reported to OPM by a telephone call.

Comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 8,000 reports of missing payments are processed each year. Of these, we estimate that 7,800 are reports of missing checks. Approximately 200 reports of missing checks are reported using RI 38–31 and 7,600 are reported by telephone. A response time of ten minutes per form reporting a missing check is estimated; the same amount of time is needed to report the missing checks or electronic funds transfer (EFT) payments using the telephone. The annual burden for reporting missing checks is 1,300 hours. The remaining 200 reports relate to EFT payments. No missing EFT payments are reported using RI 38–31. The annual burden for reporting missing EFT payments is 33 hours. The total burden is 1,333 hours.

For copies of this proposal, contact Cyrus S. Benson on (202) 606–4808, FAX (202) 606–0910 or via e-mail to *Cyrus.Benson@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received by December 6, 2010.

ADDRESSES: Send or deliver comments to—

James K. Freiert, (Acting) Deputy Associate Director, Retirement Operations, Retirement and Benefits, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3305, Washington, DC 20415–3500.

For information regarding administrative coordination contact:

Cyrus S. Benson, Team Leader, Publications Team, RB/RM/ Administrative Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 4H28, Washington, DC 20415, (202) 606–4808.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2010–25034 Filed 10–5–10; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Revised Information Collection: (OMB Control No. 3206–0201; Federal Employees Health Benefits (FEHB) Open Season Express Interactive Voice Response (IVR) System)

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of a revised information collection. This information collection, "Federal Employees Health Benefits (FEHB) Open Season Express Interactive Voice Response (IVR) System" (OMB Control No. 3206–0201), and the Open Season Web site, Open Season Online, are used by retirees and survivors. They collect information for changing FEHB enrollments, collecting dependent and other insurance information for self and family enrollments, requesting plan brochures, requesting a change of address, requesting cancellation or suspension of FEHB benefits, asking to make payment to the Office of Personnel Management when the FEHB payment is greater than the monthly annuity amount, or for requesting FEHB plan accreditation and Customer Satisfaction Survey information.

Comments are particularly invited on: Whether this information is necessary for the proper performance of functions of the Office of Personnel Management and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

We receive approximately 215,000 responses per year to the IVR system and the online web. Each response takes approximately 10 minutes to complete. The annual burden is 35,833 hours.

For copies of this proposal, contact Cyrus S. Benson on (202) 606–4808, FAX (202) 606–0910 or via e-mail to *Cyrus.Benson@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received within December 6, 2010.

ADDRESSES: Send or deliver comments to—

James K. Freiert (Acting), Deputy Associate Director, Retirement Operations, Retirement and Benefits, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3305, Washington, DC 20415–3500.

For information regarding administrative coordination contact:

Cyrus S. Benson, Team Leader, Publications Team, RB/RM/ Administrative Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 4H28, Washington, DC 20415, (202) 606–4808.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2010–25049 Filed 10–5–10; 8:45 am]

BILLING CODE 6325–38–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2010–119, CP2010–120, CP2010–121, CP2010–122, CP2010–123, CP2010–124, and CP2010–125; Order No. 548]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently–filed Postal Service request to add seven Global Expedited Package Services 3 contracts to the competitive product list. This notice addresses procedural steps associated with this filing.

DATES: Comments are due: October 7, 2010.

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, at *stephen.sharfman@prc.gov* or 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

On September 28, 2010, the Postal Service filed a notice announcing that it has entered into seven additional Global Expedited Package Services 3 (GEPS 3) contracts.[1] The Postal Service believes the instant contracts are functionally equivalent to previously submitted GEPS contracts, and are supported by Governors' Decision No.08–7, attached to the Notice and originally filed in Docket No. CP2008–4. *Id.* at 1, Attachment 3. The Notice explains that Order No. 86, which established GEPS 1 as a product, also authorized functionally equivalent agreements to be included within the product, provided that they meet the requirements of 39 U.S.C. 3633. *Id.* at 2. In Order No. 290, the Commission approved the GEPS 2 product.[2] In Order No. 503, the Commission approved the GEPS 3 product. Additionally, the Postal Service requested to have the contract in Docket No. CP2010–71 serve as the baseline contract for future functional equivalence analyses of the GEPS 3 product.

The instant contracts. The Postal Service filed the instant contracts pursuant to 39 CFR 3015.5. In addition, the Postal Service contends that each contract is in accordance with Order No. 86. The term of each contract is one year from the date the Postal Service notifies the customer that all necessary regulatory approvals have been received. Notice at 3.

In support of its Notice, the Postal Service filed four attachments as follows:

•Attachments 1A through 1G—redacted copies of the seven contracts and applicable annexes;

•Attachments 2A through 2G—certified statements required by 39 CFR 3015.5(c)(2) for each contract;

•Attachment 3—a redacted copy of Governors' Decision No. 08–7 which establishes prices and classifications for GEPS contracts, a description of applicable GEPS contracts, formulas for prices, an analysis of the formulas, and certification of the Governors' vote; and

•Attachment 4—an application for non–public treatment of materials to maintain redacted portions of the contracts and supporting documents under seal.

The Notice advances reasons why the instant GEPS 3 contracts fit within the Mail Classification Schedule language for GEPS. The Postal Service identifies customer–specific information and general contract terms that distinguish the instant contracts from the baseline GEPS 3 agreement. *Id.* at 4–5. It states that the differences, which include price variations based on updated costing information and volume commitments, do not alter the contracts' functional equivalency. *Id.* at 4. The Postal Service asserts that "[b]ecause the agreements incorporate the same cost attributes and methodology, the relevant characteristics of these seven GEPS contracts are similar, if not the same, as the relevant characteristics of previously filed contracts." *Id.*

The Postal Service concludes that its filings demonstrate that each of the new GEPS 3 contracts complies with the requirements of 39 U.S.C. 3633 and is functionally equivalent to the baseline GEPS 3 contract. Therefore, it requests that the instant contracts be included within the GEPS 3 product. *Id.* at 5.

II. Notice of Filing

The Commission establishes Docket Nos. CP2010–119 through CP2010–125 for consideration of matters related to the contracts identified in the Postal Service's Notice.

These dockets are addressed on a consolidated basis for purposes of this order. Filings with respect to a particular contract should be filed in that docket.

Interested persons may submit comments on whether the Postal Service's contracts are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642. Comments are due no later than October 7, 2010. 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 the captioned proceedings.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. CP2010–119 through CP2010–125 for consideration of matters raised by the Postal Service's Notice.

2. Comments by interested persons in these proceedings are due no later than October 7, 2010.

3. Pursuant to 39 U.S.C. 505, Paul L. Harrington is appointed to serve as the officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

4. The Secretary shall arrange for publication of this order in the **Federal Register.**

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2010–25061 Filed 10–5–10; 8:45 am]

BILLING CODE 7710–FW–S

[1] Notice of United States Postal Service of Filing Seven Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreements and Application For Non-Public Treatment of Materials Filed Under Seal, September 28, 2010 (Notice).

[2] Docket No. CP2009–50, Order Granting Clarification and Adding Global Expedited Package Services 2 to the Competitive Product List, August 28, 2009 (Order No. 290).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29452; File No. 812–13786]

Northern Lights Fund Trust, et al.; Notice of Application

September 30, 2010.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from rule 12d1–2(a) under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit funds of funds relying on rule 12d1–2 under the Act to invest in certain financial instruments.

APPLICANTS: Northern Lights Fund Trust ("NLFT"), Arrow Investment Advisors, LLC ("AIA"), and Northern Lights Distributors, LLC ("NLD").

FILING DATES: The application was filed on June 22, 2010, and amended on September 29, 2010. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 25, 2010 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants: Northern Lights Fund Trust, 450 Wireless Boulevard, Hauppauge, New York 11788; Arrow Investment

Advisers, LLC, 2943 Olney-Sandy Spring Road, Suite A, Olney, Maryland 20832; Northern Lights Distributors, LLC, 4020 South 147th Street, Omaha, Nebraska 68137.

FOR FURTHER INFORMATION CONTACT: Lewis Reich, Senior Counsel, at (202) 551–6919, or Jennifer L. Sawin, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. NLFT is organized as a Delaware statutory trust, and is registered under the Act as an open-end management investment company. AIA is organized as a Maryland corporation, and currently serves as investment adviser to each existing Fund (as defined below). Each Adviser (as defined below) will be registered under the Investment Advisers Act of 1940, as amended. NLD is registered as a broker-dealer under the Securities Exchange Act of 1934, as amended ("Exchange Act") and serves as the distributor for the Funds (as defined below) that are series of NLFT.

2. Applicants request the exemption on behalf of NLFT and its existing and future series and any other existing or future registered open-end investment company or series thereof that (i) is advised by AIA or any entity controlling, controlled by or under common control with AIA (collectively with AIA, the "Advisers"), (ii) operates as a "fund of funds" (each, a "Fund"); (iii) invests in other registered open-end investment companies ("Underlying Funds") in reliance on Section 12(d)(1)(G) of the Act; and (iv) is eligible to invest in securities (as defined in Section 2(a)(36) of the Act) in reliance on Rule 12d1–2 under the Act. Applicants request the exemption to the extent necessary to permit each Fund to also invest, to the extent consistent with its investment objective, policies, strategies and limitations, in financial instruments that may not be securities within the meaning of section 2(a)(36) of the Act ("Other Investments").[1] Applicants also request that the order exempt NLD and any entity controlling, controlled by or under common control with NLD that now or in the future acts as principal underwriter with respect to the transactions described in the application.

3. Consistent with its fiduciary obligations under the Act, each Fund's board of trustees will review the advisory fees charged by the Fund's investment adviser to ensure that they are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to the advisory agreement of any investment company in which the Fund may invest.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company ("acquiring company") may acquire securities of another investment company ("acquired company") if such securities represent more than 3% of the acquired company's outstanding voting stock or more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or cause more than 10% of the acquired company's voting stock to be owned by investment companies and companies controlled by them.

2. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (i) The acquired company and acquiring company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the Exchange Act or by the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F) or (G) of the Act.

3. Rule 12d1–2 under the Act permits a registered open-end investment company or a registered unit investment trust that relies on section 12(d)(1)(G) of the Act to acquire, in addition to securities issued by another registered investment company in the same group of investment companies, government securities, and short-term paper: (1) Securities issued by an investment company that is not in the same group of investment companies, when the acquisition is in reliance on section 12(d)(1)(A) or 12(d)(1)(F) of the Act; (2) securities (other than securities issued by an investment company); and (3) securities issued by a money market fund, when the investment is in reliance on rule 12d1–1 under the Act. For the purposes of rule 12d1–2, "securities" means any security as defined in section 2(a)(36) of the Act.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of the Act, or from any rule under the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

5. Applicants state that the Funds will comply with Rule 12d1–2 under the Act, but for the fact that the Funds may invest a portion of their assets in Other Investments. Applicants request an order under section 6(c) of the Act for an exemption from rule 12d1–2(a) to allow the Funds to invest in Other Investments while investing in Underlying Funds. Applicants assert that permitting the Funds to invest in Other Investments as described in the application would not raise any of the concerns that the requirements of section 12(d)(1) were designed to address.

Applicants' Condition

Applicants agree that the order granting the requested relief will be subject to the following condition:

Applicants will comply with all provisions of rule 12d1–2 under the Act, except for paragraph (a)(2) to the extent that it restricts any Fund from investing in Other Investments as described in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–25072 Filed 10–5–10; 8:45 am]

BILLING CODE 8010–01–P

[1] Every existing entity that currently intends to rely on the requested order is named as an applicant. Any existing or future entity that relies on the order in the future will do so only in accordance with the terms and condition in the application.

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29453; 812–13771]

Triangle Capital Corporation, et al.; Notice of Application

September 30, 2010.

AGENCY: Securities and Exchange Commission (the "Commission").

ACTION: Notice of an application to amend a prior order under sections 6(c), 12(d)(1)(J), and 57(c) of the Investment Company Act of 1940 ("Act") granting exemptions from sections 12(d)(1)(A) and (C), 18(a), 21(b), 57(a)(1)–(a)(3), and 61(a) of the Act; under section 57(i) of the Act and rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by section 57(a)(4) of the Act; and under section 12(h) of the Securities Exchange Act of 1934 ("Exchange Act") granting an exemption from section 13(a) of the Exchange Act.

APPLICANTS: Triangle Capital Corporation ("Triangle"), Triangle Mezzanine Fund, LLLP ("TMF"), New Triangle GP, LLC ("General Partner"), New Triangle GP, LLC ("GP II"), and Triangle Mezzanine Fund II LP ("SBIC II").

SUMMARY OF APPLICATION: Applicants request an order ("Amended Order") to amend a prior order permitting a parent business development company ("BDC") and its wholly-owned small business investment company ("SBIC") subsidiary to engage in certain transactions that otherwise would be permitted if such parent BDC and such SBIC subsidiary were one company and to file certain reports on a consolidated basis, and permitting such parent BDC to adhere to a modified asset coverage requirement ("Prior Order").[1] Applicants seek to amend the Prior Order in order to permit such SBIC subsidiary, which is also a BDC, and a newly formed SBIC subsidiary or any future SBIC subsidiary to engage in certain transactions that otherwise would be permitted if such parent BDC and the SBIC subsidiaries were one company and to permit such parent BDC to adhere to a modified asset coverage requirement.

DATES: *Filing Dates:* The application was filed on May 11, 2010 and amended on September 28, 2010. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 21, 2010, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants, c/o Garland S. Tucker III, Triangle Capital Corporation, 3700 Glenwood Avenue, Suite 530, Raleigh, NC 27612.

FOR FURTHER INFORMATION CONTACT: Jill Ehrlich, Attorney Adviser, at (202) 551–6819, or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. Triangle, a Maryland corporation, is an internally managed, non-diversified, closed-end investment company that has elected to be regulated as a BDC under the Act.[2] Triangle operates as a specialty finance company that provides customized financing solutions to lower middle market companies that have annual revenues between $10 and $100 million. Triangle's investment objective is to seek attractive returns by generating current income from debt investments and capital appreciation from equity related investments. Triangle has an eight member board of directors ("Triangle Board"), five of whom are not "interested persons" of Triangle within the meaning of section 2(a)(19) of the Act. Triangle is internally managed by its executive officers under the supervision of the Triangle Board.

2. TMF, a North Carolina limited liability limited partnership, is an SBIC licensed by the Small Business Administration ("SBA") to operate under the Small Business Investment Act of 1958 ("SBA Act"). TMF has elected to be regulated as a BDC under the Act. TMF has the same investment objectives and strategies as Triangle. Triangle owns a 99.9% limited partnership interest in TMF, and the General Partner, a wholly-owned subsidiary of Triangle, owns a 0.1% general partnership interest in TMF. TMF, therefore, is functionally a 100% owned subsidiary of Triangle because Triangle and the General Partner own all of the equity and voting interest in TMF. TMF is consolidated with Triangle for financial reporting purposes. TMF has a board of directors ("TMF Board") consisting of five persons who are not interested persons of TMF within the meaning of section 2(a)(19) of the Act and three persons who are interested persons of TMF.

3. SBIC II, a Delaware limited partnership, is an SBIC licensed by the SBA. Unlike TMF, SBIC II will not be registered under the Act based on the exclusion from the definition of investment company contained in section 3(c)(7) of the Act. Triangle directly owns a 99.9% limited partnership interest in SBIC II. GP II, a wholly owned subsidiary of Triangle, owns a 0.1% general partnership interest in SBIC II. Therefore, SBIC II is functionally a 100% owned subsidiary of Triangle because Triangle and GP II own all of the equity and voting interest in SBIC II. SBIC II is consolidated with Triangle for financial reporting purposes.

4. Each of TMF and SBIC II has entered into a management services agreement with Triangle, whereby Triangle provides management services to TMF and SBIC II. The General Partner is a limited liability company organized under the laws of North Carolina and the sole general partner of TMF. GP II is a limited liability company organized under the laws of Delaware and the sole general partner of SBIC II.

5. The Prior Order permits Triangle and TMF to operate effectively as one company. At the time of the Prior Order, TMF was Triangle's only wholly-owned SBIC subsidiary. Subsequent to the Prior Order, Triangle has formed SBIC II and may in the future create other direct or indirect wholly-owned subsidiaries of Triangle (collectively, with TMF and SBIC II, the "Subsidiaries," and each a "Subsidiary"). The Subsidiaries may also be licensed by the SBA to operate

[1] Triangle Capital Corporation, *et al.,* Investment Company Act Release Nos. 28383 (Sept. 19, 2008) (notice) and 28437 (Oct. 14, 2008) (order).

[2] Section 2(a)(48) of the Act defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in sections 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities.

as SBICs (collectively, the "SBIC Subsidiaries," and each an "SBIC Subsidiary") or in some cases may not be SBICs.[3]

6. Applicants seek the Amended Order to request the same exemptive relief for SBIC II and any future Subsidiaries that was granted under the Prior Order with respect to TMF, except to the extent that such relief is not necessary due to the fact that SBIC II is not (and no future Subsidiary will be) a BDC or a registered investment company under the Act.

Applicants' Legal Analysis

1. Applicants request the Amended Order under sections 6(c), 57(c) and 57(i) of the Act and rule 17d–1 under the Act to permit TMF and another Subsidiary to engage in certain transactions that otherwise would be permitted if Triangle and its Subsidiaries were one company and to permit Triangle to adhere to a modified asset coverage requirement.

2. Section 18(a) prohibits a registered closed-end investment company from issuing any class of senior security or selling any such security of which it is the issuer unless the company complies with the asset coverage requirements set forth in that section. Section 61(a) of the Act makes section 18 applicable to BDCs, with certain modifications. Section 18(k) exempts an investment company operating as an SBIC from the asset coverage requirements of section 18(a)(1)(A) and (B) (with respect to senior securities representing indebtedness).

3. Applicants state that a question exists as to whether Triangle must comply with the asset coverage requirements of section 18(a) (as modified by section 61(a)) solely on an individual basis or whether it must also comply with the asset coverage requirements on a consolidated basis because Triangle may be deemed to be an indirect issuer of any class of senior security issued by any SBIC Subsidiary. Applicants state that they wish to treat SBIC II (and any future SBIC Subsidiary) as if it were a BDC subject to sections 18 and 61 of the Act. Applicants state that companies operating under the SBA Act, such as SBIC II (and future SBIC Subsidiaries), are subject to the SBA's substantial regulation of permissible leverage in their capital structure.

4. The Prior Order granted relief under section 6(c) from sections 18(a) and 61(a) to permit Triangle to exclude from its consolidated asset coverage ratio any senior security representing indebtedness issued by TMF (not any future SBIC Subsidiary). Accordingly, applicants request relief under section 6(c) of the Act from sections 18(a) and 61(a) of the Act to permit Triangle to exclude from its consolidated asset coverage ratio any senior security representing indebtedness issued by any SBIC Subsidiary.

5. Section 6(c) of the Act, in relevant part, permits the Commission to exempt any transaction or class of transactions from any provision of the Act if, and to the extent that, such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that the requested relief satisfies the section 6(c) standard. Applicants contend that, since SBIC II (or any future SBIC Subsidiary) would be entitled to rely on section 18(k) if it were a BDC itself, there is no policy reason to deny the benefit of such exemption to Triangle.

6. Sections 57(a)(1) and (2) of the Act generally prohibit, with certain exceptions, sales or purchases of any security or other property between BDCs and certain of their affiliates as described in section 57(b) of the Act. Section 57(b) includes a person, directly or indirectly, either controlling, controlled by or under common control with the BDC. Applicants state that Triangle directly owns all of the limited partnership interests in TMF and SBIC II and indirectly owns all of the general partnership interests in TMF and SBIC II through its 100% ownership of the General Partner and GP II, respectively. Accordingly, SBIC II and TMF would each be a person related to each other in a manner described in section 57(b) because each is deemed to be under the control of Triangle and thus under common control. In addition, each future Subsidiary would also each be a person related to each other Subsidiary in a manner described in section 57(b) as long as they remain under the common control of Triangle.

7. Applicants state that there may be circumstances when one or more of Triangle, TMF, SBIC II or any future Subsidiary would purchase all or a portion of the portfolio investments held by one of the others in order to enhance the liquidity of the selling company or for other reasons, subject in each case to the requirements of the SBA and the regulations thereunder, as applicable. In addition, there may be circumstances when a Subsidiary would invest in securities of an issuer that may be deemed to be a person related to either Triangle or TMF in a manner described in section 57(b), or for Triangle to invest in securities of an issuer that may be deemed to be a person related to a Subsidiary in a manner described in section 57(b).

8. The Prior Order only extends relief from sections 57(a)(1) and (2) to transactions between Triangle and TMF. Applicants therefore request an exemption from sections 57(a)(1) and 57(a)(2) of the Act to permit any transaction between TMF (as a BDC) and any other Subsidiary with respect to the purchase or sale of securities or other property. Applicants also seek an exemption from these provisions to allow any transaction between TMF and a controlled portfolio affiliate of another Subsidiary. Applicants state that the requested relief is intended only to permit Triangle and its Subsidiaries to do that which they otherwise would be permitted to do if they were one company.

9. Section 57(c) provides that the Commission will exempt a proposed transaction from the provisions of section 57(a)(1) and (2) of the Act if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching of any person concerned, and the proposed transaction is consistent with the policy of the BDC concerned and the general purposes of the Act.

10. Applicants submit that the requested relief from section 57(a)(1) and (2) meets this standard. Applicants represent that the proposed operations as one company will enhance efficient operations of Triangle and its wholly owned subsidiaries, including TMF, and allow them to deal with portfolio companies as if Triangle and such Subsidiaries were one company. Applicants contend that the terms of the proposed transactions are reasonable and fair and do not involve overreaching of Triangle or TMF by any person, and that the requested order would permit Triangle and the Subsidiaries to carry out more effectively their purposes and objectives of investing primarily in small business concerns. Finally, applicants note that the proposed transactions are consistent with the policies of Triangle and TMF as specified in filings with the Commission and Triangle's reports to stockholders, as well as consistent with the policies and provisions of the Act.

11. Section 17(d) of the Act and rule 17d–1 under the Act (made applicable

[3] The terms and conditions of the Prior Order will continue to apply to Triangle, TMF and the General Partner, except as described in the current application. Any existing entities that currently intend to rely on the Amended Order have been named as applicants, and any other existing or future entities that may rely on the Amended Order in the future would comply with its terms and conditions.

to BDCs by section 57(i)) prohibit affiliated persons of a registered investment company, or an affiliated person of such person, acting as principal, from participating in any joint transaction or arrangement in which the registered company or a company it controls is a participant, unless the Commission has issued an order authorizing the arrangement. Section 57(a)(4) of the Act imposes substantially the same prohibitions on joint transactions involving any BDC and an affiliated person of such BDC, or an affiliated person of such affiliated person, as specified in section 57(b) of the Act. Section 57(i) of the Act provides that rules and regulations under section 17(d) of the Act will apply to transactions subject to section 57(a)(4) in the absence of rules under that section. The Commission has not adopted rules under section 57(a)(4) with respect to joint transactions and, accordingly, the standards set forth in rule 17d–1 govern applicants' request for relief.

12. The Prior Order only extends relief from section 57(a)(4) and rule 17d–1 for joint transactions between Triangle and TMF. Accordingly, applicants request relief under section 57(i) and rule 17d–1 to permit any joint transaction that would otherwise be prohibited by section 57(a)(4), in which TMF (as a BDC) and another Subsidiary participate, but only to the extent that the transaction would not be prohibited if Triangle and the Subsidiaries were a single company.

13. In determining whether to grant an order under section 57(i) and rule 17d–1, the Commission considers whether the participation of the BDC in the joint transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which such participation is on a basis different from or less advantageous than that of other participants. Applicants note that the proposed transactions are consistent with the policy and provisions of the Act and will enhance the interests of Triangle and TMF while retaining the important protections afforded by the Act. In addition, because the joint participants will conduct their operations as though they comprise one company, the participation of one will not be on a basis different from or less advantageous than the others. Accordingly, applicants believe that the standard for relief under section 57(i) and rule 17d–1 is satisfied.

14. Applicants note that the conditions in the Prior Order will be replaced by the conditions set forth herein. These conditions are the same conditions as in the Prior Order, except that (a) the defined terms have been revised to include all current and future Subsidiaries, (b) condition 6 has been added in the event that a person serves or acts as an investment adviser to SBIC II or a future Subsidiary, and (c) the two conditions relating to consolidated reporting, which applicants no longer believe to be necessary, will be deleted from the Prior Order.

Applicants' Conditions

Applicants agree that the Amended Order will be subject to the following conditions:

1. Triangle will at all times own and hold, beneficially and of record, all of the outstanding equity interests in any Subsidiary, including all of the outstanding membership interests in any general partner of any Subsidiary, or otherwise own and hold beneficially, all of the outstanding voting securities and other equity interests in such Subsidiary.

2. The SBIC Subsidiaries will have investment policies not inconsistent with those of Triangle, as set forth in Triangle's registration statement.

3. No person shall serve as a member of any board of directors of any Subsidiary unless such person shall also be a member of the Triangle Board. The board of directors or the managers, as applicable, of any Subsidiary will be appointed by the equity owners of such Subsidiary.

4. Triangle will not itself issue or sell any senior security, and Triangle will not cause or permit any SBIC Subsidiary to issue or sell any senior security of which Triangle or such SBIC Subsidiary is the issuer except to the extent permitted by section 18 (as modified for BDCs by section 61) of the Act; provided that immediately after the issuance or sale of any such senior security by either Triangle or any SBIC Subsidiary, Triangle individually and on a consolidated basis shall have the asset coverage required by section 18(a) (as modified by section 61(a)), except that, in determining whether Triangle and any SBIC Subsidiary on a consolidated basis have the asset coverage required by section 61(a), any borrowings by any SBIC Subsidiary shall not be considered senior securities and, for purposes of the definition of "asset coverage" in section 18(h), shall be treated as indebtedness not represented by senior securities.

5. Triangle will acquire securities of any SBIC Subsidiary representing indebtedness only if, in each case, the prior approval of the SBA has been obtained. In addition, Triangle and any SBIC Subsidiary will purchase and sell portfolio securities between themselves only if, in each case, the prior approval of the SBA has been obtained.

6. No person shall serve or act as investment adviser to SBIC II or any future Subsidiary unless the Triangle Board and the stockholders of Triangle shall have taken such action with respect thereto that is required to be taken pursuant to the Act by the functional equivalent of the board of directors of SBIC II or any future Subsidiary and the stockholders of SBIC II or any future Subsidiary as if SBIC II or such future Subsidiary were a BDC.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–25073 Filed 10–5–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29450; 812–13769]

Capital Southwest Corporation; Notice of Application

September 29, 2010.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 23(a), 23(b) and 63 of the Act, and under sections 57(a)(4) and 57(i) of the Act and rule 17d–1 under the Act permitting certain joint transactions otherwise prohibited by section 57(a)(4) of the Act.

SUMMARY OF THE APPLICATION: Applicant, Capital Southwest Corporation ("Capital Southwest"), requests an order to permit it to issue restricted shares of its common stock to its officers and employees under the terms of its employee compensation plan.

FILING DATES: The application was filed on May 5, 2010, and amended on May 17, 2010 and September 24, 2010.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 25, 2010, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state

the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicant, 12900 Preston Road, Suite 700, Dallas, TX 75230.

FOR FURTHER INFORMATION CONTACT: John Yoder, Senior Counsel, at (202) 551–6878, or Michael W. Mundt, Assistant Director, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm,* or by calling (202) 551–8090.

Applicant's Representations

1. Capital Southwest, a Texas corporation, is an internally managed, non-diversified, closed-end investment company that has elected to be regulated as a business development company ("BDC") under the Act.[1] Capital Southwest provides debt and equity growth capital to privately-held middle-market companies and its investment objective is to achieve capital appreciation through long-term investments in businesses believed to have favorable growth potential. Capital Southwest's investment interests are focused on expansion financings, management buyouts, minority recapitalizations, industry consolidations and early-stage financings in a broad range of industry segments. Shares of Capital Southwest's common stock are traded on the NASDAQ Global Select Market under the symbol "CSWC." As of April 13, 2010, there were 3,741,638 shares of Capital Southwest's common stock outstanding. As of that date, Capital Southwest had 514 employees, including employees of its wholly-owned subsidiaries.

2. Capital Southwest currently has a five-member board of directors (the "Board") of whom one is an "interested person" of Capital Southwest within the meaning of section 2(a)(19) of the Act and four are not interested persons (the "Non-interested Directors"). Capital Southwest has four directors who are neither officers nor employees of Capital Southwest.

3. Capital Southwest believes that its successful performance depends on its ability to offer fair compensation packages to its professionals that are competitive with those offered by other investment management businesses. Capital Southwest believes that the ability to offer equity-based compensation to its professionals is vital to Capital Southwest's future growth and success. Capital Southwest wishes to adopt the Capital Southwest Corporation 2010 Restricted Stock Award Plan (the "Plan") providing for the periodic issuance of shares of restricted stock (*i.e.,* stock that, at the time of issuance, is subject to certain forfeiture restrictions, and thus is restricted as to its transferability until such forfeiture restrictions have lapsed) (the "Restricted Stock") for its employees and officers, and employees of its wholly-owned subsidiaries (each a "Participant," and collectively, the "Participants").

4. The Plan will authorize the issuance of shares of Restricted Stock subject to certain forfeiture restrictions. These restrictions may relate to continued employment (lapsing either on an annual or other period basis or on a "cliff" basis, *i.e.,* at the end of a stated period of time), or other restrictions deemed by the Compensation Committee (as defined below) to be appropriate.[2] The Restricted Stock will be subject to restrictions on transferability and other restrictions as required by the Compensation Committee. Except to the extent restricted under the terms of the Plan, a Participant granted Restricted Stock will have all the rights of any other shareholder, including the right to vote the Restricted Stock and the right to receive dividends. During the restriction period, the Restricted Stock generally may not be sold, transferred, pledged, hypothecated, margined, or otherwise encumbered by the Participant. Except as the Board otherwise determines, upon termination of a Participant's employment during the applicable restriction period, Restricted Stock for which forfeiture restrictions have not lapsed at the time of such termination shall be forfeited.

5. The maximum amount of Restricted Stock that may be issued under the Plan will be 10% of the outstanding shares of common stock of Capital Southwest on the effective date of the Plan plus 10% of the number of shares of Capital Southwest's common stock issued or delivered by Capital Southwest (other than pursuant to compensation plans) during the term of the Plan.[3] The Plan limits the total number of shares that may be awarded to any single Participant in a single year to 6250 shares. In addition, no Restricted Stock Participant may be granted more than 25% of the shares reserved for issuance under the Plan. The Plan will be administered by the Compensation Committee, which, upon approval of the required majority, as defined in section 57(o) of the Act,[4] of the Board, will award shares of Restricted Stock to the Participants from time to time as part of the Participants' compensation based on a Participant's actual or expected performance and value to Capital Southwest.

6. Each issuance of Restricted Stock under the Plan will be approved by the required majority, as defined in section 57(o) of the Act, of Capital Southwest's directors on the basis that the issuance is in the best interests of Capital Southwest and its shareholders. The date on which the required majority approves an issuance of Restricted Stock will be deemed the date on which the subject Restricted Stock is granted.

7. The Plan has been approved by the Compensation Committee, as well as the Board, including the required majority as defined in section 57(o) of the Act. The Plan will be submitted for approval to Capital Southwest's shareholders, and will become effective upon such approval, subject to and following receipt of the order.

Applicant's Legal Analysis

Sections 23(a) and (b), Section 63

1. Under section 63 of the Act, the provisions of section 23(a) of the Act generally prohibiting a registered closed-end investment company from issuing securities for services or for

[1] Capital Southwest was incorporated in Texas in 1961. On March 30, 1988 Capital Southwest elected to be regulated as a BDC. Section 2(a)(48) of the Act defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in sections 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities.

[2] The Compensation Committee of the Board (the "Compensation Committee") is comprised solely of the Non-interested Directors.

[3] For purposes of calculating compliance with this limit, Capital Southwest will count as Restricted Stock all shares of its common stock that are issued pursuant to the Plan less any shares that are forfeited back to Capital Southwest and cancelled as a result of forfeiture restrictions not lapsing.

[4] The term "required majority," when used with respect to the approval of a proposed transaction, plan, or arrangement, means both a majority of a BDC's directors or general partners who have no financial interest in such transaction, plan, or arrangement and a majority of such directors or general partners who are not interested persons of such company.

property other than cash or securities are made applicable to BDCs. This provision would prohibit the issuance of Restricted Stock as a part of the Plan.

2. Section 23(b) generally prohibits a closed-end management investment company from selling its common stock at a price below its current net asset value ("NAV"). Section 63(2) makes section 23(b) applicable to BDCs unless certain conditions are met. Because Restricted Stock that would be granted under the Plan would not meet the terms of section 63(2), sections 23(b) and 63 prohibit the issuance of the Restricted Stock.

3. Section 6(c) provides that the Commission may, by order upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of the Act, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Capital Southwest requests an order pursuant to section 6(c) of the Act granting an exemption from the provisions of sections 23(a) and (b) and section 63 of the Act.[5] Capital Southwest states that the concerns underlying those sections include: (a) Preferential treatment of investment company insiders and the use of options and other rights by insiders to obtain control of the investment company; (b) complication of the investment company's structure that makes it difficult to determine the value of the company's shares; and (c) dilution of shareholders' equity in the investment company. Capital Southwest states that the Plan does not raise concerns about preferential treatment of Capital Southwest's insiders because the Plan is a bona fide compensation plan of the type common among corporations generally. In addition, section 61(a)(3)(B) of the Act permits a BDC to issue to its officers, directors and employees, pursuant to an executive compensation plan, warrants, options and rights to purchase the BDC's voting securities, subject to certain requirements. Capital Southwest states that, for reasons that are unclear, section 61 and its legislative history do not address the issuance by a BDC of restricted stock as incentive compensation. Capital Southwest states, however, that the issuance of Restricted Stock is substantially similar, for purposes of investor protection under the Act, to the issuance of warrants, options, and rights as contemplated by section 61. Capital Southwest also asserts that the Plan would not become a means for insiders to obtain control of Capital Southwest because the number of shares of Capital Southwest issuable under the Plan would be limited as set forth in the application. Moreover, no individual Restricted Stock Participant could be issued more than 25% of the shares reserved for issuance under the Plan.

5. Capital Southwest further states that the Plan will not unduly complicate Capital Southwest's structure because equity-based compensation arrangements are widely used among corporations and commonly known to investors. Capital Southwest notes that the Plan will be submitted to its shareholders for their approval. Capital Southwest represents that a concise, "plain English" description of the Plan, including its potential dilutive effect, will be provided in the proxy materials that will be submitted to Capital Southwest's shareholders. Capital Southwest also states that it will comply with the proxy disclosure requirements in Item 10 of Schedule 14A under the Securities Exchange Act of 1934 (the "Exchange Act"). Capital Southwest further notes that the Plan will be disclosed to investors in accordance with the requirements of the Form N–2 registration statement for closed-end investment companies, and pursuant to the standards and guidelines adopted by the Financial Accounting Standards Board for operating companies. In addition, Capital Southwest will comply with the disclosure requirements for executive compensation plans applicable to operating companies under the Exchange Act.[6] Capital Southwest thus concludes that the Plan will be adequately disclosed to investors and appropriately reflected in the market value of Capital Southwest's shares.

6. Capital Southwest acknowledges that, while awards granted under the Plan would have a dilutive effect on the shareholders' equity in Capital Southwest, that effect would be outweighed by the anticipated benefits of the Plan to Capital Southwest and its shareholders. Capital Southwest asserts that it needs the flexibility to provide the requested equity-based employee compensation in order to be able to compete effectively with other financial services firms for talented professionals. These professionals, Capital Southwest suggests, in turn are likely to increase Capital Southwest's performance and shareholder value. Capital Southwest also asserts that equity-based compensation would more closely align the interests of Capital Southwest's employees with those of its shareholders. In addition, Capital Southwest states that its shareholders will be further protected by the conditions to the requested order that assure continuing oversight of the operation of the Plan by Capital Southwest's Board.

Section 57(a)(4), Rule 17d–1

7. Section 57(a) proscribes certain transactions between a BDC and persons related to the BDC in the manner described in section 57(b) ("57(b) persons"), absent a Commission order. Section 57(a)(4) generally prohibits a 57(b) person from effecting a transaction in which the BDC is a joint participant absent such an order. Rule 17d–1, made applicable to BDCs by section 57(i), proscribes participation in a "joint enterprise or other joint arrangement or profit-sharing plan," which includes a stock option or purchase plan. Employees and directors of a BDC are 57(b) persons. Thus, the issuance of shares of Restricted Stock could be deemed to involve a joint transaction involving a BDC and a 57(b) person in contravention of section 57(a)(4). Rule 17d–1(b) provides that, in considering relief pursuant to the rule, the Commission will consider (i) whether the participation of the company in a joint enterprise is consistent with the Act's policies and purposes and (ii) the extent to which that participation is on a basis different from or less advantageous than that of other participants.

[5] Capital Southwest asks that the order apply also to any future officers and employees of Capital Southwest and future employees of Capital Southwest's wholly-owned subsidiaries that are eligible to receive Restricted Stock under the Plan. Additionally, to the extent that Capital Southwest creates or acquires additional wholly-owned subsidiaries, and to the extent that such future subsidiaries have employees to whom the relief requested herein would otherwise apply, Capital Southwest asks that such relief, if granted, be extended to such employees of any future subsidiaries.

[6] Capital Southwest will comply with the amendments to the disclosure requirements for executive and director compensation, related party transactions, director independence and other corporate governance matters, and security ownership of officers and directors to the extent adopted and applicable to BDCs. *See* Executive Compensation and Related Party Disclosure, Securities Act Release No. 8655 (Jan. 27, 2006) (proposed rule); Executive Compensation and Related Party Disclosure, Securities Act Release No. 8732A (Aug. 29, 2006) (final rule and proposed rule), as amended by Executive Compensation Disclosure, Securities Act Release No. 8765 (Dec. 22, 2006) (adopted as interim final rules with request for comments).

8. Capital Southwest requests an order pursuant to section 57(a)(4) and rule 17d–1 to permit the Plan. Capital Southwest states that the Plan, although benefiting the Participants and Capital Southwest in different ways, is in the interests of Capital Southwest's shareholders because the Plan will help align the interests of Capital Southwest's employees and officers with those of its shareholders, which will encourage conduct on the part of those employees and officers designed to produce a better return for Capital Southwest's shareholders.

Applicant's Conditions

Applicant agrees that the order granting the requested relief will be subject to the following conditions:

1. The Plan will be authorized by Capital Southwest's shareholders.

2. Each issuance of Restricted Stock to officers and employees will be approved by the required majority, as defined in section 57(o) of the Act, of Capital Southwest's directors on the basis that such issuance is in the best interests of Capital Southwest and its shareholders.

3. The amount of voting securities that would result from the exercise of all of Capital Southwest's outstanding warrants, options, and rights, together with any Restricted Stock issued pursuant to the Plan, at the time of issuance shall not exceed 25% of the outstanding voting securities of Capital Southwest, except that if the amount of voting securities that would result from the exercise of all of Capital Southwest's outstanding warrants, options, and rights issued to Capital Southwest's directors, officers, and employees, together with any Restricted Stock issued pursuant to the Plan, would exceed 15% of the outstanding voting securities of Capital Southwest, then the total amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights, together with any Restricted Stock issued pursuant to the Plan, at the time of issuance shall not exceed 20% of the outstanding voting securities of Capital Southwest.

4. The maximum amount of shares of Restricted Stock that may be issued under the Plan will be 10% of the outstanding shares of common stock of Capital Southwest on the effective date of the Plan plus 10% of the number of shares of Capital Southwest's common stock issued or delivered by Capital Southwest (other than pursuant to compensation plans) during the term of the Plan.

5. The Board will review the Plan at least annually. In addition, the Board will review periodically the potential impact that the issuance of Restricted Stock under the Plan could have on Capital Southwest's earnings and NAV per share, such review to take place prior to any decisions to grant Restricted Stock under the Plan, but in no event less frequently than annually. Adequate procedures and records will be maintained to permit such review. The Board will be authorized to take appropriate steps to ensure that the grant of Restricted Stock under the Plan would not have an effect contrary to the interests of Capital Southwest's shareholders. This authority will include the authority to prevent or limit the granting of additional Restricted Stock under the Plan. All records maintained pursuant to this condition will be subject to examination by the Commission and its staff.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–25069 Filed 10–5–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63016; File No. SR–FINRA–2010–021]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change to Amend FINRA Rule 8210 to Require Information Provided via Portable Media Device be Encrypted

September 29, 2010.

I. Introduction

On June 2, 2010, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission (the "Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Exchange Act" or "Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend FINRA Rule 8210 to require that information provided via portable media device to FINRA in response to a request under the rule be encrypted. The proposed rule change was published for comment in the **Federal Register** on June 25, 2010.[3]

The Commission received eleven comment letters on the proposal.[4] FINRA responded to these comment letters in a letter dated September 14, 2010.[5] This order approves the proposed rule change.

II. Background and Description of Proposal

FINRA Rule 8210 (Provision of Information and Testimony and Inspection and Copying of Books) confers on FINRA staff the authority to compel a member, person associated with a member, or other person over whom FINRA has jurisdiction, to produce documents, provide testimony, or supply written responses or electronic data in connection with an investigation, complaint, examination or adjudicatory proceeding. The rule applies to all members, associated persons, and other persons over whom FINRA has jurisdiction, including former associated persons subject to FINRA's jurisdiction as described in the FINRA By-Laws.[6] FINRA Rule 8210(c) provides that a member's or person's failure to provide information or testimony or to permit an inspection

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 62318 (June 17, 2010), 75 FR 36461 ("Notice").

[4] *See* letter from David M. Sobel, Esq., EVP/CCO, Abel/Noser Corp., to Elizabeth M. Murphy, Secretary, Commission, dated July 6, 2010 ("Abel/Noser Letter"); letter from Larry Taunt, Chief Executive Officer, Regal Financial Group, to Elizabeth M. Murphy, Secretary, Commission, dated July 7, 2010 ("Regal Letter"); letter from Lisa Roth, NAIBD Member Advocacy Committee Chair, CEO/CCO, National Association of Independent Broker-Dealers, Inc., to Elizabeth M. Murphy, Secretary, Commission, dated July 9, 2010 ("NAIBD Letter"); letter from Chris Charles, President, Wulff, Hansen, & Co., to Elizabeth M. Murphy, Secretary, Commission, dated July 13, 2010 ("Wulff Hansen Letter"); letter from Tamara K. Salmon, Senior Associate Counsel, Investment Company Institute, to Elizabeth M. Murphy, Secretary, Commission, dated July 14, 2010 ("ICI Letter"); letter from Byron "Pat" Treat, President/CEO, Great Nation Investment Corporation, to Elizabeth M. Murphy, Secretary, Commission, dated July 15, 2010 ("Great Nation Letter"); letter from Eric Segall, Sr. V.P., Manager, Business Conduct, and Edward W. Wedbush, President, Wedbush Securities, Inc., to Elizabeth M. Murphy, Secretary, Commission, dated July 15, 2010 ("Wedbush Letter"); letter from Raymond C. Holland, Vice-Chairman, Triad Securites Corp., to Elizabeth M. Murphy, Secretary, Commission, dated July 15, 2010 ("Triad Letter I"); letter from Sis DeMarco, Director of Compliance, Triad Securities Corp., to Elizabeth M. Murphy, Secretary, Commission, dated July 15, 2010 ("Triad Letter II"); letter from S. Kendrick Dunn, Assistant Vice President, Pacific Select Distributors, Inc. to Elizabeth M. Murphy, Secretary, Commission, dated July 16, 2010 ("PSD Letter"); and letter from Howard Spindel, Senior Managing Director, Integrated Management Solutions, to Elizabeth M. Murphy, Secretary, Commission, dated July 16, 2010 ("IMS Letter").

[5] *See* letter from Stan Macel, Assistant General Counsel, FINRA, to Elizabeth M. Murphy, Secretary, Commission, dated September 14, 2010 ("FINRA Letter").

[6] *See* FINRA By-Laws, Article V, Section 4(a) (Retention of Jurisdiction).

and copying of books, records, or accounts is a violation of the rule.

FINRA is proposing to amend FINRA Rule 8210 to require that information provided via a portable media device pursuant to a request under the rule be encrypted, as discussed further below. Requiring such information to be encrypted will help ensure that such information, which in many instances includes individuals' personal information, is protected from unauthorized or improper use.[7]

According to FINRA, frequently, members and persons who respond to requests pursuant to FINRA Rule 8210 provide information in electronic format. Because of the size of the electronic files, persons often provide information in electronic format using a portable media device such as a CD–ROM, DVD or portable hard drive.[8] In many instances, the response contains personal information that, if accessed by an unauthorized person, could be used inappropriately. For example, a response may include a person's first and last name, or first initial and last name, in combination with that person's: (1) Social security number; (2) driver's license, passport or government-issued identification number; or (3) financial account number (including but not limited to the number of a brokerage account, debit card, credit card, checking account, or savings account). If such personal information were to be intercepted by an unauthorized third party, it could be used improperly.

Additionally, according to FINRA, data security issues regarding personal information have become increasingly important in recent years.[9] In this regard, FINRA believes that requiring persons to encrypt information on portable media devices provided to FINRA in response to FINRA Rule 8210 requests will help ensure that personal information is protected from improper use by unauthorized third parties.

The proposed rule change would require that information provided via a portable media device be "encrypted," *i.e.,* the data must be encoded into a form in which meaning cannot be assigned without the use of a confidential process or key. To help ensure that encrypted information is secure, persons providing encrypted information to FINRA via a portable media device would be required: (1) To use an encryption method that meets industry standards for strong encryption; and (2) to provide FINRA staff with the confidential process or key regarding the encryption in a communication separate from the encrypted information itself (*e.g.,* a separate e-mail, fax or letter).

III. Discussion of Comment Letters and Commission Findings

The Commission received eleven comment letters on the proposed rule change and FINRA responded to these comments.[10] One commenter supported the proposal, but recommended that FINRA's rules be amended to add information security rules for itself and notify registrants when their non-public information has been accessed.[11] Two commenters questioned the need for the encryption requirement and suggested that FINRA, and not its members, should undertake the responsibility of establishing data protection [12] and controls.[13] Another commenter believed that the proposed rule change did not address FINRA's responsibility to maintain the confidentiality of the information it obtains and proposed that members be allowed to redact sensitive information.[14] FINRA responded that these comments do not address the purpose of the proposal which is to safeguard information being delivered to FINRA via portable media device and noted that it has a "robust and current information security policy." [15]

Five commenters indicated that the application of the proposed rule to electronic media and not paper documents is too narrow or misplaced.[16] One commenter noted that the proposed rule change did not cover "hard data transfers" and was "inconsistent," therefore "adding an unnecessary layer of cost and inconvenience to the normal process of business." [17] Another commenter believed that the proposed rule was "form over function" and suggested that overnight delivery of the electronic files could accomplish the goals of the proposal.[18] One commenter noted that FINRA wishes to remove the discretion of members to encrypt data and yet the proposal does not cover hard-copy, email and voluntary transmissions of information.[19] This commenter stated that the proposed rule change "was a poor solution" and suggested that FINRA allow members discretion to determine encryption methods and apply them to all transmissions to FINRA.[20] FINRA responded to these comments by stating that it believes that encryption is a useful method to protect electronic data and notes that it is not technically possible to encrypt information in paper form.[21] FINRA suggested that it might accept only electronic submissions of information in the future, but currently must accept the limitations of paper delivery.[22] FINRA also stated that it will explore encryption of other communication methods such as email.[23] FINRA states that "the argument that the difficulty of the perfect encryption of all information irrespective of media is a reason not to protect that information which can be encrypted could be used to negate all iterative protections to investors and should not be credited as a matter of public policy." [24]

Three commenters indicated that requiring encryption of all information sent via portable media devices is overbroad and suggested lesser content encryption.[25] FINRA responded that it "believes it is simpler, more efficient and safer to require encryption of all information provided via portable media device pursuant to a request under the rule." [26] FINRA stated that the requirement "obviates the need for FINRA to circumscribe and monitor,

[7] FINRA has emphasized that its members have an obligation under existing laws to protect confidential customer records and information pursuant to the requirements of SEC Regulation S–P. *See, e.g., Notice to Members* 05–49 (Safeguarding Confidential Customer Information).

[8] The proposed rule change defines "portable media device" as a storage device for electronic information, including but not limited to a flash drive, CD–ROM, DVD, portable hard drive, laptop computer, disc, diskette, or any other portable device for storing and transporting electronic information.

[9] In its Notice, FINRA represents, for example, that some jurisdictions, including Massachusetts and Nevada, have recently enacted legislation that establishes minimum standards to safeguard personal information in electronic records. *See, e.g.,* Commonwealth of Massachusetts, 201 CMR 17.00 (Standards for the Protection of Personal Information of Residents of the Commonwealth), effective March 1, 2010; State of Nevada, NRS 603A.215 (Security Measures for Data Collector that Accepts Payment Card; Use of Encryption; Liability for Damages; Applicability), effective January 1, 2010. As stated in the Notice, these laws contain penalties that can be imposed on persons and entities for failures to adequately safeguard electronic records containing personal information.

[10] *See supra* notes 4 and 5.

[11] *See* ICI Letter.

[12] *See* NAIBD Letter (endorsed by Triad I Letter and Triad II Letter), and PSD Letter.

[13] *See* NAIBD Letter.

[14] *See* Wedbush Letter.

[15] *See* FINRA Letter.

[16] *See* Abel/Noser Letter, IMS Letter, NAIBD Letter, PSD Letter, and Regal Letter, and Abel/Noser Letter.

[17] *See* Regal Letter.

[18] *See* Abel/Noser Letter.

[19] *See* IMS Letter.

[20] *Id.*

[21] *See* FINRA Letter.

[22] *Id.*

[23] *Id.*

[24] *Id.*

[25] *See* Great Nation Letter, IMS Letter, and PSD Letter.

[26] *See* FINRA Letter.

and for members to determine, the types of information that should or should not be encrypted under the rule." [27] FINRA believes that the suggested alternatives would be more costly than the proposal and believes the proposal "further supports compliance with the laws in some jurisdictions." [28]

Seven commenters believed that the proposal was difficult or costly to implement.[29] For example, some commenters believe that small firms lack the technical experience to implement the proposal and may have to hire third parties.[30] One commenter suggested an exception when information is provided directly to FINRA staff or on the FINRA premises.[31] FINRA questioned the burden on members "given the availability of web-based encryption solutions currently available at low- or no-cost." [32] FINRA noted that "members may be subject to various data protection laws that are in part the impetus" of the proposal.[33] FINRA stated that it would "help educate its members about the process of encryption" and would "endeavor to provide information regarding various options for encrypting data, including low- or no-cost web-based encryption software." [34]

Three commenters suggested that the proposed requirement to use an encryption method that "meets industry standards for strong encryption" is too vague and suggested alternatives such as providing members with the specific method of encryption.[35] FINRA acknowledged that, as proposed, the rule does not mandate a specific method of encryption.[36] However, FINRA believes that this standard, which it stated is "identical to that employed by Massachusettes and Nevada," is necessary to "adapt to changing technology regarding encryption." [37] FINRA stated that it does not believe that it is "appropriate at this time to dictate a 'one size fits all' approach" to encryption.[38] As designed, this requirement will allow each member to choose an appropriate method of encryption that works for it.[39]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[40] In particular, the Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[41] which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change is reasonably designed to ensure that information provided to FINRA on a portable media device in response to Rule 8210 is secure. FINRA has represented that this requirement is necessary to address laws in some jurisdictions that establish safeguards for personal information and records. The Commission also notes FINRA's representation that there are low- or no-cost ways to encrypt files and that it will help educate its members about the process of encryption and meeting their obligations under the rule. Although the Commission recognizes that the proposed rule change does not mandate a specific encryption method, the Commission believes that some flexibility is appropriate to allow for changes in technology and for members to choose encryption methods that meet their needs. Finally, the Commission believes that the fact that information produced to it in other forms, such as paper-based forms, for which there is no comparable means of protecting the information from unwanted disclosure, should not preclude the protection of information that can be protected.

IV. Conclusion

It is therefore ordered, pursuant to Section 19b(2) of the Act,[42] that the proposed rule change (SR–FINRA–2010–021) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[43]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–25067 Filed 10–5–10; 8:45 am]

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[27] *Id.*

[28] *Id.*

[29] *See* Abel/Noser Letter, Great Nation Letter, NAIBD Letter, PSE Letter, Triad Letter I, Triad Letter II, and Wulff Hansen Letter.

[30] *See, e.g.,* Great Nation Letter, NAIBD Letter, and PSE Letter.

[31] *See* Wulff Hansen Letter.

[32] *See* FINRA Letter.

[33] *Id.*

[34] *Id.*

[35] *See* NAIBD Letter, PSE Letter, and Great Nation Letter.

[36] *See* FINRA Letter.

[37] *Id.*

[38] *Id.*

[39] *Id.*

[40] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. *See* 15 U.S.C. 78c(f).

[41] 15 U.S.C. 78*o*–3(b)(6).

[42] 15 U.S.C. 78s(b)(2).

[43] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63017; File No. SR–ISE–2010–95]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 717

September 29, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 21, 2010, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared by the Exchange. The Exchange has filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend to amend [sic] ISE Rule 717 (Limitations on Orders) to eliminate some of its restrictions. The text of the proposed rule change is available on the Exchange's Web site *http://www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend Rule 717(b) in order to eliminate some of its restrictions. First, Rule 717(b) currently provides that an Electronic Access Member ("EAM"), acting either as principal or agent, may not enter orders in the same options series, for the account or accounts of the same or related beneficial owner(s), in such a manner that the EAM or the beneficial owner(s) effectively is operating as a market maker by holding itself out as willing to buy and sell such options contracts on a regular or continuous basis. The Exchange is proposing that these restrictions be amended to only be applicable to Priority Customer Orders [5] (*i.e.,* non-broker-dealer orders) and not Professional Orders [6] (as described below), since such Priority Customer Orders have priority at any price over bids and offers of Professional Orders.[7]

Rule 717(b) was adopted to limit the ability of EAMs that are not market makers to compete on preferential terms within ISE's automated systems. Because Priority Customer Orders are provided with certain benefits, such as priority of bids and offers, the Exchange continues to believe that Priority Customer Orders should be subject to the Rule's restrictions. However, because Priority Orders [8] are not subject to any priority that is any better than market makers, the Exchange no longer believes it is necessary to impose the Rule's restrictions on the entry of broker-dealer orders. Similarly, because Voluntary Professionals are not subject to priority that is any better than market makers, we do not believe it is necessary to impose the Rule's restrictions on Voluntary Professionals.[9]

Second, in those instances where the restrictions are applicable, Rule 717(b) currently provides that, in determining whether an EAM or beneficial owner effectively is operating as a market maker, the Exchange will consider, among other things, the simultaneous or near-simultaneous entry of limit orders to buy and sell the same options contract; the multiple acquisition and liquidation of positions in the same options series during the same day; and the entry of multiple limit orders at different prices in the same options series. The Exchange is proposing to remove the condition pertaining to the multiple acquisition and liquidation of positions from its list of factors used for determining whether a beneficial owner is operating as a market maker. In light of the proliferation of day trading activity and the fact that such a prohibition does not exist on other markets,[10] the Exchange no longer believes that this activity should be considered a factor in determining whether an EAM or beneficial owner is effectively acting as a market maker.

2. Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [11] in general, and furthers the objectives of Section 6(b)(5) of the Act [12] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, and to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The proposed changes should contribute to the Exchange's ability to maintain a fair and orderly market in a manner that will limit unfair advantage and encourage competition. Specifically, because broker-dealer orders are not subject to priority on the ISE that is any

[5] *See* ISE Rule 100(37B).

[6] "Professional Order" means an order that is for the account of a person or entity that is not a Priority Customer. *See* ISE Rule 100(37C).

[7] The Exchange notes that the Commission has previously found that it is consistent with the Act for an options exchange not to prohibit a user of its market from effectively operating as a market maker by holding itself out as willing to buy and sell options contracts on a regular or continuous basis without registering as a market maker. *See* Securities Exchange Act Release No. 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR–NASDAQ–2007–004) (Order approving, among other things, a proposed rule change to establish rules governing the trading of options on NASDAQ Options Market ("NOM")).

The Exchange notes that in the order approving a Chicago Board Options Exchange ("CBOE") rule change to amend its rules prohibiting members from functioning as market makers, the Commission stated that any entity that acts as a "dealer," as defined in Section 3(a)(5) of the Act, 15 U.S.C. 78c(a)(5), would be required to register with the Commission under Section 15 of the Act, 15 U.S.C. 78o, and the rules and regulations thereunder, or qualify for any exception or exemption from registration. Activity that may cause a person to be deemed a dealer includes " 'quoting a market in or publishing quotes for securities (other than quotes on one side of the market on a quotations system generally available to non-broker-dealers, such as a retail screen broker for government securities).' " *See* Definitions of Terms in and Specific Exemptions for Banks, Savings Associations, and Savings Banks Under Sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934, Securities Exchange Act Release No. 47364, 68 FR 8686, 8689, note 26 (February 24, 2003) (quoting OTC Derivatives Dealers, Securities Exchange Act Release No. 40594 (October 23, 1998), 63 FR 59362, 59370, note 61 (November 3, 1998)). See [sic] Securities Exchange Act Release No. 59701 (April 3, 2009), 74 FR 16247 (April 9, 2009). The Commission notes that the immediately preceding citation (Notice of filing and immediate effectiveness of SR–ISE–2009–15) is incorrect. The correct citation should be to Securities Exchange Act Release No. 59700 (April 2, 2009), 74 FR 16246 (April 9, 2009) (order approving SR–CBOE–2009–009).

[8] The Commission notes ISE incorrectly stated that "Priority Orders are not subject to any priority that is any better than market makers * * *." The Commission believes that the term "Priority Orders" in the above-referenced sentence should be replaced with the term "Professional Orders." *See* Securities Exchange Act Release No. See Securities Exchange Act Release No. 59287 (January 23, 2009), 74 FR 5964 (January 30, 2009) (SR–ISE–2006–26) (order approving ISE proposal to create Priority Customer and Professional order types).

[9] The Exchange notes that this rule change would only eliminate the restrictions of Rule 717(b) in the manner proposed. Members would continue to remain subject to the requirements of Rule 408 (which requires Members to establish, maintain and enforce written policies and procedures reasonably designed, taking into consideration the nature of such Member's business, to prevent the misuse of material, nonpublic information by such Member or persons associated with such Member), Supplementary Material .02 to Rule 400 (which may consider it conduct inconsistent with just and equitable principles of trade for any person associated with a Member who has knowledge of all material terms and conditions of (i) an order and a solicited order; (ii) an order being facilitated; or (iii) orders being crossed; the execution of which are imminent, to enter, based on such knowledge, an order to buy or sell an option for the same underlying security as any option that is the subject of the order, or an order to buy or sell the security underlying such class, or an order to buy or sell any related instrument until (a) the terms of the order and any change in the terms of the order of which the person associated with the Member has knowledge are disclosed to the trading crowd, or (b) the trade can no longer reasonably be considered imminent in the view of the passage of time since the order was received); Rule 717(d) (which state that EAMs may not execute as principal orders they represent as agent unless (i) agency orders are first exposed on the Exchange for at least one (1) second, (ii) the EAM has been bidding or offering on the Exchange for at least one (1) second prior to receiving an agency order that is executable against such bid or offer, (iii) the Member utilizes the Facilitation Mechanism pursuant to Rule 716(d), or (iv) the Member utilizes the Price Improvement Mechanism for Crossing Transactions pursuant to Rule 723); and Rule 717(e) (which states that EAMs may not execute orders they represent as agent on the Exchange against orders solicited from Members and non-member broker-dealers to transact with such orders unless (i) the unsolicited order is first exposed on the Exchange for at least one (1) second, (ii) the Member utilizes the Solicited Order Mechanism pursuant to Rule 716(e), (iii) the Member utilizes the Facilitation Mechanism pursuant to Rule 716(d) or (iv) the Member utilizes the Price Improvement Mechanism for Crossing Transactions pursuant to Rule 723).

[10] *See* note 7 and Securities Exchange Act Release No. 59700 (April 2, 2009), 74 FR 16246 (April 9, 2009) (SR–CBOE–2009–009).

[11] 15 U.S.C. 78f (b) [sic].

[12] 15 U.S.C. 78f (b)(5) [sic].

better than market makers, the Exchange does not believe it is necessary to impose the Rule's restrictions on the entry of broker-dealer orders. The Exchange believes that the elimination of these restrictions will permit entities other than market makers to enter orders on both sides of the market more freely, resulting in more orders on the ISE book and therefore increase liquidity on the ISE market, all to the benefit of investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) [13] of the Act and Rule 19b–4(f)(6) [14] thereunder. The Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing the proposed rule change.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2010–95 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2010–95. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission,[15] all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2010–95 and should be submitted on or before October 27, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–25068 Filed 10–5–10; 8:45 am]

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[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov/rules/sro.shtml.*

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63022; File No. SR–NASDAQ–2010–116)]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify Nasdaq's Order Routing Rule

September 30, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1], and Rule 19b–4 [2] thereunder, notice is hereby given that on September 27, 2010, The NASDAQ Stock Market LLC ("Nasdaq") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is filing a proposal for the NASDAQ Options Market ("NOM" or "Exchange") to modify Chapter VI, Section 11 of the NOM rules, to add a new order routing option and to assign a name to the existing routing option.

The text of the proposed rule change is available from Nasdaq's Web site at *http://nasdaq.cchwallstreet.com*, at Nasdaq's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is amending Section 11, Order Routing, of Chapter VI of the NOM rules which describes NOM's order routing processes, to add a new routing option, and to assign the name "SEEK" to the existing routing option. Currently SEEK, the only routing option available through NOM, is described in Section 11(a) of Chapter VI. NOM is now proposing to replace this existing language with text describing new, separately named routing options, including SEEK. The proposed change to introduce the SRCH routing option will provide market participants additional tools with which to manage their order flow. Routing options may be combined with all available order types and times-in-force, with the exception of order types and times-in-force whose terms are inconsistent with the terms of a particular routing option. The routing options are described below.

Section 11(a)(1)(A) provides a description of SEEK which is the Exchange's existing, unnamed order routing option. Section 11(a)(1)(A) also specifically assigns the name SEEK to this existing routing option. Pursuant to this option, an order first checks the System for available contracts for execution. After checking the System for available contracts, orders are sent to other available market centers for potential execution, per the entering firm's instructions. When checking the book, the System seeks to execute at the price at which it would send the order to a destination market center. If contracts remain un-executed after routing, they are posted on the book. Once on the book, should the order subsequently be locked or crossed by another market center, the System does not route the order to the locking or crossing market center. The SEEK option is valuable to Participants interested in executing as many contracts as possible upon submission of the order to the Exchange. After executing on the Exchange and routing to other destinations, any remaining unfilled portion will rest passively on the Exchange book regardless of whether the order is subsequently locked or crossed by another options exchange. This provides participants with the ability to aggressively seek available liquidity in the marketplace while also allowing the participant to set the new market price (once available liquidity has been exhausted in the marketplace) and avoid re-routing the order, potentially reducing the fees paid by the participant.

The SRCH routing option operates in the same manner as SEEK except that if the order is not completely executed after routing and is then posted on the Exchange book, if another options exchange subsequently locks or crosses the limit price of the order, it will re-route. Similarly to SEEK, the SRCH option is valuable to Participants interested in executing as many contracts as possible upon submission of the order to the Exchange. However, there may be times that participants wish to execute against any available liquidity that may exist in the marketplace after the order has been posted, regardless of other drawbacks associated with re-routing, in which case the SRCH routing option better fits the participant's needs.

Pursuant to Section 11(c) of Chapter VI, orders sent by the System pursuant to the SEEK and SRCH routing options to other markets would not retain time priority with respect to other orders in the System. If an order routed pursuant to SEEK or SRCH is subsequently returned, in whole or in part, that order, or its remainder, will receive a new time stamp reflecting the time of its return to the System.

Nasdaq is also deleting language from subsection 11(a) of Chapter VI, which describes existing order routing processes. This language is no longer necessary because it would be duplicative of the SEEK rule language.

Nasdaq is also amending Section 11 to include a definition of "System routing table," defined as the proprietary process for determining the specific trading venues to which NOM routes orders and the order in which it routes them.[3] The definition reflects the fact that NOM, like other trading venues, maintains different routing tables for different routing options and modifies them on a regular basis to reflect assessments about the destination markets. Such assessments consider factors such as a destination's latency, fill rates, reliability, and cost. Accordingly, the definition specifies that NOM reserves the right to maintain a different routing table for different routing options and to modify routing tables at any time without notice. All routing complies with Chapter XII of the NOM rules, the Options Order Protection and Locked and Crossed Market Rules.

Use of the various NOM routing options is purely voluntary. Market Participants wishing to use a NOM routing option must provide the Exchange with instructions specifying the option they wish to use. If no instructions are provided, the Exchange will not route on behalf of the participant.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[4] in general, and furthers the objectives of Section 6(b)(5) of the Act[5] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange believes that the proposed change to introduce the new routing options will provide market participants with greater flexibility and success in managing and executing order flow while also minimizing trading costs.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(6) thereunder.[7]

[3] Nasdaq has previously defined the term "System routing table" in connection with the Nasdaq Stock Market. *See* Securities Exchange Act Release No. 34–61460 (February 1, 2010), 75 FR 6077 (February 5, 2010) (SR–NASDAQ–2010–018).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. Nasdaq has satisfied this requirement.

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[8] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. Nasdaq requests that the Commission waive the 30-day operative delay. Nasdaq requests this waiver because it currently has the technological changes ready to support the proposed rule change, and believes that the benefits of greater flexibility that are expected from the rule change should not be delayed.

The Exchange believes that the rule change is designed to provide market participants with an additional choice when availing themselves of NOM's order routing and execution services. By offering an additional routing option, Nasdaq hopes to benefit market participants and their customers by allowing them greater flexibility in their efforts to fill orders and minimize trading costs. Nasdaq provides these services in a highly competitive market in which participants may avail themselves of a wide variety of routing options. In such an environment, system enhancements such as the changes proposed in this rule filing do not burden competition, because they can succeed in attracting order flow to NOM only if they offer investors higher quality and better value than services offered by others. Encouraging competitors to provide higher quality and better value is the essence of a well-functioning competitive marketplace.

The Exchange also believes that immediate effectiveness of this proposed rule change is especially appropriate given that routing through NOM is purely optional. Market participants have the flexibility to mark their orders as not available for routing. If there is no benefit to the new routing strategy, market participants will simply not use it. The Exchange will not apply the new order routing strategy to market participants' orders without their positive consent. In fact, market participants would have to make programming changes to adopt the new routing strategy and would need to do nothing if they chose not to adopt it.

The Commission believes that waiving the 30-day operative delay[9] is consistent with the protection of investors and the public interest and designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2010–116 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2010–116. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NASDAQ–2010–116 and should be submitted on or before October 27, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–25107 Filed 10–5–10; 8:45 am]

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[8] 17 CFR 240.19b–4(f)(6).

[9] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63024; File No. SR–Phlx–2010–134]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX, LLC Relating to Exchange Disseminated Quotations

September 30, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 29, 2010, NASDAQ OMX PHLX, Inc. ("Phlx" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rules 1017, Openings in Options, and 1082, Firm Quotations, to reflect a system change to modify the manner in which the PHLX XL® automated options trading system[3] disseminates quotations when (i) there is an opening imbalance in a particular series, and (ii) there is a Quote Exhaust (as described below) or a Market

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] This proposal refers to "PHLX XL" as the Exchange's automated options trading system. In May 2009 the Exchange enhanced the system and adopted corresponding rules referring to the system as "Phlx XL II." *See* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32). The Exchange intends to submit a separate technical proposed rule change that would change all references to the system from "Phlx XL II" to "PHLX XL" for branding purposes.

Exhaust (as described below) quote condition present in a particular series.[4]

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to change the manner in which the PHLX XL® automated options trading system disseminates quotations involving opening imbalances and during times when there are exhausted quotes or no quotes on the Exchange in a particular series.

In June, 2009, the Exchange added several significant enhancements to its automated options trading platform (now known as PHLX XL), and adopted rules to reflect those enhancements.[5] As part of the system enhancements, the Exchange proposed to disseminate a "non-firm" quote condition on a bid or offer whose size is exhausted in certain situations. The non-exhausted side of the Exchange's disseminated quotation would remain firm up to its disseminated size. Currently, however, the Options Price Reporting Authority ("OPRA") only disseminates option quotations for which both sides of the quotation are marked "non-firm." OPRA currently does not disseminate a "non-firm" condition for one side of a quotation while the other side of the quotation remains firm.[6]

Accordingly, the Exchange proposed, for a pilot period scheduled to expire November 30, 2009, and later extended through September 30, 2010,[7] to disseminate quotations in such a circumstance with a (i) a bid price of $0.00, with a size of one contract if the remaining size is a seller, or (ii) an offer price of $200,000, with a size of one contract if the remaining size is a buyer.

This proposal is intended to modify the manner in which the Exchange's PHLX XL system disseminates quotes when one side of the quote is exhausted but the opposite side still has marketable size at the disseminated price.

Opening Imbalance

An opening "imbalance" occurs when all opening marketable size cannot be completely executed at or within an established Opening Quote Range ("OQR") for the affected series.[8] Currently, pursuant to Exchange Rule 1017(l)(v)(C)(7), any unexecuted contracts from the opening imbalance not traded or routed are displayed in the Exchange quote at the opening price for a period not to exceed ten seconds, and subsequently, cancelled back to the entering participant if they remain unexecuted and priced through the opening price, unless the member that submitted the original order has instructed the Exchange in writing to re-enter the remaining size, in which case the remaining size will be automatically submitted as a new order. During this display time period, the PHLX XL system disseminates, if the imbalance is a buy imbalance, an offer that is $200,000, with a size of one contract or, if the imbalance is a sell imbalance, a bid that is $0.00, with a size of one contract, on the opposite side of the market from remaining unexecuted contracts.

The proposed rule change would modify Rule 1017(l)(v)(C)(7) to reflect that, in this situation, the PHLX XL system will disseminate, if the imbalance is a buy imbalance, an offer of $0.00, with a size of zero contracts or, if the imbalance is a sell imbalance, a bid of $0.00, with a size of zero contracts, on the opposite side of the market from remaining unexecuted contracts.

The purpose of this provision is to indicate that the Exchange has exhausted all marketable interest, at or within the OQR, on one side of the market during the opening process yet has remaining unexecuted contracts on the opposite side of the market that are firm at the disseminated price and size.

Quote Exhaust

Quote Exhaust occurs when the market at a particular price level on the Exchange includes a quote, and such market is exhausted by an inbound contra-side quote or order ("initiating quote or order"), and following such exhaustion, contracts remain to be executed from the initiating quote or order.[9]

Rather than immediately executing at the next available price, the PHLX XL system employs a timer (a "Quote Exhaust Timer"), not to exceed one second, in order to allow market participants to refresh their quotes. During the Quote Exhaust Timer, PHLX XL currently disseminates the "Reference Price" (the most recent execution price) for the remaining size, provided that such price does not lock an away market, in which case, the Exchange currently disseminates a bid and offer that is one Minimum Price Variation ("MPV") from the away market price. If the remaining size is a buyer, the Exchange disseminates an offer of $200,000, with a size of one contract or, if the remaining size is a seller, a bid of $0.00, with a size of one contract.

The proposed rule change would modify the manner in which the system generates a quote during the Quote Exhaust Timer. Specifically, during the Quote Exhaust Timer, the Exchange will disseminate: (i) A bid price of $0.00, with a size of zero contracts if the remaining size is a seller, or (ii) an offer price of $0.00, with a size of zero contracts if the remaining size is a buyer.

Currently, Exchange Rules 1082(a)(ii)(B)(3)(g)(iv)(A)(3), 1082(a)(ii)(B)(3)(g)(iv)(A)(4), 1082(a)(ii)(B)(3)(g)(iv)(B)(2), and

[4] The current rules relevant to this proposal are subject to a pilot that was originally scheduled to expire November 30, 2009. In November 2009, the Exchange extended the pilot period through September 30, 2010. *See* Securities Exchange Act Release No. 60951 (November 6, 2009), 74 FR 59275 (November 17, 2009) (SR–Phlx-2009–95). Due to an inadvertent omission, Rules 1017(l)(iv)(C)(7) and 1082(a)(ii)(B)(3)(g)(vi) were not included in the proposed rule change relating to the pilot extension, and both rules currently reflect an incorrect pilot expiration date of November 30, 2009. The Exchange is proposing an alternative to the current pilot (the "new pilot"). The new pilot is scheduled to expire November 30, 2010.

[5] *See* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009)(SR–Phlx–2009–32).

[6] Currently, there is no mechanism for the Options Price Reporting Authority ("OPRA") to identify only one side of a quote as non-firm. The Exchange has approached OPRA to attempt to develop the capability to identify and implement such functionality.

[7] *See supra* n.4.

[8] Where there is an imbalance at the price at which the maximum number of contracts can trade that is also at or within the lowest quote bid and highest quote offer, the PHLX XL system will calculate an OQR for a particular series, outside of which the PHLX XL system will not execute. *See* Exchange Rule 1017(l)(iii) and (iv).

[9] *See* Exchange Rule 1082(a)(ii)(B)(3).

1082(a)(ii)(B)(3)(g)(iv)(C) describe various scenarios under which the PHLX XL system trades, routes, or posts unexecuted contracts after determining the "Best Price" following a Quote Exhaust. These rules permit an up to 10 second time period during which participants may revise their quotes prior to the PHLX XL system taking action. In all of these scenarios, during the up to 10 second time period, the PHLX XL system currently disseminates an offer of $200,000, with a size of one contract if the remaining size is a buyer or, if the remaining size is a seller, a bid of $0.00, with a size of one contract, on the opposite side of the market from remaining unexecuted contracts.

The Exchange proposes to modify Rules 1082(a)(ii)(B)(3)(g)(iv)(A)(3), 1082(a)(ii)(B)(3)(g)(iv)(A)(4), 1082(a)(ii)(B)(3)(g)(iv)(B)(2), and 1082(a)(ii)(B)(3)(g)(iv)(C) to reflect that, during the up to 10 second time period, the Exchange will disseminate: (i) A bid price of $0.00, with a size of zero contracts if the remaining size is a seller, or (ii) an offer price of $0.00, with a size of zero contracts if the remaining size is a buyer.

The purpose of this provision is to indicate that a quote size at a price level in a particular series on the Exchange is exhausted, and there are unexecuted contra-side contracts remaining at the exhausted price level. Furthermore, this provision will enable the Exchange to indicate that it is in the process of allowing participants to refresh quotations on the exhausted side of the market, while the Exchange's quote is firm at the disseminated price and size for the remaining unexecuted contra-side contracts.

Current Rule 1082(a)(ii)(B)(3)(g)(vi) describes what the PHLX XL system does if, after trading at the PHLX and/or routing, there are unexecuted contracts from the initiating order that are still marketable. In this situation, remaining contracts are posted for a period of time not to exceed 10 seconds and then cancelled after such period of time has elapsed, unless the member that submitted the original order has instructed the Exchange in writing to re-enter the remaining size, in which case the remaining size will be automatically submitted as a new order. During this up to 10 second period, the PHLX XL system currently disseminates, on the opposite side of the market from the unexecuted contracts: (i) A bid price of $0.00, with a size of one contract if the remaining size is a seller, or (ii) an offer price of $200,000, with a size of one contract if the remaining size is a buyer.

The Exchange proposes to modify Rule 1082(a)(ii)(B)(3)(g)(vi) to reflect that, in this situation, during the up to 10 second time period, the Exchange will disseminate, on the opposite side of the market from remaining unexecuted contracts: (i) A bid price of $0.00, with a size of zero contracts if the remaining size is a seller, or (ii) an offer price of $0.00, with a size of zero contracts if the remaining size is a buyer.

The purpose of this provision is to indicate that the exchange is in the process of allowing participants to submit quotations on the exhausted side of the market while the Exchange's quote is firm at the disseminated price and size for the remaining unexecuted contra-side contracts.

Market Exhaust

Market Exhaust occurs when there are no PHLX XL participant quotations in the Exchange's disseminated market for a particular series and an initiating order in the series is received. In such a circumstance, the PHLX XL system initiates a "Market Exhaust Auction" for the initiating order.[10]

In this situation, the PHLX XL system will first determine if the initiating order, or a portion thereof, can be executed on the PHLX. Thereafter, if there are unexecuted contracts remaining in the initiating order the PHLX XL system will initiate a Market Exhaust Timer.[11] During the Market Exhaust Timer, the Exchange disseminates any unexecuted size of the initiating order at the "Reference Price," which is the execution price of a portion of the initiating order, or one MPV from a better-priced away market price if the Reference Price would lock the away market. The PHLX XL system currently disseminates, on the opposite side of the market from the remaining unexecuted contracts: (i) A bid price of $0.00, with a size of one 0 contracts if the remaining size is a seller, or (ii) an offer price of $200,000, with a size of one contract if the remaining size is a buyer.

The Exchange proposes to modify Rules 1082(a)(ii)(B)(4)(a)and (b) to reflect that, during the Market Exhaust Timer, the PHLX XL system will disseminate, on the opposite side of the market from remaining unexecuted contracts: (i) A bid price of $0.00, with a size of zero contracts if the remaining size is a seller, or (ii) an offer price of $0.00, with a size of zero contracts if the remaining size is a buyer.

The purpose of this provision is to indicate that the Exchange is in the process of allowing participants to submit quotations on the exhausted side of the market while the Exchange's quote is firm at the disseminated price and size for the remaining unexecuted contra-side contracts.

Provisional Auction

Exchange Rule 1082(a)(ii)(B)(4)(d)(iv)(E) describes what PHLX XL does after it has explored all alternatives and there still remain unexecuted contracts. During the "Provisional Auction," any unexecuted contracts from the initiating order are displayed in the Exchange quote for the remaining size for a brief period not to exceed ten seconds and subsequently cancelled back to the entering participant if they remain unexecuted, unless the member that submitted the original order has instructed the Exchange in writing to re-enter the remaining size, in which case the remaining size will be automatically submitted as a new order. During the brief period, the Phlx XL system currently disseminates an offer of $200,000 with a size of one contract if the remaining size is a buyer, or a bid of $0.00, with a size of one contract, if the remaining size is a seller, on the opposite side of the market from remaining unexecuted contracts.

The Exchange proposes to modify Rule 1082(a)(ii)(B)(4)(d)(iv)(E) to reflect that, in this situation, during the brief period, the PHLX XL system will disseminate, on the opposite side of the market from remaining unexecuted contracts: (i) A bid price of $0.00, with a size of zero contracts if the remaining size is a seller, or (ii) an offer price of $0.00, with a size of zero contracts if the remaining size is a buyer.

The purpose of this provision is to indicate that the Exchange is in the process of allowing participants to submit quotations on the exhausted side of the market while the Exchange's quote is firm at the disseminated price and size for the remaining unexecuted contra-side contracts.

The Exchange believes that this proposed rule change benefits customers and the marketplace as a whole by enabling PHLX to effectively reflect the market interest the Exchange has that is firm and executable, while at the same time indicating the other side of the Exchange market is not firm and therefore not executable. This allows the Exchange to protect orders on its book and attempt to attract interest to execute against such order.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b)

[10] *See* Exchange Rule 1082(a)(ii)(B)(4)(b).

[11] The Exchange proposes a technical amendment to Rule 1082(a)(ii)(B)(4)(b) to remove an incorrect reference to a "Quote Exhaust Timer" and refer instead to a "Market Exhaust Timer."

of the Act [12] in general, and furthers the objectives of Section 6(b)(5) of the Act [13] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange further believes that the proposal is consistent with the SEC Quote Rule's provisions regarding non-firm quotations.[14] Specifically, Rule 602(a)(3)(i) provides that if, at any time a national securities exchange is open for trading, the exchange determines, pursuant to rules approved by the Commission, that the level of trading activities or the existence of unusual market conditions is such that the exchange is incapable of collecting, processing, and making available to vendors the data for a subject security required to be made available in a manner that accurately reflects the current state of the market on such exchange, such exchange shall immediately notify all specified persons of that determination and, upon such notification, the exchange is relieved of its obligations under paragraphs (a)(1) and (2) of Rule 602 relating to collecting and disseminating quotations, subject to certain other provisions of Rule 602(a)(3).

By proposing to disseminate a bid of $0.00 for a size of zero contracts, or an offer of $0.00 for a size of zero contracts in certain situations delineated above in the Exchange's rules, the Exchange believes that it is adequately communicating that it is non-firm on that side of the market in compliance with the Quote Rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act [15] and Rule 19b–4(f)(6) [16] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2010–134 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2010–134. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2010–134 and should be submitted on or before October 27, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–25138 Filed 10–5–10; 8:45 am]

BILLING CODE 8010–01–P

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] *See* 17 CFR 242.602(a)(3)(i) and (ii).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63023; File No. SR–Phlx–2010–125]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Clearly Erroneous Transactions

September 30, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 22, 2010, NASDAQ OMX PHLX LLC ("PHLX" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend PHLX Rule 3312, governing clearly erroneous executions on the NASDAQ OMX PSX system ("PSX"). The text of the proposed rule change is available from the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com,* at the Exchange's principal office, at the Commission's Web site at *http://www.sec.gov,* and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item III below, and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing modifications to its Rule 3312, entitled Clearly Erroneous Transactions. Rule 3312 was recently approved by the Commission in connection with a proposal to resume trading of NMS stocks through the Exchange's PSX system.[3] The proposed changes are designed to conform Rule 3312 to changes that were recently approved to the corresponding rules of The NASDAQ Stock Market (the "NASDAQ Exchange") and NASDAQ OMX BX ("BX"), and other exchanges.[4] First, the Exchange proposes replacing existing paragraph (a)(2)(C)(ii) of Rule 3312, entitled "Unusual Circumstances and Joint Market Rulings" with a new paragraph, entitled "Multi-Stock Events Involving Twenty or More Securities." Second, the Exchange is replacing existing paragraph (a)(2)(C)(iv) of Rule 3312, entitled "Numerical Guidelines Applicable to Volatile Market Opens" with a new paragraph, entitled "Individual Stock Trading Pauses." Third, the Exchange is proposing changes to existing paragraph (b) of Rule 3312 to eliminate the ability of the Exchange to deviate from the Numerical Guidelines contained in paragraph (a)(2)(C)(i) when deciding which transactions will be reviewed by the Exchange as potentially clearly erroneous. Fourth, the Exchange proposes modifications to paragraphs (a)(2)(C)(i) and (iii) of Rule 3312 consistent with the proposed changes to paragraphs (a)(2)(C)(ii) and (iv). Finally, the Exchange proposes amending paragraph (c)(1), related to appeals of clearly erroneous execution decisions by the Exchange, to preserve non-appealability of all joint rulings between the Exchange and one or more other market centers.[5] As proposed, the provisions of paragraph (a)(2)(C), paragraph (b) and paragraph (c)(1) of Rule 3312, as amended by this filing, would be in effect during a pilot period set to end on December 10, 2010. If the pilot is not either extended or made permanent by December 10, 2010, the prior versions of paragraph (a)(2)(C), paragraph (b) and paragraph (c)(1) of Rule 3312 would be in effect.

The Exchange is proposing the rule changes described below in consultation with other markets and Commission staff to provide for uniform treatment: (1) Of clearly erroneous execution reviews in Multi-Stock Events involving twenty or more securities; and (2) in the event transactions occur that result in the issuance of an individual stock trading pause by the primary market and subsequent transactions that occur before the trading pause is in effect on the Exchange. The Exchange has also proposed additional changes to Rule 3312 that reduce the ability of the Exchange to deviate from the objective standards set forth in the Rule. In addition, the Exchange is modifying certain defined terms in the rule to match definitions used by other exchanges in order to avoid the risk of confusion. The proposed changes are described in further detail below.

Revised Paragraph (a)(2)(C)(ii) Related to Multi-Stock Events Involving Twenty or More Securities

The Exchange proposes to eliminate the majority of existing paragraph (a)(2)(C)(ii), which provides flexibility to the Exchange to use different Numerical Guidelines or Reference Prices in various "Unusual Circumstances." The Exchange proposes to replace this paragraph with new language that would apply to Multi-Stock Events involving twenty or more securities whose executions occurred within a period of five minutes or less. The revised paragraph would retain language making clear that during Multi-Stock Events involving twenty or more securities the number of affected transactions may be such that immediate finality is necessary to maintain a fair and orderly market and to protect investors and the public interest. Accordingly, in such circumstances, decisions made by the Exchange in consultation with other markets could not be appealed. Further, as proposed, in connection with reviews of Multi-Stock Events involving twenty or more securities, the Exchange may use a Reference Price other than consolidated last sale in its review of potentially clearly erroneous executions. With the exception of those securities under review that are subject to an individual stock trading pause as described in proposed paragraph (a)(2)(C)(iv), and to ensure consistent application across market centers when proposed paragraph (a)(2)(C)(ii) is invoked, the Exchange will promptly coordinate with the other market centers to determine the appropriate review period, which may be greater than the period of five minutes or less that triggered application of proposed paragraph (a)(2)(C)(ii), as well as select one or more specific points in time prior to the transactions in question and use transaction prices at or immediately prior to the one or more specific points in time selected as the Reference Price. The Exchange will nullify as clearly erroneous all transactions that are at prices equal to or greater than 30% away from the Reference Price in each affected security during the review period selected by the Exchange and other markets consistent with the proposed paragraph (a)(2)(C)(ii).

Because the Exchange and other market centers are adopting a different threshold and standards to handle large-scale market events, which would include events occurring during times of high volatility at the beginning of regular trading hours, the Exchange proposes deletion of paragraph (a)(2)(C)(iv) ("Numerical Guidelines Applicable to Volatile Market Opens") of the existing rule. The Exchange believes that this provision is no longer necessary, and if maintained, could result in extremely high Numerical Guidelines (up to 90%) in certain circumstances.

[3] Securities Exchange Act Release No. 62877 (September 9, 2010), 75 FR 56633 (September 16, 2010) (SR–PHLX–2010–79).

[4] Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (File Nos. SR–BATS–2010–016; SR–BX–2010–040; SR–CBOE–2010–056; SR–CHX–2010–13; SR–EDGA–2010–03; SR–EDGX–2010–03; SR–ISE–2010–62; SR–NASDAQ–2010–076; SR–NSX–2010–07; SR–NYSE–2010–47; SR–NYSEAmex–2010–60; SR–NYSEArca–2010–58).

[5] The Exchange is also amending text in paragraphs (a)(2)(A)(iii)B. and (e)(1) to correct minor typographical errors in the text of the rule.

Revised Paragraph (a)(2)(C)(iv) Related to Individual Stock Trading Pauses

The NASDAQ Exchange and other primary listing markets for U.S. stocks recently amended their rules so that they may, from time to time, issue a trading pause for an individual security if the price of such security moves 10% or more from a sale in a preceding five-minute period, and other exchanges have amended their rules to follow these trading pauses. In this regard, the Exchange's approved rules for PSX pause trading in an individual stock when the primary listing market for such stock issues a trading pause, as provided in Rule 3100(a)(4).[6] As described above, the Exchange is proposing to eliminate existing paragraph (a)(2)(C)(iv) ("Numerical Guidelines Applicable to Volatile Market Opens"). The Exchange proposes adopting a rule, numbered as (a)(2)(C)(iv) following such elimination, that will provide for uniform treatment of clearly erroneous execution reviews in the event transactions occur that result in the issuance of an individual stock trading pause by the primary listing market and subsequent transactions that occur before the trading pause is in effect on the Exchange. The proposed rule change is necessary to provide greater certainty of the clearly erroneous Reference Price for transactions that trigger a trading pause (the "Trigger Trade") and subsequent transactions occurring between the time of the Trigger Trade and the time the trading pause message is received by the Exchange from the single plan processor responsible for consolidation and dissemination of information for the security and put into effect on the Exchange, especially under highly volatile and active market conditions.

The Exchange proposes to revise paragraph (a)(2)(C)(iv) of Rule 3312 to allow the Exchange to use the price that triggered a trading pause in an individual stock (the "Trading Pause Trigger Price") as the Reference Price for clearly erroneous execution reviews of a Trigger Trade and transactions that occur immediately after a Trigger Trade but before a trading pause is in effect on the Exchange. As proposed, the phrase "Trading Pause Trigger Price" shall mean the price that triggered a trading pause pursuant to PHLX Rule 3100(a)(4). The Trading Pause Trigger Price reflects a price calculated by the primary listing market over a rolling five-minute period and may differ from the execution price of a transaction that triggered a trading pause. The Exchange will rely on the primary listing market that issued an individual stock trading pause to determine and communicate the Trading Pause Trigger Price for such stock. The Exchange proposes to make clear in the text that the proposed standards in paragraph (a)(2)(C)(iv) apply regardless of whether the security at issue is part of a Multi-Stock Event involving five or more securities as described in proposed paragraphs (a)(2)(C)(i) and (ii).

As proposed, the Numerical Guidelines set forth in PHLX Rule 3312(a)(2)(C)(i), other than those Numerical Guidelines applicable to Multi-Stock Events, would apply to reviews of Trigger Trades and subsequent transactions. The Exchange proposes to review, on its own motion pursuant to paragraph (b)(2) of the Rule, all transactions that trigger a trading pause and subsequent transactions occurring before the trading pause is in effect on the Exchange. The Exchange has proposed to limit such reviews to reviews of transactions that executed at a price lower than the Trading Pause Trigger Price in the event of a price decline and higher than the Trading Pause Trigger Price in the event of a price rise. Because the proposed rules for trading pauses would only apply within Regular Trading Hours,[7] an execution would be reviewed and nullified as clearly erroneous if it exceeds the following thresholds:

Reference price or product	Numerical guidelines (Subject transaction's % difference from the Trading Pause Trigger Price)
Greater than $0.00 up to and including $25.00	10%.
Greater than $25.00 up to and including $50.00	5%.
Greater than $50.00	3%.
Leveraged ETF/ETN securities	Regular Trading Hours Numerical Guidelines multiplied by the leverage multiplier (i.e., 2x).

Revisions to Paragraph (b)

To be consistent with other exchanges, the Exchange is eliminating paragraph (b) and adding new paragraphs (b)(1) and (b)(2) to separate System Disruptions from Own Motion situations. Consistent with other proposals made in this filing, the Exchange proposes modifying paragraph (b) to eliminate the ability of a Senior Official to deviate from the Numerical Guidelines contained in the Rule other than under very limited circumstances set forth in paragraph (a)(2)(C)(iii).

New paragraph (b)(1) provides a Senior Official of the Exchange the ability on his or her own motion, to review and rule on executions that result from "any disruption or a malfunction in the operation of any electronic communications and trading facilities of the Exchange, or extraordinary market conditions or other circumstances in which the nullification of transactions may be necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest exist."

New paragraph (b)(2) is similar to existing Rule 3312(b) and covers other situations where the Exchange may act on its own motion. Without modification, the language "extraordinary market conditions or other circumstances * * *" in current Rule 3312(b) would leave the Exchange with broad discretion to deviate from the Numerical Guidelines set forth in

[6] Prior to the launch of trading on PSX, the Exchange will submit a proposed rule change to amend Rule 3100(a)(4) to reflect changes recently approved to the corresponding rules of other exchanges. Securities Exchange Act Release No. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (SR–BATS–2010–018; SR–BX–2010–044; SR–CBOE–2010–065; SR–CHX–2010–14; SR–EDGA–2010–05; SR–EDGX–2010–05; SR–ISE–2010–66; SR–NASDAQ–2010–079; SR–NYSE–2010–49; SR–NYSEAmex–2010–63; SR–NYSEArca–2010–61; SR–NSX–2010–08). Securities Exchange Act Release No. 62884 amended trading pause rules originally adopted by PSX in SR–PHLX–2010–79, supra n. 3, and by other exchanges in Securities Exchange Act Release No. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (SR–BATS–2010–014; SR–EDGA–2010–01; SR–EDGX–2010–01; SR–BX–2010–037; SR–ISE–2010–48; SR–NYSE–2010–39; SR–NYSEAmex–2010–46; SR–NYSEArca–2010–41; SR–NASDAQ–2010–061; SR–CHX–2010–10; SR–NSX–2010–05; SR–CBOE–2010–047).

[7] The term "Regular Trading Hours" is being renamed from "Core Session" in Rule 3312(a)(2)(B) as the time between 9:30 a.m. and 4 p.m. Eastern Time. According to rules of the primary listing markets, an individual stock trading pause can be issued based on a Trigger Trade that occurs at any time between 9:45 a.m. and 3:35 p.m. Eastern Time. See NASDAQ Exchange Rule 4120(a)(11), NYSE Rule 80C, and NYSE Arca Rule 7.11.

paragraph (a)(2)(C)(i). Thus, the Exchange proposes narrowing the scope of paragraph (b) so that it only permits the Exchange to nullify transactions consistent with that paragraph (including at a lower Numerical Guideline) if there is a disruption or malfunction in the use of the Exchange's system covered by proposed Rule 3312(b)(1).

For the same reason, the Exchange proposes eliminating the words "use or" from the language in subsection (b) to make clear that the provision only applies to a disruption or malfunction of the Exchange's system (and not of a user of the Exchange's systems).

Paragraph (b)(2) gives a Senior Official of the Exchange the ability on his or her own motion to review transactions as potentially clearly erroneous. Consistent with the goal of achieving more objective and standard results, the Exchange proposes deleting language in existing paragraph (b) that would allow the Exchange to deviate from the Numerical Guidelines contained in paragraph (a)(2)(C)(i). In addition, the Exchange proposes to make clear that any Senior Official reviewing transactions on his or her own motion must follow the guidelines set forth in proposed paragraph (a)(2)(C)(iv), if applicable. Accordingly, the Exchange proposes to modify paragraph (b)(2) to state that an officer must rely on paragraphs (a)(2)(C)(i)–(iv) of Rule 3312 when reviewing transactions on his or her own motion.

Additional Conforming Revisions to Paragraphs (a)(2)(C)(i) and (a)(2)(C)(iii)

Based on proposed paragraph (a)(2)(C)(ii), the Exchange has proposed certain conforming changes to paragraphs (a)(2)(C)(i) and (iii) of the existing Rule, as described below.

Under current Rule 3312, a transaction may be found to be clearly erroneous only if the price of the transaction to buy (sell) that is the subject of the complaint is greater than (less than) the Reference Price by an amount that equals or exceeds the Numerical Guidelines set forth in paragraphs (a)(2)(C)(i) of the Rule. The "Reference Price" is currently defined as "the consolidated last sale immediately prior to the execution(s) under review except for in Unusual Circumstances * * *." The Exchange proposes modifying paragraph (a)(2)(C)(i) consistent with the changes described above such that the Exchange shall use the consolidated last sale immediately prior to the execution(s) under review as the Reference Price except for: (A) Multi-Stock Events involving twenty or more securities, as described in proposed paragraph (a)(2)(C)(ii); (B) transactions not involving a Multi-Stock Event as described in proposed paragraph (a)(2)(C)(ii) that trigger a trading pause and subsequent transactions, as described in proposed paragraph (a)(2)(C)(iv), in which case the Reference Price shall be determined in accordance with that paragraph (a)(2)(C)(iv); and (C) in other circumstances, such as, for example, relevant news impacting a security or securities, periods of extreme market volatility, sustained illiquidity, or widespread system issues, where use of a different Reference Price is necessary for the maintenance of a fair and orderly market and the protection of investors and the public interest. The Exchange also proposes modifying paragraph (a)(2)(C)(i) to reduce uncertainty as to the applicability of the Numerical Guidelines, by requiring a finding that an execution was clearly erroneous if such execution exceeds the Numerical Guidelines, subject only to the Additional Factors included in paragraph (a)(2)(C)(iii). Moreover, the Exchange proposes revising the existing description for Multi-Stock Events that is contained on the Numerical Guidelines chart to make clear that different Numerical Guidelines apply for Multi-Stock Events involving five or more, but less than twenty, securities whose executions occurred within a period of five minutes or less. In addition, the Exchange proposes adding to the Numerical Guidelines chart a row that contains the Numerical Guidelines (30%) for Multi-Stock Events involving twenty or more securities whose executions occurred within a period of five minutes or less.

The Exchange proposes clarifying paragraph (a)(2)(C)(iii) to make clear that the additional factors set forth in that paragraph are not intended to provide any discretion to an Exchange official to deviate from the guidelines that apply to Multi-Stock Events or to transactions in securities subject to individual stock trading pauses.

The Exchange also proposes amending paragraph (c)(1), related to appeals of clearly erroneous execution decisions by the Exchange, to preserve non-appealability of all joint rulings between the Exchange and one or more other market centers. The Exchange believes that certainty and consistency is critical to reviews of related executions that span multiple market centers. Accordingly, although the Exchange has proposed deletion of such language from existing paragraph (a)(2)(C)(iii), the Exchange proposes adding such language back in to paragraph (c)(1) to make clear that joint market rulings are not appealable.

Finally, the Exchange is amending text in paragraphs (a)(2)(A)(iii)B. and (e)(1) to correct minor typographical errors in the text of the existing rule.

2. Statutory Basis

The rule change proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[8] In particular, the proposed change is consistent with Section 6(b)(5) of the Act,[9] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest. The proposed rule change is also designed to support the principles of Section 11A(a)(1)[10] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes transparency and uniformity across markets concerning reviews of potentially clearly erroneous executions in various contexts, including reviews in the context of a Multi-Stock Event involving twenty or more securities and reviews resulting from a Trigger Trade and any executions occurring immediately after a Trigger Trade but before a trading pause is in effect on the Exchange. Further, the Exchange believes that the proposed changes enhance the objectivity of decisions made by the Exchange with respect to clearly erroneous executions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78k–1(a)(1).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; or (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6) thereunder.[12]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission hereby grants that request.[13] The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because it has recently approved Phlx's proposal to initiate trading on PSX, which it plans to do on October 8, 2010, and believes that the proposed rule change should be implemented on that date to ensure that the Exchange's rules on clearly erroneous trades are consistent with the recently approved changes to the clearly erroneous execution rules of the other markets.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–Phlx–2010–125 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–Phlx–2010–125. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission,[14] all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Phlx–2010–125 and should be submitted on or before October 27, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–25137 Filed 10–5–10; 8:45 am]

BILLING CODE 8010–01–P

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[13] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov.*

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63025; File No. SR–MSRB–2010–08]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Amendment No. 1 to and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Amend Rule A–3, on Membership on the Board, To Comply With the Dodd-Frank Wall Street Reform and Consumer Protection Act

September 30, 2010.

On August 27, 2010, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend MSRB Rule A–3, on membership on the Board, to comply with the requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act").[3] The Commission published the proposed rule change for comment in the **Federal Register** on September 8, 2010.[4] The Commission received ten comment letters, the MSRB's response, and a supplemental response to the MSRB's response.[5] On September 30, 2010, the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Public Law No. 111–203, 124 Stat. 1376 (2010).

[4] *See* Securities Exchange Act Release No. 62827 (September 1, 2010), 75 FR 54673.

[5] *See* e-mail from Peter Shapiro, Managing Director, Swap Financial Group, LLC, dated September 14, 2010 ("Swap Financial Letter"); email from Kevin Olson, dated September 17, 2010 ("Olson Letter"); letter from Mike Nicholas, Chief Executive Officer, Bond Dealers of America, dated September 17, 2010 ("Bond Dealers Letter"); letter from Robert W. Doty, President, American Governmental Financial Services, dated September 21, 2010 ("AGFS Letter I"); letter from Joy A. Howard, Principal, WM Financial Strategies, dated September 21, 2010 ("WM Financial Letter"); letter from Steve Apfelbacher, President, National Association of Independent Public Finance Advisors, dated September 22, 2010 ("NAIPFA Letter"); letter from Michael Decker, Managing Director and Co-Head, Municipal Securities Division, Securities Industry and Financial Markets Association, dated September 22, 2010 ("SIFMA Letter"); letter from Susan Gaffney, Director, Federal Liaison Center, Government Finance Officers Association, dated September 22, 2010 ("GFOA Letter"); letter from Thomas M. DeMars, Managing Principal, Fieldman, Rolapp & Associates, dated September 22, 2010 ("Fieldman Letter"); letter from Lawrence P. Sandor, Senior Associate General Counsel, MSRB, dated September 23, 2010 ("MSRB Response Letter"); email from Robert W. Doty, President, American Governmental Financial Services, dated September 27, 2010 ("AGFS Letter

MSRB filed Amendment No. 1 to the proposed rule change.[6] This notice and order provide notice of Amendment No.1 to the proposed rule change and approves the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

I. Background and Description of the Proposal

A. Dodd-Frank Act

The Dodd-Frank Act, among other things, amended provisions of Section 15B of the Exchange Act governing the nomination, election and composition of members of the Board.[7] These amendments to Section 15B of the Exchange Act will be effective on October 1, 2010.[8]

Prior to enactment of the Dodd-Frank Act, Section 15B(b)(1) of the Exchange Act provided that the Board must be composed initially of fifteen members appointed by the Commission.[9] In addition, the Exchange Act required that the initial members of the Board must consist of five individuals who are public representatives,[10] five individuals who are broker-dealer representatives [11] and five individuals who are bank representatives.[12] Consistent with the requirements of the Exchange Act, the MSRB adopted Rule A–3 regarding membership on the Board. MSRB Rule A–3, among other things, provided that the Board shall be composed of 15 members, at all times equally divided among public representatives, broker-dealer representatives and bank representatives.

The Dodd-Frank Act amended Section 15B(b)(1) of the Exchange Act to provide that the members of the Board shall consist of two separate groups: eight "public representatives" and seven "regulated representatives." Section 15B(b)(1)(A) of the Exchange Act defines "public representatives" to mean individuals who are independent of any municipal securities broker, municipal securities dealer, or municipal advisor, at least one of whom shall be representative of institutional or retail municipal securities investors ("investor representative"), at least one of whom shall be representative of municipal entities ("issuer representative"), and at least one of whom shall be representative of the public with knowledge of or experience in the municipal industry ("general public representative").[13] Section 15B(b)(1)(B) of the Exchange Act defines "regulated representatives" to mean individuals who are associated with a broker, dealer, municipal securities dealer, or municipal advisor, including at least one individual who is associated with and representative of brokers, dealers, or municipal securities dealers that are not banks or subsidiaries or departments or divisions of banks ("broker-dealer representative"), at least one individual who is associated with and representative of municipal securities dealers which are banks or subsidiaries or departments or divisions of banks ("bank representative"), and at least one individual who is associated with a municipal advisor ("advisor representative").[14] In addition, Section 15B(b)(1) of the Exchange Act provides that each member of the Board must be knowledgeable of matters related to the municipal securities markets.[15]

The Dodd-Frank Act also amended Section 15B(b)(2)(B) of the Exchange Act to provide that the Board shall establish fair procedures for the nomination and election of the members of the Board, and shall assure fair representation in such nominations and elections of public representatives, broker-dealer representatives, bank representatives and advisor representatives.[16] Further, the Dodd-Frank Act amended Section 15B(b)(2)(B) to provide that the Board shall establish rules that: Set forth requirements regarding the independence of public representatives; provide that the number of public representatives at all times exceed the number of regulated representatives; and provide that membership on the Board is at all times as evenly divided as possible between public and regulated representatives. In addition, the Dodd-Frank Act amended Section 15B(b)(2)(B) to provide that the MSRB, by rule, may increase the number of members on the Board, provided that such number is an odd number.[17]

B. Proposal

To implement the terms of the Dodd-Frank Act by the effective date of October 1, 2010, the MSRB proposes to add subsection (i) to Rule A–3 to implement, among other things, a transitional provision for the Board's fiscal year commencing October 1, 2010 that would increase the size of the Board from 15 members to 21 members (who are knowledgeable of matters related to the municipal securities markets), with 11 public representatives and 10 regulated representatives. This transitional provision would be in effect until September 30, 2012. In addition, prior to October 1, 2010, the MSRB proposes to elect 11 new Board members, of which eight would be public representatives and three would be municipal advisor representatives. The MSRB proposes that the terms of these new Board members would expire on September 30, 2012.

Of the 11 public representatives, the MSRB proposes that at least one would be an investor representative, at least one would be an issuer representative, and at least one would be a general public representative. With respect to the 10 regulated representatives, the MSRB proposes that at least one would be a broker-dealer representative, at least one would be a bank representative, and at least one (but not less than 30% of the total number of regulated representatives) would be an advisor representative, who shall not be

II"); letter from Lawrence P. Sandor, Senior Associate General Counsel, MSRB, dated September 30, 2010 ("MSRB Supplemental Response Letter").

[6] In Amendment No. 1, to address concerns raised by commenters, MSRB proposes that advisor representatives (as defined below) shall not be associated with a broker, dealer or municipal securities dealer. In addition, in Amendment No. 1, the MSRB proposes to amend Rule A–3(i)(iv) to provide that on or after October 1, 2010 the MSRB will propose amendments to its rules that would assure that for future board elections that the Nominating Committee will be composed of a majority of public representatives and that would assure fair representation of bank representatives, broker-dealer representatives and advisor representatives (as such terms are defined below) on the Nominating Committee.

[7] *See* Section 975(b) of the Dodd-Frank Act.

[8] *See* Section 975(i) of the Dodd-Frank Act.

[9] Section 15B(b)(1) of the Exchange Act also provided that "[p]rior to the expiration of the terms of office of the initial members of the Board, an election shall be held under rules adopted by the Board (pursuant to subsection (b)(2)(B) of this section) of the members to succeed such initial members."

[10] Section 15B(b)(1)(A) defined the term "public representatives" to mean individuals who are not associated with any broker, dealer, or municipal securities dealer (other than by reason of being under common control with, or indirectly controlling, any broker or dealer which is not a municipal broker, municipal dealer or municipal securities dealer), at least one of whom shall be representative of investors in municipal securities, and at least one of whom shall be representative of issuers of municipal securities.

[11] Section 15B(b)(1)(B) defined the term "broker-dealer representatives" to mean individuals who are associated with and representative of municipal securities brokers and municipal securities dealers which are not banks or subsidiaries or departments or divisions of banks.

[12] Section 15B(b)(1)(C) defined the term "bank representatives" to mean individuals who are associated with and representative of municipal securities dealers which are banks or subsidiaries or departments or divisions of banks.

[13] *See* 15 U.S.C. 78o–4(b)(1)(A) (as amended by the Dodd-Frank Act).

[14] *See* 15 U.S.C. 78o–4(b)(1)(B) (as amended by the Dodd-Frank Act).

[15] *See* 15 U.S.C. 78o–4(b)(1) (as amended by the Dodd-Frank Act).

[16] *See* 15 U.S.C. 78o–4(b)(2)(B) (as amended by the Dodd-Frank Act).

[17] *See id.*

associated with a broker, dealer or municipal securities dealer.

For purposes of determining whether an individual is a "public representative," the MSRB proposes to add Rule A–3(h), among other things, to define the term "independent of any municipal securities broker, municipal securities dealer, or municipal advisor" to mean the individual has "no material business relationship" with any municipal securities broker, municipal securities dealer, or municipal advisor. The term "no material business relationship," in turn, would mean that, at a minimum, the individual is not and, within the last two years, was not associated with a municipal securities broker, municipal securities dealer, or municipal advisor, and that the individual does not have a relationship with any municipal securities broker, municipal securities dealer, or municipal advisor, whether compensatory or otherwise, that reasonably could affect the independent judgment or decision making of the individual. The Board, or by delegation, its Nominating Committee, could also determine that additional circumstances involving the individual could constitute a "material business relationship" with a municipal securities broker, municipal securities dealer, or municipal advisor.

To help ensure a fair nomination process, the MSRB also proposes, in its transitional provision under MSRB Rule A–3(i), to allow the Nominating Committee to solicit nominations for municipal advisor representatives by publishing a notice in a financial journal having general national circulation among members of the municipal securities industry on or after enactment of the Dodd-Frank Act. The proposal provides that the Nominating Committee shall accept recommendations for 14 days following the date of publication of such notice and shall make the names publicly available.[18]

The proposal also provides that prior to the formation of the Nominating Committee for purposes of nominating potential new members to the Board with terms commencing on October 1, 2011, the Board shall amend the provisions of subsection (c) of Rule A–3 relating to the composition and procedures of the Nominating Committee to reflect the composition of the Board as provided under the Dodd-Frank Act, to assure that the Nominating Committee shall be composed of a majority of public representatives and to assure fair representation of bank representatives, broker-dealer representatives and advisor representatives, and "to reflect such other considerations consistent with the provisions of the Act and the Dodd-Frank Act as the Board shall determine are appropriate."

II. Discussion of Comments and MSRB's Response

The Commission received ten comment letters and the MSRB's responses.[19] The MSRB provided two responses to the comments.[20] The comments and the MSRB's responses are discussed in greater detail below.

1. Comments Regarding Requirements Relating to Independence of Public Representatives

Some commenters disagreed with the MSRB's proposed definition of the term "independent of any municipal securities broker, municipal securities dealer, or municipal advisor."[21] In particular, these commenters did not agree with the proposed definition of "no material business relationship" and the requirement that an individual is not and, within the last two years, has not been, associated with a municipal securities broker, municipal securities dealer, or municipal advisor.[22] One commenter suggested that a five-year "cooling off" period would be more appropriate.[23] Another commenter stated that under the proposed definition of the term "independent of any municipal securities broker, municipal securities dealer, or municipal advisor," it is unclear whether any independent municipal advisor would be appointed to the Board because potentially 100% of the Board members could be, or could have been, associated with, or employed by, a municipal securities broker or dealer.[24] This commenter stated that it believes that an individual who has been affiliated with, or employed by, a municipal securities broker, dealer, or municipal advisor cannot be truly independent, regardless of when the affiliation or employment ended.[25] Thus, the commenter recommended that public representatives of the Board should consist solely of individuals "who have never been associated with, employed by and do not otherwise possess a material business relationship with a [sic] municipal securities brokers, municipal securities dealers, or municipal advisors."[26]

In response to these comments, the MSRB stated that it believes that "the two-year cooling off period is appropriate as a standard for independence" and referenced the one year cooling-off period imposed by other self-regulatory organizations ("SROs") in determining the independence of public members.[27] Further, the MSRB noted that the Board or the Nominating Committee could determine whether other circumstances involving the individual would constitute a "material business relationship" that would result in the person not being viewed as independent.[28]

The Commission understands commenters' concerns regarding whether a public representative would be "independent of any municipal securities broker, municipal securities dealer, or municipal advisor" if the public representative previously has been associated with a municipal securities broker, municipal securities dealer, or municipal advisor, even where such association occurred at least two years prior to membership on the Board. Under Section 15B(b)(2)(B)(iv) of the Exchange Act,[29] the MSRB must have rules establishing requirements regarding the independence of public representatives. The Commission believes the proposed requirements in Rule A–3(h) are consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to the MSRB. In particular, as noted by the MSRB in the MSRB Response Letter, the proposal is consistent with and indeed, stricter than, cooling-off periods required by other SROs in determining whether public members are independent.[30] Further, the proposed two-year cooling off period is a minimum requirement and, as noted by the MSRB in the MSRB Response Letter, the proposal would allow the Board, or by delegation, its Nominating Committee, to determine

[18] The Dodd-Frank Act was signed into law on July 21, 2010. The MSRB published a notice on July 22, 2010, pursuant to which it received a number of additional recommendations for persons to serve as municipal advisor representatives on the Board. *See* MSRB Notice 2010–22 (July 22, 2010).

[19] *See supra* note 5.

[20] *See* MSRB Response Letter; *see also* MSRB Supplemental Response Letter.

[21] *See* AGFS Letter I; WM Financial Letter.

[22] *See id.*

[23] *See* AGFS Letter I.

[24] *See* WM Financial Letter.

[25] *See id.*

[26] *See id.*

[27] *See* MSRB Response Letter; *see also infra* note 30.

[28] *See* MSRB Response Letter.

[29] 15 U.S.C. 78o—4(b)(2)(B)(iv) (as amended by the Dodd-Frank Act).

[30] *See* Independence Policy of the NYSE Euronext Board of Directors (stating a "Director is not independent if he or she is, or within the last year was, or has an immediate family member who is, or within the last year was a Member, allied member or allied person or approved person * * *").

additional circumstances involving the individual that would constitute a "material business relationship" with a municipal securities broker, municipal securities dealer, or municipal advisor.

2. Comments Regarding Composition of the Board

Several commenters expressed concerns that the representation of municipal advisors on the proposed Board is inadequate.[31] For example, one commenter noted that during the transitional period (from October 1, 2010 to September 30, 2012), advisor representatives would constitute less than 15% of the entire Board and consequently may be outnumbered by broker-dealer representatives and bank representatives on the Board.[32] This commenter suggested that four out of the ten regulated representatives should be advisor representatives and that these four advisor representatives should represent a variety of advisors.[33] Another commenter recommended that five out of the ten regulated representatives should be advisor representatives, four of whom would be independent municipal advisors who are not, and have not been, associated with, or employed by, a municipal securities broker, dealer, bank or underwriter.[34] This commenter, however, noted that even with this increase in the number of municipal advisor representatives, such representatives would constitute only 19% of the entire Board.[35] Another commenter suggested that the number of independent advisor representatives on the Board should be equal to the number of bank and broker-dealer representatives on the Board.[36] One commenter stated that due to the different services offered by municipal advisors, a strict limitation on the number of advisor representatives could not adequately represent this diversity.[37] Five commenters stated that advisor representatives should be independent of bank and broker-dealer representatives because bank dealers and broker-dealers are already represented on the Board.[38]

One commenter stated that the Board should not require that at least 30% of regulated representatives be advisor representatives.[39] This commenter stated that the proposal goes beyond the requirements of the Dodd-Frank Act and effectively increases the minimum number of advisor representatives.[40] This commenter further stated that advisors who work for dealers should be eligible as advisor representatives.[41] Another commenter generally supported the proposed amendments to Rule A–3, but suggested that after the transitional period, the Board should consider reducing its size back to 15 members and, at that time, reduce the number of advisor representatives on the Board to less than 30% of the regulated representatives.[42] This commenter further noted that the Board should not establish, as a matter of policy, that advisors make up at least 30% of regulated representatives, especially because the Board has not established a minimum number of dealer or bank representatives.[43] This commenter also stated that it believes that the requirement that at least one member of the Board be an advisor representative can be satisfied by representatives of "independent" municipal advisors or of dealers or banks whose firms also provide municipal advisory services.[44]

One commenter suggested that the proposed MSRB Board does not provide adequate issuer representation.[45] This commenter recommended that the public representatives on the Board be comprised of four issuers, four investors, and three general public members.[46] The commenter believes that the issuer members should represent various-sized state and local governments.[47] This commenter also recommended that "[a]s the MSRB determines the composition of future boards, these numbers—as a percentage of the total number of board members—should not be altered."[48] Another commenter stated that the Board should be comprised of five investor representatives, five issuer representatives, and five vendor representatives.[49]

In its response, the MSRB stated that it believes that, during the transitional period, 30% regulatory representation on the Board for municipal advisors is appropriate because it will ensure fair representation of such entities, will assist the Board in its rulemaking process with respect to municipal advisors and "will inform the Board's decisions regarding other municipal advisory activities while not detracting from the Board's ability to continue its existing rulemaking duties with respect to broker-dealer and bank activity in the municipal securities markets."[50] The MSRB also noted that, during the transitional period, the three municipal advisors on the Board are expected to be "advisors that are not affiliated with broker-dealers or banks."[51]

At the same time, the MSRB noted that it does not believe that setting the minimum advisor representation at 30% of regulated representatives is too low.[52] In support, the MSRB noted the processes it has, or will have, in place, to maximize municipal advisor participation in the rulemaking process.[53] The MSRB also stated that, having reviewed the composition requirements of other SROs, "it is comfortable that the proposed size and composition of the MSRB represents best practices in SRO governance and will be effective in meeting the full range of obligations that the MSRB will be undertaking beginning on October 1, 2010."[54]

With respect to comments regarding the composition of public representatives on the Board, the MSRB stated that "it is comfortable that the expanded number of public representatives will provide ample opportunity for municipal entity representation on the Board at levels above those that have historically occurred under the prior Board composition formulation that limited public representation to only five members."[55] In addition, with respect to the one commenter that suggested that the Board should be comprised of five

[31] *See* NAIPFA Letter; Swap Financial Group Letter; AGFS Letter I; AGFS Letter II; WM Financial Letter; *see also* GFOA Letter.

[32] *See* Swap Financial Group Letter.

[33] *See id.* The commenter suggested that the four advisor representatives should represent each of the following categories: (1) General financial advisory firm with a national scope; (2) regional financial advisory firm whose client base is principally governmental entities; (3) financial advisory firm whose client base is obligors who borrow through tax-exempt conduit agencies; and (4) swap or financial products advisor.

[34] *See* WM Financial Letter.

[35] *See id.*

[36] *See* GFOA Letter; *see also* AGFS Letter II (stating that independent advisor representatives should be equal in numbers to broker-dealer representatives and bank representatives as municipal securities dealers are in an adverse role in relation to municipal issuers, while municipal advisors represent only the municipal issuers).

[37] *See* AGFS Letter I.

[38] *See* WM Financials Letter; NAIPFA Letter; GFOA Letter; Fieldman letter; AGFS Letter II.

[39] *See* BDA Letter.

[40] *See id.*

[41] *See id.*

[42] *See* SIFMA Letter.

[43] *See id.*

[44] *See id.*

[45] *See* GFOA Letter; *see also* NAIPFA Letter (stating that "fair representation also means that the issuers of municipal securities are appropriately represented").

[46] *See* GFOA Letter.

[47] *See id.*

[48] *See id.*

[49] *See* Olson Letter.

[50] *See* MSRB Response Letter.

[51] *See id.*

[52] *See id.*

[53] *See id.* (noting, for example, the establishment of a new advisory council to help address municipal advisor issues).

[54] *See id.*

[55] *See* MSRB Response Letter.

investor representatives, five issuer representatives, and five vendor representatives,[56] the MSRB noted that such composition formulation would not comply with the Dodd-Frank Act, which requires that of the public representatives, at least one must be an investor representative, at least one must be an issuer representative, and at least one must be a general public representative.

The MSRB noted that the Board is aware that municipal advisors are not homogeneous and is committed to seeking out all categories of members based on various criteria.[57] In addition, the MSRB stated that the proposal would establish the Board composition for a two year transitional period only and, at the end of the transitional period, the MSRB will be in a better position to make "long-term decisions" regarding representation, size and related matters.[58]

The Commission believes that the proposal is consistent with the requirements of the Exchange Act, and the rules and regulations thereunder applicable to the MSRB, including the fair representation requirements of the Exchange Act. Section 15B(b)(2)(B) of the Exchange Act requires, among other things, that the rules of the Board establish fair procedures for the nomination and election of members of the Board and assure fair representation in such nominations and elections of public representatives, broker-dealer representatives, bank representatives, and advisor representatives.[59] Section 15B(b)(2)(B)(i) of the Exchange Act provides that the number of public representatives of the Board must at all times exceed the total number of regulated representatives.[60] The MSRB proposes that the Board consist of 11 public representatives and 10 regulated representatives. Of those 10 regulated representatives, the MSRB proposes that at least one, and not less than 30%, shall be advisor representatives.

Previously, the Commission has considered whether an SRO's proposed governance rules are consistent with the Exchange Act's requirements under Sections 6 and 15A for fair representation of SRO members generally.[61] For example, the Commission has approved an SRO's governance rules that require that the SRO's members as a whole be able select at least 20% of the total number of directors of the exchange's or association's board.[62] In addition, the Commission has previously found SRO rules that provide sub-categories of regulated persons with the right to select a specified number of directors to be consistent with the Exchange Act.[63]

Under the MSRB proposal, of the 10 regulated representatives, at least one would be a broker-dealer representative, at least one would be a bank representative, and at least one, and not less than 30% of the total regulated representatives (*i.e.* three out of 10), would be an advisor representative. Section 15B(b)(2)(B)(i) of the Exchange Act requires the Board to consist of a majority of public representatives, leaving a minority of the Board available to achieve "fair representation" of the three sub-categories of regulated representatives.[64] Accordingly, "fair representation" of each of the sub-categories must necessarily mean something less than the 20% standard, in relation to an entire board, previously approved by the Commission for SRO members generally under Sections 6 and 15A of the Exchange Act.

The Commission also notes that Section 15B(b)(1) of the Exchange Act sets forth minimum representation requirements for bank, broker-dealer and advisor representatives.[65] It does not mandate the specific number of any class of representative that should serve on the Board, nor does it set forth maximum Board composition or representation requirements.[66] Thus, as with the interpretation of "fair representation" with respect to other SROs, the Commission has flexibility in determining what constitutes "fair representation" for purposes of the Board's composition under Section 15B of the Exchange Act. Based on the constraints of Section 15B(b)(2)(B)(i) noted above, and the Commission's consideration of "fair representation" in other contexts, the Commission believes that the MSRB's proposal to ensure that representatives of municipal advisors (that are not associated with a broker, dealer or municipal securities dealer), which, for the first time will be subject to MSRB rulemaking,[67] would constitute at least 30% of the directors that may be representatives of the three sub-categories of regulated representatives, is reasonable, and consistent with Section 15B(b)(2)(B) of the Exchange Act.[68]

3. Other Comments

Four commenters discussed the MSRB's process for determining the Board's leadership for the next year.[69] Three commenters made statements expressing concern about a lack of transparency to this leadership selection process, and stated their belief that the Board's action was contrary to the goals of the Dodd-Frank Act and disenfranchises the new Board.[70]

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[56] *See* Olson Letter.

[57] *See* MSRB Response Letter.

[58] *See id.*

[59] *See* 15 U.S.C. 78o–4(b)(2)(B) (as amended by the Dodd-Frank Act).

[60] *See* 15 U.S.C. 78o–4(b)(2)(B)(i) (as amended by the Dodd-Frank Act).

[61] Section 6(b)(3) of the Exchange Act provides that: "An exchange may not be registered as a national securities exchange unless the Commission determines that * * * (3) The rules of the exchange assure fair representation of its members in its selection of its directors and administration of its affairs and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer." 15 U.S.C. 78f(b)(3). Section 15A(b)(4) of the Exchange Act contains an identical requirement with respect to the rules of a national securities association. *See* 15 U.S.C. 78*o*–3(b)(4).

[62] *See, e.g.,* Securities Exchange Act Release No. 58324 (August 7, 2008), 73 FR 46936 (August 12, 2008) (stating that "the requirement under BSE By-Laws that at least 20% of the BSE Directors represent members * * * [is] designed to ensure the fair representation of BSE members on the BSE Board"); Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (stating that "the requirement in [Nasdaq's] By-Laws that twenty percent of the directors be 'Member Representative Directors' * * * provides for the fair representation of members in the election of directors * * * consistent with the requirement in Section 6(b)(3) of the Exchange Act"); Securities Exchange Act Release No. 48946 (December 17, 2003), 68 FR 74678 (December 24, 2003) (stating that the amended Constitution of the New York Stock Exchange, which gives Exchange members the ability to nominate no less than 20% of the directors on the Board, satisfies the Section 6(b)(3) fair representation requirement); *see also* Securities Exchange Act Release No. 50699 (November 18, 2004), 69 FR 71126 (December 8, 2004) (stating that "[c]onsistent with the fair representation requirement, the [Commission's] proposed [SRO] governance rules would require that the Nominating Committee administer a fair process that provides members with the opportunity to elect at least 20% of the total number of directors ('member candidates'). * * * This '20% standard' for member candidates comports with previously-approved SRO rule changes that raised the issue of fair representation").

[63] *See, e.g.,* Securities Exchange Act Release No. 56145 (July 26, 2007), 72 FR 42169 (August 1, 2007) (approving the composition of the FINRA (f/k/a NASD) Board of Governors to include three small firm Governors, one mid-size firm Governor, and three large-firm Governors, elected by members of FINRA according to their classification as a small firm, mid-size firm, or large firm).

[64] *See* 15 U.S.C. 78o–4(b)(2)(B)(i) (as amended by the Dodd-Frank Act).

[65] *See* 15 U.S.C. 78o–4(b)(1) (as amended by the Dodd-Frank Act).

[66] *See id.*

[67] *See* 15 U.S.C. 78o–4(b)(2) (as amended by the Dodd-Frank Act). In addition, the Dodd-Frank Act amended Section 15B of the Exchange Act to require municipal advisors to register with the Commission as of October 1, 2010. *See* Securities Exchange Act Release No. 62824 (September 1, 2010), 75 FR 54465 (September 8, 2010) (adopting interim final temporary Rule 15Ba2–6T under the Exchange Act to require the temporary registration of municipal advisors on Form MA–T).

[68] *See* 15 U.S.C. 78o–4(b)(2)(B) (as amended by the Dodd-Frank Act).

[69] *See* NAIPFA Letter; GFOA Letter; Fieldman Letter; AGFS Letter II.

[70] *See* NAIPFA Letter; Fieldman Letter; AGFS Letter II.

Another commenter also expressed concern with the "secrecy around the election of officers during this past summer."[71] One commenter recommended "reversing the July election and allowing the reconstituted public majority Board to determine its leadership."[72] Two commenters suggested that there be substantially more transparency with regard to Board action.[73]

Although the provisions of the proposed rule change do not directly relate to these matters, the Commission notes that with respect to comments regarding the Board's election of its officers for the 2011 fiscal year, in its initial response, the MSRB noted that officer elections are governed by MSRB Rule A–5(b), and that the MSRB followed the process set out in that rule.[74] In addition, in a supplemental response, the MSRB has agreed to hold a ratification vote with respect to the prior election of the MSRB officers by the newly constituted Board at its first meeting in October.[75] In addition, as noted above, the proposal provides that prior to the formation of the Nominating Committee for purposes of nominating potential new members to the Board with terms commencing on October 1, 2011, the Board shall amend the provisions of subsection (c) of Rule A–3 relating to the composition and procedures of the Nominating Committee to reflect, among other things, the composition of the Board as provided under the Dodd-Frank Act and to assure that the Nominating Committee shall be composed of a majority of public representatives and to assure fair representation of bank representatives, broker-dealer representatives and advisor representatives.

With respect to the comments regarding transparency of the Board's governance process, the MSRB stated that it believes that these processes are transparent.[76] The MSRB stated, however, that it would take the comments regarding these processes under advisement as its new Board is seated on October 1, 2010.[77]

III. Discussion and Commission's Findings

The Commission has carefully considered the proposed rule change, the comment letters received, and the MSRB's responses to the comment letters and finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to the MSRB.[78] In particular, the proposed rule change is consistent with Section 15B(b)(1) of the Act, which requires, among other things, that the Board shall consist of at least eight public representatives (with at least one investor representative, at least one issuer representative, and at least one general public representative) and seven regulated representatives (with at least one broker-dealer representative, at least one bank representative, and at least one advisor representative). The proposed rule change is also consistent with Section 15B(b)(2)(B) of the Act,[79] which requires, among other things, that the rules of the Board shall establish fair procedures for the nomination and election of members of the Board and assure fair representation in such nominations and elections of public representatives, broker-dealer representatives, bank representatives, and advisor representatives.[80]

In the Commission's view, the proposed composition of the Board is consistent with the requirements of the Exchange Act that there is fair representation on the Board of public representatives, broker-dealer representatives, bank representatives and advisor representatives. In addition, the composition of the Board with respect to advisor representatives will help assure that municipal advisors will have appropriate representation on the Board during this period of transition when, for the first time, municipal advisors will be subject to MSRB rulemaking. The Commission further believes that the proposed two-year "cooling-off" period for public representatives is appropriate because it is a minimum requirement for establishing independence and it is consistent with other SRO requirements for establishing independence of board members.

The Commission notes that the proposed rule change with respect to the composition of the Board is being implemented as a transitional provision that will be effective for two years, until September 30, 2012. During this period, the MSRB will be able to monitor the effectiveness of the structure of the Board to determine to what extent, if any, proposed changes might be appropriate. The Commission is sensitive to commenters' concerns regarding fair representation. The Commission notes that the proposal by the MSRB for the establishment of a permanent Board structure must be filed with, and considered by, the Commission pursuant to Section 19(b) of the Exchange Act[81] before the proposal can be effective, as would rules the MSRB seeks to implement with respect to oversight of municipal advisors.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether Amendment No. 1 is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–MSRB–2010–08 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–MSRB–2010–08. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the

[71] *See* AGFS Letter I. The commenter suggested that the Board release all staff and Board member analyses and communications relating to: (1) the selection of the new officers and Board members, and the composition and structure of committees and advisory groups; (2) the need for regulation of municipal advisors; or (3) contacts with members of Congress and congressional staff members regarding municipal advisor regulation and the composition of the new independent Board. The commenter also opposed the manner in which the Board considers and takes actions with regard to its rules. *See also* AGFS Letter II (calling for the MSRB to hold open meetings on all rulemaking actions and selection of Board members and officers).

[72] *See* Fieldman Letter. *See also* GFOA Letter.

[73] *See* AGFS Letter I; Fieldman Letter; AGFS Letter II.

[74] *See* MSRB Response Letter.

[75] *See* MSRB Supplemental Response Letter.

[76] *See* MSRB Response Letter; *see also* MSRB Supplemental Response Letter.

[77] *See id.*

[78] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[79] 15 U.S.C. 78o–4(b)(2)(B) (as amended by the Dodd-Frank Act).

[80] *See id.*

[81] *See* 15 U.S.C. 78s(b).

Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the MSRB. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MSRB–2010–08 and should be submitted on or before October 27, 2010.

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause for approving the proposed rule change, as modified by Amendment No. 1, before the 30th day after the date of publication in the **Federal Register.** The Commission notes that the proposal was published for notice and comment, and the Commission received ten comment letters, which comments have been discussed in detail above. Amendment No. 1 proposes to amend proposed Rule A–3(i)(i)(B)(3) to explicitly provide that, of the regulated representatives on the Board, "at least one, and not less than 30 percent of the total number of regulated representatives, shall be associated with and representative of municipal advisors and shall not be associated with a broker, dealer or a municipal securities dealer." The Commission notes that in the MSRB's Response Letter, the MSRB expressed its expectation that the advisor representatives would be "advisors that are not affiliated with broker-dealers or banks."[82] Amendment No. 1 provides additional clarification that the advisor representatives on the Board during the transitional period will be independent advisors not associated with brokers, dealers or municipal securities dealers.

In addition, Amendment No. 1 proposes that, with respect to the formation of the Nominating Committee for purposes of nominating potential new members of the Board with terms commencing on October 1, 2011, the Board shall amend the provisions of section (c) of Rule A–3 relating to the composition and procedures of the Nominating Committee, among other things, to assure that the Nominating Committee shall be composed of a majority of public representatives and to assure fair representation of bank representatives, broker-dealer representatives and advisor representatives. Section 15B(b)(2)(B) of the Exchange Act provides that the MSRB's rules must, at a minimum, "establish fair procedures for the nomination and election of members of the Board and assure fair representation in such nominations and elections of public representatives, broker dealer representatives, bank representatives, and advisor representatives."[83] In addition, as discussed above, Section 15B(b)(2)(B)(i) of the Exchange Act provides that the MSRB's rules shall provide that the number of public representatives of the Board shall at all times exceed the total number of regulated representatives. Amendment No. 1 proposes that the Nominating Committee would reflect the new composition of the Board with a majority public representation and with fair representation of bank representatives, broker-dealer representatives and advisor representatives.

The Commission believes that Amendment No. 1 is consistent with the requirements of the Exchange Act and finds good cause, consistent with Section 19(b)(2) of the Act,[84] to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

VI. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to the MSRB, and in particular, Sections 15B(b)(1)[85] and 15B(b)(2)[86] of the Exchange Act.

It is therefore ordered that, pursuant to Section 19(b)(2) of the Exchange Act,[87] the proposed rule change (SR–MSRB–2010–08), as modified by Amendment No. 1 be, and it hereby is, approved on an accelerated basis.

By the Commission.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–25108 Filed 10–5–10; 8:45 am]

BILLING CODE 8010–01–P

[82] *See* MSRB Response Letter.

[83] 15 U.S.C. 78o–4(b)(2)(B) (as amended by the Dodd-Frank Act).

[84] 15 U.S.C. 78s(b)(2).

[85] 15 U.S.C. 78o–4(b)(1) (as amended by the Dodd-Frank Act).

[86] 15 U.S.C. 78o–4(b)(2) (as amended by the Dodd-Frank Act).

[87] 15 U.S.C. 78s(b)(2).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[DOT Docket No. DOT–OST–2010–0074]

Future of Aviation Advisory Committee (FAAC)

AGENCY: U.S. Department of Transportation, Office of the Secretary of Transportation.

ACTION: The Future of Aviation Advisory Committee (FAAC); Notice of Meeting.

SUMMARY: The Department of Transportation, Office of the Secretary of Transportation, announces the fourth meeting of the FAAC, which will be held in the Los Angeles area. This notice announces the date, time and location of the meeting, which will be open to the public. The purpose of FAAC is to provide advice and recommendations to the Secretary of Transportation to ensure the competitiveness of the U.S. aviation industry and its capability to effectively manage the evolving transportation needs, challenges, and opportunities of the global economy.

DATES: The meeting will be held on October 20, 2010, from 8:30 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at the offices of the Federal Aviation Administration's Western-Pacific Region Headquarters Building, 15000 Aviation Boulevard, Lawndale, CA 90261.

FOR FURTHER INFORMATION CONTACT: Pamela Hamilton, Designated Federal Official, Future of Aviation Advisory Committee, 202–267–9677, *FAAC@dot.gov.*

SUPPLEMENTARY INFORMATION: The advisory committee will also meet on the following date this year:

- December 15
  Location: U.S. Department of Transportation Headquarters, West Atrium, 1200 New Jersey Avenue, SE., Washington, DC 20590.

Members of the public may review the FAAC charter and minutes of FAAC meetings at *http://www.regulations.gov* in docket number DOT–OST–2010–0074 or the FAAC Web site at *http://www.dot.gov/faac.*

Agenda: A copy of the detailed agenda will be posted at *http://www.dot.gov/faac.*

Public Access: The meeting is open to the public. (*See* below for registration instructions.)

Entering the FAA Building:

- A valid form of government issued ID with an expiration date is required.
- Registration is from 7:15 a.m. to 8:30 a.m. Please arrive early for parking, security clearance, and escort to meeting room.
- Only pre-registered attendees may attend the meeting.
- Attendees must be screened and pass through a metal detector.
- No firearms are allowed in the building, including with protection detail.
- Special accessibility requirements should be noted at time of email registration.
- Parking is available in the East parking lot using the Marine Avenue entrance. Parking is limited to a maximum of 125 public registrants and all vehicles will be inspected. Car-pooling or use of public transportation is recommended.
- Public Transportation information: The Marine Station stop on the Metro Green Line is two blocks east of the FAA regional office building. See www.metro.net for Metro Green Line trip planning. Information on city buses is available at www.mta.net.

Public Comments: The public will be provided the opportunity on-site to address comments to the committee during the meeting. Comments to the committee can also be made in writing in advance of the meeting. Comments received by close of business on October 18, 2010, will be used to inform the day's discussions. Written comments should address one or more of the five topics (competition, environment, finance, safety and workforce/labor) that were published in the Federal Advisory Committee Charter at *http://www.regulations.gov* (Docket DOT–OST–2010–0074). You may file comments identified by the docket number DOT–OST–2010–0074 using any of the following methods:

- *Federal eRulemaking Portal:* go to *http://www.regulations.gov* and follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave., SE., Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Ave., SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *E-mail:* In addition, you may send a written copy of your comments and questions to *FAAC@dot.gov* and include one of the following in the subject line when making your e-mail submission; "Financing," "Safety," "Environment," "Workforce/Labor," "Competition," and/or "General comment."

Registration

- Space is limited. Registration will be available first-come, first-serve. Once the maximum number of 125 registrants has been reached, registration will close. Requests to attend the meeting must be received by close of business on Friday, October 15.
- All foreign nationals must register and provide their date of birth and passport number and country of issue by Friday, October 1.
- Persons with disabilities who require special assistance should advise the Department at *FAAC@dot.gov,* under the subject line of "Special Assistance" of their anticipated special needs as early as possible.
- *To register:* Send an e-mail to *FAAC@dot.gov* with "Registration" in the subject line including the following information:
  - Last name, First name
  - Title (if any)
  - Company or affiliation (if any)
  - Address
  - Phone number
  - US Citizen (Y/N)
  - E-mail address in order for us to confirm your registration
- The Federal Aviation Administration building is a secure Federal facility.
- Lunch will be available for purchase on-site (cash only).
- An e-mail will be sent confirming your registration along with details on security procedures for entering the Federal Aviation Administration building.
- There is no Internet access. Bringing computers into the building requires additional security screening.

Issued on: September 30, 2010.

Ray LaHood,

Secretary of Transportation.

[FR Doc. 2010–25199 Filed 10–1–10; 4:15 pm]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Notice and Request for Comments

AGENCY: Surface Transportation Board, DOT.

ACTION: 30-Day notice of request for approval: report of fuel cost, consumption, and surcharge revenue.

SUMMARY: As required by the Paperwork Reduction Act of 1995, 44 U.S.C. 501–3519 (PRA), the Surface Transportation Board (STB or Board) has submitted a request to the Office of Management and Budget (OMB) for an extension of approval for the collection of the Rail Fuel Surcharge Report. The Board previously published a notice about this collection in the **Federal Register** on June 29, 2010, at 75 FR 37,522. That notice allowed for a 60-day public review and comment period. No comments were received. The Rail Fuel Surcharge Report is described in detail below. Comments may now be submitted to OMB concerning (1) the accuracy of the Board's burden estimates; (2) ways to enhance the quality, utility, and clarity of the information collected; (3) 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, when appropriate; and (4) whether this collection of information is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility.

Description of Collection

Title: Report of Fuel Cost, Consumption, and Surcharge Revenue.

OMB Control Number: 2140–0014.

STB Form Number: None.

Type of Review: Extension without change.

Respondents: Class I railroads (railroads with operating revenues exceeding $250 million in 1991 dollars).

Number of Respondents: 7.

Estimated Time per Response: 1 hour.

Frequency: Monthly.

Total Burden Hours (annually including all respondents): 84 hours.

Total "Non-hour Burden" Cost: None identified.

Needs and Uses: Under 49 U.S.C. 10702, the Surface Transportation Board has the authority to address the reasonableness of a rail carrier's practices. The proposed information collection is intended to permit the Board to monitor the current fuel surcharge practices of the Class I carriers. Failure to collect this information would impede the Board's ability to monitor the current fuel surcharge practices of Class I carriers. The Board has authority to collect information about rail costs and revenues under 49 U.S.C. 11144 and 11145.

Retention Period: Information in this report is maintained on the Board's website for a minimum of one year and is otherwise maintained by the Board for a minimum of two years.

DATES: Comments on this information collection should be submitted by November 5, 2010.

ADDRESSES: Written comments should be identified as "Paperwork Reduction Act Comments, Surface Transportation Board, Rail Fuel Surcharge Report." These comments should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Chandana Achanta, Surface Transportation Board Desk Officer, by fax at (202) 395–6974; by mail at Room 10235, 725 17th Street, NW., Washington, DC 20503; or by e-mail at *OIRA_SUBMISSION@OMB.EOP.GOV.*

FOR FURTHER INFORMATION CONTACT:FOR FURTHER INFORMATION OR TO OBTAIN A COPY OF THE STB FORM, CONTACT: For additional information or copies of the Rail Fuel Surcharge Report form, contact Marcin Skomial at (202) 245–0344 or *skomialm@stb.dot.gov,* or Paul Aguiar at (202) 245–0323 or *paul.aguiar@stb.dot.gov.* Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Under the PRA, a Federal agency conducting or sponsoring a collection of information must display a currently valid OMB control number. A collection of information, which is defined in 44 U.S.C. 3502(3) and 5 CFR. 1320.3(c), includes agency requirements that persons submit reports, keep records, or provide information to the agency, third parties, or the public. Under § 3506(b) of the PRA, Federal agencies are required to provide, concurrent with an agency's submitting a collection to OMB for approval, a 30-day notice and comment period, through publication in the **Federal Register,** concerning each proposed collection of information, including each proposed extension of an existing collection of information.

Dated: October 1, 2010.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2010–25104 Filed 10–5–10; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2010–0131]

Agency Information Collection Activities: Notice of Request for Extension of Currently Approved Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of request for extension of currently approved information collection.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for renewal of an existing information collection that is summarized below under **SUPPLEMENTARY INFORMATION.** The **Federal Register** notice with a 60-day public comment period soliciting comments on this information collection was published on July 22, 2010. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by November 5, 2010.

ADDRESSES: You may send comments within 30 days to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer. You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the U.S. DOT's performance; (2) the accuracy of the estimated burden; (3) ways for the U.S. DOT to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. All comments should include the Docket number FHWA–2010–0131.

FOR FURTHER INFORMATION CONTACT: Michael Koontz, 202–366–2076, Office of Natural and Human Environment, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Congestion Mitigation and Air Quality (CMAQ) Improvement Program.

OMB Control Number: 2125–0614.

Background: Section 1808 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users of 2005 (SAFETEA–LU) calls for an Evaluation and Assessment of CMAQ Projects. The statute calls for the identification and analysis of a representative sample of CMAQ projects and the development and population of a database that describes the impacts of the program both on traffic congestion levels and air quality. To establish and maintain this database, the FHWA is requesting States to submit annual reports on their CMAQ investments that cover projected air quality benefits, financial information, a brief description of projects, and several other factors outlined in the Interim Program Guidance for the CMAQ program. States are requested to provide the end of year summary reports via the automated system provided through FHWA by the first day of March of each year, covering the prior Federal fiscal year.

Respondents: 51 (each State DOT, and Washington DC).

Frequency: Annually.

Estimated Average Burden per Response: 125 hours per annual report.

Estimated Total Annual Burden Hours: 6,375 hours.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued On: September 30, 2010.

Judith Kane,

Acting Chief, Management Programs and Analysis Division.

[FR Doc. 2010–25182 Filed 10–5–10; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA 2010–0130]

Agency Information Collection Activities: Notice of Request for Extension of Currently Approved Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of request for extension of currently approved information collection.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for renewal of an existing information collection that is summarized below under **SUPPLEMENTARY INFORMATION.** The **Federal Register** notice with a 60-day public comment period soliciting comments on this information collection was published on July 22, 2010. We are required to publish this

notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by November 5, 2010.

ADDRESSES: You may send comments within 30 days to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer. You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the U.S. DOT's performance; (2) the accuracy of the estimated burden; (3) ways for the U.S. DOT to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. All comments should include the Docket number FHWA 2010–0130.

FOR FURTHER INFORMATION CONTACT: David Jones, 202–366–5053, Federal Highway Administration, Department of Transportation, Office of Highway Policy Information, 1200 New Jersey Avenue, SE., Washington, DC 20590, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Heavy Vehicle Travel Information System (HVTIS).

OMB Control Number: 2125–0587.

Background: Title 49, United States Code, section 301, authorizes the DOT to collect statistical information relevant to domestic transportation. The FHWA is continuing to develop the HVTIS to house data that will enable analysis of the amount and nature of truck travel at the national and regional levels. The information will be used by the FHWA and other DOT agencies to evaluate changes in truck travel in order to assess impacts on highway safety; the role of travel in economic productivity; impacts of changes in truck travel on infrastructure condition; and maintenance of our Nation's mobility while protecting the human and natural environment. The increasing dependence on truck transport requires that data be available to better assess its overall contribution to the Nation's well-being. In conducting the data collection, the FHWA will be requesting that State Departments of Transportations (SDOTs) provide reporting of traffic volume, vehicle classification, and vehicle weight data which they collect as part of their existing traffic monitoring programs, including other sources such as local governments and traffic operations. States and local governments collect traffic volume, vehicle classification data, and vehicle weight data throughout the year using weigh-in-motion devices. The data should be representative of all public roads within State boundaries. The data will allow transportation professionals at the Federal, State, and metropolitan levels to make informed decisions about policies and plans.

Respondents: 52 SDOTs, including the District of Columbia and Puerto Rico.

Frequency: Annually.

Estimated Average Burden per Response: Each of the SDOTs already collect traffic data for various purposes. In accordance with 23 USC 303, each State has a Traffic Monitoring System in place so the data collection burden relevant for this notice is the additional burden for each State to provide a copy of their traffic data using the record formats specified in the *Traffic Monitoring Guide.* Automation and online tools continue to be developed in support of the HVTIS and the capability now exists for online submission and validation of total volume data. The estimated average monthly burden is 3.5 hours for an annual burden of 42 hours. The annual reporting requirement is estimated to be 6 hours for the States and the District of Columbia and Puerto Rico. The combined burden from the monthly and annual reports is 48 hours per respondent.

Estimated Total Annual Burden Hours: Total burden will be 2,496 hours.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued On: September 30, 2010.

Judith Kane,

Acting Chief, Management Programs and Analysis Division.

[FR Doc. 2010–25186 Filed 10–5–10; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2010–0134]

Agency Information Collection Activities: Notice of Request for Extension of Currently Approved Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of request for extension of currently approved information collection.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for renewal of an existing information collection that is summarized below under **SUPPLEMENTARY INFORMATION**. The Federal Register notice with a 60-day public comment period soliciting comments on this information collection was published on July 23, 2010. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by November 5, 2010.

ADDRESSES: You may send comments within 30 days to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer. You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the U.S. DOT's performance; (2) the accuracy of the estimated burden; (3) ways for the U.S. DOT to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. All comments should include the Docket number FHWA–2010–0134.

FOR FURTHER INFORMATION CONTACT: John Nicholas, (202) 366–2317, Office of Freight Management and Operations, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Certification of Enforcement of Vehicle Size and Weight Laws.

OMB Control Number: 2125–0034.

Background: Title 23, U.S.C., section 141, requires each State, the District of Columbia and Puerto Rico to file an annual certification that they are enforcing their size and weight laws on Federal-aid highways and that their Interstate System weight limits are consistent with Federal requirements to be eligible to receive an apportionment of Federal highway trust funds. Section 141 also authorizes the Secretary to require States to file such information as is necessary to verify that their certifications are accurate. To determine whether States are adequately enforcing their size and weight limits, each must submit an updated plan for enforcing their size and weight limits to the FHWA at the beginning of each fiscal year. At the end of the fiscal year, they must submit their certifications and sufficient information to verify that their

enforcement goals established in the plan have been met. Failure of a State to file a certification, adequately enforce its size and weight laws and enforce weight laws on the Interstate System that are consistent with Federal requirements, could result in a specified reduction of its Federal highway fund apportionment for the next fiscal year. In addition, section 123 of the Surface Transportation Assistance Act of 1978 (Pub. L. 95–599, 92 Stat. 2689, 2701) requires each jurisdiction to inventory (1) its penalties for violation of its size and weight laws, and (2) the term and cost of its oversize and overweight permits.

Respondents: The State Departments of Transportation (or equivalent) in the 50 states, the District of Columbia, and the Commonwealth of Puerto Rico.

Frequency: Twice Annually.

Estimated Average Burden per Response: Each response will take approximately 40 hours.

Estimated Total Annual Burden Hours: 4,160 hours.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued On: September 30, 2010.

Judith Kane,

Acting Chief, Management Programs and Analysis Division.

[FR Doc. 2010–25189 Filed 10–5–10; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2010–0132]

Agency Information Collection Activities: Notice of Request for Extension of Currently Approved Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of request for extension of currently approved information collection.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for renewal of an existing information collection that is summarized below under **SUPPLEMENTARY INFORMATION**. The **Federal Register** notice with a 60-day public comment period soliciting comments on this information collection was published on July 22, 2010. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by November 5, 2010.

ADDRESSES: You may send comments within 30 days to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer. You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the U.S. DOT's performance; (2) the accuracy of the estimated burden; (3) ways for the U.S. DOT to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. All comments should include the Docket number FHWA–2010–0132.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony DeSimone, (317) 226–5307, Office of Program Administration, Federal Highway Administration, Department of Transportation, 575 North Pennsylvania Street, Room 254, Indianapolis, Indiana, 46204, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Preparation and Execution of the Project Agreement and Modifications.

OMB Control Number: 2125–0529

Background: Formal agreements between State Transportation Departments and the FHWA are required for Federal-aid highway projects. These agreements, referred to as "project agreements" are written contracts between the State and the Federal government that define the extent of work to be undertaken and commitments made concerning a highway project. Section 1305 of the Transportation Equity Act for the 21st Century (TEA–21, Pub. L. 105–178) amended 23 U.S.C. 106(a) and combined authorization of work and execution of the project agreement for a Federal-aid project into a single action. States continue to have the flexibility to use whatever format is suitable to provide the statutory information required, and burden estimates for this information collection are not changed.

Respondents: There are 56 respondents, including 50 State Transportation Departments, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Territories of Guam, the Virgin Islands and American Samoa.

Frequency: Annually.

Estimated Average Burden per Response: There is an average of 498 annual agreements per respondent. Each agreement requires 1 hour to complete.

Estimated Total Annual Burden Hours: 27,888 hours.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued On: October 1, 2010.

Judith Kane,

Acting Chief, Management Programs and Analysis Division.

[FR Doc. 2010–25188 Filed 10–5–10; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2010–0133]

Agency Information Collection Activities: Notice of Request for Extension of Currently Approved Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of request for extension of currently approved information collection.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for renewal of an existing information collection that is summarized below under **SUPPLEMENTARY INFORMATION**. The **Federal Register** notice with a 60-day public comment period soliciting comments on this information collection was published on July 23, 2010. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by November 5, 2010.

ADDRESSES: You may send comments within 30 days to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer. You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the U.S. DOT's performance; (2) the accuracy of the estimated burden; (3) ways for the U.S. DOT to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. All comments should include the Docket number FHWA–2010–0133.

FOR FURTHER INFORMATION CONTACT: Aquilla Carter, (202) 493–2906, Office of the Chief Financial Officer, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Voucher for Federal-aid Reimbursements.

OMB Control Number: 2125–0507

Background: The Federal-aid Highway Program provides for the reimbursement to States for expenditure of State funds for eligible Federal-aid highway projects. The Voucher for Work Performed under Provisions of the Federal Aid and Federal Highway Acts as amended is utilized by the States to provide project financial data regarding the expenditure of State funds and to request progress payments from the FHWA. Title 23 U.S.C. 121(b) requires the submission of vouchers. The specific information required on the voucher is contained in 23 U.S.C. 121 and 117. Two types of submissions are required by recipients. One is a progress voucher where the recipient enters the amounts claimed for each FHWA appropriation, and the other is a final voucher where project costs are classified by work type. An electronic version of the Voucher for Work Performed under Provisions of the Federal Aid Highway Acts, as amended, Form PR–20, is used by all recipients to request progress and final payments.

Respondents: 50 State Transportation Departments, the District of Columbia, Puerto Rico, Guam, American Samoa, and the Virgin Islands.

Frequency: Annually.

Estimated Average Burden per Response: The respondents electronically submit an estimated total of 12,900 vouchers each year. Each voucher requires an estimated average of 30 minutes to complete.

Estimated Total Annual Burden Hours: 6,450 hours.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued On: October 1, 2010.

Judith Kane,

Acting Chief, Management Programs and Analysis Division.

[FR Doc. 2010–25184 Filed 10–5–10; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35410]

Adrian & Blissfield Rail Road Company—Continuance in Control Exemption—Jackson & Lansing Railroad Company

Adrian & Blissfield Rail Road Company (ADBF), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1180.2(d)(2) to continue in control of Jackson & Lansing Railroad Company (JAIL), upon JAIL's becoming a Class III rail carrier.[1]

This transaction is related to 2 other transactions for which notices of exemption have been simultaneously filed: Docket No. FD 35411, *Jackson & Lansing Railroad Company—Lease and Operation Exemption—Norfolk Southern Railway Company,* in which JAIL seeks an exemption under 49 CFR 1150.31 to lease from Norfolk Southern Railway Company (NSR), and to operate, approximately 44.5 miles of rail lines,[2] known as the Lansing Secondary, the Lansing Manufacturers Railroad, and segments of the Lansing Industrial Track; and Docket No. FD 35418, *Jackson & Lansing Railroad Company—Trackage Rights Exemption—Norfolk Southern Railway Company,* in which JAIL seeks to acquire, pursuant to an agreement with NSR, non-exclusive local and overhead trackage rights over approximately 1.06 miles of the line owned by NSR and currently leased to CSX Transportation, Inc., on the Lansing Secondary, between milepost LZ 36.8[3] in Lansing, Mich., and milepost 37.86 in North Lansing, Mich., for the sole purpose of interchanging with NSR.

This transaction may not be consummated until October 20, 2010, the effective date of the exemption (30 days after exemption was filed).

ADBF states that: (1) The rail lines to be operated by JAIL do not connect with the lines of ADBF or any other single railroad controlled by ADBF's corporate family; (2) the transaction is not part of a series of anticipated transactions that would result in such a connection; and (3) the transaction does not involve a Class I rail carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here because all of the carriers involved are Class III carriers.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than October 13, 2010 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35410, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, 1 copy of each pleading must be served on John D. Heffner, PLLC, and James H. M. Savage, Of Counsel, 1750 K Street, NW., Washington, DC 20006.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: October 1, 2010.

By the Board.

Rachel D. Campbell,

Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2010–25105 Filed 10–5–10; 8:45 am]

BILLING CODE 4915–01–P

[1] JAIL is a noncarrier entity, wholly owned and controlled by ADBF. In addition, ADBF currently controls through stock ownership 3 Class III carriers: The Charlotte Southern Railroad Company; the Detroit Connecting Railroad Company; and the Lapeer Industrial Railroad Company, all within the State of Michigan.

[2] In addition, JAIL will acquire from NSR incidental trackage rights over 2.96 miles of track on NSR's Michigan Main Line in Jackson, Mich., for the sole purpose of interchanging with NSR.

[3] JAIL states that, despite the apparent overlap, the boundary of the assigned trackage rights is distinct from the boundary of the Lansing Secondary. The apparent overlap is the result of an historical rounding error in NSR's engineering maps.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35411]

Jackson & Lansing Railroad Company—Lease and Operation Exemption—Norfolk Southern Railway Company

Under 49 CFR 1011.7(b)(10), the Director of the Office of Proceedings (Director) is delegated the authority to determine whether to issue notices of exemption for lease transactions under

49 U.S.C. 10902. However, the Board reserves to itself the consideration and disposition of all matters involving issues of general transportation importance. 49 CFR 1011.2(a)(6). Accordingly, the Board revokes the delegation to the Director with respect to the issuance of this notice of exemption. The Board determines that this notice of lease and operation exemption should be issued, and does so here.

Jackson & Lansing Railroad Company (JAIL), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31, *et seq.,* to lease and operate certain rail lines from Norfolk Southern Railway Company (NSR). Pursuant to the lease agreement, JAIL will lease the following rail lines from NSR: (1) The Lansing Secondary, located between the connection with NSR's Michigan Main Line at milepost LZ 0.0 in Jackson, Mich., and milepost LZ 36.9 in Lansing, Mich. (36.9 miles in length); (2) the Lansing Manufacturers Railroad, located between milepost XF 0.0 and milepost XF 5.1 in Lansing (5.1 miles in length); (3) the Lansing Industrial Track line segment located between milepost XM 57.1 and milepost XM 58.9 in Lansing (1.8 miles in length); and (4) the Lansing Industrial Track line segment between milepost UA 60.7 and milepost UA 61.4 in Lansing (approximately 0.7 miles in length).[1] The total length of the lines to be leased is 44.5 miles. In conjunction with the lease of these lines, NSR will also grant to JAIL limited incidental trackage rights over 2.6 miles of NSR's Michigan Main Line, between milepost NS 72.73 and milepost NS 75.67 (equal to milepost LZ 0.0) in Jackson, for the sole purpose of interchanging with NSR at NSR's Jackson Yard. The lease agreement will expire on December 31, 2030.

As required at 49 CFR 1150.33(h), JAIL has disclosed that the lease agreement contains a provision that would provide for a "Lease Credit" whereby JAIL may reduce its lease payments by receiving a credit for each car interchanged with NSR. JAIL notes that NSR initially proposed a fixed rental payment with no option to reduce the rent, but JAIL insisted on a lease credit option to provide an opportunity for JAIL to earn a lower rental payment so it would be able to invest in improvements on the lease lines to increase traffic levels. According to JAIL, the affected interchange point is Jackson.

This transaction is related to 2 other transactions for which notices of exemption have been simultaneously filed: Docket No. FD 35410, *Adrian & Blissfield Rail Road Company—Continuance in Control Exemption—Jackson & Lansing Railroad Company,* in which Adrian & Blissfield Rail Road Company seeks to continue in control of JAIL, upon JAIL's becoming a Class III rail carrier; and Docket No. FD 35418, *Jackson & Lansing Railroad Company—Trackage Rights Exemption—Norfolk Southern Railway Company,* in which JAIL seeks to acquire, pursuant to an agreement with NSR, non-exclusive local and overhead trackage rights over approximately 1.06 miles of line owned by NSR and currently leased to CSX Transportation, Inc., on the Lansing Secondary, between milepost LZ 36.8[2] in Lansing and milepost 37.86 in North Lansing, Mich., for the sole purpose of interchanging with NSR.

JAIL certifies that the projected annual revenues as a result of the proposed transaction will not exceed $5 million, and that JAIL will be a Class III carrier.

The transaction may not be consummated until October 20, 2010, the effective date of the exemption (30 days after the exemption was filed).

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed not later than October 13, 2010 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35411, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John D. Heffner, PLLC, and James H. M. Savage, Of Counsel, 1750 K Street, NW., Washington, DC 20006.

Board decisions and notices are available at our Web site at *http://www.stb.dot.gov.*

It is ordered:

1. The delegation of authority to the Director of the Office of Proceedings, under 49 CFR 1011.7(b)(10), to determine whether to issue a notice of exemption in this proceeding is revoked.

2. This decision is effective on the date of service.

Decided: October 1, 2010.

Jeffrey Herzig,

Clearance Clerk.

By the Board, Chairman Elliott, Vice Chairman Mulvey, and Commissioner Nottingham. Vice Chairman Mulvey dissented with a separate expression.

Vice Chairman Mulvey, dissenting:

I disagree with the Board's decision to allow this transaction to be processed under the Board's class exemption procedures. In this case, I would like to have more information about the likely impact of the proposed interchange commitment prior to permitting the exemption to become effective. I believe that it is incumbent for the Board to take a close look at interchange commitments, particularly when they contain outright bans on interchange with third-party carriers or, as here, economic incentives that can only be evaluated with the provision of additional information.

[FR Doc. 2010–25159 Filed 10–5–10; 8:45 am]

BILLING CODE 4915–01–P

[1] JAIL's lease and operation agreement was filed under seal pursuant to 49 CFR 1150.43(h)(1)(ii).

[2] JAIL states that, despite the apparent overlap, the boundary of the assigned trackage rights is distinct from the boundary of the Lansing Secondary. The apparent overlap is the result of an historical rounding error in NSR's engineering maps.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Eighty-Third Meeting: RTCA Special Committee 159: Global Positioning System (GPS).

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 159 meeting: Global Positioning System (GPS).

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 159: Global Positioning System (GPS).

DATES: The meeting will be held October 25–29, from 9 a.m. to 4:30 p.m. (unless stated otherwise).

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 159: Global Positioning System (GPS) meeting. The agenda will include:

Specific Working Group Sessions

Monday, October 25

- All Day, Working Group 2C, GPS/Inertial, MacIntosh–NBAA Room and Hilton–ATA Room.

Tuesday, October 26

- All Day, Working Group 2, GPS/WAAS, Colton Board Room.

Wednesday, October 27

- All Day, Working Group 2, GPS/WAAS, Colson Board Room.
- All Day, Working Group 4, Precision Landing Guidance (GPS/LAAS), MacIntosh–NBAA Room and Hilton–ATA Room.

Thursday, October 28

- (Proposed) 9—Noon, Joint Working Groups 2 & 4, Discussion—Nav and ADS–B Out Equipment Requirements, MacIntosh–NBAA Room and Hilton–ATA Room. (Otherwise WG–4 will meet All Day.)
- 1–4:30 Working Group 4, Precision Landing Guidance (GPS/LAAS), MacIntosh–NBAA & Hilton–ATA Room.
- All Day, Working Group 7, GPS/Antennas, ARINC Room.

Friday, October 29

Plenary Session—See Agenda Below

Agenda—Plenary Session—Agenda

June 11th, 2010—starting at 9 a.m.

MacIntosh–NBAA & Hilton–ATA Rooms

- Chairman's Introductory Remarks.
- Approval of Summary of the Eighty-Second Meeting held June 11, 2010, RTCA Paper No. 179–10/SC159–987.
- Review Working Group (WG) Progress and Identify Issues for Resolution.
  - GPS/3rd Civil Frequency (WG–1)
  - GPS/WAAS (WG–2)
  - GPS/GLONASS (WG–2A)
  - GPS/Inertial (WG–2C)
  - GPS/Precision Landing Guidance (WG-4)
  - GPS/Airport Surface Surveillance (WG–5)
  - GPS/Interference (WG–6)
  - GPS/Antennas (WG–7)
- Review of EUROCAE Activities.
- Nav and ADS–B Out Equipment Requirements—Discussion.
- Assignment/Review of Future Work.
- Other Business.
- Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 30, 2010.

Robert L. Bostiga,

RTCA Advisory Committee.

[FR Doc. 2010–25205 Filed 10–5–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

First Meeting: RTCA Special Committee 224: Airport Security Access Control Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 224 meeting: Airport Security Access Control Systems (Update to DO–230B).

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 224: Airport Security Access Control Systems.

DATES: The meeting will be held November 2, 2010, from 10 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, MacIntosh–NBAA Room and Hilton–ATA Room, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 224: Airport Security Access Control Systems (Update to DO–230B):

November 2, 2010

- Welcome/Introductions/Administrative Remarks
- Agenda Overview
- RTCA Functional Overview
- Previous Committee History
- Current Committee Scope, Terms of Reference Overview (Presentation)
- Discussion of Terms of Reference for This Update
- Discussion of Scope/Areas for This Update
- Organization of Work, Assign Tasks and Workgroups
- Presentation, Discussion, Recommendations
- Assignment of Responsibilities
- Other Business
- Establish Agenda for Next Meeting
- Date and Place of Next Meeting

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 30, 2010.

Robert L. Bostiga,

RTCA Advisory Committee.

[FR Doc. 2010–25203 Filed 10–5–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[NHTSA Docket No. NHTSA–2010–0136]

National Emergency Medical Services Advisory Council (NEMSAC); Teleconference Meeting

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of Teleconference Meeting.

SUMMARY: The NHTSA announces a teleconference meeting of NEMSAC to be held in October 2010. This notice announces the date, time and call-in information for the meeting, which will be open to the public. The purpose of NEMSAC is to serve as a nationally recognized council of emergency medical services representatives and consumers to provide advice and recommendations regarding Emergency Medical Services (EMS) to the U.S. DOT's NHTSA.

DATES: The teleconference meeting will be held on October 26, 2010, from 1 p.m. to 5 p.m., EDT. A public comment period will take place on October 26, 2010, between 4 p.m. to 4:15 p.m.

Comment Date: Written comments or requests to make oral presentations must be received by October 19, 2010.

ADDRESSES: The meeting will be held via teleconference only. Members of the public who wish to obtain the call-in number, access code, and other information for the teleconference may contact Drew Dawson as listed in the

FOR FURTHER INFORMATION CONTACT section by October 19, 2010. Persons may request time to make an oral presentation. Persons may also submit written comments. Written comments and requests to make oral presentations at the meeting should reach Drew Dawson at the address listed below or via the Document Management System and must be received by October 19, 2010.

All submissions received must include the docket number, NHTSA–2010–0136, and may be submitted by any one of the following methods: (1) You may submit or retrieve comments online through the Document Management System (DMS) at *http://www.regulations.gov/* under the docket number listed at the beginning of this notice. The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help guidelines are available under the help section of the Web site; (2) you may submit comments by E-mail to *drew.dawson@dot.gov* or *noah.smith@dot.gov;* or (3) you may submit comments by Fax to (202) 366–7149.

An electronic copy of this document may be downloaded from the **Federal Register**'s home page at *http://www.archives.gov* and the Government Printing Office's database at *http://www.access.gpo.gov/nara.*

Please note, that even after the comment closing date, we will continue to file relevant information in the docket as it becomes available.

FOR FURTHER INFORMATION CONTACT: Drew Dawson, Director, Office of Emergency Medical Services, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., NTI–140, Washington, DC 20590,Telephone number (202) 366–9966; E-mail *Drew.Dawson@dot.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act (FACA), Public Law 92–463, as amended (5 U.S.C. App. 1 *et seq.*) The NEMSAC will hold a meeting on Tuesday, October 26, 2010, via teleconference.

Agenda of Council Teleconference Meeting, October 26, 2010

The tentative agenda includes the following:

Tuesday, October 26, 2010

(1) Opening Remarks—Chair and Designated Federal Officer;

(2) Introduction of Members and all in attendance;

(3) Federal Advisory Council Act Overview;

(4) NHTSA Office of EMS Overview;

(5) Other Federal agency EMS activities;

(6) FICEMS Overview;

(7) Public Comment Period;

(8) Next Steps and Future Meetings.

While the entire meeting is open to the public, the public comment period will take place on October 26, 2010, between 4 p.m. and 4:15 p.m.

Public Attendance: The meeting is open to the public. Persons with disabilities who require special assistance should advise Drew Dawson of their anticipated special needs as early as possible. Members of the public who wish to make comments on Tuesday, October 26, between 4 p.m. and 4:15 p.m. are requested to register in advance. In order to allow as many people as possible to speak, speakers are requested to limit their remarks to 3 minutes. For those wishing to submit written comments, please follow the procedure noted above.

Individuals wishing to register for attendance in the teleconference must provide their name, affiliation, phone number, and e-mail address to Drew Dawson by e-mail at *drew.dawson@dot.gov* or by telephone at (202) 366–9966 no later than October 19, 2010. There will be limited call-in lines, so please register early. Pre-registration is necessary to enable proper arrangements.

Minutes of the NEMSAC Meeting will be available to the public online through the DOT Document Management System (DMS) at: *http://www.regulations.gov* under the docket number listed at the beginning of this notice and on *http://www.ems.gov*

Issued on: October 1, 2010.

Jeffrey P. Michael,

Associate Administrator for Research and Program Development.

[FR Doc. 2010–25164 Filed 10–5–10; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2010–0033]

Model Specifications for Breath Alcohol Ignition Interlock Devices (BAIIDs)

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice proposes revisions to the Model Specifications for Breath Alcohol Ignition Interlock Devices (BAIIDs). The Model Specifications are guidelines for the performance and testing of BAIIDs. These devices are designed to prevent a driver from starting a motor vehicle when the driver's breath alcohol concentration (BrAC) is at or above a set alcohol level. Most States currently use BAIIDs as a sanction for drivers convicted of driving while intoxicated offenses. In 1992, this technology was new. Now that it has matured, NHTSA proposes to revise the 1992 Model Specifications, to test BAIIDs for conformance and to maintain a conforming products list (CPL) of BAIIDs that have been found to meet the Model Specifications. These proposed revisions are based, in part, on input from interested parties during an open comment period.

DATES: Written comments may be submitted to this agency and must be received no later than December 6, 2010.

ADDRESSES: You may submit comments identified by DOT Docket ID Number NHTSA–2010–0033 by any of the following methods:

- *Electronic submissions:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *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.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Eastern Time, Monday through Friday, except Federal holidays.

Regardless of how you submit your comments, you should identify the Docket number of this document.

Instructions: For detailed instructions on submitting comments and additional information, *see http://www.regulations.gov.* Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the "Privacy Act" heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the complete User Notice and Privacy Notice for Regulations.gov at *http://www.regulations.gov/search/footer/privacyanduse.jsp.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Eastern Time, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: *For technical issues:* Ms. De Carlo Ciccel, Behavioral Research Division, NTI–131, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590; Telephone number: (202) 366–1694; E-mail: *decarlo.ciccel@dot.gov. For legal issues:* Ms. Jin Kim, Attorney-Advisor, Office of the Chief Counsel, NCC–113, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590; Telephone number: (202) 366–1834; E-mail: *jin.kim@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In 1992, the National Highway Traffic Safety Administration (NHTSA) adopted and published Model Specifications for Breath Alcohol Ignition Interlock Devices (BAIIDs). (57 FR 11772.) Ignition interlocks are alcohol breath-testing devices installed in motor vehicles that require the driver to provide a breath sample in order to start the engine and to provide a breath sample periodically while the engine is running. If the breath sample provided by the driver contains more than a predetermined alcohol concentration, the ignition interlock device prevents the vehicle from starting.

Before NHTSA adopted the Model Specifications, a number of States passed laws authorizing the use of "certified" BAIIDs. However, there was no single standard or test procedure among the States for certifying BAIIDs. Manufacturers of ignition interlock devices requested that the Federal Government develop and issue standards for certifying such devices rather than leaving the industry subject to numerous State standards and test requirements. After notice and comment, NHTSA adopted the Model Specifications for BAIIDs to provide a degree of consistency.

Since the Model Specifications were adopted in 1992, many States have incorporated them or some variation into their certification requirements. Persons required to use BAIIDs are generally under the direct supervision of a court or another State agency (*e.g.,* Motor Vehicle Administration). As of March 2010, 47 States and the District of Columbia allow the use of BAIIDs for some driving while intoxicated (DWI) offenders. Of these States, 22 mandate the use of BAIIDs for repeat DWI offenders, and 13 mandate or highly incentivize the use of BAIIDs by all DWI offenders, including first-time offenders.

While many States have incorporated the Model Specifications to certify BAIIDs used by DWI offenders, there remains considerable variability among State certification requirements. Due to this variability and to rapid technological advances in the industry, States and manufacturers of BAIIDs have requested that NHTSA test the devices against the Model Specifications and maintain a conforming products list (CPL) of devices found to meet the Model Specifications, similar to CPLs that NHTSA maintains for other breath alcohol measuring devices, such as Alcohol Screening Devices, Evidential Breath Testers, and Calibrating Units for Breath Alcohol Testers.

In response to these requests, NHTSA proposes to revise and update the 1992 Model Specifications, add provisions for the agency to conduct conformance testing of BAIIDs, and maintain a CPL of BAIIDs that have been found to meet those Model Specifications. This proposal is not intended to take the place of any State certification requirements; rather, it would establish a voluntary testing and conformance program.

In advance of these proposed revisions of the 1992 Model Specifications, NHTSA published a request for comments on February 15, 2006. (71 FR 8047.) NHTSA explained that it was interested in obtaining comments from interested parties in 13 specific areas:

(1) *Accuracy and precision requirements.* Is the current set point of 0.025 grams of alcohol per 210 Liters of air (g/dL) appropriate or should it be changed? Are the current specifications for 90 percent accuracy at 0.01 g/dL above the set point in the unstressed testing conditions, and 90 percent accuracy at 0.02 g/dL above the set point in the stressed testing condition appropriate?

(2) *Sensor technology.* The 1992 Model Specifications do not address what type of sensor technology should be used to satisfy those performance requirements. Should the Model Specifications limit sensor technology to alcohol-specific sensors (such as fuel cell technology based on electro-chemical oxidation of alcohol) or other emerging sensor technologies? Or, should NHTSA not specify the sensor technology and rely on performance requirements?

(3) *Sample size requirements.* The 1992 Model Specifications set the minimum breath sampling size at 1.5 Liters. Informal comments received over the years have suggested that this requirement may be too high. Should NHTSA consider lowering the minimum breath sampling size requirement? Should NHTSA include a minimum sample size and minimum back pressure at the input-mouthpiece of the device?

(4) *Temperature extreme testing.* The 1992 Model Specifications call for testing at −40 °C, −20 °C, +70 °C and +85 °C, but allow for the removability of the alcohol sensing unit so that it may be kept at an artificial temperature when the vehicle may be subject to extremely cold or hot temperatures. Is this approach to extreme temperature testing sufficient, or should it be more stringent?

(5) *Radio Frequency Interference (RFI) or Electromagnetic Interference (EMI) Testing.* The RFI testing protocol in the 1992 Model Specifications uses power sources that are no longer commonly in use. New power sources that may interfere with the operation of BAIIDs (*e.g.,* cell phones) have output power commensurate with equipment in use today. What are the appropriate levels to measure RFI/EMI?

(6) *Circumvention testing.* The 1992 Model Specifications offer a number of procedures for evaluating whether existing devices can be easily circumvented. Are these procedures sufficient or should new or modified procedures be incorporated into the Model Specifications?

(7) *The Vehicle-Interlock Interface.* Anecdotal reports from ignition interlock manufacturers have suggested that it is sometimes difficult to install existing interlock systems in some of the newer electronic ignition systems. Should NHTSA establish any guidelines regarding the vehicle-interlock interface?

(8) *Calibration stability.* Is the duration of calibration stability testing sufficient? Should ignition interlocks be required to hold their calibration for a longer period of time, thereby requiring less frequent calibration checks?

(9) *Ready-to-use Times.* Should NHTSA establish a "ready-to-use" time period for extreme cold temperatures, such that devices must operate within a given period of time under extreme cold conditions?

(10) *NHTSA testing.* Should NHTSA undertake the responsibility to evaluate ignition interlocks against its Model Specifications and publish a Conforming Products List (CPL) of devices meeting those specifications?

(11) *International Harmonization.* Is it important to harmonize the ignition interlock Model Specifications with standards in other parts of the world, such as the European Union, Canada, and Australia?

(12) *Specifications for Ignition Interlock Programs.* Does the ignition interlock community (users, manufacturers, States, etc.) favor NHTSA development of an interlock program, in addition to Model Specifications for devices?

(13) *Acceptance Testing.* NHTSA's current Model Specifications involve "type-testing" (*i.e.,* testing particular models of BAIIDs for conformance) of various models of BAIIDs. Should NHTSA establish standardized acceptance-testing procedures (*i.e.,* testing each individual device for conformance), instead of the current type-testing guidelines? What testing should be included in such Model Specifications? Who should conduct the testing?

In addition to the above 13 specific areas, NHTSA's 2006 notice solicited comments on other areas that might enhance the revisions of the Model Specifications. Comments were received from five manufacturers of interlock devices, five State government representatives, two automobile manufacturers, one association of interlock installers and the European Committee for Electrotechnical Standardization (CENELEC). Today's notice responds to these comments in setting forth the agency's proposal.

In addition, this notice sets forth the proposed procedures for submitting BAIIDs for NHTSA testing (Appendix A) and re-examination of BAIIDs that have been tested (Appendix B).

II. Response to Comments

The comments were supportive of the agency's proposal to revise the Model Specifications, noting that they had served well in organizing the interlock field but that some adjustments were warranted to assure more consistency in the quality of equipment in use today.

A. Set Point, Accuracy and Precision Requirements

There was a lot of variability among comments on the alcohol set point (i.e., Breath Alcohol Concentration (BrAC) at which a BAIID is set to lock the ignition). Two commenters stated that the 1992 Model Specification requirements for set point was appropriate and should not be changed. One State representative recommended a 0.025 g/dL set point for adults and a 0.02 g/dL set point for minors. Other State representatives commented that the alcohol set point could be more stringent. One commenter stated that several States already use a 0.02 g/dL set point.

NHTSA proposes to lower the set point for testing BAIIDs from 0.025 g/dL to 0.02 g/dL. This is the critical point that is used in the Breath Alcohol Screening Devices to indicate the presence of alcohol. Accordingly, for listing on the Conforming Products List (CPL), NHTSA proposes to test BAIIDs that are capable of locking out at a set point of 0.02 g/dL. NHTSA believes that 0.02 g/dL is an appropriate set point because it is an appropriate level to test the presence of alcohol among offenders using ignition interlocks and it is our understanding that the technology is available for BAIIDs to have a set point at 0.02 g/dL.

A few commenters stated that the 1992 Model Specifications for accuracy and precision were appropriate. Most commenters indicated that with improved technology, a greater degree of accuracy was possible, but did not specify to what degree. One interlock manufacturer advocated 95 percent accuracy with a precision of 19 out of 20 test trials at 0.01 g/dL above the set point for unstressed conditions (*i.e.,* normal) and 100 percent accuracy and with a precision of 20 out of 20 test trials at 0.02 g/dL above the set point for stressed conditions (*i.e.,* atypical, such as extreme temperatures).

Accuracy is the degree to which a BAIID measures the BrAC correctly. For example, for a BAIID to be accurate, a breath sample with no alcohol present (0.000 g/dL) must not lock the ignition. Precision is the degree to which that same measure can be repeated. In the previous example, for that BAIID to be precise, that same alcohol free breath sample should not lock the ignition 20 out of 20 test trials.

NHTSA agrees with the commenters that because of improved technology, BAIIDs should be subject to a higher degree of accuracy and precision. NHTSA proposes to define the accuracy and precision requirements for BAIIDs by testing at ±0.012 g/dL above and below the nominal set point of 0.02 g/dL, i.e., 0.032 g/dL and 0.008 g/dL, respectively. At 0.032 g/dL, not more than 1 ignition unlock in 20 trials would be allowed. At 0.008 g/dL, not more than 1 ignition lock in 20 trials would be allowed. No ignition locks in 20 trials would be allowed at 0.000 g/dL. This increases the accuracy from 90 percent to 95 percent at ±0.012 g/dL above and below the nominal set point of 0.02 g/dL, and 100 percent at 0.000 g/dL. NHTSA determined these proposed test levels by using standard statistical techniques for small samples.

B. Sensor Technology

Most commenters stated that it is important to require alcohol-specific technology in the Model Specifications, but that the particular sensor design should not be specified. A small group, including States, favored the use of a particular sensor design (*e.g.,* fuel cell). One interlock manufacturer stated that a non-alcohol-specific technology, such as a semi-conductor that senses alcohol differently and costs about 50 percent less than a fuel cell, was an economic alternative to the fuel cell.

While alcohol-specific sensor technologies have made great advances, this proposal does not limit the sensor technology used in the BAIIDs as long as the BAIID meets the performance requirements of the Model Specifications. We believe that this approach will allow a wider variety of options, including the use of emerging technologies as they become available.

C. Sample Size Requirement

Most commenters advocated lowering the current 1.5 Liters (L) minimum sample size (to either 1.2 L or 1.0 L). A subset of these commenters felt that anything lower than 1.2 L should be set only on recommendation of a physician. One commenter thought that a 1.5 L air sample was not enough to ensure an accurate measure of the alcohol content. NHTSA agrees with the recommendation to lower the minimum sample size to 1.2 L and proposes a minimum 1.2 L sample size. NHTSA believes that, at this level, accuracy can be attained and that users will be able to deliver this smaller sample size.

Some commenters felt that a minimum back pressure, which controls the force of the air entering the BAIID, was not necessary if the sample size was not lower than 1.0 L. One commenter suggested requiring 1.2 L sample size with a minimum back pressure and a flow rate of 0.2 L/second. A manufacturer suggested requiring 1.2 L sample size with a back pressure of 20 hectoPascal (hPa) (e.g., 2 kiloPascals (kPa)) and a flow rate of 0.1 L/sec. One State suggested an exhale-inhale-exhale pattern as an alternative to setting a standard. Two States suggested a 1.2 L sample size with back pressure, temperature and time requirements. Two commenters felt that NHTSA should only set the minimum sample size, and should not prescribe the means by which the sample delivery would be accomplished.

In addition to lowering the minimum sample size to 1.2 L as discussed above,

NHTSA proposes to require a minimum flow rate of 0.1 L/sec. Flow rate is the length of time that a sample breath is delivered into the BAIID. NHTSA believes that a 0.1 L/sec minimum flow rate is a level that will enable more people to deliver an adequate sample. By lowering the minimum sample size and adding a minimum flow rate, NHTSA does not believe that specifying a minimum back pressure is necessary. NHTSA believes that this proposal will make the BAIID available to a larger population of users.

D. Extreme Temperature Testing, Removable Sensing Heads or Units

One interlock manufacturer suggested that NHTSA test for extreme temperature at −45 °C, as temperatures reach that level in high latitudes and high altitudes. Another interlock manufacturer suggested that NHTSA leave the testing temperature unchanged and continue to allow the sensing unit to be removed from the vehicle. Most commenters felt that the current testing temperature extremes of −40 °C and +85 °C were appropriate, but did not object to tests at more extreme temperatures. The CENELEC suggested that the component of the device that is mounted in the engine compartment be tested for +125 °C in addition to −45 °C. CENELEC further suggested that the −45 °C temperature test be conducted at 75 percent of nominal battery voltage because extreme temperatures can reduce available voltage from a vehicle battery.

NHTSA proposes to retain the current extreme temperature tests at −40 °C and +85 °C. The agency believes that the current temperature range is reasonably representative of the environments encountered in the United States. However, NHTSA proposes to conduct additional high temperature tests for components of the BAIID installed in the passenger compartment (at +49 °C) and in the engine compartment (at +85 °C), and to specify the humidity level for these high temperature tests. Further, NHTSA proposes to discontinue testing at −20 °C and +70 °C because our experience indicates that testing at the extreme temperatures is sufficient.

NHTSA also agrees that the −40 °C temperature test should be performed at 9 volts, which is representative of 75 percent of the nominal battery voltage (i.e., 12-volt automobile battery). NHTSA believes that the test should be conducted at this voltage because vehicles often do not operate at the optimal battery voltage. Accordingly, NHTSA proposes to test BAIIDs using a 9-volt direct current (DC) power source, simulating a 12-volt DC battery operating at low temperatures.

Many commenters stated that NHTSA should not allow the removal of the sensing unit because BAIIDs are expected to operate at a variety of ambient temperature conditions. One State favored a removable mouthpiece (to protect users' lips from extreme temperatures), rather than a removable sensing unit, and another State favored a prescribed warm-up period. NHTSA agrees with the commenters that the sensing unit should not be removable because it can more easily be damaged or mishandled, leading to frequent repairs and increased cost. Accordingly, NHTSA proposes to test only BAIIDs without removable sensing heads or units. (The agency does not object to BAIIDs with a removable mouthpiece.)

E. RFI or EMI Testing

Commenters noted that appropriate power for RFI testing should be considered because an increasing number of electronic devices are being operated in close proximity to BAIIDs, such as gaming, remote keyless entry, portable medical and Bluetooth-capable devices. Two BAIID manufacturers suggested that the European Standard for EMI be adopted because it describes electromagnetic compatibility of vehicles for broadband and narrowband interference and shielding. Two commenters noted that CB radios were more relevant sources of interference and that the CENELEC standard is unnecessarily restrictive on EMI. A State government commenter suggested that the Society of Automotive Engineers (SAE) J551 Vehicle Electromagnetic Immunity-Bulk Current Injection Standard be applied to BAIIDs.

NHTSA agrees that the current specifications do not adequately define or describe RFI/EMI tests. NHTSA proposes to test BAIIDs for emissions and transmissions of RFI/EMI and immunity to RFI/EMI using the SAE Surface Vehicle Standard J1113 series for Class C devices (devices essential to the operation or control of the vehicle) and the International Special Committee on Radio Interference (CISPR), Subcommittee of International Electrotechnical Committee (IEC), specifically CISPR 25, for RFI/EMI testing. NHTSA proposes these tests because we believe that they represent a broad consensus in the industry.

F. Tampering and Circumvention Testing

There was some criticism that the 1992 Model Specifications for tampering and circumvention testing are confusing and lack specificity. One BAIID manufacturer felt that the U.S. should adopt the CENELEC standards for charcoal filters, water bubbler, condensation through a long cool tube and pressurized air, and interlock bypass. Another BAIID manufacturer commented that there are aspects of the circumvention detection specifications that are difficult to quantify because different companies develop their own proprietary anti-circumvention strategies (*e.g.,* a learned hum code or toot sequence). This manufacturer commented that program standards should address this by imposing consequences for tampering with devices. Three State government commenters suggested that NHTSA should set higher anti-circumvention standards and have a counter system or data log that records attempts to start the vehicle by bypassing the ignition. One State thought that the use of time, pressure, differing blow patterns and breath temperature should help prevent circumvention. States believed that device design should not present challenges to the user, and that the individual's breath signature should be used as the basis for anti-circumvention efforts.

Although NHTSA believes that an individual's breath signature (i.e., a person's unique breath pattern) is a good goal for the future, NHTSA's proposal does not include individual breath signature as an anti-circumvention measure. NHTSA does not believe that technology is sufficiently advanced to warrant including individual breath signature in this proposal. However, NHTSA agrees with commenters that the circumvention requirements are confusing. Accordingly, the agency proposes to clarify and specify the requirement for circumvention and tampering tests and to specify that the BAIID must have tamper proof seals to indicate when a BAIID has been disconnected from the ignition.

G. Vehicle-interlock interface

Interlock manufacturers and providers supported a standard interlock-vehicle interface, and recommended that NHTSA require all vehicles to have either a communications bus interface or another hard-wired interface connector for specific use for any ignition interlock device. Other commenters suggested that a common interface would be a great convenience since it would make installation easier. However, two automobile manufacturers commented that although there may be benefits, requiring all vehicles to have a common interface for BAIIDs presented significant challenges

that could compromise vehicle ignition security systems and anti-theft immobilizing technologies.

While we understand the installation convenience that would be afforded by a common vehicle interlock interface, such a requirement goes beyond the scope of this proposal, which is limited to the BAIID itself and not to changes to the vehicle.

H. Calibration Stability and Service Interval

NHTSA received comments regarding both calibration stability and service interval requirements. Some manufacturers commented that NHTSA should establish separate requirements for the minimum period of calibration stability and the service interval. NHTSA notes that these two requirements are interrelated. If a BAIID's calibration remains stable for a given period of time, it follows that service will be required after that period to verify the calibration of the BAIID. For clarity, NHTSA proposes to define calibration stability as the ability of the BAIID to hold its accuracy and precision over a defined time period and calibration interval as the maximum time period that a BAIID may be used without a calibration check, after which the ignition must lock. NHTSA proposes to define the service interval as the maximum time period that a BAIID may be used without maintenance.

For both the calibration interval and the service interval, most commenters stated that the BAIID should enter a lockout countdown to notify the BAIID user that the BAIID needs a calibration check or maintenance, service or data download, and the BAIID should prevent the vehicle from starting at the end of the lockout countdown period. In response to these comments, NHTSA proposes to incorporate a 7-day lockout countdown for both calibration interval and service interval. NHTSA believes that requiring a lockout countdown for both the calibration interval and the service interval is important to ensure that the BAIID is accurately reading breath samples and is properly working. NHTSA further proposes that during the lockout countdown period, the BAIID should notify the user of the time remaining before the ignition locks. However, NHTSA declines to impose any countdown or lockout requirement for downloading data, as this decision should properly be left to the States or the courts for decision.

NHTSA proposes to revise the calibration stability requirements. The 1992 Model Specifications called for calibration stability for 7 days beyond the manufacturer's designated calibration stability period of 30, 45, or 60 days. For example, if the manufacturer required that the calibration of BAIIDs be checked after 60 days, the BAIID would need to hold the calibration for 67 days. NHTSA now proposes that BAIIDs must hold calibration for a minimum 30 days plus the 7-day lockout countdown described previously (i.e., 37 days) in order to conform to the Model Specifications. Although some manufacturers have BAIIDs that are claimed to hold calibration for a longer time period, NHTSA proposes to test the calibration stability at 37 days (i.e., 30 days plus the 7-day lockout countdown) and to require lockout after 37 days. Accordingly, NHTSA proposes that only BAIIDs that meet both the 37-day calibration stability test and the 30+ 7-day lockout countdown function will be listed on the CPL.

NHTSA also proposes to add service interval requirements. The 1992 Model Specifications did not specifically require a service interval period. Although the term "service interval" is used in the 1992 Model Specifications, that term was used only in relation to calibration stability. It is our understanding that some States use this term to denote the time period for maintenance and data download as well as calibration stability checks. Commenters from State governments recommended that NHTSA require that BAIIDs have a service interval not greater than 30 days, plus a 7-day lockout countdown. NHTSA agrees with these comments and proposes to incorporate this requirement in the Model Specifications because requiring regular maintenance checks is important to ensure that the BAIID is properly working. As noted above, we do not specify a lockout requirement for data download.

I. Ready-to-Use Times and Retest

Commenters stated that a quicker ready-to-use time is possible with newer technology. A commenter stated that one of the biggest complaints with users of BAIIDs is the waiting time for the breath test, and that reducing the waiting time may increase the acceptance of BAIIDs. Several manufacturers indicated that a faster ready time of 3 minutes at low temperatures was achievable.

NHTSA agrees that with current technology, BAIIDs can be ready for use faster than the times provided under the 1992 Model Specifications. NHTSA proposes that at temperatures above −40 °C (−40 °F), BAIIDs should be ready for use in 1 minute or less and be ready to retest in 1 minute or less. For temperatures at −40 °C (−40 °F), NHTSA proposes that the BAIID should be ready for use in 3 minutes or less and ready to retest in 3 minutes or less. NHTSA proposes to test this performance.

NHTSA does not intend that retests be conducted while the vehicle is moving, but rather while the engine is running with the vehicle stopped in a safe location on the side of the road. The proposed Model Specifications make this point clear.

J. NHTSA Testing

Commenters favored a certified testing laboratory program. Most advocated a NHTSA test program and the development of a Conforming Products List (CPL) based on the Model Specifications. One commenter favored having a single private testing laboratory certified by NHTSA for this purpose. Several manufacturers noted significant problems with State certification requirements leading to questionable test results for some products. In general, both manufacturers and States favored a NHTSA test program because it would organize and standardize the industry and exclude less effective BAIIDs. One commenter suggested that NHTSA require BAIID re-certification in the event of an instrument design change and/or at some reasonable interval.

NHTSA proposes to test BAIIDs for conformance with the Model Specifications. See Appendix A for proposed BAIID submission procedures. NHTSA also proposes to maintain and publish periodically a CPL with BAIIDs that have been tested and found to conform to the Model Specifications. NHTSA proposes to manage this new program as it does its other breath alcohol instrument testing programs, including the re-examination of BAIIDs at its sole discretion (Appendix B) and requiring manufacturers to inform NHTSA of any changes or modifications to a tested BAIID. As with NHTSA's other testing programs, NHTSA also proposes to require manufacturers to submit a quality assurance plan (QAP) for BAIIDs being tested. A QAP is a manufacturer's plan for maintaining the integrity and the calibration of a BAIID. NHTSA proposes that the QAP include the following information: instructions for checking the calibration of the BAIID (*i.e.,* recommended calibrating unit, BrAC of 0.02 g/dL, agreement not greater than ±0.005 BrAC, verification of accuracy of readout, actions to take for failed calibration check), instructions for downloading the data from the data logger, instructions to maintain the BAIID, instructions on checking for

tampering, and any other information regarding quality assurance unique to the instrument. See Appendix C, the proposed sample QAP template.

Testing of BAIIDs will be subject to the availability of Federal funds. If Federal funds are not available, NHTSA will discontinue testing BAIIDs until funds become available.

K. International Harmonization

There was considerable variability from commenters on this issue. Those favoring harmonization with the CENELEC standards argued that in an increasingly global marketplace, common standards would benefit both economic and safety concerns. Some against harmonization stated that aspects of the CENELEC standard are potentially restrictive and costly. Others opposed harmonization because the U.S. organized the BAIID industry by emphasizing safety and design flexibility in a way that encouraged the domestic industry and avoided costly requirements.

NHTSA believes that there are some benefits to harmonizing some standards, and has proposed to incorporate aspects of CENELEC standards as identified elsewhere in this proposal.

L. Interlock Program Specifications

Some commenters stated that interlock program specifications or interlock program guidelines (*i.e.,* programs to implement the use of BAIIDs) have been and should remain a function of State government. Others largely expressed support for NHTSA development of interlock program guidelines, especially in the areas of installation requirements, monitoring and recalibration of devices, and recognizing device tampering. While NHTSA believes that such a program is important, today's notice addresses only BAIID performance criteria and testing of BAIIDs. NHTSA may explore interlock program guidelines in a future action.

M. Acceptance Testing

Some commenters stated that acceptance testing is being performed by some States, but that the criteria vary among those States. These commenters stated that NHTSA should establish standardized acceptance-testing procedures in addition to the 1992 Model Specifications. Several commenters requested that the term "acceptance testing" be more clearly defined. One commenter recommended that NHTSA establish enforceable guidelines, mandatory audits and periodic re-examinations.

NHTSA defines "acceptance testing" as the pass-fail evaluation of each individual device performed before placing that device into service. Because of limited resources, NHTSA proposes to conduct "type-testing" (*i.e.,* testing of a sample of a particular model of BAIID, rather than every device manufactured).

N. Additional Comments

1. Two commenters suggested that BAIID manufacturers make available the operating software codes of the BAIIDs, including disclosure of how the BAIIDs monitor their own malfunctions and the criteria the devices use to trigger recalls. NHTSA does not believe that making a manufacturer's proprietary software publicly available is desirable or necessary, as the agency's proposal sets forth performance specifications, not design specifications. Moreover, making such information public may lead to increased circumvention and tampering.

2. Commenters suggested that data loggers distinguish calibration tests from user samples. NHTSA agrees that distinguishing such information would be useful for monitoring the BAIID user. Accordingly, NHTSA proposes that the BAIID must include a data logger that will distinguish calibration tests from user samples as well as record all start attempts and outcomes, such as emergency override, circumvention, tampering, and BrAC for each start attempt. The data must be presented in chronological order (*i.e.,* by date and time of event). See Appendix D for a sample format for downloaded data from the data logger. The audit trail should also indicate the version of the metrological software (*i.e.,* the BAIID's operating system) in use. All printed and downloaded reports should indicate the software version. NHTSA proposes to test these features.

The agency understands that some customers (such as States) request certain changes to the BAIID, so that read-out data is presented in a particular format. Such customization is generally accomplished through software modifications. Testing customer-driven software modifications is beyond the scope of this program. Moreover, if such modifications were permitted to be performed to the internal software of the BAIID at a customer's behest, the integrity of the CPL would be compromised as the BAIID tested could then differ from customized devices in production. However, NHTSA is aware that States (and local jurisdictions) use different set points in their interlock programs. Therefore, we do not believe that changes to the set point, alone, should be deemed impermissible modifications. Accordingly, the agency's proposal does not allow any modifications of internal BAIID software at the behest of customers, except for adjustments to the set point. (We note that for testing purposes, NHTSA proposes to test BAIIDs with an alcohol set point of 0.02 g/dL.) Manufacturers wishing to accommodate a customer's interest in data formatting options should do so by providing a port that allows connection of a peripheral device with its own formatting software. Manufacturers are advised that, when submitting a BAIID to NHTSA for testing, they must submit the basic model without any customized or add-on software.

3. Commenters suggested that the BAIID memory should be located in a fixed control box. NHTSA agrees with these commenters and proposes to add this to the General Requirements and BAIID Features because a fixed control box provides less opportunity for potential damage to the BAIID memory.

4. Commenters suggested that restarts should be allowed only if a vehicle stalls, but not if the ignition is intentionally turned-off or if a BAIID malfunctions or is awaiting a retest. NHTSA proposes that a restart (*i.e.,* without a breath sample) should be allowed when the vehicle stalls, provided the restart is accomplished in no more than 20 seconds. NHTSA also proposes that in all other situations where the vehicle malfunctions, the vehicle should be prevented from starting without a breath test.

Commenters further suggested that if a BAIID malfunctions or fails, the device should default to preventing the vehicle from starting. NHTSA agrees with the commenters and proposes that if a BAIID malfunctions or fails (*e.g.,* improper voltage, temperature exceeding operating range, dead sensor, etc.), the BAIID should prevent the vehicle from starting.

5. Some commenters stated that an emergency override was a useful feature. NHTSA declines to propose that BAIIDs be required to have an emergency override feature (*i.e.,* the ability to start the vehicle without a breath test) in order to conform with the Model Specifications. However, should a BAIID be equipped with an emergency override feature, NHTSA proposes to allow its activation to start the vehicle only once. After that, the BAIID must indicate the need for service and record the use of the emergency override. No additional emergency overrides would be allowed during the lifetime of the BAIID installation. The agency proposes to test this feature. NHTSA also proposes that this emergency override feature have a default to prevent an

override from being used when the BAIID malfunctions or fails. *See* Section II, N, 4 above.

6. A commenter suggested that the BrAC test results be displayed to the driver. NHTSA declines to propose that BAIIDs display the BrAC test results to the driver and does not propose to add this requirement in the Model Specifications. NHTSA believes that the role of the BAIID is to detect the presence of alcohol and to prevent the driver from operating the vehicle if alcohol is present. We believe that displaying the BrAC goes beyond the purpose of the BAIID. Accordingly, NHTSA does not propose to test BAIIDs for the accuracy of the BrAC display. NHTSA proposes to test only the accuracy of the notifications to a BAIID user that are related to the features tested by NHTSA, such as warm-up time, retest, calibration check and service interval.

In addition, NHTSA proposes to remove a number of tests for optional features identified in the 1992 Model Specifications.

7. A commenter suggested that an interlock-specific tone (other than a honking horn) be used to alert outsiders to BAIID violations. At this time, NHTSA does not believe that audible sounds or lights to alert the public to interlock violations are necessary, and does not include the suggestion in this proposal.

8. A commenter suggested that several CENELEC standards be adopted into the Model Specifications, including a dust test, a drop test for removable sensor heads, vibration tests, and protection against reverse polarity on all circuits. That commenter also suggested that instruction guides or manuals be provided to the interlock installers and user.

In two decades of experience, NHTSA has received no reports suggesting that dust is an issue or source of concern in BAIIDs installed in vehicles. Therefore, we are not proposing a dust standard. As the agency's proposal does not allow the removal of the sensor head, we are not proposing a drop test. NHTSA proposes to update the vibration and cigarette smoke tests from the 1992 Model Specifications to incorporate aspects of the CENELEC standard (*see* Test 7 and Test 12, respectively). NHTSA agrees with the commenter that electrical properties of the vehicle (contact safety, etc.) must not adversely affect or be affected by a properly installed BAIID. NHTSA also agrees that instruction guides or manuals should be made available to interlock installers and users.

O. Other Proposed Revisions

The agency proposes to re-organize the Model Specifications to improve clarity. NHTSA also proposes to delete the commentary sections of the 1992 Model Specifications because these sections are no longer necessary. Also, we have not retained the previous organization of sections on safety and utility, and we have specified in more detail the tests for humidity, cigarette smoke, retest, and circumvention and tampering. In addition, the proposed Model Specifications no longer include a separate test for user displays, but rather incorporate the test for user display under other tests (*e.g.,* warm up time, retest, calibration interval, service interval). The proposed Model Specifications delineate conformance tests and performance requirements.

NHTSA proposes to delete the following terms as no longer applicable: Safety and Utility (Safety Feature, Utility Feature, and Optional Feature), Stress Tests, Certification Tests, Clearance Rates, Device, Fail-safe, False-negative, False-positive, High end and Low end. NHTSA also proposes to add three terms—calibration stability, calibration interval, and service interval. *See* Section II, H.

NHTSA proposes to delete the Certification Test Summary and the Equipment List that appeared in Appendices A and B because these provisions are obsolete, and relevant information is incorporated in the Tests.

NHTSA proposes to add two tests to the Model Specifications—High Altitude (Test 11) and Acetone (Test 13). NHTSA believes that because high altitudes may affect semi-conductor type alcohol sensors, this condition should be tested. NHTSA believes that acetone should be tested because it is the most common interfering substance for BAIIDs. Finally, of the tests listed, Test 17 (Data Integrity and Format) must be performed last as this test checks the integrity of the downloaded data. See also Appendix D for a sample format for downloaded data from the data logger.

In addition, NHTSA proposes that in order to be listed on the CPL, manufacturers must submit a self-certification, certifying that the manufacturer meets the requirements of the U.S. Department of Health and Human Services Public Health Services, Food and Drug Administration's (FDA) Good Manufacturing Practices regulations for devices used for medical purposes (21 CFR Part 820), and that the device's label meets the requirements contained in FDA's Labeling regulations for devices used for medical purposes (21 CFR 809.10), even if the devices are not to be used for medical purposes. If NHTSA becomes aware that a manufacturer of a BAIID on the CPL is not in compliance with the requirements in FDA's Good Manufacturing Practices regulations for devices used for medical purposes or that the device's label does not comply with the requirements in FDA's labeling regulations for devices used for medical purposes, NHTSA may remove the manufacturer's BAIID from the CPL.

The agency encourages interested parties to review carefully this notice and the Model Specifications set forth below, and to submit comments in the manner identified in Addresses above.

These proposed Model Specifications, if adopted in final, would not have the force of regulations and are not binding. States and others may adopt these Model Specifications and rely on NHTSA's type-test results or they may conduct their own tests according to their own procedures and specifications.

After consideration of the comments, the agency proposes the Model Specifications for Breath Alcohol Ignition Interlock Devices as set forth below.

Authority: 23 U.S.C. 403; 49 CFR 1.50; 49 CFR part 501.

Model Specifications for Breath Alcohol Ignition Interlock Devices (BAIID)

A. Purpose and Scope

1. In General

The purpose of these specifications is to establish performance criteria and test methods for breath alcohol ignition interlock devices (BAIIDs), commonly referred to as alcohol interlocks or ignition interlocks. BAIIDs are breath alcohol sensing instruments designed to be connected to the ignition system in a way that prevents the motor vehicle from starting unless the driver first provides a breath sample whose alcohol concentration is below the set point into the BAIID. If the measured breath alcohol concentration (BrAC) is at or above a set level, the ignition is locked and the vehicle will not start. BAIIDs are currently being used as court sanctions as well as administrative conditions of licensure. Drivers convicted of Driving While Intoxicated (DWI) may be required to use BAIIDs in their vehicle under court supervision or as part of a required path to full reinstatement of driving privileges. These specifications are intended for use in conformance testing of BAIIDs installed in vehicles. BAIIDs found to conform to these specifications will be placed on a conforming products list

(CPL) published in the **Federal Register**. NHTSA will periodically update this CPL. These specifications are voluntary and do not impose any compliance obligations on BAIID manufacturers or others.

2. Limitations

NHTSA will test BAIIDs for conformance with these Model Specifications on a first-come, first-served basis, subject to the manufacturer submission requirements of Appendix A. Any re-examination of BAIIDs will be conducted at the agency's sole discretion, in accordance with the provisions of Appendix B. All tests are subject to the availability of Federal funds.

B. Terms

Alcohol—Ethanol or ethyl alcohol (C_2H_5OH).

Alcohol set point—Breath Alcohol Concentration (BrAC) at which a BAIID is set to lock the ignition.

Breath Alcohol Concentration (*BrAC*)—The amount of alcohol in a given amount of breath, expressed in weight per volume (w/v) based upon grams of alcohol per 210 liters (L) of breath, in accordance with the Uniform Vehicle Code, Chapter 11, Section 11–903.4 and 5.[1]

Breath alcohol ignition interlock device (BAIID)—A device that is designed to allow a driver to start a vehicle if the driver's BrAC is below the set point and to prevent the driver from starting the vehicle if the driver's BrAC is at or above the set point.

Breath Sample – Normal expired human breath primarily containing air from the deep lung.

Calibration Interval—The maximum time period that a BAIID may be used without a calibration check, after which the ignition must lock.

Calibration Stability—The ability of a BAIID to hold its accuracy and precision over a defined time period.

Circumvention—An attempt to bypass the correct operation of a BAIID, whether by use of an altered breath sample, by starting the vehicle without using the ignition switch, or by any other means without first providing a breath sample.

Filtered air sample—Any human breath sample that has intentionally been altered so as to remove alcohol from it.

Interlock Data Logger—A device within a BAIID that records all pertinent events, dates, and times during the period of installation and use of a BAIID.

Retest—A breath test that is required after the initial engine start-up breath test and while the engine is running with the vehicle stopped in a safe location on the side of the road. This is also referred to as a running retest or a rolling retest.

Service Interval—The maximum time period that a BAIID may be used without maintenance or data download, after which the ignition must lock.

Simulator—A device that produces an alcohol-in-air test sample of known concentration (*e.g.,* a Breath Alcohol Sampling Simulator (BASS))[2] or a device that meets the NHTSA Model Specifications for Calibrating Units (72 FR 34742)).

Tampering—An attempt to physically disable, disconnect, adjust, or otherwise alter the proper operation of a BAIID.

C. General Requirements and Features of BAIIDs

In order to be listed on NHTSA's Conforming Products List (CPL), a BAIID must meet the following requirements:

The BAIID must pass each of the conformance tests 1 through 17 in Section D, unless explicitly excluded from a test by the specific terms of these specifications.

Installation and service of the BAIID in a vehicle must not compromise any normal function of the vehicle, including anti-theft functions, on-board computer functions, or vehicle safety features required by the Federal Motor Vehicle Safety Standards, and must not cause harm to the vehicle occupants. Care should be taken to protect against reverse polarity and damage to other circuits and to ensure that the BAIID does not drain the vehicle's battery while in sleep mode (*i.e.,* power save mode).

The BAIID must not have a removable sensing head or unit, but may include the use of a detachable mouthpiece for breath sample delivery.

The BAIID memory must be in a fixed control box.

The BAIID must have tamper proof seals to indicate when a BAIID has been disconnected from the ignition.

The BAIID must be capable of locking out at a specified breath alcohol concentration. The submitted BAIID will be tested at an alcohol set point of 0.02 g/dL with a minimum flow rate of 0.1 L/sec. Upon detecting an alcohol concentration at or above that set point, the BAIID must lock the ignition for a period of time before another test can be performed.

If the vehicle is equipped with a remote start device, the BAIID must be installed so that the remote start function is bypassed or disabled so that a valid breath test must be performed before the vehicle may be started.

The BAIID must include clear instructions to the driver (*e.g.,* when to blow, when to wait, when to start the vehicle, when to retest, when a lockout countdown occurs, including the time remaining before the BAIID locks the vehicle's ignition, and when to seek service).

Manufacturers must submit the operator's manual (user's guide or instructions to the user), the maintenance manual, and specifications and drawings fully describing the BAIID to the Volpe Center.

In addition, manufacturers must submit the quality assurance plan (QAP) to NHTSA for approval. The QAP must include the following information: instructions for checking the calibration of the BAIID (*i.e.,* recommended calibrating unit, BrAC of 0.02 g/dL, agreement not greater than ±0.005 BrAC, verification of accuracy of readout, actions to take for failed calibration check), instructions for downloading the data from the data logger, instructions to maintain the BAIID, instructions on checking for tampering, and any other information regarding quality assurance unique to the BAIID. *See* Appendix C for sample QAP template.

Manufacturer must also submit a self-certification to NHTSA, certifying that the manufacturer meets the requirements of the U.S. Department of Health and Human Services Public Health Services, Food and Drug Administration's (FDA) Good Manufacturing Practices regulations for devices used for medical purposes (21 CFR Part 820), and that the device's label meets the requirements contained in FDA's Labeling regulations for devices used for medical purposes (21 CFR 809.10), even if the devices are not to be used for medical purposes. (If NHTSA becomes aware that a manufacturer of a BAIID on the CPL is not in compliance with the requirements in FDA's Good Manufacturing Practices regulations for devices used for medical purposes or that the device's label does not comply with the requirements in FDA's labeling regulations for devices used for medical purposes, NHTSA may remove the manufacturer's BAIID from the CPL.)

The design of the BAIID must include a data logger that will record all start

[1] Available from the National Committee on Uniform Traffic Laws and Ordinances, 107 South West Street, #110, Alexandria, VA 22314 (*http://www.ncutlo.org*).

[2] *See* NBS Special Publication 480–41, July 1981. Available from Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

attempts and outcomes, including an emergency override, delineation of calibration checks, circumvention, tampering, operator attempts to start the vehicle, and BrAC for each start attempt. The data must be presented in chronological order (*i.e.,* by date and time of event). *See* Appendix D for a sample format for downloaded data from the data logger. The manufacturer must provide NHTSA with a means of downloading the data from the data logger.

The BAIID must track all changes to the metrological software and indicate the software version and date on all printed and downloaded reports. The BAIID must not include any add-on or specialized software to meet the needs of a specific customer. Manufacturers wishing to accommodate a customer's interest in data formatting options should do so by providing a port that allows connection of a peripheral device with its own formatting software. We are aware that States (and local jurisdictions) use different set points in their interlock programs, and such changes to the set point, alone, would not be deemed impermissible. However, NHTSA will test BAIIDs at an alcohol set point of 0.02 g/dL.

D. BAIID Test Procedures

General Test Conditions

Unless otherwise specified in the conformance test, the following conditions apply to each test:

- Number of trials at each alcohol level = 20
- Ambient temperature: 22 °C ± 3 °C (71.6 °F ± 5.4 °F).
- Ambient atmospheric pressure: 97.5 kPa ± 10.5 kPa (25.7 and 31.9 inches Hg).
- Sample parameters: volume 1.2 liters; ambient flow rate 0.3 Liters per second; maximum delivery pressure 2.5 kPa; temperature 34 °C (93.2 °F)
- Simulated breath samples will be generated by the BASS[3] or by a wet bath type calibrating unit that is listed on the NHTSA Conforming Products List for such devices. Solutions used in the calibrating device will be prepared as described in the NHTSA Model Specifications for Calibrating Units published June 25, 2007 (72 FR 34742).

Performance Requirements

Unless otherwise specified in the conformance test, the BAIID must meet the following performance requirements in each test:

- Tests at 0.032 g/dL BrAC (grams alcohol/210 liters of air): not more than 1 ignition unlock in 20 trials is allowed.
- Test at 0.008 g/dL BrAC: not more than 1 ignition lock in 20 trials is allowed.
- Tests at 0.000 g/dL BrAC: no ignition lock in 20 trials is allowed.
- A BAIID must be ready for use 1 minute after it is turned on. A BAIID must be ready for a second test within 1 minute of a preceding test.

Conformance Tests

Unless otherwise specified in a test, these conformance tests need not be conducted in any particular order. Except when a test or portion of a test specifically requires the use of a motor vehicle, NHTSA may elect to use either a motor vehicle or a bench test set-up that simulates the relevant functions of a motor vehicle.

Test 1. Precision and Accuracy

Test the BAIID at the following alcohol concentrations:

a. 0.000 g/dL BrAC,
b. 0.008 g/dL BrAC, and
c. 0.032 g/dL BrAC.

Test 2. Breath Sample Volume and Flow Rate

Use a mass flow meter to monitor sample volume. Conduct each test (a–d) five times.

a. Test at 0.000 g/dL BrAC with sample volume 1.0 liter. The BAIID must lock the ignition and indicate insufficient volume 5 out of 5 times.

b. Test at 0.000 g/dL BrAC with sample volume 1.5 liters. The BAIID must not lock the ignition 5 out of 5 times.

c. Test at 0.000 g/dL BrAC with sample volume 1.2 liters at 0.1 L/s. The BAIID must not lock the ignition 5 out of 5 times.

d. Test at 0.000 g/dL BrAC with sample volume 1.2 liters at 0.7 L/s. The BAIID must not lock the ignition 5 out of 5 times.

Test 3. Calibration Interval and Calibration Stability

Initialize the BAIID to begin the calibration stability test. A BAIID must not be re-calibrated after the start of Test 3. Conduct Test 1. Repeat Test 1 at 37 days. Test 2 and Tests 4–15 may be performed between these two Precision and Accuracy tests.

After 30 days, the BAIID must prominently indicate a 7-day lockout countdown, *i.e.,* an indication that the BAIID must be taken to a designated facility for a calibration check within 7 days or the ignition will lock and the event will be logged. Over the course of the 7-day lockout countdown, the BAIID must prominently indicate that the BAIID needs a calibration check, the time remaining until ignition lockout, but the ignition must not lock. At the end of this 7-day lockout countdown, the BAIID must prominently indicate that the BAIID needs a calibration check and the ignition must lock.

Test 4. Input Power

Conduct Test 1b and Test 1c at the following input power conditions:

a. Test at 11 VDC input power.
b. Test at 16 VDC input power.

Test 5. Extreme Temperature and Humidity

Using a temperature/humidity chamber:

a. Soak the BAIID at −40 °C (−40 °F) for 1 hour, then conduct Test 1b and Test 1c at that temperature using 9 VDC input power.

b. Soak the BAIID at 49 °C (120 °F), 95 percent relative humidity for 1 hour, then conduct Test 1b and Test 1c at that temperature and humidity using 16 VDC input power.

c. This part of the test applies only to BAIIDs with components installed in the engine compartment. Soak the components of the BAIID that are installed in the engine compartment at 85 °C (185 °F), 95 percent relative humidity for 1 hour, then conduct Test 1b and Test 1c at that temperature and humidity using 16 VDC input power. The components that are installed in the passenger compartment should remain at ambient temperature and humidity conditions (see General Test Conditions).

Test 6. Warm Up Time at −40 °C

Using a temperature chamber, soak the BAIID for 1 hour at −40 °C. With input power set at 9 VDC, the BAIID must be ready to test in 3 minutes, and ready to retest in 3 minutes after being turned on. Conduct Test 6 five times. The BAIID must indicate that it is ready to test or ready to retest in 3 minutes all five times. This test may be conducted in conjunction with Test 5 Extreme Temperature and Humidity.

Test 7. Vibration

Vibrate the BAIID in simple harmonic motion on each of three main axes uniformly through the frequency schedule specified below. For components not intended to be mounted on the engine, vibrate according to Test 7a; for components intended to be mounted on the engine, vibrate according to Test 7b. If a BAIID consists of several components connected by electrical wires or connected wirelessly,

[3] *See* NBS Special Publication 480–41, July 1981. Available from Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

vibrate these components separately. After completion of the vibration, remove the BAIID from the shake table and conduct Test 1b and Test 1c.

VIBRATION FREQUENCY SCHEDULE

Test 7	Frequency range, Hz	Number of cycles	Sweep rate, octave/min	Amplitude, inches 0 to peak	Acceleration, gravity (g), 0 to peak
a	10 to 500	10	1	0.2	3
b	10 to 500	10	1	0.08	15

Test 8. Retest

If a BAIID includes a feature designed to detect whether the vehicle is moving, conduct Test 8 using a motor vehicle. If a BAIID does not include a feature designed to detect whether the vehicle is moving, conduct Test 8 using a motor vehicle or a bench test set-up that simulates the relevant functions of a motor vehicle. Retests must not be conducted while the vehicle is moving, but must be conducted while the engine is running with the vehicle stopped in a safe location on the side of the road.

a. Within an interval of 5 to 7 minutes after a successful ignition unlock, using a 0.000 g/dL BrAC test sample, and while the ignition remains unlocked and the engine is running, the BAIID must indicate that a second breath sample is required. Conduct Test 1b five times. The ignition must remain unlocked all 5 times.

b. Within an interval of 5 to 7 minutes after a successful ignition unlock, using a 0.000 g/dL BrAC test sample, and while the ignition remains unlocked and the engine is running, the BAIID must indicate that a second breath sample is required. Conduct Test 1c five times. The ignition must remain unlocked, but the BAIID must prominently indicate the need for a service call (i.e., this is an indication of a failed retest).

A failed retest must be identified as an alert condition and flagged on the data logger. A missed retest must be flagged on the data logger. After the driver is alerted to retest, if the engine is accidentally or intentionally powered off, the BAIID must not unlock without a service call. If a BAIID includes a feature designed to detect whether the vehicle is moving, perform the above tests with and without vehicle movement.

Test 9. Tampering and Circumvention

Attempt to start the ignition as indicated below. Conduct each test (a through f) five times. Each attempt to start the engine must be logged by the data logger.

a. "*Hot wiring*". Start the engine by electrically bypassing the BAIID. The data logger must record the ignition on with no breath test.

b. *Push start.* A motor vehicle must be used for this part of Test 9. Use a vehicle equipped with a manual transmission. Start the engine by pushing the vehicle with another vehicle or by coasting the vehicle downhill before engaging the clutch. The data logger must record the ignition on with no breath test.

c. *Un-warmed air sample.* Deliver an alcohol-free air sample of at least 2 liters into the BAIID using an air filled plastic bag which is fitted to the sampling tube and squeezed in a manner that mimics a person blowing into the BAIID. The ignition must remain locked.

d. *Warmed air sample.* Prepare a 12-ounce foam coffee cup fitted with a bubble tube inlet and a vent tube (rubber or tygon tubing) attached through the plastic lid. Fill the cup with 8 ounces of water warmed to 36 °C and attach the lid. Attach the vent tube to the BAIID and pass an air sample of at least 2 liters through the bubble tube into the heated water and thence into the BAIID. The flow rate must not be high enough to cause a mechanical transfer of water to the BAIID. The ignition must remain locked.

e. *Cooled 0.032 BrAC sample.* Attach a 4 foot long tygon tube of ⅜ inch inside diameter which has been cooled to ice temperature to the inlet of the BAIID, then test at 0.032 BrAC. The ignition must remain locked.

f. *Filtered 0.032 BrAC sample.* Prepare a 1 to 2 inch diameter 3 to 5 inches long paper tube loosely packed with an active absorbent material. Use loose cotton plugs to retain the absorbent in the paper tube. Pack the tube so that a person can easily blow 2 liters of air through the assembly within 5 seconds. Test the absorbent by passing a 2 liter 0.032 BrAC sample though the assembly within 5 seconds. If the air passing out of the BAIID is found to have a concentration of 0.006 BrAC or less, prepare 5 tubes packed in the same manner, fit separately to the BAIID and test at 0.032 BrAC. The ignition must remain locked.

Test 10. Restart of Stalled Motor Vehicle

Conduct Test 10 using a motor vehicle.

Using a 0.000 g/dL BrAC sample, turn on the ignition. Turn off the ignition. Attempt to restart the ignition without a breath sample in less than 20 seconds—the ignition must not lock. Turn off the ignition. Attempt to restart the ignition without a breath sample between 20 to 25 seconds after turning off the ignition—the ignition must lock. Conduct Test 10 five times.

Test 11. High Altitude

This test applies only to BAIIDs with a semiconductor-type alcohol sensor. Conduct Test 1b and Test 1c each at pressures of 80 kPa and 110 kPa (600 mmHg and 820 mmHg). Conduct Test 11 five times at each indicated pressure. At indicated pressure levels, for Test 1b, the ignition must remain unlocked; for Test 1c, the ignition must remain locked.

Test 12. Cigarette Smoke

Direct a cigarette smoker, who is alcohol-free, to smoke approximately ½ of a cigarette. The smoker must wait 1 minute or a period specified by the BAIID manufacturer before testing. Conduct Test 12 three times. The ignition must not lock. (A simulator may be used in lieu of a smoker.)

Test 13. Acetone

Test the BAIID for acetone interference. Conduct Test 1b by adding 230 microliters of acetone [4] to the 500 milliliters of .008 g/dL BrAC alcohol simulator solution. Conduct Test 1b three times. The ignition must not lock.

Test 14. Emergency Override

This test applies only to BAIIDs equipped with an emergency override feature. Follow the BAIID manufacturer's instructions to activate the emergency override feature without providing a breath sample. Upon a first

[4] The amount of acetone specified is experimentally determined based on water to air partition factor of 365 to 1 at 34 °C to yield an acetone concentration in the air sample of 0.5 mg/liter.

activation, verify that the BAIID allows the vehicle to start. Attempt to activate the emergency override feature two additional times without providing a breath sample. Verify that the BAIID does not allow the vehicle to start on either of those subsequent attempts. The ignition must not lock on the first attempt, and must lock on both subsequent attempts. All other functions of the BAIID should operate normally, including the running retest and data logging.

Test 15. Radiofrequency Interference/ Electromagnetic Interference

The Society of Automotive Engineers (SAE) Surface Vehicle Standard J1113 series, Required Function Performance Status, as defined in Surface Vehicle Standard J1113–1 for Class C devices (devices essential to the operation or control of the vehicle), and the International Special Committee on Radio Interference (CISPR), Subcommittee of International Electrotechnical Committee (IEC), specifically CISPR 25, will be used to evaluate BAIID electromagnetic immunity and compatibility. The test severity levels are specified below. The tests must be performed while the BAIID is in the drive and standby modes.

a. *J1113–1* 2006–10 General and definitions. Electromagnetic Compatibility Measurement Procedures and Limits for Vehicles, Boats, and Machines (Except Aircraft) (16.6 Hz to 18 GHz).

b. *J1113–2* 2004–07 Conducted immunity 30 Hz to 250 kHz—Power leads.

Level	Severity (volts, peak to peak)	Status
1	0.15	I.
2	0.50	I.
3	1.0	I.
4	3.0	II.

c. *J1113–4* 2004–08 Conducted immunity—Bulk Current Injection (BCI) Method.

Level	Severity (milliamps)	Status
1	25 to 60	I.
2	60 to 80	II.
3	80 to 100	III.
4	100	IV.

d. *J1113–11* 2007–06 Immunity to Conducted Transients on Power Leads.

Pulse (12 v sys)	Level	Severity (volts)	Status
	1	−25	I.
1	2	−50	II.
	3	−75	II.
	4	−100	IV.
	1	25	I.
2a	2	40	II.
	3	50	II.
	4	75	IV.
2b	1	10	I.
	1	−35	I.
3a	2	−75	II.
	3	−112	II.
	4	−150	IV.
	1	25	I.
3b	2	50	II.
	3	75	II.
	4	100	IV.
	1	−4	I.
4	2	−5	II.
	3	−6	II.
	4	−7	IV.
5	1	87	IV.

e. *J1113–13* 2004–11 Part 13: Immunity to Electrostatic Discharge.

Severity	Status
Contact discharge	
0–4 kV	I.
4–8 kV	II.
8 kV	IV.
Air discharge	
0–4 kV	I.
4–15 kV	II.
15 kV	IV.

f. *J1113–21* 2005–10 Immunity to Electromagnetic Fields, 30 MHz to 18 GHz.

Severity (V/M)	Status
Up to 60	I.
60–80	II.
80–100	III.
100–150	IV.

g. *J1113–22* 2003–11 Immunity to magnetic fields.

Severity (uT)	Status
40	I.
40–50	II.
50–80	III.
80	IV.

h. *IEC CISPR 25* Limits of Radio Disturbance.

RADIATED DISTURBANCE LIMITS

[1 M test distance, 120 kHz bandwidth]

30–75 MHz	75–400 MHz	400–1000 MHz
a: 62 − 25.13 × log(F/30)	52 + 15.13 × log(F/75)	63
b: 52 − 25.13 × log(F/30)	42 + 15.13 × log(F/75)	53

a: Broadband, quasi-peak detector.
b: Narrowband, average detector.
Limit in dB (uV/M) at frequency F.

CONDUCTED TRANSIENT EMISSIONS

Pulse polarity	Maximum pulse amplitude (12 volt system) (V)
Positive	75

CONDUCTED TRANSIENT EMISSIONS—Continued

Pulse polarity	Maximum pulse amplitude (12 volt system) (V)
Negative	−100

LIMITS FOR BROADBAND CONDUCTED DISTURBANCES (MHZ)

	0.15–0.3		0.53–2.0		5.9–6.2		30–54		68–108	
	P	QP	P	QP	P	QP	P	QP	P	QP
a	93	80	79	66	65	52	65	52	49	36

LIMITS FOR BROADBAND CONDUCTED DISTURBANCES (MHZ)—Continued

	0.15–0.3		0.53–2.0		5.9–6.2		30–54		68–108	
	P	QP	P	QP	P	QP	P	QP	P	QP
b	80	67	76	63	62	49	62	49	56	43

a: Power lines, limit in dB (uV).
b: Control lines, limit in dB (uA).
P: Peak detector.
QP: Quasi-Peak detector.

LIMITS FOR NARROWBAND CONDUCTED DISTURBANCES (MHZ)

	0.15–0.3	0.53–2.0	5.9–6.2	30–54	68–87	76–108
a	70	50	45	40	30	36
b	60	50	45	40	40	46

a: Power lines, limit in dB (uV).
b: Control lines, limit in dB (uA).
Limits by peak detection.

Test 16. Service Interval

Initialize the BAIID to begin the service interval period. After thirty (30) days, the BAIID must prominently indicate that it must be taken to a designated maintenance facility for maintenance and data downloads within 7 days or the ignition will lock and the event will be logged. Over the course of the 7-day lockout countdown, the BAIID must prominently indicate that the BAIID is in need of service, the time remaining until ignition lockout, but the ignition must not lock. At the end of this 7-day lockout countdown, the BAIID must prominently indicate that the BAIID is in need of service and the ignition must lock. Other tests (except Tests 15 and 17) may be performed during this 37-day period.

Test 17. Data Integrity and Format

Complete all other tests before performing Test 17. Download the data from the data logger and compare it to the data recorded for each test. Disconnect, then reconnect the power to the data logger. Download the data again and compare it to the first data download. No lost or corrupted data is allowed. Check the data format (*i.e.,* date and time of event) to verify conformance with the sample format in Appendix D.

Appendix A—Submission Procedures for Conformance Testing of Breath Alcohol Ignition Interlock Devices (BAIID)

NHTSA will test Breath Alcohol Ignition Interlock Devices (BAIIDs) at the DOT Volpe National Transportation Systems Center (Volpe Center). Testing of BAIIDs will be subject to the availability of Federal funds. If Federal funds are not available, NHTSA will discontinue testing BAIIDs until funds become available.

Manufacturers that wish to submit a BAIID for testing must apply in writing to the Office of Behavioral Safety Research, NTI–130, NHTSA, 1200 New Jersey Avenue, SE., Washington, DC 20590. Manufacturers must apply separately for each BAIID. NHTSA will test BAIIDs on a first-come, first-served basis. NHTSA will contact manufacturers with a test date and instructions for BAIID delivery to the Volpe Center. Manufacturers should not send devices until NHTSA has scheduled a test date.

When NHTSA has scheduled a test date, the manufacturer must submit one BAIID. If the BAIID is designed with special features, the BAIID must be submitted with instructions explaining how to turn each feature on and off. The manufacturer must also submit the operator's manual (user's guide or instructions to the user), the maintenance manual, quality assurance plan (QAP) (Appendix C), including recalibration and service requirements that are provided to the installation providers with the purchase or lease of the BAIID, self-certification as to the FDA's good manufacturing practices and device labeling requirements, as well as specifications and drawings fully describing the BAIID and its use. Manufacturers seeking confidential treatment for submitted information must follow the procedures set out in 49 CFR part 512.

The manufacturer is responsible for ensuring that the BAIID is operating properly and calibrated prior to the initiation of the test. Once testing begins, the manufacturer will not be allowed access to the BAIID or to the test site.

BAIIDs that are tested by the Volpe Center and determined to conform to the Model Specifications will be listed on a Conforming Products List (CPL). NHTSA will not accept test results from other sources. Except as specifically noted under a test procedure, BAIIDs must conform to the specifications in all 17 tests in order to be listed on the CPL.

Any malfunction of a BAIID resulting in failure to complete any of the required tests satisfactorily will result in a determination that the BAIID does not conform to the Model Specifications. If a BAIID fails any one of the tests, the agency at its own discretion may stop any further tests. If a BAIID fails to conform to the Model Specifications, NHTSA will notify the manufacturer in writing, and provide the reasons for the failure.

NHTSA will publish and update the CPL periodically in the **Federal Register**.

Appendix B—Re-Examination* of Breath Alcohol Ignition Interlock Devices (BAIID)

*Re-examination of a BAIID is at the sole discretion of NHTSA and subject to the availability of Federal funds.

1. Re-Examination of Nonconforming BAIID

If test results reveal that a BAIID does not meet the Model Specifications, a manufacturer may resubmit the BAIID for re-examination after appropriate corrections have been made to the BAIID. The manufacturer must follow the submission procedures in Appendix A. In addition, the manufacturer must provide written documentation of the changes or corrections that have been made to the BAIID to bring the device into conformance with the Model Specifications.

2. Changes to BAIID Listed on the Conforming Products List (CPL)

Manufacturers contemplating changes to a BAIID listed on the CPL (other than modification of the set point) are advised that any change may affect the status of the BAIID on the CPL. The manufacturer should inform NHTSA of the contemplated change(s) to determine whether re-examination of the BAIID is necessary. The manufacturer should submit the following information to NHTSA:

- Model name of the changed device.
- Nature and reason for change.
- Scope of change (*e.g.,* Will existing BAIIDs or BAIIDs in the marketplace be retrofitted? Will the change apply to some users but not others?)
- Will the change affect performance of the BAIID under the Model Specifications? (Precision and accuracy, temperature operations, vibrations, other laboratory readings, etc.)
- How will the change(s) be documented for the benefit of the user? (e.g., Will the

change(s) be documented in service bulletins and/or service manuals? If not, why not?)

- Drawings of the changed BAIID.

If NHTSA determines that the changes to the BAIID may affect the conformance of the BAIID with the Model Specifications, NHTSA will request that the changed BAIID be sent for testing. Refusal to provide the changed BAIID for testing may result in the removal of the BAIID from the CPL.

3. Re-Examination of BAIID Listed on the CPL

If available information indicates that a BAIID on the CPL may not perform in accordance with the Model Specifications, NHTSA may direct the Volpe Center to re-examine the BAIID. To assist in this effort, NHTSA may request manufacturers to send another BAIID sample for testing. (Refusal to provide another BAIID sample may result in the removal of the BAIID from the CPL.) Based on the new tests, NHTSA will determine whether the BAIID continues to conform to the Model Specifications. If the BAIID does not meet the Model Specifications, the BAIID will be removed from the CPL.

Appendix C—Quality Assurance Plan Template

[Manufacturer name], Quality Assurance Plan for [Interlock name AND Model number] [date]

Under the National Highway Traffic Safety Administration (NHTSA) Breath alcohol ignition interlock testing program, interlocks are evaluated according to the NHTSA Model Specifications for Breath Alcohol Ignition Interlocks (BAIIDs). Those models that conform to the Model Specifications are added to the Conforming Products List for Breath Alcohol Ignition Interlocks. This Quality Assurance Plan (QAP) and the operating instructions for the [Interlock name] provide step-by-step instructions for checking the accuracy of the calibration of a BAIID and the maintenance of the BAIID. (As noted in the Model Specifications, BAIIDs must hold calibration for 37 days (30 days + 7 day lockout countdown) and must have a service interval of 37 days (30 days + 7 day lockout countdown).

1. Provide step-by-step instructions for checking the calibration of the BAIID. These instructions must include:

- Recommended calibrating unit(s) (listed on NHTSA's Conforming Products List of Calibrating Units for Breath Alcohol Testers) and instructions for using the calibrating unit(s);
- Breath alcohol concentration to be used in the calibration check(s): 0.02 g/dL BrAC;
- Agreement of the calibration check with the breath alcohol concentration of the calibrating unit: Not greater than ±0.005 BrAC;
- Description of how to verify the accuracy of the BAIID reading of BrAC (e.g., from an instrument read out, printout, data logger, etc.);
- Description of actions that must be taken if the BAIID fails the calibration check.

2. Provide instructions on downloading the data from the data logger.

3. Provide instructions on how to maintain the BAIID (i.e., what must be examined at the 30 day service interval; any functions that require less frequent checks). Such instructions must detail any corrective action to be taken if the BAIID fails to perform as well as any events that would require a BAIID to be taken out of service and returned to the manufacturer.

4. Provide instructions on how to check for tampering.

5. Other information regarding quality assurance unique to this instrument, if any:

Contact information for the BAIID manufacturer regarding calibration and maintenance issues:

Appendix D—Sample Format for Downloaded Data From Data Logger

Date	Time	Start attempts (engine activity)
Example 1. Acceptable start and drive cycle		
4/21/07	0951	start attempt. sample accepted. BrAC (alcohol absent, *e.g.,* 0.000, 0.008). unlock. ignition keyed. starter active. 0952 engine on. 0956 rolling retest. sample accepted. BrAC (alcohol absent, *e.g.,* 0.000, 0.008). 1032 engine off.
Example 2. Acceptable start but fail rolling re-start		
4/22/07	2316	start attempt. sample accepted. BrAC (alcohol absent, *e.g.,* 0.008). unlock. ignition keyed. starter active.
	2317	engine on.
	2319	rolling retest. BrAC (alcohol present, *e.g.,* 0.025). warning given.
4/23/07	0047	engine off.
Example 3. Push start		
4/23/07	2054	ignition keyed. warning given. starter not active.
	2055	engine on. warning given.
	2120	engine off.
Example 4. Start attempted but alcohol detected. Retry		
4/21/07	1652	start attempt.

Date	Time	Start attempts (engine activity)
		sample accepted.
		BrAC (alcohol present, *e.g.,* 0.030).
		lock.
	1653	warning given.
	1656	start attempt.
		sample accepted.
		BrAC (alcohol absent, *e.g.,* 0.015).
		unlock.
		ignition keyed.
		starter active.
	1657	engine on.
	1702	rolling retest.
		sample accepted.
		BrAC (alcohol absent, *e.g.,* 0.010).
	1850	engine off.
Example 5. Start attempted using filtered sample. Retry		
4/15/07	2016	start attempt.
		low temp.
		warning given.
	2205	start attempt.
		sample accepted.
		BrAC (alcohol absent, 0.000).
		unlock.
		ignition keyed.
		starter active.
	2206	engine on.
	2352	engine off.
Example 6. Calibration Check		
4/28/07	0900	start attempt.
		sample accepted.
		BrAC (alcohol absent, 0.000 or 0.008).
		unlock.
		ignition keyed.
		starter active.
	0903	engine on.
	0926	rolling retest.
		sample accepted.
		BrAC (alcohol absent, 0.000 or 0.008).
	1032	engine on.
	1045	Calibration check.

Issued on: October 1, 2010.

Jeff Michael,

Associate Administrator for the Office of Research and Program Development, National Highway Traffic Safety Administration.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2010–0161]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 17 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision standard. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these CMV drivers.

DATES: The exemptions are effective October 6, 2010. The exemptions expire on October 8, 2012.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202)–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-

addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

Background

On July 12, 2010, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (75 FR 39725). That notice listed 17 applicants' case histories. The 17 individuals applied for exemptions from the vision requirement in 49 CFR 391.41(b)(10), for drivers who operate CMVs in interstate commerce.

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the Agency to renew exemptions at the end of the 2-year period. Accordingly, FMCSA has evaluated the 17 applications on their merits and made a determination to grant exemptions to each of them.

Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision standard, but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely. The 17 exemption applicants listed in this notice are in this category. They are unable to meet the vision standard in one eye for various reasons, including amblyopia, loss of vision, macular choroidal neovascularization, macular scarring, optic nerve atrophy, optic nerve damage, prosthesis, retinal detachment, retinal scarring, retinopathy and a ruptured globe. In most cases, their eye conditions were recently developed. 5 of the applicants were either born with their vision impairments or have had them since childhood. The 12 individuals who sustained their vision conditions as adults have had them for periods ranging from 4 to 34 years.

Although each applicant has one eye which does not meet the vision standard in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV.

All of these applicants satisfied the testing standards for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a commercial vehicle, with their limited vision, to the satisfaction of the State. While possessing a valid CDL or non-CDL, these 17 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 3 to 35 years. In the past 3 years, none of the drivers were involved in crashes or convicted of moving violations in a CMV.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the July 12, 2010 notice (75 FR 39725).

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision standard in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered not only the medical reports about the applicants' vision, but also their driving records and experience with the vision deficiency.

To qualify for an exemption from the vision standard, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at Docket Number FMCSA–1998–3637.

We believe we can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (See 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (*See* Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (*See* Weber, Donald C., "Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process," Journal of American Statistical Association,

June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 17 applicants, none of the applicants were involved in crashes or convicted of moving violations in a CMV. All the applicants achieved a record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision standard in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to the 17 applicants listed in the notice of July 12, 2010 (75 FR 39725).

We recognize that the vision of an applicant may change and affect his/her ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the 17 individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

Based upon its evaluation of the 17 exemption applications, FMCSA exempts, Ramon Adame, Calvin D. Bills, Joel W. Bryant, Jonathan Carriaga, Michael R. Clark, James D. Drabek, Jr., Curtis E. Firari, Percy L. Gaston, Ronald M. Green, Richard Iocolano, Daniel W. Johnson, Albert E. Joiner, Richard L. Kelley, Charles E. Queen, Matias P. Quintanilla, Richard T. Traigle and Eugene E. Wright, from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)).

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on September 29, 2010.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. 2010–25197 Filed 10–5–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35418]

Jackson & Lansing Railroad Company—Trackage Rights Exemption—Norfolk Southern Railway Company

Pursuant to a written Assignment of Trackage Rights and Other Joint Facility Agreements (Trackage Agreement) dated September 16, 2010, Norfolk Southern Railway Company (NSR) has agreed to grant non-exclusive overhead and local trackage rights to Jackson & Lansing Railroad Company (JAIL) over approximately 1.06 miles of NSR's Lansing Secondary [1] between milepost LZ 36.8 in Lansing, Mich., and milepost LZ 37.86 in North Lansing, Mich.[2]

This transaction is related to the concurrently filed notice of exemption in Docket No. FD 35411, *Jackson & Lansing Railroad Company—Lease and Operation Exemption—Norfolk Southern Railway Company,* wherein JAIL seeks to lease and operate 44.5 miles of rail property owned by NSR, consisting of 36.9 miles of the Lansing Secondary, 5.1 miles of the Lansing Manufacturers Railroad, 1.8 miles of the Lansing Industrial Track, and 0.7 miles of the Lansing Industrial Track. JAIL also will acquire 2.96 miles of incidental trackage rights over NSR's Michigan Main Line for interchange purposes with NSR at NSR's Jackson Yard. This transaction also is related to the concurrently filed notice of exemption in Docket No. FD 35410, *Adrian & Blissfield Rail Road Company—Continuance in Control*

[1] By Lease Agreement dated April 21, 1995, Consolidated Rail Corporation (Conrail) leased this trackage to CSX Transportation, Inc. (CSXT). By Trackage Rights Agreement (TRA) of the same date, CSXT granted local and bridge trackage rights back to Conrail. Upon acquisition of the Lansing Secondary from Conrail in 1998, NSR succeeded to Conrail's rights under both the Lease Agreement and the TRA. Now, pursuant to the Trackage Agreement, NSR, with CSXT's consent, assigns its rights under the TRA to JAIL.

[2] A redacted, executed trackage rights agreement between NSR and JAIL and an executed Trackage Agreement, along with CSXT's consent of the assignment, were filed with the notice of exemption. The unredacted version, as required by 49 C.F.R. § 1180.6(a)(7)(ii), was concurrently filed under seal along with a motion for protective order. The motion is being addressed in a separate decision.

Exemption—Jackson & Lansing Railroad Company, in which Adrian & Blissfield Rail Road Company seeks to continue in control of JAIL once JAIL becomes a Class III rail carrier.

The earliest the transaction may be consummated is October 20, 2010, the effective date of the exemption (30 days after the exemption was filed).

The purpose of the transaction is to improve service by establishing a rail link allowing JAIL to interchange traffic originating or terminating on NSR's Lansing Secondary line with CSXT at North Lansing.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk & Western Railway Co.—Trackage Rights—Burlington Northern, Inc.,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway, Inc.—Lease and Operate—California Western Railroad,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by October 13, 2010 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35418, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John D. Heffner, PLLC, and James H. M. Savage, Of Counsel, 1750 K Street, NW., Suite 200, Washington, DC 20006 (for JAIL), and David L. Coleman, General Attorney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510–9241 (for NSR).

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: October 1, 2010.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2010–25109 Filed 10–5–10; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designation of Individuals and Entities Pursuant to Executive Order 13382

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is publishing the names of four newly-designated individuals and twelve newly-designated entities whose property and interests in property are blocked pursuant to Executive Order 13382 of June 28, 2005, "Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters." OFAC also is publishing the names of 27 vessels identified as property blocked because of their connection to IRISL and is updating the entries of 71 already-blocked vessels to identify new names.

DATES: The designation by the Director of OFAC of the four individuals and twelve entities identified in this notice pursuant to Executive Order 13382 is effective on June 16, 2010.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: (202) 622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

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

Background

On June 28, 2005, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) ("IEEPA"), issued Executive Order 13382 (70 FR 38567, July 1, 2005) (the "Order"), effective at 12:01 a.m. eastern daylight time on June 29, 2005. In the Order, the President took additional steps with respect to the national emergency described and declared in Executive Order 12938 of November 14, 1994, regarding the proliferation of weapons of mass destruction and the means of delivering them.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in the Annex to the Order; (2) any foreign person determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Attorney General, and other relevant agencies, to have engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by any person or foreign country of proliferation concern; (3) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to have provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, any activity or transaction described in clause (2) above or any person whose property and interests in property are blocked pursuant to the Order; and (4) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to the Order.

On June 16, 2010, the Director of OFAC, in consultation with the Departments of State, Justice, and other relevant agencies, designated four individuals and 12 entities whose property and interests in property are blocked pursuant to Executive Order 13382.

The List of Additional Designees is as Follows

Individuals

1. JAFARI, Mohammad Ali; (a.k.a. JAFARI–NAJAFABADI); c/o IRGC, Tehran, Iran; DOB 1957; POB Yazd, Iran; nationality Iran; Commander-in-Chief, IRGC (individual) [NPWMD] [IRGC].

2. NAQDI, Mohammad Reza; DOB circa 1952; alt DOB circa March 1961; alt DOB circa April 1961; POB Najaf, Iran; alt POB Tehran, Iran; Brigadier General and Commander of the IRGC Basij Resistance Force (individual) [IRGC] [NPWMD].

3. SABET, Javad Karimi; c/o Novin Energy Company, Tehran, Iran; DOB 25 July 1973 (individual) [NPWMD].

4. VAHIDI, Ahmad; c/o MODAFL, Tehran, Iran; DOB 1958; POB Shiraz, Iran; nationality Iran; Brigadier General (individual) [NPWMD].

Entities

1. HAFIZ DARYA SHIPPING CO; (a.k.a. HAFIZ DARYA SHIPPING LINES COMPANY; a.k.a. HDS LINES); No 60, Ehteshamiyeh Square, 7th Neyestan Street, Pasdaran Avenue, Tehran, Iran; Business Registration Document #5478431 issued Mar 2009 [NPWMD].

2. IRGC AIR FORCE; (a.k.a. ISLAMIC REVOLUTIONARY GUARD CORPS AIR FORCE; a.k.a. SEPAH PASDARAN AIR FORCE); Tehran, Iran [IRGC] [NPWMD].

3. IRGC MISSILE COMMAND; (a.k.a. ISLAMIC REVOLUTIONARY GUARD CORPS MISSILE COMMAND); Tehran, Iran [IRGC] [NPWMD].

4. JAVEDAN MEHR TOOS; Tehran, Iran [NPWMD].

5. NAVAL DEFENSE MISSILE INDUSTRY GROUP; (a.k.a. 8TH IMAM INDUSTRIES GROUP; a.k.a. CRUISE MISSILE INDUSTRY GROUP; a.k.a. CRUISE SYSTEMS INDUSTRY GROUP; a.k.a. SAMEN AL–A'EMMEH INDUSTRIES GROUP); Tehran, Iran [NPWMD].

6. POST BANK OF IRAN; 237 Motahari Avenue, Tehran 1587618118, Iran [NPWMD] [IFSR].

7. RAH SAHEL INSTITUTE; Tehran, Iran [NPWMD] [IRGC].

8. SAFIRAN PAYAM DARYA SHIPPING COMPANY; (a.k.a. SAPID SHIPPING CO); No. 3, 8th Narenjestan Street, Artesh Boulevard, Farmaniyah Avenue, Tehran, Iran; P.O. Box 1963116, Tehran, Iran; No. 33, 8th Narenjestan Street, Artesh Boulevard, Aghdasieh, Tehran, Iran; Web site *http://www.sapidshpg.com* [NPWMD].

9. SEIBOW LIMITED; Room 803, 8/F, Futura Plaza, 111 How Kimg Street, Kwun Tong, Kowloon, Hong Kong, China; Business Registration Document #926320 issued 6 Oct 2004 [NPWMD].

10. SEIBOW LOGISTICS LIMITED; Room 803, 8/F, Futura Plaza, 111 How Kimg Street, Kwun Tong, Kowloon, Hong Kong, China; Business Registration Document #1218675 issued 18 Mar 2008 [NPWMD].

11. SEPANIR; (a.k.a. SEPANIR ESTABLISHMENT; a.k.a. SEPANIR OIL AND GAS ENGINEERING COMPANY); No 319 Shahid Bahonar Street, Tehran, Iran [NPWMD] [IRGC].

12. SOROUSH SARZAMIN ASATIR SHIP MANAGEMENT COMPANY; No. 5 Shabnam Alley, Golzar Street, Fajr Street, Shahid Motahari Avenue, Tehran 193651, Iran; P.O. Box 19365–1114, Tehran, Iran; Business Registration Document #5466371 issued 2009 [NPWMD].

In addition to the individuals and entities listed above, OFAC has identified the following 27 vessels as property of the Islamic Republic of Iran Shipping Lines (IRISL). OFAC has also updated 71 already-blocked IRISL vessels to identify new names given to those vessels. Banks are instructed to reject any funds transfer referencing a blocked vessel and must notify OFAC, via facsimile with a copy of the payment instructions that funds have been returned to the remitter due to the possible involvement of a SDN vessel in the underlying transaction.

Newly Identified Vessels

1. AAJ 72DWT 103GRT IRAN flag (IRISL); Vessel Registration Identification IMO 8984484 (vessel) [NPWMD].

2. AALI Bulk Carrier 53,500DWT 32,474GRT MALTA flag; Vessel Registration Identification IMO 9405942 (Malta) (vessel) [NPWMD].

3. ABTIN 1 Container Ship 13,760DWT 9,957GRT IRAN flag (IRISL); Vessel Registration Identification IMO 9379636 (Iran) (vessel) [NPWMD].

4. ALIM Bulk Carrier 53,100DWT 31,117GRT MALTA flag (IRISL); Vessel Registration Identification IMO 9465849 (Malta) (vessel) [NPWMD].

5. AZIM Bulk Carrier 53,100DWT 31,117GRT MALTA flag (IRISL); Vessel Registration Identification IMO 9465760 (Malta) (vessel) [NPWMD].

6. BAAGHI Bulk Carrier 53,457DWT 32,474GRT MALTA flag; Vessel Registration Identification IMO 9405930 (Malta) (vessel) [NPWMD].

7. BAANI Bulk Carrier 53,500DWT 32,474GRT MALTA flag; Vessel Registration Identification IMO 9405954 (Malta) (vessel) [NPWMD].

8. EIGHTH OCEAN General Cargo 22,882DWT 15,670GRT GERMANY flag (IRISL); Vessel Registration Identification IMO 9165803 (Germany) (vessel) [NPWMD].

9. FIRST OCEAN Container Ship 85,896DWT 74,175GRT MALTA flag (IRISL); Vessel Registration Identification IMO 9349576 (Malta) (vessel) [NPWMD].

10. FOURTH OCEAN Container Ship 82,200DWT 74,200GRT MALTA flag (IRISL); Vessel Registration Identification IMO 9349605 (Malta) (vessel) [NPWMD].

11. GLORY Bulk Carrier 76,500DWT 41,226GRT MALTA flag (IRISL); Vessel Registration Identification IMO 9369710 (Malta) (vessel) [NPWMD].

12. GRACEFUL Bulk Carrier 76,000DWT 41,226GRT MALTA flag (IRISL); Vessel Registration Identification IMO 9369722 (Malta) (vessel) [NPWMD].

13. HAADI Bulk Carrier 53,442DWT 32,474GRT MALTA flag; Vessel Registration Identification IMO 9387798 (Malta) (vessel) [NPWMD].

14. HAAMI Bulk Carrier 53,500DWT 32,474GRT MALTA flag; Vessel Registration Identification IMO 9405966 (Malta) (vessel) [NPWMD].

15. HAKIM Bulk Carrier 53,100DWT 31,117GRT MALTA flag (IRISL); Vessel Registration Identification IMO 9465863 (Malta) (vessel) [NPWMD].

16. IRAN BEHESHTI 38,411DWT 21,999GRT IRAN flag (IRISL); Vessel Registration Identification IMO 7389792 (Iran) (vessel) [NPWMD].

17. IRAN KONG 0DWT 63GRT IRAN flag (IRISL); Vessel Registration Identification IMO 9007582 (Iran) (vessel) [NPWMD].

18. MEKONG SPIRIT Container Ship 12,380DWT 9,616GRT CYPRUS flag (HAFIZ DARYA SHIPPING COMPANY); Vessel Registration Identification IMO 9118513 (Cyprus) (vessel) [NPWMD].

19. PALMARY (a.k.a. IRAN ZAGROS; a.k.a. ZAGROS) Container Ship 54,340DWT 54,851GRT MALTA flag; Vessel Registration Identification IMO 9346548 (Malta) (vessel) [NPWMD].

20. RAAZI Bulk Carrier 53,412DWT 32,474GRT MALTA flag; Vessel Registration Identification IMO 9387803 (Malta) (vessel) [NPWMD].

21. SAEI Bulk Carrier 53,386DWT 32,474GRT MALTA flag; Vessel Registration Identification IMO 9387815 (Malta) (vessel) [NPWMD].

22. SAMIN 1 Container Ship 13,739DWT 9,957GRT MALTA flag (IRISL); Vessel Registration Identification IMO 9420370 (Malta) (vessel) [NPWMD].

23. SECOND OCEAN Container Ship 86,018DWT 74,175GRT MALTA flag (HDS); Vessel Registration Identification IMO 9349588 (Malta) (vessel) [NPWMD].

24. SHAADI Bulk Carrier 53,500DWT 32,474GRT MALTA flag; Vessel Registration Identification IMO 9405978 (Malta) (vessel) [NPWMD].

25. SHAYAN 1 Container Ship 13,772DWT 9,957GRT IRAN flag (IRISL); Vessel Registration Identification IMO 9420356 (Iran) (vessel) [NPWMD].

26. TABAN 1 Container Ship 13,734DWT 9,957GRT IRAN flag (IRISL); Vessel Registration Identification IMO 9420368 (Iran) (vessel) [NPWMD].

27. THIRD OCEAN Container Ship 85,878DWT 74,175GRT MALTA flag

(IRISL); Vessel Registration Identification IMO 9349590 (Malta) (vessel) [NPWMD].

Already-Blocked Vessels Updated With New Names

1. ABBA (a.k.a. IRAN MARTIN) General Cargo 24,065DWT 16,621GRT IRAN flag (IRISL); Vessel Registration Identification IMO 9051624 (vessel) [NPWMD].
2. ACCURATE (a.k.a. DRIFTER; a.k.a. IRAN DRIFTER) Bulk Carrier 43,499DWT 25,770GRT HONG KONG flag (IRISL); Vessel Registration Identification IMO 8320169 (vessel) [NPWMD].
3. ACENA (a.k.a. IRAN KERMANSHAH) Bulk Carrier 75,249DWT 40,609GRT CYPRUS flag (IRISL); Vessel Registration Identification IMO 9213399 (vessel) [NPWMD].
4. ACROBAT (a.k.a. DEVOTIONAL; a.k.a. IRAN DEVOTIONAL) Bulk Carrier 43,330DWT 25,768GRT HONG KONG flag (IRISL); Vessel Registration Identification IMO 8309684 (vessel) [NPWMD].
5. ADMIRAL (a.k.a. DAIS; a.k.a. IRAN DAIS) Bulk Carrier 43,406DWT 25,768GRT HONG KONG flag (IRISL); Vessel Registration Identification IMO 8309696 (vessel) [NPWMD].
6. ADRIAN (a.k.a. DELIGHT; a.k.a. IRAN DELIGHT; a.k.a. IRAN JAMAL) Bulk Carrier 43,218DWT 25,768GRT HONG KONG flag (IRISL); Vessel Registration Identification IMO 8320133 (vessel) [NPWMD].
7. ADVENTIST (a.k.a. IRAN MADANI) Bulk Carrier 43,369DWT 25,768GRT HONG KONG flag (IRISL); Vessel Registration Identification IMO 8309622 (Hong Kong) (vessel) [NPWMD].
8. AEROLITE (a.k.a. DELEGATE; a.k.a. IRAN DELEGATE) Bulk Carrier 43,265DWT 25,768GRT HONG KONG flag (IRISL); Vessel Registration Identification IMO 8320121 (vessel) [NPWMD].
9. AGEAN (a.k.a. DYNAMIZE; a.k.a. IRAN DYNAMIZE) Bulk Carrier 43,369DWT 25,768GRT HONG KONG flag (IRISL); Vessel Registration Identification IMO 8309634 (vessel) [NPWMD].
10. AGILE (a.k.a. DECOROUS; a.k.a. IRAN DECOROUS) Bulk Carrier 43,369DWT 25,768GRT HONG KONG flag (IRISL); Vessel Registration Identification IMO 8309658 (vessel) [NPWMD].
11. AJAX (a.k.a. DYNASTY; a.k.a. IRAN GHAZI) Bulk Carrier 43,497DWT 25,768GRT HONG KONG flag (IRISL); Vessel Registration Identification IMO 8309672 (Hong Kong) (vessel) [NPWMD].
12. ALAMEDA (a.k.a. IRAN DOLPHIN) Bulk Carrier 43,480DWT 25,770GRT HONG KONG flag (IRISL); Vessel Registration Identification IMO 8320195 (Hong Kong) (vessel) [NPWD].
13. ALIAS (a.k.a. DEVOTEE; a.k.a. IRAN DEVOTEE) Bulk Carrier 43,369DWT 25,768GRT HONG KONG flag (IRISL); Vessel Registration Identification IMO 8309608 (vessel) [NPWMD].
14. AMITEES (a.k.a. IRAN JOMHURI) Bulk Carrier 35,828DWT 20,811GRT IRAN flag (IRISL); Vessel Registration Identification IMO 7632826 (vessel) [NPWMD].
15. AMPLIFY (a.k.a. DIPLOMAT; a.k.a. IRAN DIPLOMAT) Bulk Carrier 43,262DWT 25,768GRT HONG KONG flag (IRISL); Vessel Registration Identification IMO 8309701 (vessel) [NPWMD].
16. ANGEL (a.k.a. DAPPER; a.k.a. IRAN DAPPER) Bulk Carrier 43,499DWT 25,768GRT HONG KONG flag (IRISL); Vessel Registration Identification IMO 8309646 (vessel) [NPWMD].
17. ANIL (a.k.a. DANDY; a.k.a. IRAN DANDY) Bulk Carrier 43,279DWT 25,768GRT HONG KONG flag (IRISL); Vessel Registration Identification IMO 8320157 (vessel) [NPWMD].
18. APOLLO (a.k.a. IRAN DESTINY; a.k.a. IRAN NAVAB) Bulk Carrier 43,329DWT 25,768GRT HONG KONG flag (IRISL); Vessel Registration Identification IMO 8320145 (Hong Kong) (vessel) [NPWMD].
19. AQUARIAN (a.k.a. DIGNIFIED; a.k.a. IRAN DIGNIFIED) Bulk Carrier 43,369DWT 25,768GRT HONG KONG flag (IRISL); Vessel Registration Identification IMO 8309610 (vessel) [NPWMD].
20. ASSA (a.k.a. IRAN ENTEKHAB) Bulk Carrier 35,896DWT 20,811GRT IRAN flag (IRISL); Vessel Registration Identification IMO 7632814 (vessel) [NPWMD].
21. ATLANTIC (a.k.a. DREAMLAND; a.k.a. IRAN DREAMLAND) Bulk Carrier 43,302DWT 25,770GRT HONG KONG flag (IRISL); Vessel Registration Identification IMO 8320183 (vessel) [NPWMD].
22. ATRIUM (a.k.a. IRAN HAMZEH) Bulk Carrier 43,288DWT 25,770GRT HONG KONG flag (IRISL); Vessel Registration Identification IMO 8320171 (Hong Kong) (vessel) [NPWMD].
23. ATTRIBUTE (a.k.a. DIAMOND; a.k.a. IRAN DIAMOND) Bulk Carrier 43,369DWT 25,768GRT HONG KONG flag (IRISL); Vessel Registration Identification IMO 8309593 (vessel) [NPWMD].
24. BARSAM (a.k.a. IRAN SHARIT) Bulk Carrier 44,441DWT 25,168GRT IRAN flag (IRISL); Vessel Registration Identification IMO 8107581 (vessel) [NPWMD].
25. BLUEBELL (a.k.a. IRAN GILAN) Bulk Carrier 63,400DWT 39,424GRT MALTA flag (IRISL); Vessel Registration Identification IMO 9193202 (vessel) [NPWMD].
26. CHASTITY (a.k.a. IRAN SHAAFI; a.k.a. SHAAFI) Bulk Carrier 53,000DWT 32,474GRT MALTA flag (IRISL); Vessel Registration Identification IMO 9386500 (vessel) [NPWMD].
27. CHIMES (a.k.a. IRAN VAAFI; a.k.a. VAAFI) Bulk Carrier 53,000DWT 32,474GRT MALTA flag (IRISL); Vessel Registration Identification IMO 9387786 (vessel) [NPWMD].
28. DAFFODIL (a.k.a. ELEVENTH OCEAN) Container Ship 41,962DWT 36,014GRT GERMANY flag (IRISL); Vessel Registration Identification IMO 9209324 (Germany) (vessel) [NPWMD].
29. DANDELION (a.k.a. IRAN NEW STATE; a.k.a. NEW STATE) Container Ship 41,937DWT 36,014GRT MALTA flag (IRISL); Vessel Registration Identification IMO 9209336 (vessel) [NPWMD].
30. DANDLE (a.k.a. TWELFTH OCEAN) Container Ship 41,971DWT 36,014GRT GERMANY flag (IRISL); Vessel Registration Identification IMO 9209348 (Germany) (vessel) [NPWMD].
31. DECKER (a.k.a. FIFTH OCEAN) Container Ship 79,030DWT 75,395GRT GERMANY flag (IRISL); Vessel Registration Identification IMO 9349667 (Germany) (vessel) [NPWMD].
32. DECRETIVE (a.k.a. SIXTH OCEAN) Container Ship 79,030DWT 75,395GRT MALTA flag (IRISL); Vessel Registration Identification IMO 9349679 (vessel) [NPWMD].
33. DESPINA (a.k.a. IRAN KOLAHDOOZ) General Cargo 17,982DWT 13,914GRT IRAN flag (IRISL); Vessel Registration Identification IMO 7428809 (vessel) [NPWMD].
34. GABION (a.k.a. SEVENTH OCEAN) General Cargo 22,882DWT 15,670GRT GERMANY flag (IRISL); Vessel Registration Identification IMO 9165786 (Germany) (vessel) [NPWMD].
35. GALAX (a.k.a. NINTH OCEAN) General Cargo 22,882DWT 15,670GRT GERMANY flag (IRISL); Vessel Registration Identification IMO 9165798 (Germany) (vessel) [NPWMD].
36. GARLAND (a.k.a. IRAN LUCKY MAN; a.k.a. LUCKY MAN) General Cargo 22,882DWT 15,670GRT MALTA flag (IRISL); Vessel Registration Identification IMO 9165839 (vessel) [NPWMD].

37. GLADIOLUS (a.k.a. TENTH OCEAN) General Cargo 22,882DWT 15,670GRT GERMANY flag (IRISL); Vessel Registration Identification IMO 9165815 (Germany) (vessel) [NPWMD].

38. GOLDENROD (a.k.a. IRAN LUCKY LILY; a.k.a. LUCKY LILY) General Cargo 22,882DWT 15,670GRT MALTA flag (IRISL); Vessel Registration Identification IMO 9165827 (vessel) [NPWMD].

39. GOMIDAS (a.k.a. IRAN ESTEGHLAL) Bulk Carrier 35,839DWT 20,811GRT IRAN flag (IRISL); Vessel Registration Identification IMO 7620550 (vessel) [NPWMD].

40. HOOTAN (a.k.a. IRAN SEPAH) Bulk Carrier 33,856DWT 20,361GRT IRAN flag (IRISL); Vessel Registration Identification IMO 7375363 (vessel) [NPWMD].

41. HORSHAM (a.k.a. IRAN BAM) Bulk Carrier 73,664DWT 40,166GRT MALTA flag (IRISL); Vessel Registration Identification IMO 9323833 (vessel) [NPWMD].

42. IRAN SAHAR (a.k.a. RA–EES ALI) General Cargo 2,876DWT 2,576GRT IRAN flag (IRISL); Vessel Registration Identification IMO 8203608 (vessel) [NPWMD].

43. KHORASAN (a.k.a. IRAN KHORASAN) Bulk Carrier 72,622DWT 39,424GRT MALTA flag (IRISL); Vessel Registration Identification IMO 9193214 (vessel) [NPWMD].

44. LANCELIN (a.k.a. IRAN YAZD) Bulk Carrier 72,642DWT 40,609GRT CYPRUS flag (IRISL); Vessel Registration Identification IMO 9213387 (vessel) [NPWMD].

45. LANTANA (a.k.a. IRAN OCEAN CANDLE; a.k.a. OCEAN CANDLE) General Cargo 23,176DWT 16,694GRT MALTA flag (IRISL); Vessel Registration Identification IMO 9167253 (vessel) [NPWMD].

46. LAVENDER (a.k.a. IRAN PRETTY SEA (KHUZESTAN); a.k.a. PRETTY SEA) General Cargo 23,116DWT 16,694GRT MALTA flag (IRISL); Vessel Registration Identification IMO 9167277 (vessel) [NPWMD].

47. LILIED (a.k.a. IRAN SEA STATE; a.k.a. SEA STATE) General Cargo 23,176DWT 16,694GRT MALTA flag (IRISL); Vessel Registration Identification IMO 9167265 (vessel) [NPWMD].

48. LIMNETIC (a.k.a. SEA FLOWER) General Cargo 23,176DWT 16,694GRT MALTA flag (IRISL); Vessel Registration Identification IMO 9167289 (Malta) (vessel) [NPWMD].

49. LODESTAR (a.k.a. IRAN SEA BLOOM; a.k.a. SEA BLOOM) General Cargo 23,176DWT 16,694GRT MALTA flag (IRISL); Vessel Registration Identification IMO 9167291 (vessel) [NPWMD].

50. MARGRAVE (a.k.a. IRAN BRAVE) General Cargo 22,950DWT 16,620GRT MALTA flag (IRISL); Vessel Registration Identification IMO 9051650 (vessel) [NPWMD].

51. MARIGOLD (a.k.a. BRIGHTNESS; a.k.a. IRAN BRIGHTNESS) General Cargo 24,065DWT 16,621GRT MALTA flag (IRISL); Vessel Registration Identification IMO 9051648 (vessel) [NPWMD].

52. MARKARID (a.k.a. IRAN DEYANAT) Bulk Carrier 43,150DWT 25,168GRT IRAN flag (IRISL); Vessel Registration Identification IMO 8107579 (vessel) [NPWMD].

53. MULBERRY (a.k.a. BRILLIANCE; a.k.a. IRAN BRILLIANCE) General Cargo 24,065DWT 16,621GRT MALTA flag (IRISL); Vessel Registration Identification IMO 9051636 (vessel) [NPWMD].

54. PANTEA (a.k.a. IRAN ADL) Bulk Carrier 37,537DWT 22,027GRT IRAN flag (IRISL); Vessel Registration Identification IMO 8108559 (vessel) [NPWMD].

55. PARMIDA (a.k.a. IRAN AFZAL) Bulk Carrier 37,564DWT 22,027GRT IRAN flag (IRISL); Vessel Registration Identification IMO 8105284 (vessel) [NPWMD].

56. SAKAS (a.k.a. IRAN PIROOZI) Container Ship 33,835DWT 25,391GRT IRAN flag (IRISL); Vessel Registration Identification IMO 9283007 (vessel) [NPWMD].

57. SEPANTA (a.k.a. IRAN ARDEBIL) Container Ship 37,875DWT 27,681GRT IRAN flag (IRISL); Vessel Registration Identification IMO 9284154 (vessel) [NPWMD].

58. SEPITAM (a.k.a. IRAN ILAM) Container Ship 37,600DWT 27,681GRT IRAN flag (IRISL); Vessel Registration Identification IMO 9283033 (vessel) [NPWMD].

59. SEWAK (a.k.a. IRAN FARS) Container Ship 33,702DWT 25,391GRT IRAN flag (IRISL); Vessel Registration Identification IMO 9283021 (vessel) [NPWMD].

60. SHERE (a.k.a. IRAN TABAS) Bulk Carrier 73,586DWT 40,166GRT MALTA flag (IRISL); Vessel Registration Identification IMO 9305192 (vessel) [NPWMD].

61. SILVER CRAFT (a.k.a. IRAN KERMAN) Container Ship 41,978DWT 36,014GRT MALTA flag (IRISL); Vessel Registration Identification IMO 9209350 (vessel) [NPWMD].

62. SILVER ZONE (a.k.a. IRAN BUSHEHR) Container Ship 30,146DWT 23,285GRT MALTA flag (IRISL); Vessel Registration Identification IMO 9270658 (Malta) (vessel) [NPWMD].

63. SIMBER (a.k.a. IRAN YASOOJ) Container Ship 33,813DWT 25,391GRT IRAN flag (IRISL); Vessel Registration Identification IMO 9284142 (vessel) [NPWMD].

64. TABAK (a.k.a. IRAN AMANAT) Bulk Carrier 34,859DWT 20,576GRT IRAN flag (IRISL); Vessel Registration Identification IMO 8112990 (vessel) [NPWMD].

65. TONGHAM (a.k.a. IRAN BIRJAND) Bulk Carrier 73,664DWT 40,166GRT MALTA flag (IRISL); Vessel Registration Identification IMO 9305219 (vessel) [NPWMD].

66. TUCHAL (a.k.a. IRAN TUCHAL) Container Ship 66,900DWT 53,453GRT MALTA flag (IRISL); Vessel Registration Identification IMO 9346536 (vessel) [NPWMD].

67. UPPERCOURT (a.k.a. IRAN BOJNOORD) Bulk Carrier 73,518DWT 40,166GRT MALTA flag (IRISL); Vessel Registration Identification IMO 9305207 (vessel) [NPWMD].

68. VALILI (a.k.a. IRAN ARAK) Container Ship 29,870DWT 23,200GRT MALTA flag (IRISL); Vessel Registration Identification IMO 9270646 (Malta) (vessel) [NPWMD].

69. VISEA (a.k.a. IRAN ZANJAN) Container Ship 33,757DWT 25,391GRT IRAN flag (IRISL); Vessel Registration Identification IMO 9283019 (vessel) [NPWMD].

70. VOBSTER (a.k.a. IRAN PERSIAN GULFL a.k.a. PERSIAN GULF) Bulk Carrier 73,664DWT 40,166GRT MALTA flag (IRISL); Vessel Registration Identification IMO 9305221 (vessel) [NPWMD].

71. ZAWA (a.k.a. IRAN AZARBAYJAN) Bulk Carrier 72,642DWT 39,424GRT IRAN flag (IRISL); Vessel Registration Identification IMO 9193185 (vessel) [NPWMD].

Dated: September 27, 2010.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2010–25135 Filed 10–5–10; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–106177–98; (TD 8845)]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

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 IRS is soliciting comments concerning REG–106177–98 (TD 8845), Adequate Disclosure of Gifts (Sec. 301.6501(c)–1).

DATES: Written comments should be received on or before December 6, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the Regulation should be directed to Joel Goldberger, at (202) 927–9368, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Joel.P.Goldberger@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Adequate Disclosure of Gifts.

OMB Number: 1545–1637.

Regulation Project Number: REG–106177–98 (TD 8845).

Abstract: Section 301.6501(c)–1(f) requires that, in order to commence the running of the gift tax statute of limitations, the donor must file a Form 709 and submit sufficient information about the transaction that will give the Service a complete and accurate description of the transfer. Such information includes a description of the transferred property, the identity and relationship of the parties to the transfer and any entities involved, a description of the methods used to value the transferred property, a description of any restrictions on the transferred property, and a statement of any potential controversy or legal issue involved.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Individuals, households, and businesses.

The reporting burden contained in Sec. 301.6501(c)–1(f) is reflected in the burden for Form 709, U.S. Gift (and Generation-Skipping Transfer) Tax Return.

The following paragraph applies to all of the collections of information covered by this notice:

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

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.

Approved: September 29, 2010.

Alan Hopkins,

IRS Tax Analyst.

[FR Doc. 2010–25040 Filed 10–5–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5300 and Schedule Q (Form 5300)

AGENCY: Internal Revenue Service (IRS), Treasury.

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 IRS is soliciting comments concerning Form 5300, Application for Determination for Employee Benefit Plan, and Schedule Q (Form 5300), Elective Determination Requests.

DATES: Written comments should be received on or before December 6, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Joel Goldberger, at (202) 927–9368, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Joel.P.Goldberger@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application for Determination for Employee Benefit Plan (Form 5300), and Elective Determination Requests (Schedule Q (Form 5300)).

OMB Number: 1545–0197.

Form Number: Form 5300 and Schedule Q (Form 5300).

Abstract: Internal Revenue Code sections 401(a) and 501(a) set out requirements for qualification of employee benefit trusts and the tax exempt status of these trusts. Form 5300 is used to request a determination letter from the IRS for the qualification of a defined benefit or a defined contribution plan and the exempt status of any related trust. The information requested on Schedule Q (Form 5300) relates to the manner in which the plan satisfies certain qualification requirements concerning minimum participation, coverage, and nondiscrimination.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 185,000.

Estimated Time per Respondent: 43 hours, 6 minutes.

Estimated Total Annual Burden Hours: 7,972,750.

The following paragraph applies to all of the collections of information covered by this notice:

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. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and

tax return information are confidential, as required by 26 U.S.C. 6103.

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.

Approved: September 29, 2010.

Alan Hopkins,

IRS Tax Analyst.

[FR Doc. 2010–25045 Filed 10–5–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 8804, 8804 (Sch. A), 8805 and 8813

AGENCY: Internal Revenue Service (IRS), Treasury.

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 IRS is soliciting comments concerning Form 8804, Annual Return for Partnership Withholding Tax (Section 1446); Form 8804 (Sch. A), Penalty for Underpayment of Estimated Section 1446 Tax by Partnerships; Form 8805, Foreign Partner's Information Statement of Section 1446 Withholding Tax; and Form 8813, Partnership Withholding Tax Payment Voucher (Section 1446).

DATES: Written comments should be received on or before December 6, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Joel Goldberger, at (202) 927–9368, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue , NW., Washington, DC 20224, or through the Internet, at *Joel.P.Goldberger@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Form 8804, Annual Return for Partnership Withholding Tax (Section 1446); Form 8804 (Sch. A), Penalty for Underpayment of Estimated Section 1446 Tax by Partnerships; Form 8805, Foreign Partner's Information Statement of Section 1446 Withholding Tax; and Form 8813, Partnership Withholding Tax Payment Voucher 8813, Partnership Withholding Tax Payment Voucher (Section 1446).

OMB Number: 1545–1119.

Abstract: Internal Revenue Code section 1446 requires partnerships that are engaged in the conduct of a trade or business in the United States to pay a withholding tax if they have effectively collected taxable income that is allocable to foreign partners. The partnerships use Form 8813 to make payments of withholding tax to the IRS. They use Forms 8804 and 8805 to make annual reports to provide the IRS and affected partners with information to assure proper withholding, crediting to partners' accounts and compliance.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 55,000.

Estimated Total Annual Burden Hours: 155,005.

The following paragraph applies to all of the collections of information covered by this notice:

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

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.

Approved: September 29, 2010.

Allan Hopkins,

IRS Tax Analyst.

[FR Doc. 2010–25046 Filed 10–5–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Operating Subsidiary

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

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 comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on its proposal to extend this information collection.

DATES: Submit written comments on or before December 6, 2010.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile

transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from Mr. Donald W. Dwyer at (202) 906–6414, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use of information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: Operating Subsidiary.

OMB Number: 1550–0077.

Form Number: N/A.

Description: 12 CFR Part 559 permits federally chartered savings associations to establish and acquire operating subsidiaries. The savings association requesting to establish or acquire an operating subsidiary must provide the OTS with prior notification through either an application or a notice. OTS reviews the information to determine whether the savings association's request is in accordance with existing statutory and regulatory criteria.

OTS analyzes the information contained in the notice or application to determine if the savings association is in compliance with applicable statutes, regulations and policies.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 43.

Estimated Frequency of Response: On occasion.

Estimated Total Burden: 430 hours.

Dated: September 30, 2010.

Ira L. Mills,

Paperwork Clearance Officer, Office of Chief Counsel, Office of Thrift Supervision.

[FR Doc. 2010–25070 Filed 10–5–10; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Fair Credit Reporting Affiliate Marketing Regulations

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

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 comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on its proposal to extend this information collection.

DATES: Submit written comments on or before December 6, 2010.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from Suzanne McQueen (202) 906–6459, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use of information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: Fair Credit Reporting Affiliate Marketing Regulations.

OMB Number: 1550–0112.

Form Number: N/A.

Description: Section 214 of the Fair and Accurate Credit Transactions Act of 2003, which added new section 624 to the Fair Credit Reporting Act, generally prohibits a person from using certain information received from an affiliate to make a solicitation for marketing purposes to the consumer, unless the consumer is given notice and an opportunity and simple method to opt out of making such solicitations. Section 214 also required the OTS, the Securities and Exchange Commission, and the Federal Trade Commission, in consultation and coordination with each other, to issue regulations implementing section 214 that, to the extent possible, are consistent and comparable.

Consumers will use the information in the disclosures to decide whether to

opt out of their institutions' affiliate marketing practices. Respondent entities will use the opt out notices to manage their affiliate marketing practices appropriately.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 193,479.

Estimated Frequency of Response: On occasion.

Estimated Total Burden: 25,834 hours.

Dated: October 1, 2010.

Ira L. Mills,

Paperwork Clearance Officer, Office of Chief Counsel, Office of Thrift Supervision.

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BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Funding Opportunity Title: Notice of Funds Availability (NOFA) Inviting Applications for the Community Development Financial Institutions (CDFI) Program FY 2011 Funding Round (the FY 2011 Funding Round)

Announcement Type: Announcement of funding opportunity.

Catalog of Federal Domestic Assistance (*CFDA*) *Number:* 21.020.

DATES: Applications for Financial Assistance (FA) or Technical Assistance (TA) awards through the FY 2011 Funding Round must be received by midnight, Eastern Time (ET), November 19, 2010.

Executive Summary: Subject to funding availability, this NOFA is issued in connection with the FY 2011 Funding Round. The Community Development Financial Institutions (CDFI) Fund administers the CDFI Program.

I. Funding Opportunity Description

A. Award Requirements

Through the CDFI Program, the CDFI Fund provides FA awards and TA grants. FA awards are made to certified CDFIs that meet the requirements set forth in this NOFA, subject to funding availability. In FY 2011, the CDFI Fund will also make FA awards under the Healthy Food Financing Initiative (HFFI) to certified CDFIs that meet the requirements set forth in this NOFA, subject to funding availability. TA grants are made to certified CDFIs and entities proposing to become certified that complete and submit Part III of the CDFI Program funding application and meet the requirements set forth in this NOFA, subject to funding availability.

B. Program Regulations

The regulations governing the CDFI Program are found at 12 CFR Parts 1805 and 1815 (the Regulations) and provide guidance on evaluation criteria and other requirements of the CDFI Program. Detailed application content requirements are found in the CDFI Program application and related materials. Each capitalized term in this NOFA is more fully defined in this NOFA, the Regulations, or the application, and the CDFI Fund encourages Applicants to review the Regulations in addition to this NOFA.

C. The CDFI Fund reserves the right to fund, in whole or in part, any, all, or none of the applications submitted in response to this NOFA. The CDFI Fund reserves the right to reallocate funds from the amount that is anticipated to be available under this NOFA to other CDFI Fund programs, particularly if the CDFI Fund determines that the number of awards made under this NOFA is fewer than projected. In addition, the CDFI Fund invites applications that propose innovative Financial Products and Financial Services to address the current difficult economic conditions of our nation.

II. Award Information

A. Funding Availability

1. *FY 2011 Funding Round:* Subject to funding availability, the CDFI Fund expects to award, through this NOFA, approximately $135 million in appropriated funds in the following ways: (i) $25 million in FA awards to Category I/SECA Applicants; (ii) $82 million in FA awards to Category II/Core Applicants; (iii) $25 million in FA awards to HFFI Applicants; and (vi) $3 million in TA grants to TA Applicants. The CDFI Fund reserves the right to award more or less than the amounts cited above in each category in the FY 2011 Funding Round, provided that the funds are available and the CDFI Fund deems it appropriate.

2. *Availability of Funds for the FY 2011 Funding Round:* Funds for the FY 2011 Funding Round have not yet been appropriated. If funds are not appropriated, there will not be a FY 2011 Funding Round. If funds are appropriated, the amount of such funds may be greater or less than the amounts set forth above. If funds for the FY 2011 Funding Round for the Native American CDFI Assistance (NACA) Program are not appropriated, entities eligible to apply for CDFI Program funds that would have applied for NACA Program funding, are encouraged to apply for CDFI Program funds through this NOFA.

B. Types of Awards

An Applicant may submit an application for either: (i) A FA award (including a HFFI–FA award) or (ii) TA grant. Applicants applying for HFFI–FA awards must apply for both a FA award (by submitting Part II of the application) and an HFFI–FA award by submitting a HFFI questionnaire which will be sent to only those applicants indicating they are interested in applying for HFFI funding. The CDFI Fund will send the HFFI questionnaire to such applicants no later than December 1, 2010. The CDFI Fund reserves the right to award such applicants a FA award, a HFFI–FA award, both a FA and HFFI–FA award, or no award.

1. *FA Awards:* FA awards provide flexible financial support to CDFIs so they may achieve the strategies outlined in their Comprehensive Business Plans. FA awards can be used in the following five categories: (i) Financial Products; (ii) Financial Services; (iii) Development Services; (iv) Loan Loss Reserves and Capital Reserves; and/or (v) Operations. For purposes of this NOFA, the five categories mean:

TABLE 1—FIVE CATEGORIES OF FA

(i) Financial Products	Loans, grants, equity investments, and similar financing activities, including the purchase of loans that the Applicant originates and the provision of loan guarantees, in the Applicant's Target Market, or for related purposes that the CDFI Fund deems appropriate (including administrative funds used to carry out Financial Products).
(ii) Financial Services	Checking and savings accounts, certified checks, automated teller machines services, deposit taking, remittances, safe deposit box services, and other similar services (including administrative funds used to carry out Financial Services).

TABLE 1—FIVE CATEGORIES OF FA—Continued

(iii) Development Services	Activities that promote community development and help the Applicant provide its Financial Products and Financial Services, including financial or credit counseling, housing and home-ownership counseling (pre- and post-), self-employment technical assistance, entrepreneurship training, and financial management skill-building (including administrative funds used to carry out Development Services).
(iv) Loan Loss Reserves	Funds set aside in the form of cash reserves, or through accounting-based accrual reserves, to cover losses on loans, accounts, and notes receivable made in the Target Market, or for related purposes that the CDFI Fund deems appropriate (including administrative funds used to carry out Loan Loss Reserves).
(v) Capital Reserves	Funds set aside as reserves to support the Applicant's ability to leverage other capital, for such purposes as increasing its net assets or serving the financing needs of its Target Market, or for related purposes that the CDFI Fund deems appropriate (including administrative funds used to carry out Capital Reserves).
(vi) Operations	Funds used to carry out the Comprehensive Business Plan, and/or for related purposes the CDFI Fund deems appropriate, that are not used to carry out or administer any of the foregoing eligible FA uses.

The CDFI Fund may provide FA awards in the form of equity investments (including secondary capital in the case of certain Insured Credit Unions), grants, loans, deposits, credit union shares, or any combination thereof. The CDFI Fund reserves the right, in its sole discretion, to provide a FA award in a form and amount other than that which the Applicant requests; however, the award amount will not exceed the Applicant's award request as stated in its application. FA awards must be used to support the Applicant's activities; FA awards cannot be used to support the activities of, or otherwise be passed through, transferred, or co-awarded to, third-party entities, whether Affiliates, Subsidiaries, or others.

2. *Healthy Food Financing Initiative (HFFI)*:

(a) *Overview.* The HFFI represents the Federal government's first coordinated step to eliminate food deserts—urban and rural areas in the United States with limited access to affordable and nutritious food, particularly areas composed of predominantly lower-income neighborhoods and communities—by promoting a wide range of interventions that expand the supply of and demand for nutritious foods, including increasing the distribution of agricultural products; developing and equipping grocery stores and strengthening the producer-to-consumer relationship. Importantly, the HFFI also seeks to support the elimination of food deserts in the context of the broader neighborhood revitalization efforts of a community.

In addition to the CDFI Program, the HFFI includes: (i) The New Markets Tax Credit (NMTC) Program, also administered by the CDFI Fund; (ii) the Community and Economic Development (CED) Program, which the Department of Health and Human Services (HHS) administers; and (iii) several programs that the Department of Agriculture (USDA) administers including, among others, the Business and Industry (B&I) Program and the Intermediary Relending Program (IRP).

Each of the above-listed programs provides a unique mechanism to support initiatives aimed at increasing access to healthy food. When these programs are combined, public dollars can act far more effectively as a market catalyst by providing the full range of financing to local actors—a key step to addressing the problem of limited access to affordable and nutritious food. Instead of approaching this problem through separate agency and program silos, the HFFI will use a collaborative approach involving the resources of all three agencies.

Together, USDA, Treasury and HHS have created the Healthy Food Financing Working Group (Working Group), comprising senior policy officials and program staff from each agency. USDA chairs the HFFI Working Group and will coordinate the solicitations, applications, review and award processes, and public events, as well as mechanisms to track annual investment performance to clearly demonstrate progress toward eliminating food deserts in seven years and other stated HFFI goals. Departments will review applications separately, but incorporate HFFI-specific criteria into the selection process to ensure agencies evaluate applications using common standards, such as community need, quality of strategies, and capacity to execute plans. While each agency will retain the authority to make final funding decisions for its programs, participating agencies will consult with each other during the review process and prior to HFFI awards being made under any given program. In addition, where appropriate and consistent with existing statutes, special funding consideration will be given to organizations intending to use (either directly or through partnerships) multiple sources of HFFI funding. In this manner, a community can benefit from tax credits, grants, loans, guarantees, and technical assistance for a project or suite of projects that collectively address the goals of this initiative. This working group will also seek to coordinate with the Administration's Neighborhood Revitalization Working Group (which includes HUD, ED, HHS, DOJ, and Treasury) in an effort to help amplify the neighborhood and revitalization connections that can be derived from HFFI activities. For more information about the Neighborhood Revitalization Working Group, please visit the following Web site: *http://www.whitehouse.gov/sites/default/files/nri_description.pdf.*

The HFFI has specific outcome targets—the most important of which is measurably reducing the number of food deserts through a concerted, multi-year, performance-driven effort. In addition HFFI is part of a larger effort to create quality jobs and promote comprehensive community development strategies to revitalize distressed neighborhoods into healthy and vibrant communities of opportunity. As such, HFFI should be viewed as a resource that communities can use to help implement a key element of their broader neighborhood revitalization strategies—namely, access to healthy food. Applicants are encouraged to consider and pursue linkages not only to other HFFI component programs but also to other community development programs in areas such as housing, education, economic development, public safety and access to health services.

Agencies will stay engaged with HFFI awardees as projects move forward. The Working Group will develop reporting requirements specifically for HFFI awardees that will chart the annual

progress awardees have made toward achieving the goal of eliminating food deserts in seven years, and other key data points for end outcomes (such as access, job creation and quality, commodity sales, and community health) as well as interim ones (such as amount of funding leveraged and business performance).

(b) *HFFI–FA Awards.* In FY 2011, subject to appropriations, the CDFI Fund plans to award up to $25 million of FA awards through the HFFI. The CDFI Fund expects to make HFFI–FA awards of up to $5 million or larger to certified CDFIs that submit and complete Parts II and a HFFI questionnaire, which will be sent to only those applicants indicating on their FY 2011 FA application that they will be applying for an HFFI award. The CDFI Fund reserves the right to make awards less than or greater than $5 million based upon the questionnaires received and the funds available. The HFFI questionnaire will be sent to those applicants on or about December 1, 2010. The questionnaire will have a series of questions and responses will be limited to a specific page length. The maximum amount per award will depend on Congressional appropriations, as well as authorization to exceed award caps as described in Section III. B.1. of this NOFA.

HFFI Applicants will be eligible for a HFFI–FA award for this initiative or a combination of a FA award and a HFFI–FA award. HFFI Applicants must receive a minimum score in Part II of the CDFI Program Application in order to be considered for an HFFI award, and then will be rated and scored separately based upon the HFFI questionnaire responses. HFFI Applicants will be rated, among other elements, on the extent of community need, the quality of their HFFI strategy, and their capacity to execute their HFFI strategy. The CDFI Fund will collaborate with the other Federal agencies involved in the HFFI prior to making final award selections. The CDFI Fund may, at its discretion, perform additional due diligence on Applicants for this initiative. HFFI–FA awards must be used to support the Applicant's activities; the awards cannot be used to support the activities of, or otherwise be passed through, transferred, or co-awarded to, third-party entities, whether Affiliates, Subsidiaries, or others. The CDFI Fund reserves the right to limit the portion of HFFI–FA awards that may be applied to Capital Reserves or Operations uses.

3. *TA Grants:*

(a) The CDFI Fund provides TA as a grant and reserves the right, in its sole discretion, to provide a grant for uses and amounts other than that which the Applicant requests; however, the grant amount will not exceed the Applicant's request as stated in its application and the applicable budget chart.

(b) For purposes of this NOFA, TA eligible uses are: (i) Personnel/salary; (ii) personnel/fringe; (iii) professional services; (iv) travel; (v) training; (vi) equipment; (vii) materials/supplies; and (viii) other. (Please see the CDFI Program Application, Part III for details of TA uses.) TA awards must be used to support the Applicant's capacity building activities. TA awards cannot be used to support the activities of, or otherwise be passed through, transferred, or co-awarded to, third-party entities, whether Affiliates, Subsidiaries, or others.

C. *Assistance Agreement:* Each Awardee under this NOFA must sign an Assistance Agreement before the CDFI Fund will disburse an award or grant. The Assistance Agreement contains the terms and conditions of the award. For further information, see Section VI.A of this NOFA.

III. Eligibility Information

A. Eligible Applicants

The Regulations specify the eligibility requirements each Applicant must meet in order to be eligible to apply for assistance under this NOFA. Applicants may apply as either a FA applicant or a TA applicant, but not both. If an Applicant applies for both, the CDFI Fund reserves the right to disqualify the Applicant from competing for either a FA or a TA award or to decide to give the Applicant either a FA award or a TA grant.

1. *FA Applicant Categories:* All FA Applicants must meet the criteria for one of the following two categories listed in Table 2. (Any Applicant requesting FA funding in excess of the allowable amount for Category I will be classified as a Category II Applicant, regardless of its total assets, years in operation, or prior CDFI Fund awards.)

TABLE 2—FA APPLICANT CRITERIA

FA applicant category	Applicant criteria	Applicant may apply for:
Category I/Small and/or Emerging CDFI Assistance (SECA).	(1) Is a Certified/Certifiable CDFI; (2) As of the end of the Applicant's most recent fiscal year end or September 30, 2010, has total assets as follows: • Insured Depository Institutions and Depository Institution Holding Companies: up to $250 million • Insured Credit Unions: up to $10 million; • Venture capital funds: up to $10 million; • Other CDFIs: up to $5 million; OR (3) Began operations* on or after January 1, 2007.	Up to and including $600,000 in FA funds.
Category II/Core/HFFI	A Certified/Certifiable CDFI that meets all other eligibility requirements described in this NOFA.	Up to and including $2 million in FA funds; and up to and $5 million or more in FA funds under the HFFI.

* The term "began operations" is defined as the financing activity start date indicated in the Applicant's myCDFIFund account.

2. *TA Applicants:* All TA Applicants must meet the following criteria:

TABLE 3—TA APPLICANT CRITERIA

Applicant type	Criteria of applicant	Applicant can apply for:
TA	A Certified CDFI, a Certifiable CDFI, or an Emerging CDFI	Up to $100,000 in TA funds.

3. *CDFI Certification Requirements:* For purposes of this NOFA, eligible FA Applicants include Certified CDFIs and Certifiable CDFIs; eligible TA Applicants include Certified CDFIs, Certifiable CDFIs, and Emerging CDFIs, defined as follows:

(a) *Certified CDFIs:* A Certified CDFI is an entity that has received official notification from the CDFI Fund that it meets all CDFI certification requirements as of this NOFA's publication date. CDFIs that have received official notification from the CDFI Fund that their certification has expired or been terminated are not eligible to apply as Certified CDFIs. In cases where the CDFI Fund provided certified CDFIs with written notification that their certifications had been extended, the CDFI Fund will consider the extended certification dates to determine whether those certified CDFIs meet this eligibility requirement. Certified Applicants must submit a Certification of Material Events form if they have experienced a material event. A "material event" is an occurrence that affects an organization's strategic direction, mission, or business operation and, thereby, its status as a Certified CDFI and/or its compliance with the terms and conditions of an Assistance Agreement. *Please see* Section IV in this NOFA for deadlines to submit certification application and material events forms. The material events form can be found on the CDFI Fund's Web site at *http://www.cdfifund.gov.*

(b) *Certifiable CDFIs:* A Certifiable CDFI is an entity that has submitted an application to the CDFI Fund demonstrating that it meets the CDFI certification requirements but the CDFI Fund has not yet officially certified the entity. If the CDFI Fund is unable to certify an Applicant and the Applicant is selected for a FA award, the CDFI Fund may, in its sole discretion, terminate the award commitment. The CDFI Fund will not enter into an Assistance Agreement or disburse FA award funds unless and until an Applicant is a Certified CDFI. The CDFI Certification application can be found on the CDFI Fund's Web site at *http://www.cdfifund.gov.*

(c) *Emerging CDFIs:* An Emerging CDFI is an entity that demonstrates to the CDFI Fund it has an acceptable plan to become a Certified CDFI by December 31, 2013, or another date selected by the CDFI Fund. Emerging CDFIs may only apply for TA grants; they are not eligible to apply for FA awards. Each Emerging CDFI that is selected to receive a TA grant will be required, pursuant to its Assistance Agreement with the CDFI Fund, to become certified as a CDFI by a specified date.

4. *Limitation on Awards:* An Applicant may receive only one award through the FY 2011 CDFI Program Funding Round or the FY 2011 NACA Funding Round. An Applicant may also receive a FY 2011 Bank Enterprise Award (BEA) Program award for any activities not funded by a CDFI Program award. A CDFI Program Applicant, its Subsidiaries, or Affiliates may also apply for and receive a tax credit allocation (referred to in this NOFA as an Allocatee) through the New Markets Tax Credit (NMTC) Program, but only to the extent that the activities approved for CDFI Program awards are different from those activities for which the Applicant or Allocatee receives a NMTC Program allocation.

B. Prior Awardees

For purposes of this section, the CDFI Fund will consider an Affiliate to be any entity that meets the definition of Affiliate in the Regulations or any entity otherwise identified as an Affiliate by the Applicant in its funding application and/or its myCDFI Fund account. Prior awardees should note the following:

1. *$5 Million Funding Cap:* Congress waived the $5 million funding cap for the FY 2009 and the FY 2010 Funding Rounds, and it is possible that the $5 million funding cap may be waived for the FY 2011 Funding Round. As of the publication date of this NOFA, however, such a waiver has not been enacted into law. Accordingly, the CDFI Fund is currently prohibited from obligating more than $5 million in assistance, in the aggregate, to any one organization and its Subsidiaries and Affiliates during any three-year period. In general, the three-year period calculated for the cap extends back three years from the Effective Date of the Assistance Agreement between the Awardee and the CDFI Fund. For purposes of this NOFA, the CDFI Fund will include any assistance in the cap that was/will be provided to an Applicant between July 31, 2008 and July 31, 2011, the anticipated date the CDFI Fund expects to issue Assistance Agreements for the FY 2011 Funding Round. Since Congress may issue a waiver of the cap, Applicants that are eligible to receive awards under this NOFA but would exceed the $5 million funding cap if selected for a FY 2011 award, should submit an application under this NOFA. The CDFI Fund will assess the $5 million funding cap applicability during the award selection phase if a Congressional waiver has not been enacted by that time.

2. *Failure to Meet Reporting Requirements:* The CDFI Fund will not consider an Applicant's application if the Applicant, or an Affiliate of the Applicant, is a prior Awardee/Allocatee under any CDFI Fund program and is not current on the reporting requirements set forth in a previously executed assistance, allocation, or award agreement(s), as of this NOFA's application deadline. The CDFI Fund only acknowledges receipt of reports that are complete; incomplete reports or reports that are deficient of required elements will not be considered as having been received.

3. *Pending Resolution of Noncompliance:* If the Applicant, or an Affiliate of the Applicant is a prior Awardee/Allocatee under any CDFI Fund program and if: (i) The entity has submitted reports to the CDFI Fund indicating noncompliance with a previously executed agreement with the CDFI Fund, and (ii) the CDFI Fund has yet to make a final determination as to whether the entity is in default of its previously executed agreement, it is in the CDFI Fund's sole discretion to consider the Applicant's application pending until full resolution of the noncompliance issue.

4. *Default Status:* If an Applicant or Affiliate of the Applicant is a prior Awardee/Allocatee under any CDFI Fund program and is in default of a previously executed agreement with the CDFI Fund at the time that the application is due under this NOFA, the application will not be considered for funding. Such entities will be ineligible to apply for an award under this NOFA as long as the Applicant or an Affiliate

of the Applicant's prior award or allocation remains in default status or such other time period as the CDFI Fund has specified in writing.

5. *Termination in Default:* The CDFI Fund will not consider an application submitted by an Applicant, or an Affiliate of the Applicant that is a prior Awardee/Allocatee under any CDFI Fund program if the CDFI Fund made a final determination that the Awardee/Allocatee's prior award was terminated in default: (i) Within the 12-month period prior to this NOFA's application deadline, and (ii) the final reporting period end date for the applicable terminated award falls within the 12-month period prior to this NOFA's application deadline.

6. *Undisbursed Award Funds:* The CDFI Fund will not consider an Applicant's application if the Applicant or an Affiliate of the Applicant is a prior Awardee under any CDFI Fund program and has undisbursed award funds (as defined below) as of this NOFA's application deadline. The CDFI Fund will include the combined undisbursed prior awards, as of this NOFA's application deadline, of the Applicant and affiliated entities, including those in which the affiliated entity Controls the Applicant, is Controlled by the Applicant, or shares common management officials with the Applicant as determined by the CDFI Fund.

For the BEA Program, undisbursed award funds will be included in the calculation of undisbursed awards for the Applicant (and any Affiliates) three to five calendar years prior to the end of the calendar year of this NOFA's application deadline. Thus, for purposes of this NOFA, undisbursed awards made in FYs 2005, 2006, and 2007 will be included in the calculation for the Applicant's undisbursed award amounts if the funds have not been disbursed as of this NOFA's application deadline.

The CDFI and NACA Programs' undisbursed funds will be calculated by adding all undisbursed award amounts made to the Applicant (and any Affiliate(s)) two to five calendar years prior to the end of the calendar year of this NOFA. Therefore, undisbursed CDFI Program and NACA awards made in FYs 2005, 2006, 2007, and 2008 will be included in the undisbursed calculation as of this NOFA's application deadline.

Undisbursed awards can not exceed five percent of the total includable awards for the Applicant's BEA/CDFI/NACA awards, as of this NOFA's application deadline. (The total "includable" award amount is the total award amount from the relevant CDFI Fund program.) Please refer to an example of this calculation on the CDFI Fund's Web site, found in the Q&A document for the FY 2011 Funding Round.

The "undisbursed award funds" calculation does not include: (i) Tax credit allocation authority made available through the NMTC Program; (ii) award funds that the Awardee has requested from the CDFI Fund by submitting a full and complete disbursement request before this NOFA's application deadline; (iii) award funds for an award that the CDFI Fund has terminated or de-obligated; or (iv) award funds for an award that does not have a fully executed assistance or award agreement. The CDFI Fund encourages Applicants to request their undisbursed funds from the CDFI Fund at least 10 business days prior to this NOFA's application deadline.

7. *Contact the Fund:* Applicants that are prior CDFI Fund Awardees are advised to: (i) Comply with requirements specified in assistance, allocation, and/or award agreement(s), and (ii) contact the CDFI Fund to ensure that all necessary actions are underway for the disbursement or de-obligation of any outstanding balance of prior award(s) as referenced above. An Applicant that is unsure about the disbursement status of any prior award should contact the CDFI Fund by sending an e-mail to *CDFI.disburseinquiries@cdfi.treas.gov.*

8. *Other Targeted Populations as Target Markets:* Other Targeted Populations are defined as identifiable groups of individuals in the Applicant's service area for which there exists strong evidence that they lack access to loans, equity investments, and/or Financial Services. The CDFI Fund has determined there is strong evidence that the following groups of individuals lack access to such products and services on a national level or within their recognized ancestral areas: (i) Native Americans or American Indians, including Alaska Natives living in Alaska; (ii) Blacks or African Americans; (iii) Hispanics or Latinos; (iv) Native Hawaiians living in Hawaii; and (v) other Pacific Islanders living in other Pacific Islands. An Applicant designating any of the above-cited Other Targeted Populations is not required to provide additional narrative explaining their lack of access to loans, equity investments, or Financial Services. To define these populations for the purposes of this NOFA, the CDFI Fund is using the following definitions, set forth in the Office of Management and Budget (OMB) Notice, Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity (October 30, 1997), as amended and supplemented: (a) American Indian, Native American, or Alaska Native: A person having origins in any of the original peoples of North and South America (including Central America) and who maintains tribal affiliation or community attachment; (b) Black or African American: A person having origins in any of the black racial groups of Africa (terms such as Haitian or Negro can be used in addition to Black or African American); (c) Hispanic or Latino: A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race (the term Spanish origin can be used in addition to Hispanic or Latino); (d) Native Hawaiian: A person having origins in any of the original peoples of Hawaii; and (e) Other Pacific Islander: a person having origins in any of the original peoples of Guam, Samoa or other Pacific Islands.

C. Matching Funds

Congress waived the matching funds requirements for the FY 2009 and FY 2010 Funding Rounds, and it is possible that the matching funds requirements may be waived for the FY 2011 Funding Round. As of the publication date of this NOFA, however, such a waiver has not been enacted into law. Accordingly, the CDFI Fund encourages Applicants to include matching funds documentation as instructed in the application. If a matching funds waiver is enacted, the CDFI Fund will not consider matching funds documentation. An Applicant that does not include matching funds documentation in its application runs the risk of being determined to be ineligible for funding under the FY 2011 Funding Round if a matching funds waiver is not enacted. In light of a possible matching funds requirement waiver, an Applicant that would not satisfy the matching funds requirements but is otherwise eligible under this NOFA should submit an application. The CDFI Fund will assess applicability of the matching funds requirements during the award selection phase if Congress has not enacted a waiver by that time. Accordingly, subject to the immediately preceding paragraph:

1. FA Applicants must obtain non-Federal matching funds, on the basis of not less than one dollar for each dollar of FA funds the CDFI Fund provides. (This requirement pertains to FA Applicants only; matching funds are not required for TA Applicants). Matching funds must be comparable in form and value to the CDFI Fund's FA award. For example, if an Applicant is requesting a

FA award, the Applicant must show it has obtained matching funds through commitment(s) from non-Federal sources that are equal to the amount requested from the CDFI Fund. Applicants cannot use matching funds from a prior FA award under the NACA or CDFI Program or under another Federal grant or award program to satisfy the matching funds requirement of this NOFA. If an Applicant seeks to use matching funds from an organization that was a prior Awardee under the NACA or CDFI Program, the CDFI Fund will deem such funds as Federal funds, unless the funding entity establishes and the CDFI Fund agrees, that such funds do not consist, in whole or in part, of NACA or CDFI Program funds or other Federal funds. The CDFI Fund encourages Applicants to review the Regulations at 12 CFR 1805.500 *et seq.* and matching funds guidance materials on the CDFI Fund's Web site for further information.

2. The CDFI Fund will not consider any FA Applicant for an award that has no matching funds in-hand or firmly committed as of this NOFA's application deadline. Specifically, FA Applicants must meet the following matching funds requirements:

(a) *Category I/SECA Applicants:* A Category I/SECA Applicant must demonstrate that it has eligible matching funds equal to no less than 25 percent of the FA amount requested in-hand or firmly committed, on or after January 1, 2009, and on or before the application deadline. The CDFI Fund reserves the right to rescind all or a portion of a FA award and re-allocate the rescinded award amount to other qualified Applicant(s), if an Applicant fails to obtain in-hand 100 percent of the required matching funds by March 14, 2012 (with required documentation of such receipt received by the CDFI Fund not later than March 31, 2012), or to grant an extension of such matching funds deadline for specific Applicants selected to receive FA awards, if the CDFI Fund deems it appropriate. For any Applicant that demonstrates it has less than 100 percent of matching funds in-hand or firmly committed as of the application deadline, the CDFI Fund will evaluate the Applicant's ability to raise the remaining matching funds by March 14, 2012.

(b) *Category II/Core Applicants:* A Category II/Core Applicant must demonstrate that it has eligible matching funds equal to no less than 100 percent of the amount of the FA award requested in-hand or firmly committed, on or after January 1, 2009 and on or before the application deadline. The CDFI Fund reserves the right to rescind all or a portion of a FA award and re-allocate the rescinded award amount to other qualified Applicant(s), if an Applicant fails to obtain in-hand 100 percent of the required matching funds by March 14, 2012 (with required documentation of such receipt received by the CDFI Fund not later than March 31, 2012), or to grant an extension of such matching funds deadline for specific Applicants selected to receive FA, if the CDFI Fund deems it appropriate.

(c) *HFFI Applicants:* A HFFI Applicant must demonstrate that it has eligible matching funds equal to no less than 25 percent of the FA amount requested in-hand or firmly committed, on or after January 1, 2009, and on or before the deadline for the submitting the HFFI supplemental questionnaire. The CDFI Fund reserves the right to rescind all or a portion of a FA award and re-allocate the rescinded award amount to other qualified Applicant(s), if an Applicant fails to obtain in-hand 100 percent of the required matching funds by March 14, 2012 (with required documentation of such receipt received by the CDFI Fund not later than March 31, 2012), or to grant an extension of such matching funds deadline for specific Applicants selected to receive FA awards, if the CDFI Fund deems it appropriate. For any Applicant that demonstrates it has less than 100 percent of matching funds in-hand or firmly committed as of the application deadline, the CDFI Fund will evaluate the Applicant's ability to raise the remaining matching funds by March 14, 2012.

3. *Matching Funds Terms Defined; Required Documentation:*

(a) "*Matching funds in-hand*" means the Applicant has actually received the matching funds. If the matching funds are in-hand, the Applicant must provide the CDFI Fund with acceptable written documentation of the source, form, and amount of the matching funds (i.e., grant, loan, deposit, and equity investment). Applicants must provide the CDFI Fund with copies of the following documentation depending on the type of award: (i) Loans—the loan agreement and promissory note; (ii) grant—the grant letter or agreement for all grants of $50,000 or more; (iii) equity investment—the stock certificate and any related shareholder agreement. Further, if the matching funds are in-hand, the Applicant must provide the CDFI Fund with acceptable documentation that shows receipt of the matching funds, such as a copy of a check or a wire transfer statement.

(b) "*Firmly committed matching funds*" means the Applicant has entered into or received a legally binding commitment from the matching funds source showing the matching funds will be disbursed to the Applicant. If the matching funds are firmly committed, the Applicant must provide the CDFI Fund with acceptable written documentation showing the source, form, and amount of the firm commitment (and, in the case of a loan, the terms thereof), as well as the anticipated date of disbursement of the committed funds.

4. The CDFI Fund may contact the matching funds source to discuss the matching funds and the documentation that the Applicant has provided. If the CDFI Fund determines that any portion of the Applicant's matching funds is ineligible under this NOFA, the CDFI Fund, in its sole discretion, may permit the Applicant to offer alternative matching funds as a substitute for the ineligible matching funds. In this case: (i) The Applicant must provide acceptable alternative matching funds documentation within two business days of the CDFI Fund's request, and (ii) the alternative matching funds documentation cannot increase the total amount of FA the Applicant requested.

5. *Special Rule for Insured Credit Unions:* The Regulations allow an Insured Credit Union to use retained earnings to serve as matching funds for a FA award in an amount equal to: (i) The increase in retained earnings that has occurred over the Applicant's most recent fiscal year; (ii) the annual average of such increases that has occurred over the Applicant's three most recent fiscal years; or (iii) the entire retained earnings that have been accumulated since the inception of the Applicant, as provided in the Regulations. For purposes of this NOFA, if option (iii) is used, the Applicant must increase its member and/or non-member shares or total loans outstanding by an amount equal to the amount of retained earnings committed as matching funds. This amount must be raised by the end of the Awardee's second performance period, as set forth in its Assistance Agreement, and will be based on amounts reported in the Applicant's Audited or Reviewed Financial Statements or NCUA Form 5300 Call Report. The CDFI Fund will assess the likelihood of this increase during the application review process. An award will not be made to any Applicant that has not demonstrated in the relevant NCUA call report that it has increased shares or loans by at least 25 percent of the requested FA award amount between December 31, 2009, and December 31, 2010.

IV. Application And Submission Information

A. Application Submission

Under this NOFA, all Applicants must submit their applications electronically through Grants.gov. The CDFI Fund will not accept applications through myCDFIFund accounts nor will applications be accepted via e-mail, mail, facsimile, or other forms of communication, except in circumstances approved by the CDFI Fund beforehand.

B. Grants.gov

In compliance with Public Law 106–107 and Section 5(a) of the Federal Financial Assistance Management Improvement Act, the CDFI Fund is required to accept applications submitted through the Grants.gov electronic system. The CDFI Fund strongly recommends Applicants start the registration process as soon as possible and visit *http://www.grants.gov* immediately. Applicants that have used Grants.gov in the past must verify that their registration is current and active. New applicants must properly register, which can take weeks to complete. Pursuant to OMB guidance (68 FR 38402), each Applicant must provide, as part of its application submission, a Dun and Bradstreet Data Universal Numbering System (DUNS) number. In addition, each application must include a valid and current Employer Identification Number (EIN). An electronic application that does not include either a DUNS or an EIN is incomplete and runs the risk of not being transmitted to the CDFI Fund from Grants.gov. As a result, Applicants without a DUNS or EIN should allow sufficient time for the IRS and/or Dun and Bradstreet to respond to inquiries and/or requests for identification numbers.

The CDFI Fund will not consider Applicants that fail to properly register in Grants.gov or to confirm they are properly registered. The CDFI Fund will not accept applications from Applicants that are not properly registered in Grants.gov and therefore, unable to submit their application before the deadline. Also, Applicants are reminded that the CDFI Fund does not maintain the Grants.gov registration or submittal process so Applicants must contact Grants.gov directly for issues related to that aspect of the application submission process. *Please see* the following link for information on getting started on Grants.gov: *http://grants.gov/assets/GrantsgovCoBrandBrochure 8X11.pdf.*

C. MyCDFIFund Accounts

MyCDFIFund is the CDFI Fund's primary means of communication with Applicants so it must be kept updated. All Applicants must register as an organization and as a user with myCDFIFund before the application deadline. Applicants that fail to properly register and update their myCDFIFund accounts run the risk of missing important communication with the CDFI Fund that could impact their application. For more information on myCDFIFund, *please see* the "Frequently Asked Questions" link posted at *https://www.cdfifund.gov/myCDFI/Help/Help.asp.*

D. Application Content Requirements

The application and related documents can be found on the Grants.gov and the CDFI Fund's Web sites. The CDFI Fund anticipates posting the application and related documents to the CDFI Fund's Web site on the same day that the NOFA is released or shortly thereafter. Once an application is submitted, the Applicant will not be allowed to change any element of the application. The CDFI Fund, however, may contact the Applicant to clarify or confirm application information.

E. Paperwork Reduction Act

Under the Paperwork Reduction Act (44 U.S.C. chapter 35), an agency may not conduct or sponsor a collection of information, and an individual is not required to respond to a collection of information, unless it displays a valid OMB control number. Pursuant to the Paperwork Reduction Act, the CDFI Program funding application has been assigned the following control number: 1559–0021.

F. Application Deadlines

1. Please see Table 4 for critical deadlines that are relevant to the FY 2011 Funding Round:

TABLE 4—CDFI PROGRAM APPLICATION CRITICAL DATES

Description	Date due	Time
Last day to contact Certification staff for assistance	October 20, 2010	5:00 p.m.
Certification application	October 22, 2010	5:00 p.m.
Certification Material Events Form	October 22, 2010	5:00 p.m.
Last day to contact CDFI Program staff for assistance	November 17, 2010	5:00 p.m.
Last day to contact CDFI Compliance staff for assistance	November 17, 2010	5:00 p.m.
FA Application (Part II of the application)	November 19, 2010	midnight.
TA Application (Part III of the application)	November 19, 2010	midnight.
Healthy Food Financing Initiative Questionnaire	To Be Determined	To Be Determined.

2. *Late Delivery:* The CDFI Fund will neither accept a late application nor any portion of an application that is late; an application that is late, or for which any portion is late, will be rejected. The CDFI Fund will not grant exceptions or waivers. Any application that is deemed ineligible or rejected will not be returned to the Applicant.

G. Intergovernmental Review

Not applicable.

H. Funding Restrictions

For allowable uses of FA proceeds, please see the Regulations at 12 CFR 1805.301.

V. Application Review Information

A. Format

Applicants must complete the application as provided in Grants.gov and the CDFI Fund's Web sites. All applications must be single-spaced and use no smaller than an 11-point font. Each component in the application has page limitations. The CDFI Fund will read only information requested in the application and will not read attachments that have not been specifically requested in this NOFA or the application. Applicants should not submit documents like strategic plans or market studies unless the CDFI Fund has specifically requested such documents in the application.

B. Review and Selection Process

1. *Eligibility and Completeness Review:* The CDFI Fund will review each application to determine whether it is complete and the Applicant meets

the eligibility requirements described in Section III of this NOFA. An incomplete application or one that does not meet eligibility requirements will be rejected at this point.

2. *Substantive Review:* If the Applicant has submitted a complete and eligible application, the CDFI Fund will conduct a substantive review in accordance with the criteria and procedures described in the Regulations, this NOFA, and the application. The CDFI Fund reserves the right to contact the Applicant by telephone, e-mail, mail, or through an on-site visit for the sole purpose of clarifying or confirming application information. If contacted, the Applicant must respond within the CDFI Fund's time parameters or run the risk of being rejected.

3. *Application Scoring and Award Selection (FA and TA Applicants):*

(a) *Application Scoring:* The CDFI Fund will evaluate each application on the four criteria categories and the scoring scale described in the CDFI Program application. An Applicant must receive a minimum score in each evaluation criteria in order to be considered for an award. The CDFI Fund will score each part as indicated in the following table:

TABLE 5—APPLICATION SCORING CRITERIA

Application parts	Scoring points
Part II. Financial Assistance (FA) Applicants	
High Impact Narrative	10
Target Market Needs	**10
Responsiveness to Target Market Needs	40
Delivery Capacity	40
TOTAL POINTS	100
Part III. Technical Assistance (TA) Applicants	
Technical Assistance Proposal	20
Target Market Needs	**10
Responsiveness to Target Market Needs	30
Delivery Capacity	40
TOTAL POINTS	100

**Includes up to 5 priority points based on distress criteria.

(b) In the FY 2011 Funding Round, the CDFI Fund will allow Applicants to earn up to 5 extra priority points for serving eligible highly distressed Target Markets. Such markets are identified by a distress index based on county-level rankings of high poverty, home foreclosure rates, a high proportion of high cost mortgages (as defined in the Home Ownership and Equity Protection Act [HOEPA] of 1994), high unemployment rates and low median family income. Applicants can identify distressed markets by using the index, which identifies the most distressed counties with the highest rank number. The index is posted to the CDFI Fund's Web site at *http://www.cdfifund.gov/distressindex.*

(c) *Evaluating Prior Award Performance:* Prior Awardees/Allocatees of any CDFI Fund program will be deducted points if the Applicant: (i) Is noncompliant with any active award or award that terminated in the current calendar year by failing to meet performance goals and measures, reporting deadlines, and other requirements set forth in the CDFI Fund's assistance or award agreement(s) during the Applicant's two complete fiscal years prior to this NOFA's application deadline; (ii) failed to make timely loan payments to the CDFI Fund during the Applicant's two complete fiscal years prior to this NOFA's application deadline (if applicable); and (iii) did not perform on any prior assistance agreement, which is determined during the application review process. In addition, the CDFI Fund will deduct points if a FA Applicant had funds de-obligated for or from an FA award issued in FY 2008, 2009 or 2010 if: (i) The amount of de-obligated funds is at least $200,000 and (ii) the de-obligation occurred within the 12 months prior to this NOFA's application deadline. Point deductions for a de-obligation in this funding round will not be counted against future FA applications. The CDFI Fund has the sole discretion to deduct points from prior Awardees/Allocates if those Applicants have proceedings instituted against them in, by, or before any court, governmental, agency, or administrative body and has received a final determination within the last three years indicating the Applicant has discriminated on the basis of race, color, national origin, disability, age, marital status, receipt of income from public assistance, religion, or sex.

(d) *Award Selection:* The CDFI Fund will make its final award selections based on the Applicants' scores, ranked from highest to lowest, and the amount of funds available. In the case of tied scores, Applicants will be ranked according to each Applicant's Community Development Performance and Effective Use scores. TA Applicants, Category I, Category II, and HFFI Applicants will be grouped and ranked separately. In addition, the CDFI Fund may consider the institutional and geographic diversity of Applicants when making its funding decisions.

4. *Application Scoring and Award Selection (HFFI–FA Applicants).* Only FA Applicants that complete and submit the HFFI questionnaire and that meet minimum established scoring thresholds under Part II of the application may be considered for a HFFI–FA award. Such Applicants will be separately scored based on the HFFI questionnaire. HFFI Applicants will be rated, among other elements, on the extent of community need, the quality of their HFFI strategy, and their capacity to execute their HFFI strategy. To the extent possible, based primarily on the number of applications received, HFFI questionnaires will be evaluated and scored by multiple reviewers. With respect to each HFFI questionnaire reviewed, the reviewer will give equal weight to all elements of the application questionnaire (*i.e.,* each plan will be reviewed holistically—no one element will be weighted more heavily than any other element). HFFI–FA awards will generally be made in descending order of the total aggregate scores of the HFFI questionnaires until the HFFI appropriated dollars are expended. In the case of a tied HFFI ranking score, Applicants will be ranked according to their total aggregate score under Part II of the application. The CDFI Fund reserves the right not to fund an HFFI application if the CDFI Fund has concerns (*e.g.,* based on the review and scoring of Part II of the application) about the Applicant's capacity to implement its HFFI strategy. In addition, the CDFI Fund will consult with other Federal agencies participating in the HFFI prior to making its HFFI–FA awards. Finally, the CDFI Fund may consider the institutional and geographic diversity of Applicants when making its funding decisions.

5. *Insured CDFIs:* In the case of Insured Depository Institutions and Insured Credit Unions, the CDFI Fund will consider the views of the Appropriate Federal Banking Agencies. Throughout the award review process, the CDFI Fund will consult with the Appropriate Federal Banking Agency about the Applicant's financial safety and soundness. If the Appropriate Federal Banking Agency identifies safety and soundness concerns, the CDFI Fund will assess whether the concerns cause or will cause the Applicant to be incapable of undertaking the activities for which funding has been requested. If it is determined the Applicant is incapable of meeting its obligations, the CDFI Fund reserves the right to deselect the

Applicant from receiving an award. The CDFI Fund also reserves the right to require insured CDFI Applicants to improve safety and soundness conditions prior to receiving an award disbursement. In addition, the CDFI Fund will take into consideration Community Reinvestment Act assessments of Insured Depository Institutions and/or their Affiliates.

6. *Award Notification:* Each Applicant will be informed of the CDFI Fund's award decision through a notification in the Applicant's myCDFIFund account. This includes notification to Applicants that have not been selected for an award if the decision is based on reasons other than completeness or eligibility. Applicants that have not been selected for an award will receive a debriefing in their myCDFIFund account. The CDFI Fund will provide this feedback in a format and within a timeframe depending on available resources.

7. The CDFI Fund reserves the right to reject an application if information (including administrative errors) comes to the CDFI Fund's attention that either adversely affects an Applicant's eligibility for an award, adversely affects the CDFI Fund's evaluation or scoring of an application, or indicates fraud or mismanagement on the Applicant's part. If the CDFI Fund determines any portion of the application is incorrect in a material respect, the CDFI Fund reserves the right, in its sole discretion, to reject the application. The CDFI Fund reserves the right to change its eligibility and evaluation criteria and procedures, if the CDFI Fund deems it appropriate. If the changes materially affect the CDFI Fund's award decisions the CDFI Fund will provide information about the changes through the CDFI Fund's Web site. The CDFI Fund's award decisions are final and there is no right to appeal the decisions.

VI. Award Administration Information

Assistance Agreement: Each Applicant selected to receive an award under this NOFA must enter into an Assistance Agreement with the CDFI Fund in order to receive the award's disbursement. The Assistance Agreement will set forth the award's terms and conditions, including but not be limited to the award's: (i) Amount; (ii) type; (iii) uses; (iv) eligible market to which the funded activity must be targeted; (v) performance goals and measures; and (vi) reporting requirements. Applicants should review the OMB Guidance: Requirements for Federal Funding Accountability and Transparency Act Implementation (75 FR 55663) to ensure that they have processes and systems in place to comply with the reporting obligations. FA Assistance Agreements under this NOFA will usually have three-year performance periods; TA Assistance Agreements will usually have two-year performance periods. If prior to entering into an Assistance Agreement with the CDFI Fund, information (including administrative error) comes to the CDFI Fund's attention that either adversely affects the Awardee's eligibility for an award, or adversely affects the CDFI Fund's evaluation of the Awardee's application, or indicates fraud or mismanagement on the Awardee's part, the CDFI Fund may, in its discretion and without advance notice to the Awardee, terminate the award or take such other actions as it deems appropriate. Moreover, if prior to entering into an Assistance Agreement, the CDFI Fund determines that the Awardee or an Affiliate of the Awardee is in default of any previously executed agreement with the CDFI Fund, the CDFI Fund may, in its discretion and without advance notice to the Awardee, either terminate the award or take such other actions as it deems appropriate. For purposes of this section, the CDFI Fund will consider an Affiliate to mean any entity that meets the definition of Affiliate in the Regulations. The CDFI Fund reserves the right, in its sole discretion, to rescind an award if the Awardee fails to return the Assistance Agreement, signed by the authorized representative of the Awardee, and/or provide the CDFI Fund with any other requested documentation, within the CDFI Fund's deadlines. Each Awardee must provide the CDFI Fund with a good standing certificate (or equivalent documentation) from its state (or jurisdiction) of incorporation.

1. *Failure to Meet Reporting Requirements:* If an Awardee or an Affiliate of the Awardee is a prior Awardee/Allocatee under any CDFI Fund program and is not current with the reporting requirements set forth in the previously executed agreement(s) with the CDFI Fund, the CDFI Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement until the Awardee/Allocatee is current with the reporting requirements. Please note that the CDFI Fund only acknowledges the receipt of reports that are complete. As such, incomplete reports or reports that are deficient of required elements will not be recognized as having been received. If said prior Awardee/Allocatee is unable to meet this requirement within the timeframe the CDFI Fund sets, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the Assistance Agreement and the award made under this NOFA.

2. *Pending Resolution of Noncompliance:* If an Applicant is a prior Awardee or an Affiliate of the Awardee/Allocatee under any CDFI Fund program and if: (i) It has submitted reports to the CDFI Fund that demonstrate noncompliance with a previous executed agreement with the CDFI Fund; and (ii) the CDFI Fund has yet to make a final determination as to whether the entity is in default of its agreement, the CDFI Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement, pending full resolution of the noncompliance issue to the CDFI Fund's satisfaction. If the said prior Awardee/Allocatee is unable to satisfactorily resolve the compliance issues, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the Assistance Agreement and the award made under this NOFA.

3. *Default Status:* If, at any time prior to entering into an Assistance Agreement through this NOFA, the CDFI Fund has made a final determination that an Awardee or an Affiliate of the Awardee that is a prior Awardee/Allocatee under any CDFI Fund program is in default of a previously executed assistance, allocation, or award agreement(s), the CDFI Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement, until said prior Awardee/Allocatee has submitted a complete and timely report demonstrating full compliance within the CDFI Fund's timeframe. If said prior Awardee/Allocatee is unable to meet this requirement and the CDFI Fund has not specified in writing that the prior Awardee/Allocatee is otherwise eligible to receive an Award under this NOFA, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the Assistance Agreement and the award made under this NOFA.

4. *Termination in Default:* The CDFI Fund reserves the right, in its sole discretion, to delay entering into or not to enter into an Assistance Agreement if: (i) Within the 12-month period prior to entering into an Assistance Agreement for this funding round, the CDFI Fund has made a final determination that a prior Awardee or an Affiliate of the Awardee under any CDFI Fund program whose award or allocation agreement was terminated in default, and (ii) the final reporting period end date for the applicable terminated agreement falls within the 12-month period prior to this NOFA's application deadline.

5. *Compliance with Federal Anti-Discrimination Laws:* If the Awardee has

previously received funding through any CDFI Fund program, and if at any time prior to entering into an Assistance Agreement through this NOFA, the CDFI Fund is made aware of a final determination, made within the last three years, in any proceeding instituted against the Awardee in, by, or before any court, governmental, or administrative body or agency, declaring that the Awardee has discriminated on the basis of race, color, national origin, disability, age, marital status, receipt of income from public assistance, religion, or sex, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the Assistance Agreement and the award made under this NOFA.

B. Reporting

1. *Reporting requirements:* At least on an annual basis, the CDFI Fund will collect information from each Awardee including, but not limited to, an Annual Report with the following components: (i) Financial Reports (including an OMB A–133 audit); (ii) Institution Level Report; (iii) Transaction Level Report (for Awardees receiving FA awards); (iv) Financial Status Report form SF–269/SF–425 (for Awardees receiving TA grants); (v) Uses of Financial Assistance (for Awardees receiving FA awards); (vi) Explanation of Noncompliance (as applicable); and (vii) such other information as the CDFI Fund may require. Each Awardee is responsible for the timely and complete submission of the Annual Report, even if all or a portion of the documents actually is completed by another entity or signatory to the Assistance Agreement. If such other entities or signatories are required to provide Institution Level Reports, Transaction Level Reports, Financial Reports, or other documentation that the CDFI Fund may require, the Awardee is responsible for ensuring that the information submitted is timely and complete. The CDFI Fund reserves the right to contact such additional entities or signatories to the Assistance Agreement and require that additional information and documentation be provided. The CDFI Fund will use such information to monitor each Awardee's compliance with the requirements in the Assistance Agreement and to assess the impact of the CDFI Program. All reports must be electronically submitted to the CDFI Fund via the Awardee's myCDFIFund account. The Institution Level Report and the Transaction Level Report must be submitted through the CDFI Fund's web-based data collection system, the Community Investment Impact System (CIIS). The Financial Reports may be uploaded to the Awardee's myCDFIFund account. All other components of the Annual Report may be submitted electronically, as the CDFI Fund directs. The CDFI Fund reserves the right, in its sole discretion, to modify these reporting requirements if it determines it to be appropriate and necessary; however, such reporting requirements will be modified only after notice to Awardees.

2. *Accounting:* The CDFI Fund will require each FA and TA Awardee to account for and track the use of its award. This means that FA and TA Awardees must track every dollar and must inform the CDFI Fund of its uses. This will require Awardees to establish separate administrative and accounting controls, subject to the applicable OMB Circulars. The CDFI Fund will provide guidance on the format and content of the annual information to be provided, outlining and describing how the funds were used. All Awardees must provide the CDFI Fund with an accurate and completed Automated Clearinghouse (ACH) form prior to award closing and disbursement.

VII. Agency Contacts

A. The CDFI Fund will respond to questions and provide support concerning this NOFA and the funding application between the hours of 9 a.m. and 5 p.m. ET, starting on the date that the NOFA is published through three business days prior to the application deadline. During the three business days prior to the application deadline, the CDFI Fund will not respond to questions or provide support to Applicants until after the application deadline. Applications and other information regarding the CDFI Fund and its programs may be obtained from the CDFI Fund's Web site at *http://www.cdfifund.gov.* The CDFI Fund will post on its Web site responses to questions of general applicability regarding the CDFI Program.

B. Applicants may contact the CDFI Fund as follows:

TABLE 6—CONTACT INFORMATION

[Fax number for all offices: 202–622–7754]

Type of question	Telephone number (not toll free)	E-mail addresses
CDFI Program	202–622–6355	*cdfihelp@cdfi.treas.gov.*
CDFI Certification	202–622–6355	*cdfihelp@cdfi.treas.gov.*
Compliance Monitoring and Evaluation	202–622–6330	*ccme@cdfi.treas.gov.*
Information Technology Support	202–622–2455	*IThelp@cdfi.treas.gov.*

C. Information Technology Support

People who have visual or mobility impairments that prevent them from creating a Target Market map using the CDFI Fund's Web site should call (202) 622–2455 for assistance (this is not a toll free number).

D. Communication With the CDFI Fund

The CDFI Fund will use the Applicants' and Awardees' contact information in their myCDFIFund accounts to communicate. It is imperative, therefore, that Applicants, Awardees, Subsidiaries, Affiliates, and signatories maintain accurate contact information in their accounts.

This includes information like contact names, especially for the authorized representative; e-mail addresses; fax and phone numbers; and office locations. For more information about myCDFIFund, as well as information on the Community Investment Impact System, please see the following Web site: *http://www.cdfifund.gov/ciis/accessingciis.pdf.*

VIII. Information Sessions and Outreach

The CDFI Fund may conduct webinars or host information sessions for organizations that are considering applying to, or are interested in learning about, the CDFI Fund's programs. For further information, please visit the CDFI Fund's Web site at *http://www.cdfifund.gov.*

Authority: 12 U.S.C. 4701, *et seq;* 12 CFR parts 1805 and 1815.

Dated: October 1, 2010.

Donna J. Gambrell,

Director, Community Development Financial Institutions Fund.

[FR Doc. 2010–25236 Filed 10–5–10; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Advisory Committee to the Internal Revenue Service; Meeting

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: The Information Reporting Program Advisory Committee (IRPAC) will hold a public meeting on Wednesday, October 20, 2010.

FOR FURTHER INFORMATION CONTACT: Ms. Caryl Grant, National Public Liaison, CL:NPL:SRM, Rm. 7559, 1111 Constitution Avenue, NW., Washington, DC 20224. Phone: 202–927–3641 (not a toll-free number). E-mail address: *public_liaison@irs.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), a public meeting of the IRPAC will be held on Wednesday, October 20, 2010 from 9:30 a.m. to 12:30 p.m. at Four Points by Sheraton, 1201 K Street, NW., Washington, DC. Report recommendations on issues that may be discussed include: Foreign Account Tax Compliance Act, § 6050W information reporting of payments made in settlement of payment card and third party network transactions, expansion of information reporting under § 6041, electronic furnishing of Forms 1098, 1099, 5498 and W–2, backup withholding procedures requiring SSN validation following receipt of second B Notice, information regarding non-resident alien taxation and tax reporting, withholding tax issues, Identity Theft, Form 1099–DIV, Box 10, foreign tax paid, Form 5948 and fair market value reporting for deceased and successor beneficiaries, reporting of return of mistaken HSA contributions to an employer, Form 1099R reporting under EPCRS guidelines SEP, SARSEP, and Simple excesses returned to employer, Form 5498–SA, HSA, Archer MSA, or Medicare Advantage MSA information due date change, NRA documentation and Form 1042 withholding issues on freight shipping and other transportation issues, Cost Basis and Draft 2011 Form 1099–B, K–1 matching, information reporting for tax credit bonds and stripped tax credits, electronic Power of Attorney validation for business returns, Central Withholding Agreements, IRS Business Master File, staggered B-notices, Form 8886 Reportable Transaction Disclosure Statement, methodology of estimating Estate Tax non-compliance and underreporting, health care valuation on W–2, tip reporting compliance and enforcement, EINs for qualified plans and trusts, transparency for abusive use of multiple EINs, 2009 Form 5500 automatic extension for calendar year plans, and basis allocation for direct rollovers. Last minute agenda changes may preclude advance notice. Due to limited seating and security requirements, please call or email Caryl Grant to confirm your attendance. Ms. Grant can be reached at 202–927–3641 or *public_liaison@irs.gov.* Should you wish the IRPAC to consider a written statement, please call 202–927–3641, or write to: Internal Revenue Service, Office of National Public Liaison, CL:NPL:SRM, Room 7559, 1111 Constitution Avenue, NW., Washington, DC 20224 or *e-mail: public_liaison@irs.gov.*

Dated: September 23, 2010.

Candice Cromling,

Director, National Public Liaison.

[FR Doc. 2010–25041 Filed 10–5–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Privacy Act of 1974, as Amended, System of Records

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of Consolidated Privacy Act System of Records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Department of the Treasury, Departmental Offices, gives notice of a consolidated Privacy Act system of records.

DATES: Comments must be received no later than November 5, 2010. This consolidated system of records will be effective November 5, 2010 unless the Office of Foreign Assets Control (OFAC) receives comments that would result in a contrary determination.

ADDRESSES: Comments should be sent to: Assistant Director, Disclosure Services, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. The Department will make such comments available for public inspection and copying in the Department's Library, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect comments by telephoning 202–622–0990 (not a toll free number). All comments, including attachments and other supporting materials, received are subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Disclosure Services, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, tel.: 202–622–2510 (not a toll free number), or Chief Counsel (Foreign Assets Control), Office of General Counsel, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, tel.: 202–622–2410 (not a toll free number).

SUPPLEMENTARY INFORMATION: This system of records exists within Treasury's Departmental Offices to manage records related to the implementation, enforcement, and administration of U.S. economic sanctions. The following systems of records are being consolidated and renamed as Treasury/DO .120—Records Related to Office of Foreign Assets Control Economic Sanctions:

Treasury/DO .111—Office of Foreign Assets Control Census Records.

Treasury/DO .114—Foreign Assets Control Enforcement Records.

Treasury/DO .118—Foreign Assets Control Licensing Records.

This notice of this system of records will provide the public with a better understanding of the purposes and uses of OFAC-related records and the public's access to these records. This system of records also supports determinations made by OFAC pursuant to Section 2002 of Public Law 106–386, Victims of Trafficking and Violence Protection Act of 2000. Additionally, one of the purposes of this system of records is to provide the names and other identifying information (such as names and aliases, addresses, dates of birth, citizenship information, and identification numbers associated with government-issued documents) of individuals and entities whose property and interests in property are blocked or otherwise affected by one or more OFAC economic sanctions programs to assist the public in complying with those sanctions programs. OFAC provides this information to the public by publishing

a List of Specially Designated Nationals and Blocked Persons (SDN List). Individuals and entities on the SDN List are generally designated based on Executive orders and other authorities imposing sanctions with respect to terrorists, proliferators of weapons of mass destruction, sanctioned nations or regimes, narcotics traffickers, or other identified threats to the national security, foreign policy, and/or economy of the United States. The SDN List also includes information identifying certain property of individuals and entities that are subject to OFAC economic sanctions programs, such as vessels. The relevant sanctions programs generally prohibit U.S. persons and certain others from engaging in transactions involving property and interests in property of the identified individuals and entities. A very small subset of the individuals on the SDN List consists of U.S. individuals. The List of Specially Designated Nationals and Blocked Persons is published in the **Federal Register**, the Code of Federal Regulations (as an appendix to 31 CFR chapter V), and on OFAC's Internet site (*http://www.treas.gov/ofac*).

The Privacy Act generally prohibits an agency from disclosing any record contained in a system of records unless the individual to whom the record pertains has provided written consent. Subsection (b)(3) of the Privacy Act, however, provides that an agency may make a nonconsensual disclosure under a routine use for a purpose that is compatible with the purpose for which it collected the information. Disclosure of all information included in the SDN List is directly related to the purpose for which the information is collected and is necessary for the public and others to comply with the economic sanctions programs administered by OFAC.

The Department will publish separately in the **Federal Register** a final rule amending 31 CFR 1.36(g)(1)(i) by revising the system number and title of the system of records for which an exemption has been claimed from certain of the Privacy Act's requirements pursuant to 5 U.S.C. 552a(k)(2).

In a second rulemaking initiative associated with this notice, the Department will publish separately in the **Federal Register** a proposed rule amending 31 CFR 1.26(g)(6)(ii)(A) and 1.36(e), (f) and adding a system of records for which an exemption will be claimed from provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(1).

As required by 5 U.S.C. 552a(r), a report of a consolidated system of records has been provided to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget.

The system of records entitled "Treasury/DO .120—Records Related to Office of Foreign Assets Control Economic Sanctions" is published in its entirety below.

Dated: July 16, 2010.

Melissa Hartman,

Acting Deputy Assistant Secretary for Privacy, Transparency, and Records.

Treasury/DO .120

SYSTEM NAME:

Records Related to Office of Foreign Assets Control Economic Sanctions.

SYSTEM LOCATION:

Office of Foreign Assets Control (OFAC), Treasury Annex, Washington, DC 20220 or other U.S. Government facilities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

A system of records within Treasury's Departmental Offices exists to manage records related to the implementation, enforcement, and administration of U.S. economic sanctions. This includes records and information relating to individuals who:

(1) Are or have been subject to investigation to determine whether they meet the criteria for designation or blocking and/or are determined to be designated or blocked individuals or otherwise subject to sanctions under the sanctions programs administered by OFAC, or with respect to whom information has been obtained by OFAC in connection with such an investigation;

(2) Have engaged in or are suspected of having engaged in transactions and activities prohibited by Treasury Department regulations found at 31 CFR part 1, subpart B, chapter V, relevant statutes, and related Executive orders or proclamations, or with respect to whom information has been obtained by OFAC in connection with an investigation of such transactions and activities;

(3) Are applicants for permissive and authorizing licenses or already hold valid licenses under Treasury Department regulations, relevant statutes, and related Executive orders or proclamations;

(4) Hold blocked assets. Although most persons (individuals and entities) reporting the holding of blocked assets or persons holding blocked assets are not individuals, such reports and censuses conducted by OFAC identify a small number of U.S. individuals as holders of assets subject to U.S. jurisdiction which are blocked under the various sets of Treasury Department regulations involved, relevant statutes, and related Executive orders or proclamations; or

(5) Have submitted claims received, reviewed, and/or processed by OFAC for payment determination pursuant to Section 2002 of the Victims of Trafficking and Violence Protection Act of 2000 (Pub. L. 106–386, Section 2002).

CATEGORIES OF RECORDS IN THE SYSTEM:

Records related to the implementation, enforcement, and administration of U.S. sanctions programs, including records related to:

(1) Investigations to determine whether an individual meets the criteria for designation or blocking and/or is determined to be a designated or blocked individual or otherwise affected by one or more sanctions programs administered by OFAC. In the course of an investigation, personally identifiable information is collected. Once an individual is designated, OFAC provides personally identifiable information to the public so that it can recognize listed individuals and prevent them from accessing the U.S. financial system. The release of personally identifiable information pertaining to the designee is also important in helping to protect other individuals from being improperly identified as the sanctioned target. The personally identifiable information collected by OFAC may include, but is not limited to, names and aliases, dates of birth, citizenship information, addresses, identification numbers associated with government-issued documents, such as drivers license and passport numbers, and for U.S. individuals, Social Security numbers;

(2) Suspected or actual violations of regulations, relevant statutes, and related Executive orders or proclamations administered by OFAC;

(3) Applications for OFAC licenses—with attendant supporting documentary material and copies of licenses issued—related to engaging in activities with designated entities and individuals or other activities that otherwise would be prohibited by relevant statutes, regulations, and Executive orders or proclamations administered by OFAC, including reports by individuals and entities currently holding Treasury licenses concerning transactions which the license holder has conducted pursuant to the licenses;

(4) Reports and censuses of assets blocked or held by U.S. individuals and entities which have been blocked at any

time since 1940 pursuant to Treasury Department regulations found at 31 CFR part 1, subpart B, chapter V, relevant statutes, and related Executive orders or proclamations; or

(5) Submitted claims received, reviewed, and/or processed by OFAC for payment determinations pursuant to Section 2002 of the Victims of Trafficking and Violence Protection Act of 2000 (Pub. L. 106–386).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

3 U.S.C. 301; 50 U.S.C. App. 1–44; 21 U.S.C. 1901–1908; 8 U.S.C. 1182; 18 U.S.C. 2339B; 22 U.S.C. 287c; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651; 50 U.S.C. 1701–1706; Pub. L. 110–286, 122 Stat. 2632; 22 U.S.C. 2370(a); Pub. L. 108–19, 117 Stat. 631; Pub. L. 106–386 § 2002; Pub. L. 108–175, 117 Stat. 2482; Pub. L. 109–344, 120 Stat. 1869; 31 CFR Chapter V.

PURPOSE(S):

This system of records exists within Treasury's Departmental Offices to manage records related to the implementation, enforcement, and administration of U.S. economic sanctions by OFAC. Included in this system of records are records:

(1) Relating to investigations into whether individuals and entities meet the criteria for economic sanctions under U.S. sanctions programs administered by OFAC. This portion of the system of records may be used during enforcement, designation, blocking, and other investigations, when applicable. These records are also used to produce the publicly issued List of Specially Designated Nationals and Blocked Persons (SDN List). The SDN List is used to publish information that will assist the public in identifying individuals and entities whose property and interests in property are blocked or otherwise affected by one or more sanctions programs administered by OFAC, as well as information identifying certain property of individuals and entities that are subject to OFAC economic sanctions programs, such as vessels.

(2) Relating to investigations of individuals and entities suspected of violating statutes, regulations, or Executive orders administered by OFAC. Possible violations may relate to financial, commercial, or other transactions with persons with respect to whom sanctions have been imposed, including but not limited to foreign governments, blocked persons (entities and individuals), and specially designated nationals (entities and individuals). OFAC conducts civil investigations of possible violations. When it determines that a violation has occurred, OFAC issues a civil penalty or takes other administrative action, when appropriate. Criminal investigations of possible violations are conducted by relevant U.S. law enforcement agencies. OFAC refers criminal matters to those agencies and otherwise exchanges information with them in order to support the investigation and prosecution of possible violations. Records of enforcement investigations and resulting administrative actions are also used to generate statistical information. (3) Containing requests from U.S. and foreign individuals or entities for licenses to engage in commercial or humanitarian transactions, to unblock property and bank accounts, or to engage in other activities otherwise prohibited under economic sanctions administered by OFAC. This also includes information collected in the course of determining whether to issue a license and ensuring its proper use, as well as reports by individuals and entities currently holding Treasury licenses concerning transactions which the license holder has conducted pursuant to the licenses. This portion of the system of records may be used during enforcement investigations, to ascertain whether there is compliance with the conditions of ongoing OFAC licenses, and to generate information used in reports on the number and types of licenses granted or denied under particular sanctions programs.

(4) Used to identify and administer assets of blocked foreign governments, groups, entities, or individuals. OFAC receives reports of asset blocking actions by U.S. entities and individuals when assets are blocked under the sanctions programs OFAC administers; when censuses are undertaken at various times for specific sanctions programs to identify the location, type, and value of property blocked under OFAC-administered programs; and when OFAC obtains information regarding blockable assets in the course of its investigations. Most blocked asset information is obtained by requiring reports from all U.S. holders of blocked property subject to OFAC reporting requirements. The reports normally contain information such as the name of the U.S. holder, the account party, the location of the property, and a description of the type and value of the asset. In some instances, adverse claims by U.S. entities and individuals against the blocked property are also reported. This portion of the system of records may be used during enforcement, designation, blocking, and other investigations as well as to produce reports and respond to requests for information.

(5) Used to support determinations made by OFAC pursuant to Section 2002 of Pub. L. 106–386, the Victims of Trafficking and Violence Protection Act of 2000, including the facilitating of payments provided for under the Act. OFAC has reported its determinations to other parts of Treasury to facilitate payment on claims.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose information to further the efforts of appropriate Federal, state, local, or foreign agencies in investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, license, or agreement;

(2) Disclose information to a Federal, state, local, or foreign agency, maintaining civil, criminal, or other relevant enforcement information or other pertinent information, which has requested information necessary or relevant to the requesting agency's official functions;

(3) Disclose information to the Departments of State, Justice, Homeland Security, Commerce, Defense, or Energy, or other federal agencies, in connection with Treasury licensing policy or other matters of mutual interest or concern;

(4) Provide information to appropriate national security and/or foreign-policy-making officials in the Executive branch to ensure that the management of OFAC's sanctions programs is consistent with U.S. foreign policy and national security goals;

(5) Disclose information relating to blocked property to appropriate state agencies for activities or efforts connected to abandoned property;

(6) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosure to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, or in response to a Court order, or in connection with criminal law proceedings, when such information is determined to be arguably relevant to the proceeding;

(7) Provide information to a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(8) Disclose information to foreign governments and entities, and multilateral organizations—such as Interpol, the United Nations, and international financial institutions—

consistent with law and in accordance with formal or informal international agreements, or for an enforcement, licensing, investigatory, or national security purpose;

(9) Provide information to third parties during the course of an investigation or an enforcement action to the extent necessary to obtain information pertinent to the investigation or to carry out an enforcement action;

(10) Provide access to information to any agency, entity, or individual for purposes of performing authorized security, audit, or oversight operations or meeting related reporting requirements;

(11) Disclose information to appropriate agencies, entities, and individuals when:

(a) Treasury suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) Treasury has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and individuals is reasonably necessary to assist in connection with Treasury's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm; or

(12) Disclose information to the general public, in furtherance of OFAC's mission, regarding individuals and entities whose property and interests in property are blocked or otherwise affected by one or more OFAC economic sanctions programs, as well as information identifying certain property of individuals and entities subject to OFAC economic sanctions programs. This routine use includes disclosure of information to the general public in furtherance of OFAC's mission regarding individuals and entities that have been designated by OFAC. This routine use encompasses publishing this information in the **Federal Register**, in the Code of Federal Regulations, on OFAC's Web site, and by other means.

The information associated with individuals as published on OFAC's List of Specially Designated Nationals and Blocked Persons (the SDN List) generally relates to non-U.S. entities and individuals, and, therefore, the Privacy Act does not apply to most of the individuals included on the SDN List. However, a very small subset of the individuals on the SDN List consists of U.S. individuals. Individuals and entities on the SDN List are generally designated based on Executive orders and other authorities imposing sanctions with respect to terrorists, proliferators of weapons of mass destruction, sanctioned nations or regimes, narcotics traffickers, or other identified threats to the national security, foreign policy, and/or economy of the United States. Generally, the personal identifier information provided on the SDN List may include, but is not limited to, names and aliases, addresses, dates of birth, citizenship information, and, at times, identification numbers associated with government-issued documents. It is necessary to provide this identifier information in a publicly available format so that listed individuals and entities can be identified and prevented from accessing the U.S. financial system. At the same time, the release of detailed identifier information of individuals whose property is blocked or who are otherwise affected by one or more OFAC economic sanctions programs is important in helping to protect other individuals from being improperly identified as the sanctioned target.

Because the SDN List is posted on OFAC's public Web site and published in the **Federal Register** and in 31 CFR Appendix A, a designated individual's identifier information can be accessed by any individual or entity with access to the internet, the **Federal Register**, or 31 CFR Appendix A. Thus, the impact on the individual's privacy will be substantial, but this is necessary in order to make targeted economic sanctions effective. Designated individuals can file a "de-listing petition" to request their removal from the SDN List. *See* 31 CFR 501.807. If such a petition is granted, the individual's name and all related identifier information are removed from the active SDN List.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

As hard copy documents in file folders or magnetic or electronic media.

RETRIEVABILITY:

Records related to:

(1) Enforcement, designation, blocking, and other investigations are retrieved by the name of the individual or other relevant search term.

(2) Licensing applications are retrieved by license or letter number or by the name of the applicant.

(3) Blocked property records are retrieved by the name of the holder, custodian, or owner of blocked property.

(4) Claims received, reviewed, and processed by OFAC for payment determinations pursuant to Section 2002 of the Victims of Trafficking and Violence Protection Act of 2000, Public Law Number 106–386, are retrieved by the name of the applicant.

SAFEGUARDS:

Folders maintained in authorized filing equipment are located in areas of limited and controlled access and are limited to authorized Treasury employees. Computerized records are on a password-protected network. Access controls for all internal, electronic information are not less than required by the Treasury Security Manual (TDP–71–10). The published List of Specially Designated Nationals and Blocked Persons is considered public domain.

RETENTION AND DISPOSAL:

Records are managed according to applicable Federal Records Management laws and regulations (see also 5 U.S.C. Part I, Chapter 5, Subchapter II, Section 552a—Records Maintained on Individuals). Record retention and disposition rules are approved by the Archivist of the United States and applied appropriately.

SYSTEM MANAGER AND ADDRESS:

Director, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

For records in this system that are unrelated to enforcement, designation, blocking, and other investigations, individuals wishing to be notified if they are named in this system of records must submit a written request containing the following elements: (1) Identify the record system; (2) identify the category and type of record sought; and (3) provide at least two items of secondary identification (date of birth, employee identification number, dates of employment, or similar information). Address inquiries to Assistant Director, Disclosure Services, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

For records in this system that are unrelated to enforcement, designation, blocking, and other investigations, individuals wishing to gain access to records maintained in the system under their name or personal identifier must

submit a written request containing the following elements: (1) Identify the record system; (2) identify the category and type of record sought; and (3) provide at least two items of secondary identification (date of birth, employee identification number, dates of employment, or similar information). Address inquiries to Assistant Director, Disclosure Services, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. The request must be made in accordance with 5 U.S.C. 552a and 31 CFR 1.2. See also 31 CFR part 1, subpart C, appendix A, Paragraph 8.

Records in this system that are related to enforcement, designation, blocking, and other investigations are exempt from the provisions of the Privacy Act as permitted by 5 U.S.C. 552a(k)(2). Exempt records may not be disclosed for purposes of determining if the system contains a record pertaining to a particular individual, inspecting records, or contesting the content of records. Although the investigative records that underlie the SDN List may not be accessed for purposes of inspection or for contest of content of records, the SDN List, which is produced from some of the investigative records in the system, is made public. Persons (entities and individuals) on this public list who wish to request the removal of their name from this list may submit a de-listing petition according to the provisions of 31 CFR 501.807.

RECORD ACCESS PROCEDURES:

Address inquiries to: Assistant Director, Disclosure Services, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

(1) From the individual, from OFAC investigations, and from other Federal, state, local, or foreign agencies;

(2) Applicants for Treasury Department licenses under laws or regulations administered by OFAC;

(3) From individuals and entities that are designated or otherwise subject to sanctions and the representatives of such individuals and entities; or

(4) Custodians or other holders of blocked assets.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Records in this system related to enforcement, designation, blocking, and other investigations are exempt from disclosure and review under 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). See 31 CFR 1.36.

[FR Doc. 2010–25133 Filed 10–5–10; 8:45 am]

BILLING CODE 4811–45–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Statement on Sound Practices Concerning Elevated Risk Complex Structured Finance Activities

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

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 comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on its proposal to extend this information collection.

DATES: Submit written comments on or before December 6, 2010.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW. by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from Deborah S. Merkle (202) 906–5688, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use of information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: Statement on Sound Practices Concerning Elevated Risk Complex Structured Finance Activities.

OMB Number: 1550–0111.

Form Number: N/A.

Description: Statement on Sound Practices Concerning Elevated Risk Complex Structured Finance Activities describes the types of internal controls and risk management procedures that the OTS believes are particularly effective in assisting financial institutions to identify and address the reputational, legal, and other risks associated with complex structured finance activities.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 1.

Estimated Frequency of Response: On occasion.

Estimated Total Burden: 25 hours.

Dated: October 1, 2010.

Ira L. Mills,

Paperwork Clearance Officer, Office of Chief Counsel, Office of Thrift Supervision.

[FR Doc. 2010–25168 Filed 10–5–10; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0654]

Proposed Information Collection (Annual Certification of Veteran Status and Veteran-Relatives) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to identify and properly protect VA benefit records.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 6, 2010.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov.* Please refer to "OMB Control No. 2900–0654" in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Annual Certification of Veteran Status and Veteran-Relatives, VA Form 20–0344.

OMB Control Number: 2900–0654.

Type of Review: Extension of a currently approved collection.

Abstract: VBA employees, non-VBA employees in VBA space and Veteran Service Organization employees who have access to VA's benefit records complete VA Form 20–0344. These individuals are required to provide personal identifying information on themselves and any veteran relatives, in order for VA to identify and protect benefit records. VA uses the information collected to determine which benefit records require special handling to guard against fraud, conflict of interest, improper influence etc., by VA and non-VA employees.

Affected Public: Individuals or households.

Estimated Annual Burden: 5,834 hours.

Estimated Average Burden per Respondent: 25 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 14,000.

Dated: September 29, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–25146 Filed 10–5–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0045]

Proposed Information Collection (VA Request for Determination of Reasonable Value) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine the reasonable value of properties for guaranteed or direct home loans.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 6, 2010.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov.* Please refer to "OMB Control No. 2900–0045" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: VA Request for Determination of Reasonable Value, VA Form 26–1805 and 26–1805–1.

OMB Control Number: 2900–0045.

Type of Review: Extension of a currently approved collection.

Abstract: VA Forms 26–1805 and 26–1805–1 are used to identify properties to

be appraised and to make assignments to an appraiser. VA home loans cannot be guaranteed or made unless the nature and conditions of the property is suitable for dwelling purposes is determined; the loan amount to be paid by the veteran for such property for the cost of construction, repairs, or alterations does not exceed the reasonable value; or if the loan is for repair, alteration, or improvements of property, the work substantially protects or improves the basic livability of the property. VA or the lender's participating in the lender appraisal processing program issues a notice of values to notify the veteran and requester of the determination of reasonable value and any conditional requirements.

Affected Public: Individuals or households.

Estimated Annual Burden: 60,000 hours.

Estimated Average Burden per Respondent: 12 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 300,000.

Dated: September 29, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–25148 Filed 10–5–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0474]

Proposed Information Collection (Create Payment Request for the VA Funding Fee Payment System (VA FFPS); A Computer Generated Funding Fee Receipt) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine whether funding fees for VA guaranteed loans were paid.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 6, 2010.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov.* Please refer to "OMB Control No. 2900–0474" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Create Payment Request for the VA Funding Fee Payment System (VA FFPS); A Computer Generated Funding Fee Receipt, VA Form 26–8986.

OMB Control Number: 2900–0474.

Type of Review: Extension of a currently approved collection.

Abstract: Veterans obtaining a VA-guaranteed home loan must pay a funding fee to VA before the loan can be guaranteed. The only exceptions are loans made to veterans receiving VA compensation for service-connected disabilities, (or veterans whom, but for receipt of retirement pay, would be entitled to receive compensation) and unmarried surviving spouses of veterans who died in active military service or from service-connected disability regardless of whether the spouse has his or her own eligibility.

Affected Public: Business or other for profit.

Estimated Annual Burden: 8,000 hours.

Estimated Average Burden per Respondent: 2 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 240,000.

Dated: September 29, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–25149 Filed 10–5–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0568]

Proposed Information Collection (Submission of School Catalog to the State Approving Agency) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed from accredited and nonaccredited educational institutions.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 6, 2010.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov;* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov.* Please refer to "OMB Control No. 2900–0568" in any correspondence. During the comment

period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Submission of School Catalog to the State Approving Agency.

OMB Control Number: 2900–0568.

Type of Review: Extension of a previously approved collection.

Abstract: Accredited and nonaccredited educational institutions, with the exceptions of elementary and secondary schools, must submit copies of their catalog to State approving agency when applying for approval of a new course. State approval agencies use the catalog to determine what courses can be approved for VA training. VA pays educational assistance to veterans, persons on active duty or reservists, and eligible persons pursuing an approved program of education. Educational assistance is not payable when claimants pursue unapproved courses.

Affected Public: Not-for-profit institutions.

Estimated Annual Burden: 2,000 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On Occasion.

Estimated Number of Respondents: 8,000.

Dated: September 29, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–25145 Filed 10–5–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0043]

Proposed Information Collection (Declaration of Status of Dependents) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the Federal Register concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to confirm marital status and dependent children.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 6, 2010.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov.* Please refer to "OMB Control No. 2900–0043" in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Declaration of Status of Dependents, VA Form 21–686c.

OMB Control Number: 2900–0043.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used to obtain information to confirm marital status and existence of any dependent child(ren). The information is used by VA to determine eligibility and rate of payment for veterans and surviving spouses who are entitled to an additional allowance for dependents.

Affected Public: Individuals or households.

Estimated Annual Burden: 56,500 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 226,000.

Dated: September 28, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–25147 Filed 10–5–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Women Veterans; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Advisory Committee on Women Veterans will meet October 26–28, 2010, at the Hilton Garden Inn, in the Georgetown Ballroom, 815 14th Street, NW., Washington, DC, from 8:30 a.m. until 4 p.m. each day. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs regarding the needs of women Veterans with respect to health care, rehabilitation, compensation, outreach, and other programs and activities administered by VA designed to meet such needs. The Committee makes recommendations to the Secretary regarding such programs and activities.

The agenda will include updates on recommendations from the 2010 report; updates from the Veterans Benefits Administration, the Veterans Health Administration, the National Cemetery

Administration; and briefings on mental health, prosthetic services for women Veterans, readjustment counseling, women Veterans' legislative issues, special health initiatives, women Veterans' research, rural health, and homeless initiatives for women Veterans.

Interested persons may attend, appear before, or file statements with the Committee. Any member of the public wishing to attend or provide written statements should contact Ms. Shannon L. Middleton at the Department of Veterans Affairs, Center for Women Veterans (00W), 810 Vermont Avenue, NW., Washington, DC 20420, or phone at (202) 461–6193, fax at (202) 273–7092, and e-mail at *00W@mail.va.gov.* Written statements must be filed before the meeting, or within 10 days after the meeting.

Dated: September 30, 2010.

By Direction of the Secretary.

Vivian Drake,

Acting Committee Management Officer.

[FR Doc. 2010–25051 Filed 10–5–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Genomic Medicine Program Advisory Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Genomic Medicine Program Advisory Committee will meet on October 22, 2010, at the Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC. The meeting will convene at 9 a.m. and adjourn at 5 p.m. The meeting is open to the public.

The purpose of the Committee is to provide advice and make recommendations to the Secretary of Veterans Affairs on using genetic information to optimize medical care of Veterans and to enhance development of tests and treatments for diseases particularly relevant to Veterans.

The Committee will receive program updates from the VA program staff; continue to discuss optimal ways for VA to incorporate genomic information into its health care program while applying appropriate ethical oversight and protecting the privacy of Veterans; and receive updates on genomics initiatives within Patient Care Services; efforts to increase genetics education among VA Nursing Staff; and VA's latest efforts to improve its electronic medical records system.

Public comments will be received at 3 p.m. Public comments will be limited to five minutes each. Individuals who speak are invited to submit 1–2 page summaries of their comments at the time of the meeting for inclusion in the official meeting record. Any member of the public seeking additional information should contact Dr. Sumitra Muralidhar, Designated Federal Officer, at *sumitra.muralidhar@va.gov* or (202) 461–1669.

Dated: September 30, 2010.

By Direction of the Secretary.

Vivian Drake,

Acting Committee Management Officer.

[FR Doc. 2010–25062 Filed 10–5–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of Amendment of Systems of Records Notice "Repatriated American Prisoners of War—VA" (60VA21).

SUMMARY: As required by the Privacy Act of 1974 (5 U.S.C. 552a(e)(4)), notice is hereby given that the Department of Veterans Affairs (VA) is updating a system of records in its inventory entitled "Repatriated American Prisoners of War—VA" (60VA21). VA is amending the system of records by revising the Purpose(s), System Manager and address, and Routine Uses of Records Maintained in the System. VA is republishing the system notice in its entirety.

DATES: Comments on this amended system of records must be received no later than November 5, 2010. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the amended system will become effective November 5, 2010.

ADDRESSES: Written comments may be submitted through *http://www.Regulations.gov;* by mail or hand-delivery to the Director, Regulation Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to 202–273–9026. Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays). Please call 202–461–4902 for an appointment. (This is not a toll free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *https://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Thomas J. Murphy, Director, Compensation and Pension Service, Veterans Benefits Administration (VBA), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, 202–461–9700.

SUPPLEMENTARY INFORMATION:

I. Description of Proposed Systems of Records

This system will collect a limited amount of personally identifiable information in order to provide service to Veterans, service members, reservists, and their spouses, surviving spouses, and dependents, who file claims for a wide variety of Federal veteran's benefits administered by VA at VA facilities located throughout the nation. See the statutory provisions cited in "Authority for maintenance of the system." VA gathers or creates these records in order to enable it to administer these statutory benefits programs.

The Department of the Veterans Affairs notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system reports, as required by 5 U.S.C. 552a(r), of the Privacy Act of 1974, as amended, were submitted to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (61 FR 6427, February 20, 1996).

The Purpose in this system of records is being added to provide explanation for the information collection and list affected individuals. In this system of records the name and address of the System Owner have been updated for accuracy.

The notice of amendment and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) and guidelines issued by OMB (65 FR 77677, December 12, 2000).

II. Proposed Routine Use Disclosures of Data in the System

The routine uses of records maintained in the system, including categories of users and the purposes of such uses, are being amended to protect the confidentiality and release of VA records subject to 38 U.S.C. 5701, which prohibits disclosure under a routine use inconsistent with existing statutes. Routine use numbers 6, 7, 8, 9, 10, 11 and 12 have been added in accordance with this authority.

Routine use number 1 has been revised to require that individuals covered by this system provide written requests for disclosures to be made to members of Congress or their staff. Routine use 6 was added to allow for the disclosure of information to the National Archives and Records Administration (NARA) and the General Services Administration (GSA) in records management inspections conducted under authority of chapter 29 of title 44, United States Code. Routine use 7 was added to allow for the disclosure of information in this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to DoJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. Routine use 8 was added to allow for the disclosure of information to individuals, organizations, public or private agencies, or other entities with whom VA has a contract or agreement or where there is a subcontract to perform the services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement. Routine use 9 was added to allow for the disclosure of information in this system, except the names and mailing addresses of veterans and their dependents, that is relevant to a suspected violation or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, State, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, rule, regulation or order. Routine use 10 was added to allow for the disclosure of information to other Federal agencies to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs. Routine use 11 was added to allow for the disclosure of information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) VA has determined that as a result of the suspected or confirmed compromise, there is a risk of embarrassment or harm to the reputations of the record subjects, harm to the economic or property interests, identity theft or fraud, or harm to the programs (whether maintained by VA or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out VA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosures by VA to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727. Routine use 12 was added to allow for the disclosure of the name and mailing address of a VA beneficiary, and other information as is reasonably necessary to identify such a beneficiary, who has been adjudicated as incompetent under 38 CFR 3.353, to the Attorney General of the United States or his/her designee, for use by the Department of Justice in the National Instant Criminal Background Check System (NICS) mandated by the Brady Handgun Violence Prevention Act, Public Law 103–159.

Approved: September 13, 2010.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

60VA21

SYSTEM NAME:

Repatriated American Prisoners of War—VA (60VA21).

SYSTEM LOCATION:

Records are maintained at the Department of Veterans Affairs (VA) regional offices, VA Medical Centers, the VA Records Management Center, St. Louis, Missouri, and at the Corporate Franchise Data Center in Austin, Texas. Address locations are listed in the VA Appendix I, located at the end of this document.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are repatriated prisoners of war, including but not limited to those of World War II; Korean Conflict; Vietnam Era; Pueblo Crisis; the members of the group known as Civilian Employees, Pacific Naval Air Bases, who actively participated in the defense of Wake Island and were determined to be eligible for veterans' benefits under Public Law 95–202; and those determined by the VA to have been held as prisoners of war during peacetime.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal identification information related to the POW experience and identifying data, *e.g.,* name, social security number, file number, service number, date of birth, date of death (if applicable), period of service, branch of service, entitlement code, aid and attendance or household status, number of service-connected disabilities, number of days interned as a POW, place of internment and hospital discharge data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code, Chapter 3, section 501(a), (b) and Chapters 11, 13, 17, 19, 24, 34, 51, 71, and 72.

PURPOSE:

Maintain records and provide benefits to repatriated prisoners of war who file claims for a wide variety of Federal veteran's benefits administered by VA at VA facilities located throughout the nation. See the statutory provisions cited in "Authority for maintenance of the system". VA gathers or creates these records in order to enable it to administer these statutory benefits programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. The record of an individual who is covered by this system may be disclosed to a member of Congress or staff person acting for member when the member or staff person requests the record on behalf of and at the written request of the individual.

2. Any information in this system relevant to a veteran's claim such as the

name, military service information and the number of days interned as a POW may be disclosed at the request of the veteran to accredited service organizations, VA-approved claims agents and attorneys acting under a declaration of representation so that these individuals can aid veterans in the preparation, presentation and prosecution of claims under the laws administered by the VA. The name of a veteran will not, however, be disclosed to these individuals under this routine use if the veteran has not requested the assistance of an accredited service organization, claims agent or an attorney.

3. Any information in this system may be disclosed to the Office of the Secretary of Defense, International Security Affairs (POW/MIA), upon their official request, in order to aid the Department in verifying the status of individuals who were prisoners of war or missing in action and/or in determining their most recent location.

4. Any information in this system (excluding the name of a veteran unless the name is furnished by the requestor) may be disclosed to epidemiological and other research facilities approved by the Chief Medical Director to obtain data from those facilities necessary to assist in medical studies on veterans for the Veterans Administration or for any research purposes determined to be necessary and proper by the Chief Medical Director.

5. The name(s) of a veteran may be disclosed to another Federal agency or to a contractor of that agency at the written request of the head of that agency for the purpose of conducting government research necessary to accomplish a statutory purpose of that agency.

6. Disclosure may be made to the National Archives and Records Administration (NARA) and the General Services Administration (GSA) in records management inspections conducted under authority of chapter 29 of title 44, United States Code.

7. VA may disclose information from this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to DoJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its on initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

8. Disclosure of relevant information may be made to individuals, organizations, public or private agencies, or other entities with whom VA has a contract or agreement or where there is a subcontract to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement.

9. VA may disclose on its own initiative any information in this system, except the names and mailing addresses of veterans and their dependents, that is relevant to a suspected violation or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, State, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, rule, regulation or order.

10. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

11. VA may on its own initiative, disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) VA has determined that as a result of the suspected or confirmed compromise, there is a risk of embarrassment or harm to the reputations of the record subjects, harm to the economic or property interests, identity theft or fraud, or harm to the programs (whether maintained by VA or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out VA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosures by VA to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

12. The name and mailing address of a VA beneficiary, and other information as is reasonably necessary to identify such a beneficiary, who has been adjudicated as incompetent under 38 CFR 3.353, may be provided to the Attorney General of the United States or his/her designee, for use by the Department of Justice in the National Instant Criminal Background Check System (NICS) mandated by the Brady Handgun Violence Prevention Act, Public Law 103–159.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records (or information contained in records) are maintained on paper documents in claims folders (C-folders), vocational rehabilitation folders, electronic file folders (*e.g.,* Virtual VA and TIMS File), and on automated storage media (*e.g.,* microfilm, microfiche, magnetic tape and disks). Such information may be accessed through data telecommunication terminal systems designated the Benefits Delivery Network (BDN), Virtual VA and Veterans Service Network (VETSNET). BDN, Virtual VA and VETSNET terminal locations include VA Central Office, regional offices, VA health care facilities, and Veterans Integrated Service Network (VISN) offices. Remote on-line access is also made available to authorized remote sites, representatives of claimants and to attorneys of record for claimants. A VA claimant must execute a prior written consent or a power of attorney authorizing access to his or her claims records before VA will allow the representative or attorney to have access to the claimant's automated claims records. Access by representatives and attorneys of record is to be used solely for the purpose of assisting an individual claimant whose records are accessed in a claim for benefits administered by VA.

RETRIEVABILITY:

File folders, whether paper or electronic, are indexed by name of the individual, social security number, payee number, and type of benefit.

SAFEGUARDS:

Access to the basic file in the Corporate Franchise Data Center in Austin, Texas is restricted to authorized VA employees and vendors. Access to working spaces and claims folder file

storage areas in VA regional offices and centers is restricted to VA employees on a need-to-know basis. Generally, file areas are locked after normal duty hours and the offices and centers are protected from outside access by the Federal Protective Service or other security personnel. Employee claims file records and claims file records of public figures are stored in separate locked files. Strict control measures are enforced to ensure that access to and disclosure from these claims file records are limited to a need-to-know basis.

Access to BDN, Virtual VA, and VETSNET data telecommunication networks are by authorization controlled by the site security officer who is responsible for authorizing access to BDN, Virtual VA, and VETSNET by a claimant's representative or attorney approved for access in accordance with VA regulations. The site security officer is responsible for ensuring that the hardware, software, and security practices of a representative or attorney satisfy VA security requirements before granting access. The security requirements applicable to the access of automated claims files by VA employees also apply to the access of automated claims files by claimants' representatives or attorneys. The security officer is assigned responsibility for privacy-security measures, especially for review of violation logs, information logs, and control of password distribution, including password distribution for claimants' representatives.

Access to data processing centers is generally restricted to center employees, custodial personnel, Federal Protective Service, and other security personnel. Access to computer rooms is restricted to authorized operational personnel through electronic locking devices. All other persons provided access to computer rooms are escorted.

RETENTION AND DISPOSAL:

Records are maintained on magnetic tape, disks, and microfiche and are retained and disposed of in accordance with disposition and authorization approved by the National Archives and Records Administration. Once a file is electronically imaged and accepted by VA, its paper contents (with the exception of service treatment records and official legal documents), are destroyed in accordance with Records Control Schedule VB–1 Part 1 Section XIII, as authorized by the National Archives and Records Administration (NARA) of the United States.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Compensation and Pension Service (21), VA Central Office, 810 Vermont Avenue, NW., Washington, DC 20420.

NOTIFICATION PROCEDURE:

Any individual who wishes to determine whether a record is being maintained in this system under his or her name or other personal identifier, or wants to determine the contents of such record should submit a written request or apply in person to the nearest VA regional office or medical center. Addresses for these offices may be found in VA Appendix 1 at the end of this document. Inquiries should include as much of the following information as possible: The veteran's full name, VA file number, service number, and social security number. The magnetic tape is indexed by the veteran's service, VA file or social security number. The microfiche is indexed by the veteran's name with secondary verification by the veteran's service, VA file, or social security number.

RECORD ACCESS PROCEDURES:

Individuals seeking information regarding access to and contesting of VA records may write, call, or visit the nearest VA regional office. Address locations are listed in VA Appendix 1.

CONTESTING RECORD PROCEDURES:

See Record access procedures above.

RECORD SOURCE CATEGORIES:

The Department of Defense, National Archives and Records Administration, Veterans, service members, reservists, spouses, surviving spouses, dependents and other beneficiaries of the veteran, accredited service organizations, VA-supervised fiduciaries (*i.e.,* VA Federal fiduciaries, court-appointed fiduciaries), military service departments, VA medical facilities and physicians, private medical facilities and physicians, education and rehabilitation training establishments, State and local agencies, other Federal agencies, State, local, and county courts and clerks, Federal, State, and local penal institutions and correctional facilities, other third parties and other VA records.

Appendix 1:

Department of Veterans Affairs Regional Offices and Centers

Alabama AL

VA Regional Office, 345 Perry Hill Rd., Montgomery, Alabama 36109.

Alaska AK

VA Regional Office, 1201 N Muldoon Rd., Anchorage 99504.

Arizona AZ

VA Regional Office, 3333 North Central Ave., Phoenix, Arizona 85012.

Arkansas AR

VA Regional Office, 2200 Fort Roots Dr., Bldg.65, North Little Rock, Arkansas 72144.

California CA

VA Regional Office, Federal Bldg., 11000 Wilshire Blvd., Los Angeles, California 90024.

VA Regional Office, 1301 Clay St., Rm. 1300 North, Oakland, California 94612.

VA Regional Office, 8810 Rio San Diego Dr., San Diego, California 92108.

Colorado CO

VA Regional Office, 155 Van Gordon St., Lakewood, Colorado 80228.

Connecticut CT

VA Regional Office, 555 Willard Ave., Newington, Connecticut 06111.

Delaware DE

VA Regional Office, 1601 Kirkwood Hwy., Wilmington, Delaware 19805.

District of Columbia DC

VA Regional Office, 1722 I St., NW., Washington, DC 20421.

VA Central Office, 810 Vermont Ave., NW., Washington, DC 20420.

Florida FL

VA Regional Office, 9500 Bay Pines Blvd., St. Petersburg, Florida 33708.

Georgia GA

VA Regional Office, 1700 Clairmont Rd., Decatur, Georgia 30033.

Hawaii HI

VA Regional Office, 459 Patterson Rd., E-Wing, Honolulu, Hawaii 96819.

Idaho ID

VA Regional Office, 444 W. Fort St., Boise, Idaho 83702.

Illinois IL

VA Regional Office, 2122 W. Taylor St., Chicago, Illinois 60612.

Indiana IN

VA Regional Office, 575 N. Pennsylvania St., Indianapolis, Indiana 46204.

Iowa IA

VA Regional Office, 210 Walnut St., Des Moines, Iowa 50309.

Kansas KS

VA Regional Office, 5500 E. Kellogg Ave., Wichita, Kansas 67128.

Kentucky KY

VA Regional Office, 321 W. Main St., Ste. 390, Louisville, Kentucky 40202.

Louisiana LA

VA Regional Office, 1250 Poydras St., New Orleans, Louisiana 70056.

Maine ME

VA Regional Office, One VA Center, Augusta, Maine 04330.

Maryland MD

VA Regional Office, Federal Bldg., 31 Hopkins Plaza, Baltimore, Maryland 21201.

Massachusetts MA

VA Regional Office, John Fitzgerald Kennedy Federal Bldg., Government Center, Boston, Massachusetts 02203.

Michigan MI

VA Regional Office, Patrick V. McNamara Federal Bldg., 477 Michigan Ave., Rm. 1400, Detroit, Michigan 48226.

Minnesota MN

VA Regional Office, Bishop Henry Whipple Federal Bldg., 1 Federal Dr., Fort Snelling, St. Paul, Minnesota 55111.

Mississippi MS

VA Regional Office, 1600 East Woodrow Wilson Ave., Jackson, Mississippi 39216.

Missouri MO

VA Regional Office, 400 South 18th St., St. Louis, Missouri 63103.

Montana MT

VA Regional Office, 3633 Veterans Dr., Fort Harrison, Montana 59636.

Nebraska NE

VA Regional Office, 5631 S. 48th St., Lincoln, Nebraska 68516.

Nevada NV

VA Regional Office, 5460 Reno Corporate Dr., Reno, Nevada 89511.

VA Benefits Office, 4800 Alpine Pl., Suite 12, Las Vegas, Nevada 89107.

New Hampshire NH

VA Regional Office, Norris Cotton Federal Bldg., 275 Chestnut St., Manchester, New Hampshire 03101.

New Jersey NJ

VA Regional Office, 20 Washington Place, Newark, New Jersey 07120.

New Mexico NM

VA Regional Office, Dennis Chavez Federal Bldg., 500 Gold Ave., SW., Albuquerque, New Mexico 87102.

New York NY

VA Regional Office, 245 W. Houston St., New York, New York 10014.

VA Regional Office, Niagra Center, 130 S. Elmwood Ave., Buffalo, New York 14202.

North Carolina NC

VA Regional Office, Federal Office Building, 251 North Main Street, Winston-Salem, North Carolina 27155.

North Dakota ND

VA Regional Office, 2101 Elm St., Fargo, North Dakota 58102.

Ohio OH

VA Regional Office, Anthony J. Celebreeze Federal Office Bldg., 1240 East Ninth St., Cleveland, Ohio 44199.

Oklahoma OK

VA Regional Office, 125 South Main St., Muskogee, Oklahoma 74401.

Oregon OR

VA Regional Office, Edith Green/Wendell Wyatt Federal Building, 1220 S.W. Third Ave., Portland, Oregon 97204.

Pennsylvania PA

VA Regional Office, 1000 Liberty Ave., Pittsburgh, Pennsylvania 15222.

VA Regional Office and Insurance Center, 5000 Wissahickon Ave., Philadelphia, Pennsylvania 19101.

Philippines

VA Regional Office and Outpatient Clinic, 1131 Roxas Blvd., Manila, Philippines; MAILING ADDRESS from U.S.: VA Regional Office, PSC 501, DPO AP 96515–1100.

Puerto Rico, Commonwealth of (including the Virgin Islands)

VA Regional Office, 150 Carlos Chardon Ave., Suite 300, San Juan, Puerto Rico 00918.

Rhode Island RI

VA Regional Office, 380 Westminster Street, Providence, Rhode Island 02903.

South Carolina SC

VA Regional Office, 6437 Garners Ferry Rd., Columbia, South Carolina 29201.

South Dakota SD

VA Regional Office, P.O. Box 5046, 2501 W. 22nd St., Sioux Falls, South Dakota 57105.

Tennessee TN

VA Regional Office, 110 9th Ave. South, Nashville, Tennessee 37203.

Texas TX

VA Regional Office, 6900 Almeda Rd., Houston, Texas 77030.

VA Regional Office, One Veterans Plaza, 701 Clay Ave., Waco, Texas 76799.

Utah UT

VA Regional Office, 550 Foothill Drive, Salt Lake City, Utah 84148.

Vermont VT

VA Regional Office, 215 North Main Street, White River Junction, Vermont 05001.

Virginia VA

VA Regional Office, 210 Franklin Rd., SW, Roanoke, Virginia 24011.

Washington WA

VA Regional Office, Federal Bldg., 915 Second Ave., Seattle, Washington 98174.

West Virginia WV

VA Regional Office, 640 4th Ave., Huntington, West Virginia 25701.

Wisconsin WI

VA Regional Office, 5400 W. National Ave., Milwaukee, Wisconsin 53214.

Wyoming WY

VA Regional Office and Medical Center, 2360 East Pershing Blvd., Cheyenne, Wyoming 82001.

[FR Doc. 2010–25237 Filed 10–5–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of Amendment of Systems of Records Notice "Veterans Assistance Discharge System—VA" (45VA21).

SUMMARY: As required by the Privacy Act of 1974, 5 U.S.C. 552a(e)(4), notice is hereby given that the Department of Veterans Affairs (VA) proposes to update system of records, "Veterans Assistance Discharge System—VA" (45VA21). VA is amending the system of records by revising the Purpose(s), System Manager and address, and Routine Uses of Records Maintained in the System. VA is republishing the system notice in its entirety.

DATES: Comments on this amended system of records must be received no later than November 5, 2010. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the amended system will become effective November 5, 2010.

ADDRESSES: Written comments may be submitted through *www.Regulations.gov;* by mail or hand-delivery to Director, Regulation Policy and Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; or by fax to 202–273–9026. (This is not a toll free number.) Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays). Please call 202–461–4902 for an appointment. (This is not a toll free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *https://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Thomas J. Murphy, Director Compensation and Pension Service, Veterans Benefits Administration (VBA), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington DC 20420, 202–461–9700.

SUPPLEMENTARY INFORMATION:

I. Description of Proposed Systems of Records

This system will collect a limited amount of personally identifiable

information in order to provide service to Veterans, service members, reservists, and their spouses, surviving spouses, and dependents, who file claims for a wide variety of Federal veteran's benefits administered by VA at VA facilities located throughout the nation. See the statutory provisions cited in "Authority for maintenance of the system". VA gathers or creates these records in order to enable it to administer these statutory benefits programs.

The Department of Veterans Affairs notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

In this system of records the name and address of the System Owner has been updated for accuracy. The Purpose in this system of records is being revised to provide explanation for the information collection and list affected individuals.

The notice of amendment and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) and guidelines issued by OMB (65 FR 77677, December 12, 2000).

II. Proposed Routine Use Disclosures of Data in the System

The routine uses of records maintained in the system, including categories of users and the purposes of such uses, are being amended to protect the confidentiality and govern the release of VA records subject to 38 U.S.C. 5701, which permits disclosure in accordance with valid routine uses. Routine use numbers 15, 16, 17, 18, 19, 20 and 21 have been added to conform in accordance with this authority.

Routine use number 1 has been revised to require that individuals covered by this system provide written requests for disclosures to be made to members of Congress or their staff. Routine use 15 was added to allow for the disclosure of information to the National Archives and Records Administration (NARA) and the General Services Administration (GSA) in records management inspections conducted under authority of chapter 29 of title 44, United States Code. Routine use 16 was added to allow for the disclosure of information in this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to DoJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its on initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. Routine use 17 was added to allow for the disclosure of information to individuals, organizations, public or private agencies, or other entities with whom VA has a contract or agreement or where there is a subcontract to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement. Routine use 18 was added to allow for the disclosure of information in this system to other Federal agencies to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs. Routine use 19 was added to allow for the disclosure of information in this system, except the names and mailing addresses of veterans and their dependents, that is relevant to a suspected violation or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, State, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, rule, regulation or order. Routine use 20 was added to allow for the disclosure of information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) VA has determined that as a result of the suspected or confirmed compromise, there is a risk of embarrassment or harm to the reputations of the record subjects, harm to the economic or property interests, identity theft or fraud, or harm to the programs (whether maintained by VA or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out VA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosures by VA to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727. Routine use 21 was added to allow for the disclosure of the name and mailing address of a VA beneficiary, and other information as is reasonably necessary to identify such a beneficiary, who has been adjudicated as incompetent under 38 CFR 3.353, to the Attorney General of the United States or his/her designee, for use by the Department of Justice in the National Instant Criminal Background Check System (NICS) mandated by the Brady Handgun Violence Prevention Act, Public Law 103–159.

Approved: September 10, 2010.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

45VA21

SYSTEM OF RECORD:

"Veterans Assistance Discharge System—VA"

SYSTEM LOCATION:

Records are maintained at the Department of Veterans Affairs (VA) regional offices, VA Medical Centers, the VA Records Management Center, St. Louis, Missouri, and at the Corporate Franchise Data Center in Austin, Texas. Address locations are listed in the VA Appendix 1, located at the end of this document.

CATAGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals (veterans only) released from active military service from March 1973, for whom separation documents (*i.e.,* DD Forms 214, 215) were received in the Corporate Franchise Data Center in Austin, Texas.

CATEGORIES OF RECORDS IN THE SYSTEM:

The record, or information contained in the record may include personally identifiable information (PII) and military discharge information. PII may include the following concerning the veteran: Full name, social security number, service number, date of birth. Military discharge information may include the primary military occupational specialty number, entry and release from active duty, character of service, branch of service, and

mailing address at the time of discharge, level of education (*e.g.,* high school graduate or equivalent or not high school graduate or equivalent), sex, total amount of active service, the dollar amount of readjustment or severance pay, number of non-paydays, pay grade, narrative reason for separation and whether the veteran was discharged with a disability, served in the Vietnam Conflict, reenlisted in the military service or received a military decoration such as a Purple Heart.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code, Chapter 3, section 501(a), (b).

PURPOSE:

This system collects a limited amount of personally identifiable information for the purpose of maintaining records and providing benefits to veterans who file claims for a wide variety of Federal veteran's benefits administered by VA at VA facilities located throughout the United States. *See* the statutory provisions cited in "Authority for maintenance of the system". VA gathers or creates these records in order to enable it to administer these statutory benefits programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. The record of an individual who is covered by this system may be disclosed to a member of Congress or staff person acting for the member when the member or staff person requests the record on behalf of and at the written request of that individual.

2. Any information in this system may be disclosed to a Federal agency, upon its official request, to the extent that it is relevant and necessary to that agency's decision regarding: The hiring, retention or transfer of an employee; the issuance of a security clearance, the letting of a contract, or the issuance or continuance of a license, grant or other benefit given by that agency. However, in accordance with an agreement with the U.S. Postal Service, disclosures to the U.S. Postal Service for decisions concerning the employment of veterans will only be made with the veteran's prior written consent.

3. Any information in this system may be disclosed to a State or local agency, upon its official request, to the extent that it is relevant and necessary to that agency's decision on: The hiring, transfer or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance or continuance of a license, grant or other benefit by that agency; provided, that if the information pertains to a veteran, the name and address of the veteran will not be disclosed unless the name and address is provided first by the requesting State or local agency.

4. Any information in this system may be disclosed to a Federal agency, except for the name and address of a veteran, in order for VA to obtain information relevant to the issuance of a benefit under title 38, United States Code. The name and address of a veteran may be disclosed to a Federal agency under this routine use if they are required by the Federal agency to respond to the VA inquiry.

5. Any information in this system, except for the name and address of a veteran, which is relevant to a suspected violation or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, may be disclosed to a Federal, State, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, rule, regulation or order.

6. The name and address of a veteran, which is relevant to a suspected violation or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, may be disclosed to a Federal agency charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto, in response to its official request.

7. The name and address of a veteran, which is relevant to a suspected violation or reasonably imminent violation of law concerning public health or safety, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, may be disclosed to any foreign State or local governmental agency or instrumentality charged under applicable law with the protection of the public health or safety if a qualified representative of such organization, agency or instrumentality has made a written request that such name and address be provided for a purpose authorized by law.

8. Any information, including name and address of a veteran, may be disclosed to any nonprofit organization if the release is directly connected with the conduct of programs and the utilization of benefits under title 38, United States Code (such disclosures include computerized lists of names and addresses).

9. A listing of names and addresses of educationally disadvantaged veterans residing in a specific geographic area may be disclosed to VA-approved nonprofit educational facilities in order to aid these facilities in VA outreach programs by permitting direct contact with the educationally disadvantaged veteran.

10. Identifying information may be disclosed at the request of the veteran to accredited service organization representatives, VA-approved claims agents and attorneys acting under a declaration of representation so that these individuals can aid veterans in the preparation, presentation, and prosecution of claims under the laws administered by VA. The name and address of a veteran will not, however, be disclosed to these individuals if the veteran has not requested the assistance of an accredited service organization, claims agent or an attorney.

11. The names and addresses and military discharge information (e.g., job-related information regarding veterans with a certain primary occupational specialty number) may be disclosed upon official request to the Departments of Justice, Labor and to the Department of Health and Human Services, Operation Military Experience Directed Into Health Careers (MEDIHC) State coordinators. These disclosures help veterans who were trained in health and other skills while in the military to learn of career opportunities.

12. Any information in this system of records may be disclosed to the Department of Defense Manpower Data Center, upon its official request, for statistical compilation of information contained on the separation documents issued by the Department of Defense. Veterans' addresses that are contained in this system of records may be disclosed to the Department of Defense Manpower Data Center, upon its official request, for military recruiting command needs: Department of Defense civilian personnel offices' mobilization studies and mobilization information, debt collection, and Individual Ready Reserve (IRR) Units' locator services.

13. The name, address, date of birth and other identifying data, including social security numbers, of a male veteran covered by this system may be released to the Selective Service System for the purpose of identifying men who served on active military duty, but failed to register with the Selective Service System upon separation or discharge from the service; providing

the current addresses of veterans; correcting or supplementing the data which the Selective Service System receives from Department of Defense separation points; and ensuring the proper classification of veterans for induction purposes in the event of a return to the draft. These records may also be disclosed as part of an ongoing computer matching program to accomplish these purposes.

14. Identifying information from this system of records, including name, mailing address, service discharge date, social security number, date of birth, service branch, gender, disability status, pay grade, educational level, date of enlistment and the amount of Servicemen's Group Life Insurance coverage carried at the time of discharge may be disclosed to the Office of Servicemen's Group Life Insurance for the purposes of soliciting applications for life insurance coverage under the Veteran's Group Life Insurance program.

15. Disclosure may be made to the National Archives and Records (NARA) Administration and the General Services Administration (GSA) in records management inspections conducted under authority of chapter 29 of title 44, United States Code.

16. VA may disclose information from this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to DoJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its on initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

17. Disclosure of relevant information may be made to individuals, organizations, public or private agencies, or other entities with whom VA has a contract or agreement or where there is a subcontract to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement.

18. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

19. VA may disclose on its own initiative any information in this system, except the names and mailing addresses of veterans and their dependents, that is relevant to a suspected violation or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, State, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, rule, regulation or order.

20. VA may on its own initiative, disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) VA has determined that as a result of the suspected or confirmed compromise, there is a risk of embarrassment or harm to the reputations of the record subjects, harm to the economic or property interests, identity theft or fraud, or harm to the programs (whether maintained by VA or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the VA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosures by VA to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

21. The name and mailing address of a VA beneficiary, and other information as is reasonably necessary to identify such a beneficiary, who has been adjudicated as incompetent under 38 CFR 3.353, may be provided to the Attorney General of the United States or his/her designee, for use by the Department of Justice in the National Instant Criminal Background Check System (NICS) mandated by the Brady Handgun Violence Prevention Act, Public Law 103–159.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records (or information contained in records) are maintained on paper documents in claims folders (C-folders), vocational rehabilitation folders, electronic file folders (*e.g.,* Virtual VA and TIMS File), and on automated storage media (*e.g.,* microfilm, microfiche, magnetic tape and disks). Such information may be accessed through data telecommunication terminal systems designated the Benefits Delivery Network (BDN), Virtual VA and Veterans Service Network (VETSNET). BDN, Virtual VA and VETSNET terminal locations include VA Central Office, regional offices, VA health care facilities, and Veterans Integrated Service Network (VISN) offices. Remote on-line access is also made available to authorized remote sites, representatives of claimants and to attorneys of record for claimants. A VA claimant must execute a prior written consent or a power of attorney authorizing access to his or her claims records before VA will allow the representative or attorney to have access to the claimant's automated claims records. Access by representatives and attorneys of record is to be used solely for the purpose of assisting an individual claimant whose records are accessed in a claim for benefits administered by VA.

RETRIEVABILITY:

Information is retrievable by the use of name only; name and one or more numbers (service, social security, VA claims file, and VA insurance file); name and one or more criteria (*e.g.,* date of birth, death and service); VA file number only; or initials or first five letters of the last name and VA file number.

SAFEGUARDS:

Access to the basic file in the Corporate Franchise Data Center in Austin, Texas is restricted to authorized VA employees and vendors. Access to working spaces and claims folder file storage areas in VA regional offices and centers is restricted to VA employees who have a need-to-know for the performance of their official duties associated with providing veterans benefits. Generally, file areas are locked after normal duty hours and the offices and centers are protected from outside access by the Federal Protective Service or other security personnel. Access to BDN, Virtual VA and VETSNET data telecommunication networks are by authorization controlled by the site

security officer who is responsible for authorizing access to the BDN, Virtual VA and VETSNET by a claimant's representative or attorney approved for access in accordance with VA regulations. The site security officer is responsible for ensuring that the hardware, software and security practices of a representative or attorney satisfy VA security requirements before granting access. The security requirements applicable to the access of automated claims files by VA employees also apply to the access of automated claims files by claimants' representatives or attorneys. The security officer is assigned responsibility for implementing and enforcing privacy-security measures, especially for review of violation logs, information logs and control of password distribution, including password distribution for claimants' representatives.

RENTENTION AND DISPOSAL:

Records are maintained on magnetic tape, disks and microfiche and are retained and disposed of in accordance with disposition and authorization approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Compensation and Pension Service (21), VA Central Office, 810 Vermont Avenue NW., Washington, DC 20420.

NOTIFICATION PROCEDURE:

An individual who wishes to determine whether a record is being maintained in this system under his or her name or other personal identifier, or wants to determine the contents of such record, should submit a written request or apply in person to the Director, Administrative Service (23), VA Central Office, 810 Vermont Avenue NW., Washington, DC 20420. Inquiries should include the individual's full name and social security number to ensure that the information is shared with the correct individual.

RECORD ACCESS PROCEDURES:

Individuals seeking information regarding access to and contesting of VA records in this system may write, call or visit the nearest VA regional office.

CONTESTING RECORD PROCEDURES:

See Record access procedures above.

RECORD SOURCE CATEGORIES:

The Department of Defense, which provides copies to VA of DD Form 214, *Certificate of Release or Discharge from Active Duty,* DD Form 215, *Correction to DD Form 214;* U.S. Public Health Service, which provides copies to VA of PHS–1867, *Statement of Service Verification of Status of Commissioned Officers of the U.S. PHS;* and the National Oceanic and Atmospheric Administration, which provides VA with copies of ESSA Form 56–16, *Report of Separation Discharge.*

Appendix 1:

Department of Veterans Affairs Regional Offices and Centers

Alabama AL

VA Regional Office, 345 Perry Hill Rd., Montgomery, Alabama 36109.

Alaska AK

VA Regional Office, 1201 N Muldoon Rd., Anchorage 99504.

Arizona AZ

VA Regional Office, 3333 North Central Ave., Phoenix, Arizona 85012.

Arkansas AR

VA Regional Office, 2200 Fort Roots Dr., Bldg. 65, North Little Rock, Arkansas 72144.

California CA

VA Regional Office, Federal Bldg., 11000 Wilshire Blvd., Los Angeles, California 90024.

VA Regional Office, 1301 Clay St., Rm. 1300 North, Oakland, California 94612.

VA Regional Office, 8810 Rio San Diego Dr., San Diego, California 92108.

Colorado CO

VA Regional Office, 155 Van Gordon St., Lakewood, Colorado 80228.

Connecticut CT

VA Regional Office, 555 Willard Ave., Newington, Connecticut 06111.

Delaware DE

VA Regional Office, 1601 Kirkwood Hwy., Wilmington, Delaware 19805.

District of Columbia DC

VA Regional Office, 1722 I St., NW., Washington, DC 20421.

VA Central Office, 810 Vermont Ave., NW., Washington, DC 20420.

Florida FL

VA Regional Office, 9500 Bay Pines Blvd., St. Petersburg, Florida 33708.

Georgia GA

VA Regional Office, 1700 Clairmont Rd., Decatur, Georgia 30033.

Hawaii HI

VA Regional Office, 459 Patterson Rd., E-Wing, Honolulu, Hawaii 96819.

Idaho ID

VA Regional Office, 444 W. Fort St., Boise, Idaho 83702.

Illinois IL

VA Regional Office, 2122 W. Taylor St., Chicago, Illinois 60612.

Indiana IN

VA Regional Office, 575 N. Pennsylvania St., Indianapolis, Indiana 46204.

Iowa IA

VA Regional Office, 210 Walnut St., Des Moines, Iowa 50309.

Kansas KS

VA Regional Office, 5500 E. Kellogg Ave., Wichita, Kansas 67128.

Kentucky KY

VA Regional Office, 321 W. Main St., Ste. 390, Louisville, Kentucky 40202.

Louisiana LA

VA Regional Office, 1250 Poydras St., New Orleans, Louisiana 70056.

Maine ME

VA Regional Office, One VA Center, Augusta, Maine 04330.

Maryland MD

VA Regional Office, Federal Bldg., 31 Hopkins Plaza, Baltimore, Maryland 21201.

Massachusetts MA

VA Regional Office, John Fitzgerald Kennedy Federal Bldg., Government Center, Boston, Massachusetts 02203.

Michigan MI

VA Regional Office, Patrick V. McNamara Federal Bldg., 477 Michigan Ave., Rm. 1400, Detroit, Michigan 48226.

Minnesota MN

VA Regional Office, Bishop Henry Whipple Federal Bldg., 1 Federal Dr., Fort Snelling, St. Paul, Minnesota 55111.

Mississippi MS

VA Regional Office, 1600 East Woodrow Wilson Ave., Jackson, Mississippi 39216.

Missouri MO

VA Regional Office, 400 South 18th St., St. Louis, Missouri 63103.

Montana MT

VA Regional Office, 3633 Veterans Dr., Fort Harrison, Montana 59636.

Nebraska NE

VA Regional Office, 5631 S. 48th St., Lincoln, Nebraska 68516.

Nevada NV

VA Regional Office, 5460 Reno Corporate Dr., Reno, Nevada 89511.

VA Benefits Office, 4800 Alpine Pl., Suite 12, Las Vegas, Nevada 89107.

New Hampshire NH

VA Regional Office, Norris Cotton Federal Bldg., 275 Chestnut St., Manchester, New Hampshire 03101.

New Jersey NJ

VA Regional Office, 20 Washington Place, Newark, New Jersey 07120.

New Mexico NM

VA Regional Office, Dennis Chavez Federal Bldg., 500 Gold Ave., SW., Albuquerque, New Mexico 87102.

New York NY

VA Regional Office, 245 W. Houston St., New York, New York 10014.

VA Regional Office, Niagra Center, 130 S. Elmwood Ave., Buffalo, New York 14202.

North Carolina NC

VA Regional Office, Federal Office Building, 251 North Main Street, Winston-Salem, North Carolina 27155.

North Dakota ND

VA Regional Office, 2101 Elm St., Fargo, North Dakota 58102.

Ohio OH

VA Regional Office, Anthony J. Celebreeze Federal Office Bldg., 1240 East Ninth St., Cleveland, Ohio 44199.

Oklahoma OK

VA Regional Office, 125 South Main St., Muskogee, Oklahoma 74401.

Oregon OR

VA Regional Office, Edith Green/Wendell Wyatt Federal Building, 1220 SW. Third Ave., Portland, Oregon 97204.

Pennsylvania PA

VA Regional Office, 1000 Liberty Ave., Pittsburgh, Pennsylvania 15222.

VA Regional Office and Insurance Center, 5000 Wissahickon Ave., Philadelphia, Pennsylvania 19101.

Philippines

VA Regional Office and Outpatient Clinic, 1131 Roxas Blvd., Manila, Philippines; MAILING ADDRESS from U.S.: VA Regional Office, PSC 501, DPO AP 96515–1100.

Puerto Rico, Commonwealth of (including the Virgin Islands)

VA Regional Office, 150 Carlos Chardon Ave., Suite 300, San Juan, Puerto Rico 00918.

Rhode Island RI

VA Regional Office, 380 Westminster Street, Providence, Rhode Island 02903.

South Carolina SC

VA Regional Office, 6437 Garners Ferry Rd., Columbia, South Carolina 29201.

South Dakota SD

VA Regional Office, P.O. Box 5046, 2501 W. 22nd St., Sioux Falls, South Dakota 57105.

Tennessee TN

VA Regional Office, 110 9th Ave. South, Nashville, Tennessee 37203.

Texas TX

VA Regional Office, 6900 Almeda Rd., Houston, Texas 77030.

VA Regional Office, One Veterans Plaza, 701 Clay Ave., Waco, Texas 76799.

Utah UT

VA Regional Office, 550 Foothill Drive, Salt Lake City, Utah 84148.

Vermont VT

VA Regional Office, 215 North Main Street, White River Junction, Vermont 05001.

Virginia VA

VA Regional Office, 210 Franklin Rd., SW, Roanoke, Virginia 24011.

Washington WA

VA Regional Office, Federal Bldg., 915 Second Ave., Seattle, Washington 98174.

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Part II

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National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

Endangered and Threatened Wildlife and Plants; Proposed Rules

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and Part 224

RIN 0648–XJ00

[Docket No. 100903414–0414–02]

Endangered and Threatened Wildlife and Plants; Proposed Listing Determinations for Three Distinct Population Segments of Atlantic Sturgeon in the Northeast Region

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

ACTION: Proposed rule; request for comments.

SUMMARY: We, NMFS, have completed an Endangered Species Act (ESA) status review for Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*). Based on the status review report (ASSRT, 2007), and other information available since completion of the status review report, we have determined that the species is comprised of five distinct population segments (DPSs) that qualify as species under the ESA: Gulf of Maine (GOM); New York Bight (NYB); Chesapeake Bay (CB); Carolina; and South Atlantic. We have also determined that, for those DPSs that are located within the jurisdiction of NMFS' Northeast Region, listing as threatened is warranted for the GOM DPS, and listing as endangered is warranted for the NYB DPS and CB DPS. A separate proposed listing determination is issued for the two DPSs within NMFS' Southeast Region in today's **Federal Register.**

DATES: Comments on this proposal must be received by January 4, 2011. At least one public hearing will be held in a central location for each DPS; notice of the locations and times of the hearings will be published in the **Federal Register** not less than 15 days before the hearings are held.

ADDRESSES: You may submit comments, identified by the RIN 0648–XJ00, by any of the following methods:

- *Federal eRulemaking Portal: http//www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* To the attention of Lynn Lankshear at (978) 281–9394.
- *Mail or hand-delivery:* Submit written comments to the Assistant Regional Administrator, Protected Resources Division, NMFS, Northeast Region, 55 Great Republic Drive, Gloucester, MA 01930.

Instructions:

All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

We will accept anonymous comments (enter "n/a" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

The proposed rule, status review report, and other reference materials regarding this determination are available electronically at the following Web site at *http://www.nero.noaa.gov/prot_res/CandidateSpeciesProgram/cs.htm* or by submitting a request to the Assistant Regional Administrator, Protected Resources Division, NMFS, Northeast Region, 55 Great Republic Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Lynn Lankshear, NMFS, Northeast Region (978) 282–8473; Kimberly Damon-Randall, NMFS, Northeast Region (978) 282–8485; or Marta Nammack, NMFS, Office of Protected Resources (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We solicit scientific and commercial information to inform the listing determinations for the GOM, NYB, and CB DPSs to ensure that the final action resulting from this proposal considers information that is comprehensive and current. We particularly seek comments concerning: information on the abundance and distribution of Atlantic sturgeon belonging to the GOM, NYB, and/or the CB DPSs; information concerning the viability of and/or threats to Atlantic sturgeon belonging to the GOM, NYB, and/or the CB DPSs; efforts being made to protect Atlantic sturgeon belonging to the GOM, NYB, or CB DPSs; and the mixing of fish from different DPSs in parts of their ranges, particularly the marine environment.

We are not proposing critical habitat for the GOM, NYB, or CB DPSs at this time, given that further analysis of GIS mapping data is necessary for determining the critical habitat of each of the three DPSs. Therefore, we will propose to designate critical habitat for each DPS in a separate **Federal Register** notification once analysis of the data is complete. If the proposed listing is finalized, a recovery plan will be prepared for each DPS. In addition, any protective regulations determined to be necessary and advisable for the conservation of the GOM DPS under ESA section 4(d) will be proposed in a subsequent **Federal Register** document.

Background

There are two subspecies of Atlantic sturgeon—*Acipenser oxyrinchus oxyrinchus,* which is commonly referred to as Atlantic sturgeon, and *Acipenser oxyrinchus desotoi,* commonly referred to as Gulf sturgeon. This proposed rule addresses the subspecies *Acipenser oxyrinchus oxyrinchus* (hereafter referred to as Atlantic sturgeon), which is distributed along the eastern coast of North America.

Listing Species Under the Endangered Species Act

We, NMFS, are responsible for determining whether Atlantic sturgeon are threatened or endangered under the ESA (16 U.S.C. 1531 *et seq.*). Accordingly, based on the statutory, regulatory, and policy provisions described below, the steps we followed in making our listing determination for Atlantic sturgeon were to: (1) Determine how Atlantic sturgeon meet the definition of "species"; (2) determine the status of the species and the factors affecting it; and (3) identify and assess efforts being made to protect the species and determine if these efforts are adequate to mitigate existing threats.

To be considered for listing under the ESA, a group of organisms must constitute a "species." A "species" is defined in section 3 of the ESA to include "any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature." On February 7, 1996, the NMFS and U.S. Fish and Wildlife Service (collectively the "Services") adopted a policy to clarify our interpretation of the phrase "distinct population segment of any species of vertebrate fish or wildlife" (61 FR 4722). The joint DPS policy describes two criteria that must be considered when identifying DPSs: (1) The discreteness of the population segment in relation to the remainder of the species (or subspecies) to which it belongs; and (2) the significance of the population segment to the remainder of the species (or subspecies) to which it belongs. As further stated in the joint policy, if a population segment is discrete and significant (*i.e.,* it meets the DPS policy criteria), its evaluation for endangered or threatened status will be based on the ESA's definition of those terms and a

review of the five factors enumerated in section 4(a)(1) of the ESA.

The ESA defines an endangered species as "any species which is in danger of extinction throughout all or a significant portion of its range" and a threatened species as one "which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." As provided in section 4(a) of the ESA, the statute requires us to determine whether any species is endangered or threatened because of any of the following five factors: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence (section 4(a)(1)(A)(E)).

Section 4(b)(1)(A) of the ESA further requires that listing determinations be based solely on the best scientific and commercial data available after taking into account efforts being made to protect the species. In judging the efficacy of existing protective efforts, we rely on the Service's joint "Policy for Evaluation of Conservation Efforts When Making Listing Decisions" ("PECE"; 68 FR 15100; March 28, 2003). The PECE provides direction for consideration of conservation efforts that have not been implemented, or have been implemented but not yet demonstrated effectiveness.

Status Review

We first identified Atlantic sturgeon as a candidate species in 1991; at that time, the candidate species list served to notify the public that we had concerns regarding these species that may warrant listing in the future, and it facilitated voluntary conservation efforts. On June 2, 1997, the Services received a petition from the Biodiversity Legal Foundation requesting that we list Atlantic sturgeon in the United States as threatened or endangered and designate critical habitat within a reasonable period of time following the listing. A notice was published in the **Federal Register** on October 17, 1997, stating that the Services had determined substantial information existed indicating the petitioned action may be warranted (62 FR 54018). In 1998, after completing a comprehensive status review, the Services published a 12-month determination in the **Federal Register,** announcing that listing was not warranted at that time (63 FR 50187; September 21, 1998). We retained Atlantic sturgeon on the candidate species list (subsequently changed to the Species of Concern List (69 FR 19975; April 15, 2004)).

Concurrently, the Atlantic States Marine Fisheries Commission (ASMFC) completed Amendment 1 to the 1990 Atlantic Sturgeon Fishery Management Plan (FMP) that imposed a 20–40 year moratorium on all Atlantic sturgeon fisheries until the Atlantic Coast spawning stocks could be restored to a level where 20 subsequent year classes of adult females were protected (ASMFC, 1998). In 1999, pursuant to section 804(b) of the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA) (16 U.S.C. 5101 *et seq.*), we followed this action by closing the Exclusive Economic Zone (EEZ) to Atlantic sturgeon retention. In 2003, we sponsored a workshop with the U.S. Fish and Wildlife Service (FWS) and the ASMFC entitled "Status and Management of Atlantic Sturgeon," to discuss the status of Atlantic sturgeon along the Atlantic Coast and determine what obstacles, if any, were impeding their recovery (Kahnle *et al.,* 2005). The results of the workshop indicated some river populations (hereafter referred to as "subpopulations") seemed to be recovering while others were declining. Bycatch and habitat degradation were noted as possible causes for continued declines.

Based on the information gathered from the 2003 workshop on Atlantic sturgeon, we decided that a second review of Atlantic sturgeon status was needed to determine if listing as endangered or threatened under the ESA was warranted. We, therefore, established a status review team (SRT) consisting of NMFS, FWS, and U.S. Geological Survey (USGS) scientists with relevant expertise to assist us in assessing the viability of the species throughout all or a significant portion of its range. The SRT was asked to consider the best scientific and commercial information available, including the technical information and comments from state and regional experts. The draft status review report prepared by the SRT was peer reviewed by experts from academia, and their comments were incorporated. A Notice of Availability of this report was published in the **Federal Register** on April 3, 2007 (72 FR 15865).

On October 6, 2009, we received a petition from the Natural Resources Defense Council to list Atlantic sturgeon as endangered under the ESA. As an alternative, the petitioner requested that the species be delineated and listed as the five DPSs described in the 2007 Atlantic sturgeon status review (ASSRT, 2007) (*i.e.,* Gulf of Maine, New York Bight, Chesapeake Bay, Carolina, and South Atlantic DPSs), with the Gulf of Maine and South Atlantic DPSs listed as threatened, and the remaining three DPSs listed as endangered. The petitioner also requested that critical habitat be designated for Atlantic sturgeon under the ESA. We published a Notice of 90-Day Finding on January 6, 2010 (75 FR 838), stating that the petition presented substantial scientific or commercial information indicating that the petitioned actions may be warranted.

The status review report upon which this proposed rule is based provides extensive information on Atlantic sturgeon biology, life history, distribution, and abundance to support its conclusions. A summary of this information is provided below. More detailed information is available in the status review report.

Biology and Life History of Atlantic Sturgeon

Atlantic sturgeon are distinguished by armor-like plates and a long snout with a ventrally located protruding mouth. Four barbels crossing in front of the mouth help the sturgeon to locate prey. Sturgeon are omnivorous benthic feeders (feed off the bottom) and filter quantities of mud along with their food. Adult sturgeon diets include mollusks, gastropods, amphipods, isopods, and fish. Juvenile sturgeon feed on aquatic insects and other invertebrates (ASSRT, 2007).

The general life history pattern of Atlantic sturgeon is that of a long lived (approximately 60 years; Mangin, 1964; Stevenson and Secor, 1999), late maturing, estuarine dependent, anadromous species (ASSRT, 2007). They can reach lengths up to 14 feet (4.26 m), and weigh over 800 pounds (~364 kg).

Fecundity of female Atlantic sturgeon has been correlated with age and body size, with observed egg production ranging from 400,000 to 4 million eggs per spawning year (Smith *et al.,* 1982; Van Eenennaam *et al.,* 1996; Van Eenennaam and Doroshov, 1998; Dadswell, 2006). Female gonad weight varies from 12–25 percent of the total body weight (Smith, 1907; Huff, 1975; Dadswell, 2006). Therefore, the fecundity of a 770-pound (350 kg) female, like the one captured in the St. John River, Canada, in 1924, could be 7–8 million eggs (Dadswell, 2006). The average age at which 50 percent of the maximum lifetime egg production is achieved is estimated to be 29 years (Boreman, 1997).

Atlantic sturgeon likely do not spawn every year. Multiple studies have shown

that spawning intervals range from 1–5 years for males (Smith, 1985; Collins *et al.,* 2000; Caron *et al.,* 2002) and 2–5 years for females (Vladykov and Greeley, 1963; Van Eenennaam *et al.,* 1996; Stevenson and Secor, 1999). Spawning behavior also differs between the sexes. While there is a window of time for each river during which spawning occurs, spawning females do not migrate upstream together. Individual females make rapid spawning migrations upstream and quickly depart following spawning (Bain, 1997). Spawning males usually arrive on the spawning grounds before any of the females have arrived and leave after the last female has spawned (Bain, 1997). Presumably, this provides an opportunity for a single male to fertilize eggs of multiple females.

Spawning is believed to occur in flowing water between the salt front of estuaries and the fall line of large rivers, where optimal flows are 46–76 cm/s and depths are 11–27 m (Borodin, 1925; Leland, 1968; Scott and Crossman, 1973; Crance, 1987; Bain *et al.,* 2000). Sturgeon eggs are highly adhesive and are deposited on the bottom substrate, usually on hard surfaces such as cobble (Gilbert, 1989; Smith and Clugston, 1997). Hatching occurs approximately 94 and 140 hours after egg deposition at temperatures of 20° and 18 °C, respectively, and, once hatched, larvae assume a demersal existence (Smith *et al.,* 1980). The yolksac larval stage is completed in about 8–12 days, during which time the larvae move downstream to the rearing grounds (Kynard and Horgan, 2002). During the first half of this migration, larvae move only at night and use benthic structure (*e.g.,* gravel matrix) as refuge during the day (Kynard and Horgan, 2002). During the latter half of migration to the rearing grounds, when larvae are more fully developed, movement occurs during both day and night. Larvae transition into the juvenile phase as they continue to move even further downstream into brackish waters, developing a tolerance to salinity as they go, and eventually become residents in estuarine waters for months to years before emigrating to open ocean as subadults (Holland and Yelverton, 1973; Doevel and Berggen, 1983; Waldman *et al.,* 1996a; Dadswell, 2006; ASSRT, 2007).

Atlantic sturgeon that originate from different rivers demonstrate differences in growth rate, maturation, and timing of spawning. For example, Atlantic sturgeon mature in South Carolina river systems at 5 to 19 years (Smith *et al.,* 1982), in the Hudson River at 11 to 21 years (Young *et al.,* 1998), and in the Saint Lawrence River at 22 to 34 years (Scott and Crossman, 1973). In general, Atlantic sturgeon subpopulations show clinal variation with faster growth and earlier age at maturation for fish originating from more southern systems, though not all data sets conform to this trend. Timing of spawning migrations also exhibit a latitudinal pattern in which migrations generally occur during February-March in southern systems, April-May in mid-Atlantic systems, and May-July in Canadian systems (Murawski and Pacheco, 1977; Smith, 1985; Bain, 1997; Smith and Clugston, 1997; Caron *et al.,* 2002). In some rivers, predominantly in the south, a fall spawning migration may also occur (Rogers and Weber, 1995; Weber and Jennings, 1996; Moser *et al.,* 1998).

Distribution and Abundance

Historically, Atlantic sturgeon were present in approximately 38 rivers in the United States from St. Croix, ME, to the Saint Johns River, FL, 35 of which have been confirmed to have supported spawning for Atlantic sturgeon (ASSRT, 2007). It is unknown how many Canadian rivers were historically used by Atlantic sturgeon. However, it is likely that Atlantic sturgeon spawn(ed) in the Miramichi, Shubenacadie, Avon, Annapolis, and in other systems of similar size in addition to the presently known subpopulations that spawn in the Saint Lawrence River and Saint John River (reviewed in Dadswell, 2006; ASSRT, 2007). Overall, historical sightings of Atlantic sturgeon were generally reported from Hamilton Inlet, Labrador, south to the Saint Johns River, Florida (Murawski and Pacheko, 1977; Smith and Clugston, 1997; ASSRT, 2007). Occurrences south of the Saint Johns River, Florida, and north of Hamilton Inlet, Labrador, may have always been rare.

It is clear that Atlantic sturgeon underwent significant range-wide declines from historical abundance levels due to overfishing (reviewed in Smith and Clugston, 1997). Although Atlantic sturgeon had been previously exploited in commercial fisheries (Scott and Crossman, 1973; Taub, 1990; Dadswell, 2006; ASSRT, 2007), records from the 1700s and 1800s document large numbers of sturgeon in many rivers along the Atlantic coast (Kennebec River Resource Management Plan, 1993; Armstrong and Hightower, 2002). However, in 1870, a significant fishery for the species developed when a caviar market was established. Record landings were reported in 1890, when over 3,350 metric tons (mt) of Atlantic sturgeon were landed from coastal rivers along the Atlantic Coast (reviewed in Smith and Clugston, 1997; Secor and Waldman, 1999). The fishery collapsed in 1901, 10 years after peak landings, when less than 10 percent (295 mt) of its 1890 peak landings were reported. During the 1950s, the remaining fishery switched to targeting sturgeon for flesh, rather than caviar. Commercial fisheries were active in many rivers during all or some of the period from 1962 to 1997, albeit at much lower levels than in the late 1800s—early 1900s (Taub, 1990; Smith and Clugston, 1997). Nevertheless, many of these contemporary fisheries also resulted in overfishing, which prompted the ASMFC to impose the 1998 coastwide moratorium for fisheries targeting Atlantic sturgeon and NMFS to close the EEZ to Atlantic sturgeon retention in 1999.

Currently, Atlantic sturgeon presence is documented in 36 rivers in the United States and Canada, combined (ASSRT, 2007; J. Sulikowski, UNE, pers. comm.). At least 18 rivers are believed to support spawning based on available evidence (*i.e.,* presence of young-of-year or gravid Atlantic sturgeon documented within the past 15 years) (ASSRT, 2007). These rivers are: Saint Lawrence, QB; Annapolis, NS; Saint John, NB; Kennebec, ME; Hudson, NY; Delaware, NJ/DE/PA; James, VA; Roanoke, NC; Tar-Pamlico, NC; Cape Fear, NC; Waccamaw, SC; Great PeeDee, SC; Combahee, SC; Edisto, SC; Savannah, SC/GA; Ogeechee, GA; Altamaha, GA; and, the Satilla, GA (ASSRT, 2007). Rivers with possible, but unconfirmed, spawning include: St Croix, NB/ME; Penobscot, Androscoggin, and Sheepscot, ME, York, VA; Neuse, NC; Santee and Cooper Rivers; spawning may occur in the Santee and/or the Cooper Rivers, but it may not result in successful recruitment (ASSRT, 2007).

Comprehensive information on current abundance of Atlantic sturgeon is lacking for any of the spawning rivers (ASSRT, 2007). In the United States, an estimate of 870 spawning adults/year is available for the Hudson River (Kahnle *et al.,* 2007). An estimate of 343 spawning adults/year is available for the Altamaha River, GA, based on data collected in 2004–2005 (Schueller and Peterson, 2006). Data collected from the Hudson River and Altamaha River studies cannot be used to estimate the total number of adults in either subpopulation, since mature Atlantic sturgeon may not spawn every year (Vladykov and Greeley, 1963; Smith, 1985; Van Eenennaam *et al.,* 1996; Stevenson and Secor, 1999; Collins *et al.* 2000; Caron *et al.,* 2002), and it is unclear to what extent mature fish in a non-spawning condition occur on the

spawning grounds. Nevertheless, since the Hudson and Altamaha rivers are presumed to have the healthiest Atlantic sturgeon subpopulations within the United States, other U.S. subpopulations are predicted to have fewer spawning adults than either the Hudson or the Altamaha (ASSRT, 2007). In Canada, an estimate of spawning size is available for the Saint Lawrence River where tagging work suggests a total spawning subpopulation of over 500 adults (Caron *et al.,* 2002; Dadswell, 2006).

Surveys and other programs (*e.g.,* reward programs) have provided more qualitative information on Atlantic sturgeon subpopulations. While these programs may not have sufficient information by which to generate any subpopulation estimate(s), they do provide some river-specific information on abundance, trends, evidence of spawning, and/or documentation of multiple-year classes. For example, a multi-filament gill net survey conducted intermittently in the Kennebec River from 1977–2000 captured 336 Atlantic sturgeon (9 adults and 327 subadults) (Squiers, 2004). During this period, the catch-per-unit effort (CPUE) of subadult Atlantic sturgeon increased by a factor of 10–25 (1977–1981 CPUE = 0.30 versus 1998–2000 CPUE = 7.43). The CPUE of adult Atlantic sturgeon showed a slight increase over the same time period (1977–1981 CPUE = 0.12 versus 1998–2000 CPUE = 0.21) (Squiers, 2004).

An intensive gill net survey was conducted in the Merrimack River from 1987–1990 to determine annual movements, spawning, summering, and wintering areas of shortnose and Atlantic sturgeon (Kieffer and Kynard, 1993). Thirty-six Atlantic sturgeon were captured (70–156 cm total length (TL)); most were under 100 cm TL, suggesting that these were all subadult sturgeon (Kieffer and Kynard, 1993).

In Delaware, gill net surveys are conducted on the Delaware River by the state's Division of Fish and Wildlife as part of their Atlantic Sturgeon Research program. Since 1991, more than 2,000 Atlantic sturgeon have been captured and tagged (DNREC, 2009). Based on their length, most are believed to have been subadults. In September 2009, however, personnel captured their smallest sturgeon yet; an age 0 fish, which was 7 inches TL (178 mm) and weighed less than an ounce (DNREC, 2009). In all, 34 young-of-year (YOY) sturgeon were caught during the sampling period (September 9–November 9, 2009), ranging in size from 178 to 349 mm TL (Fisher, 2009). These captures provide evidence that successful spawning is still occurring in the Delaware River.

Within the Chesapeake Bay, the FWS has been funding the Maryland Reward Program since 1996; this program has resulted in the documentation of approximately 1,700 Atlantic sturgeon. Five hundred and sixty-seven of these fish were hatchery fish, of which 462 were first time captures (14 percent recapture rate), and the remaining captures (1,133) were wild fish.

Virginia also instituted an Atlantic sturgeon reward program in the Chesapeake Bay in 1997 and 1998 (ASSRT, 2007; A. Spells, FWS, pers. comm., 2008). This reward program documented and measured 295 Atlantic sturgeon. Data collected during the reward program documents the presence of YOY fish. Such data include length information which shows that 18.6 percent (55 of 295 measured) of the fish caught were within the 20 to 40 cm fork length size class (A. Spells, FWS, pers. comm., 2008). In addition, aging of fish spines collected from the fish suggested that 34 percent were age 1 (A. Spells, FWS, pers. comm., 2008). This information is important in that it strongly suggests the presence of spawning in one or more rivers that flow into the Bay. Further evidence of Atlantic sturgeon spawning in the Chesapeake Bay area is provided by three carcasses of large adults found in the James River in 2000–2003; the discovery of a 213 cm TL carcass of an adult found in the Appomattox River in 2005; the capture and release of a 240 cm TL Atlantic sturgeon near Hoopers Island, MD in April, 1998 (S. Minkkinen, FWS, pers. comm., 2006); documentation of a gravid adult female Atlantic sturgeon off Tilghman Island, MD in April, 2007 (the first gravid female documented in the Maryland portion of the Chesapeake Bay since the early 1970s); and the capture of several males producing milt (sperm) in the James River in 2007 and 2008 (A. Spells, FWS, pers. comm.).

Identification of Distinct Population Segments

As described above, the ESA's definition of "species" includes "any subspecies of fish or wildlife or plants, and any distinct population segment of any species or vertebrate fish or wildlife which interbreeds when mature." As previously described, Atlantic sturgeon originating from different rivers are known to co-occur in the marine environment and use multiple river systems for life functions, such as foraging. The DPS policy does not require absolute separation of a DPS from other members of its species (61 FR 4722; February 7, 1996). The high degree of reproductive isolation of Atlantic sturgeon (*i.e.,* homing to their natal rivers for spawning) (K. Hattala,, NYDEC, pers. comm., 1998; Wirgin *et al.,* 2000; King *et al.,* 2001; Waldman *et al.,* 2002) as well as the ecological uniqueness of those riverine spawning habitats and the genetic diversity among subpopulations, provides evidence that several populations meet the DPS Policy criteria. Therefore, prior to evaluating the conservation status for Atlantic sturgeon, and in accordance with the joint DPS policy, we considered: (1) The discreteness of any Atlantic sturgeon population segment in relation to the remainder of the subspecies to which it belongs; and (2) the significance of any Atlantic sturgeon population segment to the remainder of the subspecies to which it belongs.

Discreteness

The joint DPS policy states that a population of a vertebrate species may be considered discrete if it satisfies either one of the following conditions: (1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors (quantitative measures of genetic or morphological discontinuity may provide evidence of this separation); or (2) it is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of Section 4(a)(1)(D) of the ESA.

As has already been discussed, adult and subadult Atlantic sturgeon which originate from different rivers mix in the marine environment (Stein *et al.,* 2004; USFWS, 2004). Nevertheless, there is marked separation of Atlantic sturgeon as a result of both spatial and temporal separation of reproduction among river subpopulations. Tagging studies and genetic analyses provide evidence that Atlantic sturgeon return to their natal rivers for spawning (K. Hattala, NYDEC, pers. comm., 1998; Wirgin *et al.,* 2000; King *et al.,* 2001; Waldman *et al.,* 2002). As previously mentioned, Atlantic sturgeon are temporally separated with respect to spawning, since all adults are not reproductively active at the same time within each year (Murawski and Pacheco, 1977; Smith, 1985; Rogers and Weber, 1995; Bain, 1997; Smith and Clugston, 1997; Moser *et al.,* 1998; Caron *et al.,* 2002). For example, Atlantic sturgeon spawn in the Hudson River in May through July (Bain, 1997), while spawning in the St. Lawrence

River occurs in June through July (Caron *et al.,* 2002).

The SRT also considered genetics data to further inform its decisions as to whether there is discreteness amongst Atlantic sturgeon subpopulations. Genetics analyses for Atlantic sturgeon using mitochondrial DNA (mtDNA), which is maternally inherited, and nuclear DNA (nDNA), which reflects the genetics of both parents, have consistently shown that Atlantic sturgeon subpopulations are genetically diverse and that individual subpopulations can be differentiated (Bowen and Avise, 1990; Ong *et al.,* 1996; Waldman *et al.,* 1996a; Waldman *et al.,* 1996b; Waldman and Wirgin, 1998; Waldman *et al.,* 2002; King *et al.,* 2001; Wirgin *et al.,* 2002; Wirgin *et al.,* 2005; Wirgin and King supplemental data, 2006; Grunwald *et al.,* 2008). New analyses of both mtDNA and nDNA were conducted specifically for the status review. In comparison to previous studies, the genetic analyses for the status review employed greater sample sizes from multiple rivers, and limited the samples analyzed to those collected from YOY and mature adults (≤ 130 cm TL) to ensure that the fish originated from the river in which it was sampled (Wirgin and King supplemental data, 2006; ASSRT, 2007). The results for both the mtDNA haplotype and microsatellite (nDNA) allelic frequencies indicated that all of the Atlantic sturgeon subpopulations for which there are samples available are genetically differentiated (ASSRT, 2007; Tables 4 and 5) from each other. The results of the mtDNA analysis used for the status review report were also subsequently published by Grunwald *et al.* (2008). In comparison to the mtDNA analyses used for the status review report, Grunwald *et al.* used additional samples, some from fish in the size range (< 130 cm TL) excluded by Wirgin and King (supplemental data, 2006) because they were smaller than those considered to be mature adults. Nevertheless, the results were the same and demonstrated that each of the 12 sampled Atlantic sturgeon subpopulations could be genetically differentiated from each other (Grunwald *et al.,* 2008).

Genetic distances and statistical analyses (bootstrap values and assignment test values) were also used to investigate significant relationships among, and differences between, Atlantic sturgeon subpopulations (ASSRT, 2007, Table 6 and Figures 16–18). Overall, the genetic markers used in this analysis resulted in an average accuracy of 88 percent for determining a sturgeon's natal river origin, but an average accuracy of 94 percent for correctly classifying it to one of five population groups (Kennebec River, Hudson River, James River, Albemarle Sound, and Savannah/Ogeechee/Altamaha Rivers) when using microsatellite data collected only from YOY and adults. A phylogenetic tree (neighbor joining tree) was produced from only YOY and adult samples (to reduce the likelihood of including strays from other subpopulations) using the microsatellite analysis. Bootstrap values (which measure how consistently the data support the tree structure) for this tree were for analyses of: (1) 12 loci of samples collected from YOY and adults; and (2) 7 loci for samples of YOY, subadult, and adult Atlantic sturgeon (ASSRT, 2007, Figures 16–18). Classification success rate averaged 79.0 percent for determining a sturgeon's natal river and 86.9 percent for correctly classifying sturgeon to one of five population groups (Kennebec River, Hudson River, James River, Albemarle Sound, and Savannah/Ogeechee/Altamaha Rivers) (ASSRT, 2007). Regarding sturgeon from northeast rivers, this analysis resulted in a range of 81 to 89 percent accuracy in determining a sturgeon's natal river of origin and correctly classifying a sturgeon to a population group. To further assess the accuracy of the results, King (supplemental data, 2006) reanalyzed the nDNA using a greater number of loci. His results showed that increasing the number of loci from 7 to 12 improved the classification rates for natal origin and identification of population groupings (*e.g.,* from 84 percent to 95 percent for the James River), but did not change the conclusion that there are five discrete Atlantic sturgeon population segments in the United States.

In summary, evidence to support that there are discrete Atlantic sturgeon populations includes temporal and spatial separation during spawning and the results from genetic analyses. Genetic samples for YOY and spawning adults were not available for river populations originating from other rivers in the northeast region. However, nDNA from an expanded dataset that included juvenile Atlantic sturgeon was used to produce a neighbor-joining tree with bootstrap values (ASSRT, 2007; Figure 18). This dataset included additional samples from the Delaware River and York River populations in the Northeast. Atlantic sturgeon river populations also grouped into five population segments in this analysis (Delaware River population with the Hudson River population, and York River population with the James River population).

We have considered the information on Atlantic sturgeon population structuring provided in the status review report and Grunwald *et al.* (2008) and have concluded that five discrete Atlantic sturgeon population segments are present in the United States, with three located in the Northeast: (1)—The "Gulf of Maine (GOM)" population segment, which includes Atlantic sturgeon that originate from the Kennebec River, (2)—the "New York Bight (NYB)" population segment, which includes Atlantic sturgeon originating from the Hudson and Delaware Rivers, and (3)—the "Chesapeake Bay (CB)" population segment, which includes Atlantic sturgeon that originate from the James and York Rivers. Each is markedly separate from the other four population segments as a consequence of physical factors.

With respect to Atlantic sturgeon of Canadian origin, mtDNA analysis has shown that Atlantic sturgeon originating from rivers ranging from the Kennebec River, Maine, to the Saint Lawrence River, Canada, are predominately homogenous (one genotype) (Waldman *et al.,* 2002; Grunwald *et al.,* 2008; ASSRT, 2007). However, nDNA microsatellite analysis has found these same rivers to be genetically diverse (King, supplemental data, 2006). The SRT concluded that the differences in nDNA were sufficient to determine that Atlantic sturgeon which originate in Canada are markedly separate from Atlantic sturgeon of U.S. origin.

The genetic analyses support that at least one, and possibly more, discrete Atlantic sturgeon population groupings occur in Canada. The SRT did not further consider the status of Atlantic sturgeon originating in Canada once it was determined that they were discrete from the five U.S. Atlantic sturgeon population groupings. We did not consider a listing determination for these populations given the lack of information by which to determine whether the Canadian subpopulations represent one or more DPSs, and given the regulatory controls on import and export of Atlantic sturgeon and their parts per the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES).

Significance

When the discreteness criterion is met for a potential DPS, as it is for the GOM, NYB, and CB population segments in the Northeast identified above, the second element that must be considered

under the DPS policy is significance of each DPS to the taxon as a whole. The DPS policy cites examples of potential considerations indicating significance, including: (1) Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon; (2) evidence that loss of the discrete population segment would result in a significant gap in the range of the taxon; (3) evidence that the DPS represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; or, (4) evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

We believe that the five discrete Atlantic sturgeon population segments persist in ecological settings unique for the taxon. This is evidenced by the fact that spawning habitat of each population grouping is found in separate and distinct ecoregions that were identified by The Nature Conservancy (TNC) based on the habitat, climate, geology, and physiographic differences for both terrestrial and marine ecosystems throughout the range of the Atlantic sturgeon along the Atlantic coast (Figure 1).

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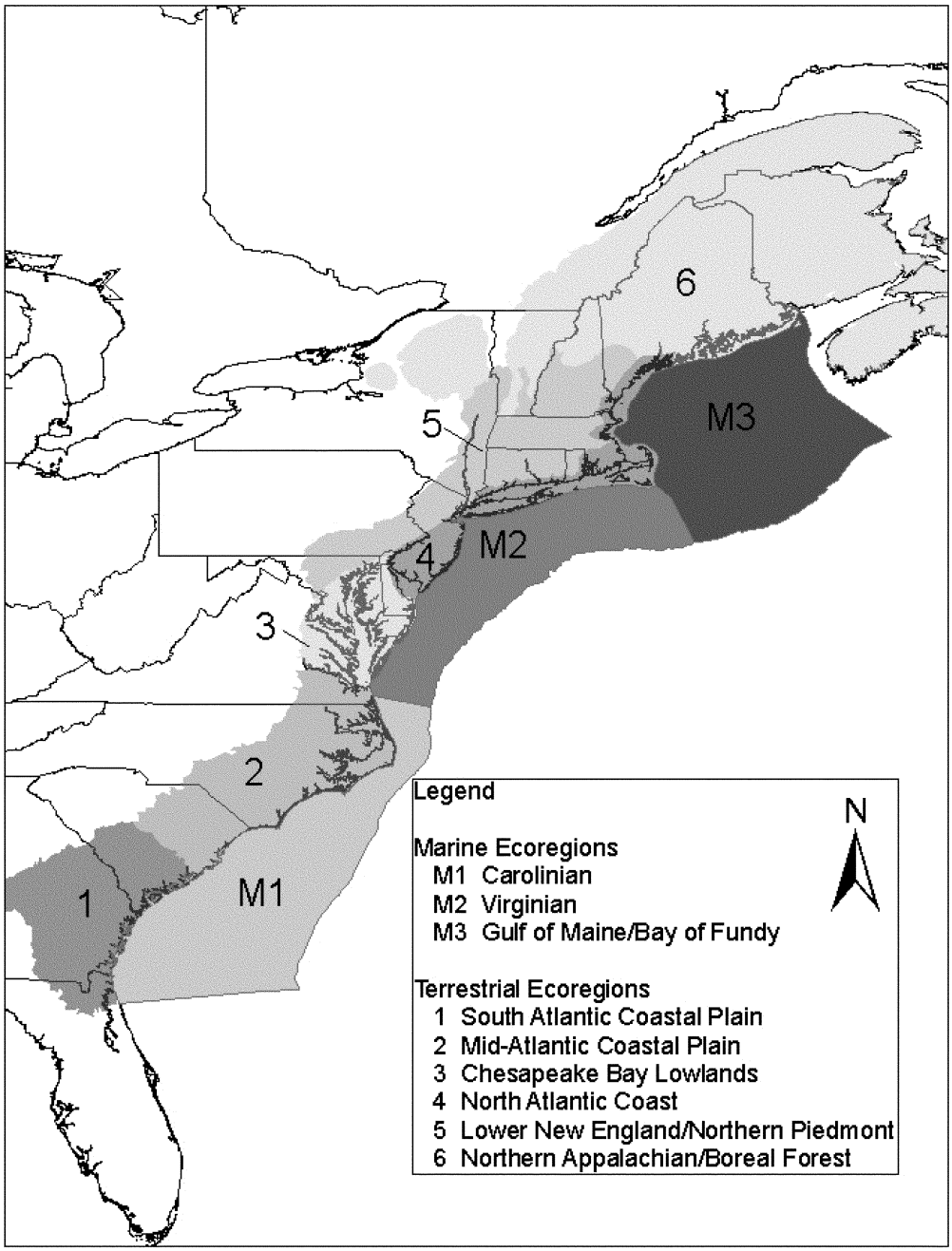

Figure 1: Map of TNC Marine and Terrestrial Ecoregions

TNC descriptions do not include detailed information on the chemical properties of the rivers within each ecoregion, but include an analysis of bedrock and surficial geology type because it relates to water chemistry, hydrologic regime, and substrate. It is well established that waters have different chemical properties (*i.e.,* identities) depending on the geology of where the waters originate. For example, riverine spawning/nursery habitat of the Kennebec River subpopulation occurs within the Northern Appalachian/Boreal Forest ecoregion whose characteristically large expanses of forest, variety of swamps, marshes, bogs, ice scoured riverbanks, salt marshes, and rocky coastal cliffs were influenced by a geological history that includes four glaciation events (TNC, 2008). In contrast, riverine spawning/nursery habitat of Atlantic sturgeon that originate from the Hudson and Delaware Rivers occurs within the Lower New England-Northern Piedmont and North Atlantic Coast ecoregions which are characterized by low mountains, abundant lakes, and limestone valleys inland and generally

flat, sandy coastal plains dissected by major tidal river systems near the coast (Barbour, 2000; TNC, 2008). The Chesapeake Bay Lowlands ecoregion, within which riverine spawning/nursery habitat for the James River population grouping of Atlantic sturgeon occurs, presents yet a different landscape based on its geologic history. As glaciers that extended as far south as present day Pennsylvania began to melt, streams and rivers that flowed toward the coast were carved out of the landscape (Pyzik *et al.,* 2004). These past events are seen today in the characteristic features of the Chesapeake Bay Lowlands ecoregion which includes a broad plain to the west of the Bay with generally low slopes and gentle drainage dissected by a series of major rivers—the Patuxent, Potomac, Rappahannock, York and James—as well as a complex and dynamic patchwork of barrier islands, salt marshes, tidal flats and large coastal bays along the Delmarva Peninsula (TNC, 2002 in draft). Riverine spawning/nursery habitat for the two remaining Atlantic sturgeon groupings in the Southeast likewise occur in separate and distinct ecoregions. Therefore, the ecoregion delineations support that the physical and chemical properties of the Atlantic sturgeon spawning rivers are unique to each population grouping. The five discrete U.S. Atlantic sturgeon population segments are "significant" as defined in the DPS policy, given that the spawning rivers for each population segment occur in a unique ecological setting.

Further, because each discrete population segment is genetically distinct and reproduces in a unique ecological setting, the loss of any one of the discrete population segments is likely to create a significant gap in the range of the taxon. Atlantic sturgeon that originate from other discrete population segments are not expected to re-colonize systems except perhaps over a long time frame (*e.g.,* greater than 100 years), given that gene flow is low between the five discrete population segments (Secor and Waldman, 1999) and the geographic distances between spawning rivers of different population segments are relatively large (ASSRT, 2007). Therefore, the loss of any of the discrete population segments would result in a significant gap in the range of Atlantic sturgeon, and negatively impact the species as a whole, given the strong natal homing behavior of the species.

In summary, the five Atlantic sturgeon discrete population segments meet the significance criterion of the DPS policy because they each persist in a unique ecological setting, and the loss of any of these discrete population segments would result in a significant gap in the range of the taxon. As described in the status review report, the SRT concluded that these five population segments of Atlantic sturgeon within the United States (identified above) should be considered significant under the DPS policy guidelines. We, therefore, concur with the SRT's conclusion that five Atlantic sturgeon DPSs occur within the United States. The five DPSs are hereafter referred to as: (1) GOM, (2) NYB, (3) CB, (4) Carolina, and (5) South Atlantic DPSs (Figure 2).

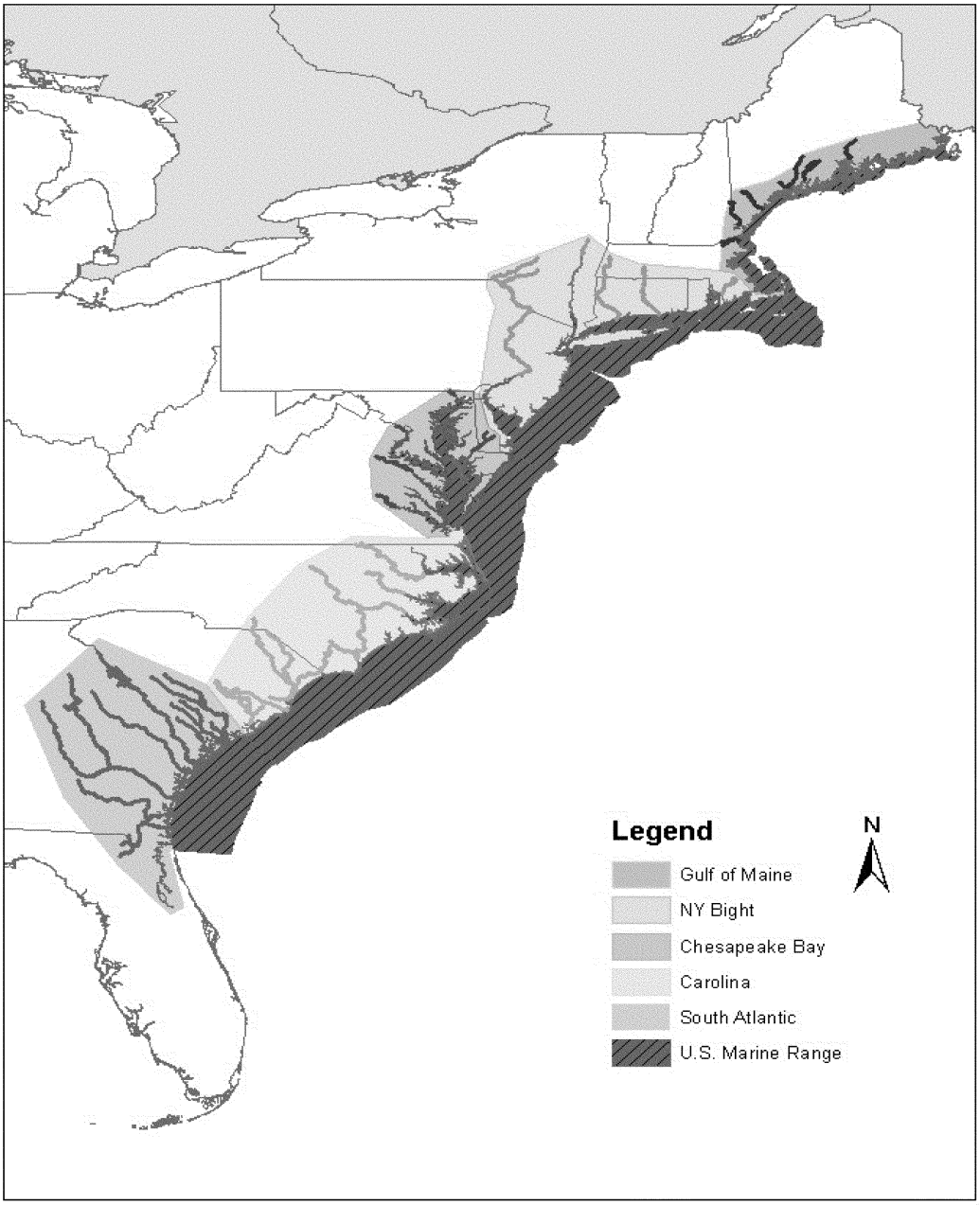

Figure 2: U.S. Atlantic sturgeon DPSs showing rivers (up to the first dam where known) in which the species are known to occur.

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Current Status of the GOM, NYB, and CB DPSs

After completing the DPS analysis, we next considered the current status of the three DPSs that occur within the Northeast Region's jurisdiction, the GOM, NYB, and CB DPSs, as well as the factors affecting each of these Atlantic sturgeon DPSs in relation to the ESA's standards for listing (*see* Analysis of Factors, below). The ESA and its implementing regulations require listing determinations to be based on the current status of the species and the factors presently affecting the species or likely to affect the species in the future.

Many of the activities causing harm to Atlantic sturgeon have occurred for years, even decades. Similarly, some conservation actions have been in place for years (*e.g.,* prohibition on catch and retention of Atlantic sturgeon). The past impacts of human activity on the GOM, NYB, and CB DPSs cannot be particularized in their entirety.

However, to the extent they have manifested themselves at the population level, such past impacts are subsumed in the information presented on their current status, recognizing that the benefits to these Atlantic sturgeon DPSs as a result of conservation activities already implemented may not be evident in the status and trend of the DPS for years, given the relatively late age to maturity for Atlantic sturgeon and depending on the age class(es) affected.

Gulf of Mexico (GOM) DPS

The GOM DPS includes all Atlantic sturgeon whose range occurs in watersheds from the Maine/Canadian border and extending southward to include all associated watersheds draining into the Gulf of Maine as far south as Chatham, MA, as well as wherever these fish occur in coastal bays, estuaries, and the marine environment from the Bay of Fundy, Canada, to the Saint Johns River, FL. Within this range, Atlantic sturgeon have been documented from the following rivers: Penobscot, Kennebec, Androscoggin, Sheepscot, Saco, Piscataqua, and Merrimack. The Kennebec River is currently the only known spawning river for the GOM DPS. Evidence of Atlantic sturgeon spawning in other rivers of the GOM DPS is not available. However, Atlantic sturgeon continue to use these historical spawning rivers and may represent additional spawning groups (ASSRT, 2007). The majority of historical Atlantic sturgeon spawning habitat is accessible in all but the Merrimack River of the GOM DPS. Therefore, the availability of spawning habitat does not appear to be the reason for the lack of observed spawning in other GOM DPS rivers. However, whether Atlantic sturgeon spawning habitat in the GOM DPS is fully functional is difficult to quantify.

Known threats to Atlantic sturgeon of the GOM DPS include effects to riverine habitat (*e.g.,* dredging, water quality) as well as threats that occur throughout their marine range (*e.g.,* fisheries bycatch). There are no current abundance estimates for the GOM DPS of Atlantic sturgeon. The CPUE of subadult Atlantic sturgeon in a multi-filament gillnet survey conducted on the Kennebec River was considerably greater for the period of 1998–2000 (CPUE=7.43) compared to the CPUE for the period 1977–1981 (CPUE = 0.30). The CPUE of adult Atlantic sturgeon showed a slight increase over the same time period (1977–1981 CPUE = 0.12 versus 1998–2000 CPUE = 0.21) (Squiers, 2004). There is also new evidence of Atlantic sturgeon presence in rivers (*e.g.,* the Saco River) where they have not been observed for many years.

New York Bight (NYB) DPS

The NYB DPS includes all Atlantic sturgeon whose range occurs in watersheds that drain into coastal waters, including Long Island Sound, the New York Bight, and Delaware Bay, from Chatham, MA to the Delaware-Maryland border on Fenwick Island, as well as wherever these fish occur in coastal bays, estuaries, and the marine environment from the Bay of Fundy, Canada, to the Saint Johns River, FL. Within this range, Atlantic sturgeon have been documented from the Hudson and Delaware rivers as well as at the mouth of the Connecticut and Taunton rivers, and throughout Long Island Sound. There is evidence to support that spawning occurs in the Hudson and Delaware Rivers. Evidence of Atlantic sturgeon spawning in the Connecticut and Taunton Rivers is not available. However, Atlantic sturgeon continue to use these historical spawning rivers (ASSRT, 2007). The majority of historical spawning habitat is accessible to the NYB DPS. Therefore, the availability of spawning habitat does not appear to be the reason for lack of observed spawning in the Connecticut and Taunton Rivers. However, whether Atlantic sturgeon spawning habitat in these rivers is fully functional is difficult to quantify.

Known threats to Atlantic sturgeon of the NYB DPS include effects to riverine habitat (*e.g.,* dredging, water quality, and vessel strikes) as well as threats that occur throughout their marine range (*e.g.,* fisheries bycatch). The only abundance estimate for Atlantic sturgeon belonging to the NYB DPS is 870 spawning adults per year for the Hudson River subpopulation, based on data collected from 1985–1995 (Kahnle *et al.,* 2007). The accuracy of the estimate may be affected by bias in the reported harvest or estimated exploitation rate for that time period (Kahnle *et al.,* 2007). Underreporting of harvest would have led to underestimates of stock size, while underestimates of exploitation rates would have resulted in overestimates of stock size (Kahnle *et al.,* 2007). In addition, the current number of spawning adults may be higher given that the estimate is based on the time period prior to the moratorium on fishing for and retention of Atlantic sturgeon.

There is no abundance estimate for the Delaware River subpopulation. Delaware's Department of Natural Resources and Environmental Control (DNREC) has been conducting surveys for Atlantic sturgeon since 1991 (DNREC, 2009). Atlantic sturgeon are a Delaware endangered species (state-listed).

CB DPS

The CB DPS includes all Atlantic sturgeon whose range occurs in watersheds that drain into the Chesapeake Bay and into coastal waters from the Delaware-Maryland border on Fenwick Island to Cape Henry, VA, as well as wherever these fish occur in coastal bays, estuaries, and the marine environment from the Bay of Fundy, Canada, to the Saint Johns River, FL. Within this range, Atlantic sturgeon have been documented from the James, York, Potomac, Rappahannock, Pocomoke, Choptank, Little Choptank, Patapsco, Nanticoke, Honga, and South rivers as well as the Susquehanna Flats. Historical evidence suggests that several of these, including the James, York, Potomac, Susquehanna, and Rappahannock Rivers, were Atlantic sturgeon spawning rivers. However, the James River is currently the only known spawning river for the CB DPS. Evidence of Atlantic sturgeon spawning in other rivers of the CB DPS is not available, although spawning is suspected to occur in the York based on genetics data and anecdotal reports. The majority of historical Atlantic sturgeon spawning habitat is accessible, but it is unknown whether it is fully functional.

Known threats to Atlantic sturgeon of the CB DPS include effects to riverine habitat (*e.g.,* dredging, water quality, vessel strikes) as well as threats that occur throughout their marine range (*e.g.,* fisheries bycatch). There are no current abundance estimates for the CB DPS. The Maryland Reward Program has resulted in the documentation of over 1,133 wild Atlantic sturgeon since 1996. The Virginia Atlantic sturgeon reward program in the Chesapeake Bay documented and measured 295 Atlantic sturgeon in 1997 and 1998 (Spells, 2007). However, since sturgeon from multiple DPSs occur in the Chesapeake Bay, it is unlikely that all of the sturgeon captured in either reward program originated from the CB DPS.

Analysis of Factors Affecting the Three Northeast Region DPSs of Atlantic Sturgeon

A species shall be listed if the Secretary of Commerce determines, on the basis of the best scientific and commercial data available after conducting a review of the species' status, that the species is in danger of extinction throughout all or a significant portion of its range (*i.e.,* "endangered")

or is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range (*i.e.,* "threatened") because of any one or a combination of the following factors: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) over utilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence.

The SRT took a multi-step approach for each DPS to answer whether there were: (1) Sufficient data to conclude whether a DPS is threatened or endangered; (2) sufficient data to conclude that a DPS was not threatened or endangered; or (3) insufficient data to allow a full assessment of the populations within a DPS. The SRT identified the threats specific to Atlantic sturgeon and then used a semi-quantitative approach to assess the overall effect of those threats to each DPS (ASSRT, 2007; Patrick and Damon-Randall, 2008).

The ESA does not define what timeframe corresponds with the phrase "within the foreseeable future" in its definition of the term "threatened." Therefore, before beginning the analysis of the Section 4(a)(1) factors, it was necessary for the SRT to define the timeframe (Patrick and Damon-Randall, 2008). Following the example of a past status review team (*Acropora* Biological Review Team, 2005), the Atlantic sturgeon SRT determined that the appropriate period of time would: (1) Depend on the particular kinds of threats; (2) consider the life history characteristics of the species; (3) consider specific habitat requirements for the species; and (4) allow for the conservation and recovery of the species and the ecosystems upon which it depends (ASSRT, 2007; Patrick and Damon-Randall, 2008). Based on these, the SRT agreed that 20 years would be the appropriate timeframe for defining "the foreseeable future" for Atlantic sturgeon (ASSRT, 2007; Patrick and Damon-Randall, 2008). The SRT also concluded that 20 years is an appropriate timeframe for determining the status of a species, as it was not too far into the future that qualitative analysis would prove to be ineffective or unreliable, it allowed sufficient time (10+ years) to determine the productivity of Atlantic sturgeon subpopulations using standardized protocols (Sweka *et al.,* 2006), and it is the approximate age of maturity for Atlantic sturgeon or is approximately equal to one generation (Scott and Crossman, 1973; Smith *et al.,* 1982; Young *et al.,* 1998).

The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

The SRT identified barriers (*i.e.,* dams, tidal turbines), dredging, and water quality (*e.g.,* dissolved oxygen levels, water temperature, and contaminants) as threats that affect Atlantic sturgeon habitat or range. The SRT did not specifically consider global climate change. Since completion of the SRT report, additional information has become available on the effects of global climate change in the Northeast and Mid-Atlantic where habitat for the GOM, NYB, and CB DPSs occurs.

As noted in the status review report, dams for hydropower generation, flood control, and navigation have the potential to affect Atlantic sturgeon by impeding access to spawning and foraging habitat, modifying free-flowing rivers to reservoirs, and altering downstream flows and temperatures. Turbines for power generation could, similarly, impede access to spawning and foraging habitat but are also known to injure and kill sturgeon as a result of direct contact with the turbine blades. Environmental impacts of dredging include direct removal or burial of organisms, elevated turbidity or siltation, contaminant resuspension, noise or disturbance, alterations to hydrodynamic regime and physical habitat, and loss of riparian habitat (Chytalo, 1996; Winger *et al.,* 2000). Water quality can be affected by many activities such as industrial activities, forestry, agriculture, land development and urbanization that can result in discharges of pollutants, changes in water temperature and dissolved oxygen levels, alteration of water flow, and the addition of nutrients or sediment from erosion. Any of these can affect sturgeon at various life stages depending on the extent of the threat and the life stage affected. There is a large and growing body of literature on past, present, and future impacts of global climate change induced by human activities—commonly referred to as "global warming." Some of the likely effects commonly mentioned are sea level rise, increased frequency of severe weather events, and change in air and water temperatures.

Dams

The SRT used GIS tools and dam location data collected by Oakley (2005) to determine the number of miles of available habitat in rivers where Atlantic sturgeon historically spawned. As previously described, within the GOM DPS, Atlantic sturgeon are known to spawn in the Kennebec River. The Penobscot, Sheepscot, Androscoggin, and Merrimack Rivers are known to have supported spawning in the past (ASSRT, 2007). Atlantic sturgeon occur in the Saco and Piscataqua Rivers, although there is no information on historical or current spawning activity for Atlantic sturgeon in these rivers (ASSRT, 2007; J. Sulikowski, UNE, pers. comm., 2009).

Historically, the upstream migration of Atlantic sturgeon in the Kennebec River was limited to Waterville, ME, which is the location of Ticonic Falls (river kilometer (rkm) 98) (NMFS and USFWS, 1998). The construction of Edwards Dam in 1837, downstream of the Ticonic Falls, denied Atlantic sturgeon access to historical habitat in the Kennebec River until 1999 when the dam was removed. Since its removal, access to 100 percent of historical habitat has been restored. In the Androscoggin River, the Brunswick Hydroelectric Dam is located at the head-of-tide near the site of the natural falls. The location of historical spawning grounds on the Androscoggin is unknown, but it is unlikely that Atlantic sturgeon could navigate the natural falls located at Brunswick Dam (NMFS and USFWS, 1998). Therefore, the dam is unlikely to have limited access of Atlantic sturgeon to their spawning habitat. Similarly, Atlantic sturgeon upstream migration within the Sheepscot River is thought to have been historically limited to the lower river (rkm 32) just below the first dam on the river (rkm 35); therefore, 100 percent of the historical habitat (based on river kilometers) is available to Atlantic sturgeon in the Sheepscot.

In contrast to the aforementioned rivers, access to Atlantic sturgeon spawning habitat is impeded on the Penobscot River. Historically, the falls at Milford, rkm 71, were likely the first natural obstacle to Atlantic sturgeon migration on the Penobscot River (L. Flagg, MEDMR, pers. comm., 1998). In 1833, the Veazie Dam was constructed on the Penobscot River at rkm 56, blocking 21 percent of Atlantic sturgeon habitat. In 1875, the Treats Falls Bangor Dam was built five kilometers downstream of the Veazie, which also impeded migration upstream (ASSRT, 2007). However, this dam was breached in 1977 (ASSRT, 2007). Therefore, 79 percent of Atlantic sturgeon habitat is currently accessible on the Penobscot (ASSRT, 2007). In 2008, the Penobscot River Restoration Trust, a non-profit corporation, exercised its option to purchase the Veazie and two other dams

on the Penobscot (ASSRT, 2007). In doing so, the Trust has the right to, in part, decommission or remove the Veazie Dam, thus reopening miles of habitat for Atlantic sturgeon and other diadromous species (ASSRT, 2007). However, funds for the removal need to be generated and permits need to be secured, and it remains uncertain whether all of the goals will be achieved. If Atlantic sturgeon were able to ascend the falls at Milford, they could have migrated without obstruction to Mattaseunk (rkm 171) (ASSRT, 2007). However, evidence is lacking to say with certainty that Atlantic sturgeon were able to ascend the falls at Milford.

Information on Atlantic sturgeon use of the Saco River in Maine became available after completion of the status review report. The last focused study of the Saco River was almost 30 years ago, and continued use of the river by Atlantic sturgeon was uncertain at the time of the status review report. However, Atlantic sturgeon have been captured during routine trawl sampling in the river during 2008 and 2009 as part of a 2-year monitoring project of the Saco River/Estuary. Tagging and tracking of the captured fish has shown that Atlantic sturgeon are making use of the river up to the Cataract Dam (J. Sulikowski, UNE, pers. comm., 2009), the first dam on the river at approximately rkm 6 (Atlantic Salmon Commission, 1983). There are several dams on the Saco River known to have blocked fish passage for species such as Atlantic salmon, shad, and alewives (MEDMR, 1994). The effect of such dams on the Atlantic sturgeon that currently use the river is unknown. Likewise, there are several dams on the Piscataqua River, and the effect of such dams on the Atlantic sturgeon that currently use the river is unknown.

Within the GOM DPS, access to historical spawning habitat is most severely impacted in the Merrimack River (ASSRT, 2007). Hoover (1938) identified Amoskeag Falls (rkm 116) as the historical limit for Atlantic sturgeon in the Merrimack River. In the 1800s, construction of the Essex Dam in Lawrence, MA (rkm 49) blocked the migration of Atlantic sturgeon to 58 percent of its historically available habitat (Oakley, 2003; ASSRT, 2007). Tidal influence extends to rkm 35; however, in the summer months when river discharge is lowest, the salt wedge extends upriver, resulting in approximately 19 km of tidal freshwater and 9 km of freshwater habitat (Keiffer and Kynard, 1993). Based on a detailed description by Keiffer and Kynard (1993), the accessible portions of the Merrimack seem to be suitable for Atlantic sturgeon spawning and nursery habitat. Nevertheless, the presence of the dam means that only 42 percent of historical Atlantic sturgeon habitat is currently available (ASSRT, 2007).

Within the NYB DPS, there is evidence of Atlantic sturgeon spawning in the Hudson and Delaware Rivers (ASSRT, 2007). Historical records indicate that Atlantic sturgeon spawned in the Taunton River at least until the turn of the century (ASSRT, 2007), and also occurred in the Connecticut River (Judd, 1905; Murawski and Pacheco, 1977; Secor, 2002; ASSRT, 2007). By 1898, the overall New England harvest of Atlantic sturgeon was quite low, 36 mt, and only occurred in Maine, Massachusetts, and Connecticut (Secor, 2002). There is no recent evidence (within the last 15 years) to confirm that spawning currently occurs in either the Taunton or Connecticut Rivers (ASSRT, 2007). Atlantic sturgeon are present in both rivers, and likely represent sturgeon originating from other spawning rivers along the coast.

In general, Atlantic sturgeon access to historical or spawning habitat believed to be historical is relatively unimpeded on all four of these NYB DPS rivers. The first impediment to migrating Atlantic sturgeon on the Hudson River is the Federal Dam located at Troy, NY (ASSRT, 2007). This dam location is upstream of Catskill (rkm 204), which is the northern extent of Atlantic sturgeon spawning and nursery habitat (Kahnle *et al.,* 1998). Therefore, 100 percent of Atlantic sturgeon habitat is still available on the Hudson (ASSRT, 2007). Similarly, 100 percent of Atlantic sturgeon habitat is believed to be accessible on the Delaware River where 140 rkm of Atlantic sturgeon habitat are available extending from Delaware Bay to the fall line at Trenton, NJ with no dams present (ASSRT, 2007). Historical upstream migration of Atlantic sturgeon in the Taunton River is unknown. However, Atlantic sturgeon have access to 89 percent of the river downstream of the Town River Pond Dam (ASSRT, 2007). Similarly, it is not clear how far up the Connecticut River Atlantic sturgeon historically migrated. In all but low flow years, it is likely that Atlantic sturgeon could pass the Enfield Rapids prior to dam construction (Enfield Dam), which occurred in three stages between 1829 and 1881 (Judd, 1905). The falls at South Hadley, MA, which is now the site of the Holyoke Dam, are considered the upstream limit of sturgeon in this system; however, there is one historical record of an Atlantic sturgeon sighted as far upstream as Hadley, MA (24 rkm upstream from South Hadley) (ASSRT, 2007). Also, in 2006 an Atlantic sturgeon was taken in the fish lift at the Holyoke Dam (R. Murray, HG&E, pers. comm., 2006). Since the Enfield Dam has been breached, an additional 90 km of habitat are available, and depending on the interpretation of historical spawning grounds, either 100 percent (Holyoke Dam, South Hadley, MA), or 86 percent (Hadley, MA) of historical Atlantic sturgeon habitat is available (ASSRT, 2007).

For the CB DPS, there is evidence that Atlantic sturgeon currently spawn in the James River (ASSRT, 2007). The observed presence of YOY and adult sturgeon in the York River suggests that spawning may still occur there (Musick *et al.,* 1994; K. Place, Commercial Fisherman, pers. comm., 2006; ASSRT, 2007). The Susquehanna, Potomac, Rappahannock, and Nanticoke Rivers also supported Atlantic sturgeon spawning in the past, but there is no conclusive evidence that spawning still occurs in any of these rivers (ASSRT, 2007). Based on the review by Oakley, 100 percent of Atlantic sturgeon habitat is currently accessible in these rivers (ASSRT, 2007). Although dams are present, most are located upriver of where spawning is expected to have historically occurred. For example, four dams were constructed from 1904–1932 on the Susquehanna River, but none of these dams are suspected to have impeded Atlantic sturgeon spawning habitat as the lowermost dam (Conowingo) is located above the suspected historical spawning grounds (Steve Minkkinen, USFWS, pers. comm., 2006). The Embrey Dam was built in 1910 above the fall line of the Rappahannock River and may have blocked the upstream migration of Atlantic sturgeon (ASSRT, 2007). This dam was breached in 2004 and 100 percent of historical Atlantic sturgeon habitat is believed to be accessible (ASSRT, 2007).

Dredging

Dredging and filling operations can impact important features of Atlantic sturgeon habitat because they disturb benthic fauna, eliminate deep holes, and alter rock substrates necessary for spawning (Smith and Clugston, 1997). Deposition of dredge sediment has been shown to affect the distribution of Atlantic sturgeon (Hatin *et al.,* 2007). Dredging can also result in direct takes (killing and injuring) of Atlantic sturgeon. Such takes have the potential to affect the range of Atlantic sturgeon if the takings contribute to the extirpation of a DPS.

Dickerson (2006) summarized observed takings of Gulf, shortnose, and

Atlantic sturgeon from dredging activities conducted by the Army Corps of Engineers (ACOE) in the United States; overall 24 sturgeon (2 Gulf, 11 shortnose, and 11 Atlantic sturgeon) were observed during the years of 1990–2005. Of the 24 sturgeon captured, 15 (62.5 percent) were reported as dead. The ASSRT calculated a minimum take of 0.6 Atlantic sturgeon per year based on hopper dredge takes since 1995 and given that dredging efforts were relatively similar among years (ACOE, 2006). Both of these are considered minimum estimates since observed takes of Atlantic sturgeon are documented incidental to observer coverage of dredging activities for other, already listed, ESA-species (*e.g.* shortnose sturgeon and sea turtles). Given that Atlantic sturgeon do not have the same temporal and spatial distribution as these ESA-listed species, it is likely that Atlantic sturgeon takes occur during unobserved dredging operations.

Dredging projects on the Kennebec River in the GOM DPS are known to have captured Atlantic sturgeon. Dredging has also been proposed for the Penobscot Harbor of the Penobscot River (ASSRT, 2007). Capture of Atlantic sturgeon is likely to occur if dredging takes place at times when Atlantic sturgeon are present in the area. NMFS can currently request, but cannot require, dredge operations to be modified to minimize capture and injury of Atlantic sturgeon.

Within the NYB DPS, the commercial shipping channel of the Hudson River is maintained at a depth of 9.75 m (at mean low water) for nearly the entire length of the river to the Port of Albany. However, the section between Haverstraw Bay and Catskill (approximately rkm 122) is naturally deep and does not require dredging (D. Mann-Klager, FWS, pers. comm., 1998).

The navigation channel in the Delaware River similarly undergoes maintenance dredging from the mouth of Delaware Bay to just north of Trenton, NJ (ASSRT, 2007). Seasonal restrictions on when this work can occur have been imposed by the Delaware River Fish and Wildlife Management Cooperative to reduce impacts from dredging on diadromous species (ASSRT, 2007). Nevertheless, dredge gear used in the Delaware is known to injure or kill Atlantic sturgeon (ASSRT, 2007). There are also new proposed dredge activities in the Delaware River. In 2006, Crown Landing, LLC, was approved by the Federal Energy Regulatory Commission (FERC) to construct and operate a liquefied natural gas (LNG) import terminal on the Delaware River near Logan, New Jersey (rkm 126). The construction of the LNG terminal would require the hydraulic dredging of 1.24 million m^3 in the first year of construction followed by maintenance dredging of 67,000–97,000 m^3/year. Dredge spoil will be deposited in an upland disposal site, and dredging will be limited to the months of August through December. The dredging operations proposed for construction and maintenance of the LNG terminal would occur, in part, directly in suspected historical Atlantic sturgeon spawning habitat (Fox, 2006; ASSRT, 2007). However, construction of the terminal has not yet begun, and it is uncertain whether it will proceed since approval from the State of Delaware has not been secured (Examiner.com, 2009).

Since completion of the SRT report, we have received information on the Delaware River Main Channel Deepening project, which calls for the deepening of the existing channel from 40 to 45 feet (12.2 to 13.7 meters) from Philadelphia Harbor, PA, to the mouth of the Delaware Bay. This project will require dredging the channel with hydraulic and hopper dredges and blasting approximately 77,000 cubic yards (58,914 cubic meters) of rock near Marcus Hook, PA. While the seasonal restrictions imposed by the Delaware River Fish and Wildlife Management Cooperative may help to reduce or prevent direct take of important resident fish species (primarily the federally endangered shortnose sturgeon and other species of diadromous fishes), there is still the potential for direct impacts of this project on Atlantic sturgeon as they may be found in the project area throughout the year. There is the potential for indirect effects as well, such as changes in hydrology of the river, which may affect possible spawning habitat (*e.g.,* salt water intruding further into the river). The location of spawning habitat for Atlantic sturgeon in the Delaware River has not been confirmed (ASSRT, 2007).

For Atlantic sturgeon belonging to the CB DPS, the most significant impacts to spawning habitat likely occurred in 1843 and 1854 in the James River when granite outcropping consisting of large and small boulders was removed and the river was dredged to improve ship navigation (Holton and Walsh, 1995; Bushnoe *et al.,* 2005). Similarly, rock was removed from Drewry's Island Channel in 1878 to improve navigation (Holton and Walsh, 1995). These granite outcroppings and boulder matrices are the types of habitats that are believed to be ideal spawning habitats for Atlantic sturgeon (Bushnoe *et al.,* 2005). Based on commercial landings (Bushnoe *et al.,* 2005), the James River likely supported the largest subpopulation in the Chesapeake Bay in the 1800s.

Dredging continues to pose a threat to Atlantic sturgeon in the James River. There are dredging projects underway to deepen and widen the shipping terminal near Richmond on the James River, and the river undergoes maintenance dredging on almost an annual basis to allow commercial ocean-going vessels to reach the Richmond terminal (C. Hager, VIMS, pers. comm., 2005; S. Powell, ACOE, pers. comm., 2009). Since 1998, six new permits have been issued for dredging within the James River, and an additional 24 maintenance projects have been approved (L. Gillingham, VMRC, pers. comm., 2005). The Commonwealth of Virginia does impose a dredging moratorium during the anadromous spawning season (C. Hager, VIMS, pers. comm., 2005). The ACOE has received a waiver to dredge during this moratorium in very limited circumstances such as to conduct a study to assess the effects of dredging on sturgeon (S. Powell and S. Cameron, ACOE, pers. comm., 2009).

Turbines

The placement of turbine structures to generate power in rivers used by Atlantic sturgeon could, potentially, damage or destroy bottom habitat. However, the more likely effect of turbines is injury and death of Atlantic sturgeon as a result of being struck by the turbine blades. Such takes have the potential to affect the range of Atlantic sturgeon if the takings contribute to the extirpation of a DPS.

Seventeen hydrokinetic projects proposed for both the GOM (9) and NYB (8) DPSs have received preliminary permits from FERC, with many more projects being proposed. There are two tidal power projects currently in operation along the range of Atlantic sturgeon. The Annapolis River (Nova Scotia, Canada) tidal power plant, built in 1982, was constructed as a demonstration site for marine Straflo turbines and consists of a rock-filled dam housing the turbine and sluice gates (M. Dadswell, Arcadia University, pers. comm., 2006). The negative impacts of the Annapolis tidal turbine on Atlantic sturgeon (150–200 cm TL) appear to be great, as the probability of lethal strike from the turbine ranges between 40 and 80 percent (M. Dadswell, Arcadia University, pers. comm., 2006; ASSRT, 2007), and at least three severed, gravid females have been observed below the power plant (Dadswell and Rulifson, 1994). In

summer 2009, nine severed Atlantic sturgeon carcasses were documented on beaches near the Annapolis project (*http://annapolisroyalheritage.blogspot.com/2009/09/atlantic-sturgeon.html*). Although the cause of mortality could not be confirmed, the injuries are consistent with blade strikes from the tidal turbines. Since this power plant occurs within the marine range of Atlantic sturgeon that originate from the GOM, NYB, and CB DPSs, fish originating from these DPSs could also be struck and killed or injured. One marine turbine project is underway within the United States in the East River, New York (Angelo, 2005; Verdant Power webpage, 2009). Although no impacts to wildlife have been reported, the project is still in the early stages. Verdant Power recently completed Phase 2 of the project, which involved installation and operation of six full-scale turbines in an array at the project site in the East River (Verdant Power webpage, 2009). Phase 3 of the project will entail placement of 30 turbines in the east branch of the river and additional turbines in the west branch if the company is able to acquire a license from FERC (Verdant Power webpage, 2009). The energy company, Verdant Power, has plans to expand the project to up to 300 turbines to be located within a 1-mile section of the river near Roosevelt Island (Angelo, 2005).

Water Quality

The Northeast Coast region, which includes the coastal waters and watersheds of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and Virginia, is the most densely populated coastal region in the United States (EPA, 2008). Therefore, it is not surprising that water quality for the GOM, NYB, and CB DPSs continues to be an issue likely affecting Atlantic sturgeon despite many positive actions (*e.g.,* implementation of the Clean Water Act). Contaminants, including toxic metals, polychlorinated aromatic hydrocarbons (PAHs), organophosphate and organochlorine pesticides, polychlorinated biphenyls (PCBs), and other chlorinated hydrocarbon compounds can have substantial deleterious effects on aquatic life. Effects from these elements and compounds on fish include production of acute lesions, growth retardation, and reproductive impairment (Cooper, 1989; Sinderman, 1994). The coastal environment is also impacted by coastal development and urbanization that result in storm water discharges, non-point source pollution, and erosion. Secor (1995) noted a correlation between low abundances of sturgeon during this century and decreasing water quality caused by increased nutrient loading and increased spatial and temporal frequency of hypoxic conditions. The SRT considered all of this information as well as the second edition of the National Coastal Condition Report (EPA, 2004), and concluded that water quality posed a moderate to moderately low risk that the GOM, NYB, and CB DPSs were likely to become endangered within the foreseeable future. Since completion of the SRT report, the EPA has released the third National Coastal Condition Report (EPA, 2008). That report is considered here to aid in assessing the level of threat water quality poses to the GOM, NYB, and CB DPSs.

Within the GOM DPS, water quality of its rivers and estuaries was severely degraded as a result of many activities, including agricultural and forestry practices, industrialization, and land development. As late as 1994, the Androscoggin River was still considered one of the most polluted rivers in the United States (EWG, 2005; Lichter *et al.,* 2006). However, water quality in the Androscoggin River has been improving (Lichter *et al.,* 2006). Likewise, the Penobscot River went through a period of very poor water quality (Hatch, 1971; Davies and Tsomides, 1999; Courtemanch *et al.,* 2009). Pollutants such as mercury and dioxin persist in the river, but dioxin levels in fish are showing improvement with a drop from 7.6 parts per trillion in 1984 to less than 0.1 parts per trillion in 2004 (MEDEP, 2005). In addition, increasing numbers of shortnose sturgeon are being found in the river (G. Zydelwski, ME DMR, pers. comm., 2009). Shortnose sturgeon and Atlantic sturgeon are believed to have similar sensitivities to pollutants (Dwyer *et al.,* 2000). Therefore, increasing numbers of shortnose sturgeon in the Penobscot River suggest that water quality in the river is also suitable for supporting Atlantic sturgeon.

In 2003, the Merrimack River was the subject of a watershed assessment conducted by the ACOE and municipalities along the river (ASSRT, 2007). The study noted that the lower basin of the river was highly urbanized with high levels of point and non-point source pollution (USACOE, 2003; ASSRT, 2007). The study also noted impaired dissolved oxygen levels and pH levels (ASSRT, 2007). The Merrimack River watershed in New Hampshire was identified as a mercury hot spot within the region (Evers *et al.,* 2007; ASSRT, 2007). However, despite these water quality assessment results, sampling studies indicate that the shortnose sturgeon population in the river has increased over the last decade. Likewise, anecdotal information indicates that more Atlantic sturgeon are using the mouth of the river now than in years past.

Despite the persistence of contaminants in rivers and increasing land development, many rivers and watersheds within the range of the GOM DPS have demonstrated improvement in water quality (EPA, 2008). In general, the most recent (third edition) EPA Coastal Condition Report identified that water quality was good to fair for waters north of Cape Cod (EPA, 2008).

Rivers and watersheds in the NYB DPS have been similarly affected by industrialization, agriculture, and urbanization that occurred since European colonization. Water quality in the Taunton River has slightly improved since 1970 (Taunton River Journal, 2006; ASSRT, 2007). However, the river still suffers from low dissolved oxygen concentrations in the summer and high ammonia-nitrogen levels (Taunton River Journal, 2006; ASSRT, 2007). Treated wastewater from several municipalities is added to the river daily, the majority of which is produced from a single facility in one city (ASSRT, 2007). There are currently no fish consumption advisories in effect for the Taunton River (ASSRT, 2007).

Water quality on the Connecticut River has improved dramatically in the last 40 years (ASSRT, 2007). It is now swimmable and fishable with some downstream exceptions (T. Savoy, CTDEP, pers. comm., 2006). As a result of the operations of a manufactured gas plant that was located adjacent to the river, there are large, discrete coal tar deposits that occupy an estimated 32.5 acres (13.16 hectares) below the Holyoke Dam. Coal tar leachate has been suspected of impairing sturgeon reproductive success. Kocan *et al.* (1993, 1996) conducted a laboratory study to investigate the survival of shortnose sturgeon eggs and larvae exposed to PAHs, a by-product of coal distillation. Only 5 percent of sturgeon embryos and larvae survived after 18 days of exposure to Connecticut River coal tar (*i.e.,* PAHs), demonstrating that contaminated sediment is toxic to shortnose sturgeon embryos and larvae under laboratory exposure conditions. A remediation project was initiated in 2002 to begin removing some of the coal tar deposits from the river. Between 2002 and 2006, 11,714 cubic yards (8,962.5 cubic meters) of coal tar and associated sediments were removed. In

2006, information that was obtained through the removal process and through diver surveys confirmed that the extent of the deposits was much greater than initial estimates. Studies are being conducted to determine if the weathered, hard tar that is present in much of the area is less toxic and mobile than the soft tar and therefore, does not pose the same risk. According to the Massachusetts Department of Environmental Protection, a substantial number of borings were taken in 2008 to identify locations and depths of submerged tar.

Population expansion beginning in the early 1900s in the Hudson River valley increased sewage output to the river, and sewage decomposition produced several areas of inadequate oxygen (oxygen blocks) in the river. Best documented was the oxygen block present in the Albany pool, located north of the Atlantic sturgeon's spawning and nursery habitat (Kahnle *et al.,* 1998). Other oxygen blocks occurred at certain times in the southern stretch of the river from the Tappan Zee Bridge south through New York Harbor (Brosnan and O'Shea, 1997; Kahnle *et al.,* 1998). Improvements to sewage treatment eliminated the problem near Albany by the late 1970s and near New York City by the middle to late 1980s (Kahnle *et al.,* 1998). PCB levels were high throughout much of the river over the last several decades. In recent years, PCB concentrations have declined to acceptable levels according to EPA guidelines, but continual monitoring is needed to document the fate of PCB contamination in the river (Sloan *et al.,* 2005). The shortnose sturgeon population in the Hudson River has increased significantly (Bain *et al.,* 2007) in the last several decades, suggesting that these improvements in water quality have resulted in more suitable habitat conditions for the species and, likely, better habitat conditions for Atlantic sturgeon in the Hudson River as well.

Until recently, poor water quality has been a significant factor affecting fish utilizing the upper tidal portion of the Delaware River estuary. As recent as the early 1970s, dissolved oxygen levels between Wilmington and Philadelphia were routinely below levels that could support aquatic life from late spring to early fall (ASSRT, 2007). Water quality has improved, however, to the extent that dissolved oxygen levels have not dropped below the state's minimum standards at any point during the year since 1990 (R. Green, Delaware DNREC, pers. comm., 1998). As has been observed in other rivers (*e.g.,* Penobscot and Hudson Rivers), the biological status of shortnose sturgeon in the Delaware River appears to be improving and suggests that water quality has improved for Atlantic sturgeon that occur in the Delaware River as well. For example, a portion of the Roebling-Trenton stretch of the river is an EPA Superfund site due to the presence of the Roebling Steel plant and contamination associated with plant operations; the EPA has been considering ways to remove or cap the contamination in the river caused by the plant operations.

The most recent (third edition) EPA Coastal Condition Report identified that water quality was fair overall for waters south of Cape Cod through Delaware (EPA, 2008). However, sampled sites in Massachusetts and Rhode Island were generally scored as good while waters from Connecticut to Delaware received fair and poor ratings (EPA, 2008). In particular, the report noted that most of the Northeast Coast sites with poor water quality ratings were concentrated in a few estuarine systems, including New York/New Jersey Harbor, some tributaries of the Delaware Bay, and the Delaware River (EPA, 2008).

With respect to the CB DPS, the period of Atlantic sturgeon population decline and low abundance in the Chesapeake Bay corresponds to a period of poor water quality caused by increased nutrient loading and increased frequency of hypoxia (Officer *et al.,* 1984; Mackiernan, 1987; Kemp *et al.,* 1992; Cooper and Brush, 1993). The Bay is especially vulnerable to the effects of nutrients due to its large surface area to volume ratio, relatively low exchange rates, and strong vertical stratification during the spring and summer months (ASSRT, 2007). The EPAs Third Coastal Condition Report identified the water quality for the Chesapeake Bay and immediate vicinity (to the Virginia—North Carolina border) as fair to poor (EPA, 2008). In particular, the western and northern tributaries of the Chesapeake Bay were rated as poor (EPA, 2008). The extensive watersheds of this historically unglaciated area funnel nutrients, sediment, and organic material into secluded, poorly flushed estuaries that are more susceptible to eutrophication (EPA, 2008).

Using a multivariable bioenergetics and survival model, Niklitschek and Secor (2005) demonstrated that within the Chesapeake Bay, a combination of low dissolved oxygen, water temperature, and salinity restricts available Atlantic sturgeon habitat to 0–35 percent of the Bay's modeled surface area during the summer. However, they further demonstrated that achieving the EPA's new dissolved oxygen criteria for the Chesapeake Bay would increase Atlantic sturgeon available habitat by 13 percent per year (Niklitschek and Secor, 2005).

In addition to water quality, one of the limiting habitat requirements for the CB DPS of Atlantic sturgeon may be the availability of clean, hard substrate for attachment of demersal, adhesive eggs (Bushnoe *et al.,* 2005; C. Hager, VIMS, pers. comm., 2005). In the Chesapeake Bay watershed, 18th and 19th century agricultural clear cutting (Miller, 1986) contributed large sediment loads that presumably have buried or reduced most sturgeon spawning habitats (reviewed in Bushnoe *et al.,* 2005).

Despite these water quality and sediment issues, Atlantic sturgeon that were stocked in the Bay had very high survival rates, suggesting that the sturgeon are able to adjust to conditions in the Bay or move out of the Bay (*e.g.,* into the rivers draining into the Bay) where water quality is better. In addition, Atlantic sturgeon that originate from other DPSs are often caught in the Bay and documented in the reward program; indicating that the current water quality is not preventing fish from moving into, and foraging in, the Bay.

Climate Change

Although the impacts of global climate change are uncertain, researchers anticipate that the frequency and intensity of droughts and floods will change across the nation (CBS, 2006). The latest report from the Intergovernmental Panel on Climate Change (IPCC) predicts that higher water temperatures and changes in extreme weather events, including floods and droughts, are projected to affect water quality and exacerbate many forms of water pollution, including sediments, nutrients, dissolved organic carbon, pathogens, pesticides, and salt, as well as thermal pollution, with possible negative impacts on ecosystems, human health, and water system reliability and operating costs. The resulting changes in water quality (temperature, salinity, dissolved oxygen, contaminants, etc.) in rivers and coastal waters inhabited by Atlantic sturgeon will likely affect those subpopulations. Effects are expected to be more severe for those subpopulations that occur at the southern extreme of the sturgeon's range, and in areas that are already subject to poor water quality as a result of eutrophication. In a simulation of the effects of water temperature on available Atlantic sturgeon habitat, Niklitschek and Secor (2005) found that a 1 °C increase of water temperature in the Chesapeake

Bay would reduce available sturgeon habitat by 65 percent.

In summary, with the exception of the Merrimack River, dams do not appear to limit Atlantic sturgeon access to spawning habitat. However, it should be noted that accessibility does not equate to functionality. Therefore, while historical spawning habitat may still be available, some of the habitat may no longer be suitable spawning habitat. In particular, water quality, while showing signs of improvement, continues to rate only fair to poor in areas of the NYB DPS and CB DPS. Dredging is known to have removed structures in the James River that are typically associated with Atlantic sturgeon spawning habitat. Nutrient loading and eutrophication of the Chesapeake Bay is expected to get worse with temperature changes and other effects associated with climate change. The SRT concluded that, cumulatively, dams, dredging, turbines, and water quality posed a moderate risk to the GOM, NYB, and CB DPSs. Of the threats to habitat that were considered, water quality was of greatest concern in terms of its contribution to the risk of endangerment for each DPS, overall. Based on the information provided by the SRT as well as information on climate change that was not considered by the SRT, and new information from the EPA on water quality, we concur that water quality is the greatest of the threats affecting the habitat or range of the GOM, NYB, and CB DPSs.

Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

As previously described, there is no directed commercial or recreational fishery for Atlantic sturgeon in the U.S. Although capture of Atlantic sturgeon on recreational fishing gear (*e.g.,* rod and reel) has occasionally occurred (ASSRT, 2007; P. Linthicum, pers. comm.), in general, recreational fishing gear is not conducive to catching Atlantic sturgeon.

Canadian fisheries for Atlantic sturgeon occur in the Saint Lawrence and Saint John Rivers. Since Atlantic sturgeon of U.S. origin are not expected to occur in areas of the Saint Lawrence and Saint John where the fisheries occur, the Canadian commercial fishery for Atlantic sturgeon is unlikely to capture sturgeon of U.S. origin.

The available information supports that the GOM, NYB, and CB DPSs are not overutilized as a result of educational or scientific purposes. There is no known use of Atlantic sturgeon for educational purposes other than, possibly, limited display in commercial aquaria. Atlantic sturgeon are the subject of scientific research in the wild and in hatcheries, and may be incidentally caught during research for other species such as shortnose sturgeon or assessment of commercial fish stocks. The SRT (2007) reviewed recent and ongoing research studies (from approximately 1988 to 2006) for Atlantic sturgeon in NMFS' Northeast Region. Overall, hundreds of fish have been captured and released and less than 10 mortalities have occurred (ASSRT, 2007). Scientific research of ESA-listed species such as shortnose sturgeon must comply with the permit requirements of the ESA, including measures to minimize the likelihood of injury and death (*e.g.,* short tow times or soak times for collection gear, handling protocols). These measures also minimize the likelihood of harm to Atlantic sturgeon when they are also present. Trawl surveys to assess the status of commercial fish stocks occur throughout the Northeast Region. The surveys typically use short tow times that help to minimize mortality and injuries. Atlantic sturgeon have been caught during such research operations, but there have been no mortalities and all fish were released in good condition (*i.e.,* no apparent injuries) (B. Kramer, NEFSC, pers. comm., 2006).

While directed fisheries for Atlantic sturgeon are prohibited in U.S. waters, Atlantic sturgeon are incidentally caught in other U.S. fisheries. The SRT reviewed information on the commercial bycatch of Atlantic sturgeon in Northeast waters from: (a) Estimates based on NMFS sea sampling/observer data (Stein *et al.,* 2004); (b) data collected as part of Delaware's tagging studies (Shirey *et al.,* 1997); and (c) recapture data reported in the USFWS Atlantic Coast Sturgeon Tagging Database (Eyler *et al.,* 2004). Additional, new information on Atlantic sturgeon bycatch in U.S. sink gillnet and otter trawl fisheries has become available since completion of the SRT report (ASMFC TC, 2007). At the request of the ASMFC, NMFS' Northeast Fisheries Science Center estimated the total bycatch of Atlantic sturgeon in sink gillnet and otter trawl gear based on observer data collected on a portion of commercial fishing trips from Cape Hatteras, NC, through Maine for 2001–2006 (ASMFC TC, 2007). For sink gillnet gear, Atlantic sturgeon bycatch ranged between 2,752 and 7,904 sturgeon annually, averaging about 5,000 sturgeon per year (ASMFC TC, 2007). Atlantic sturgeon bycatch in otter trawl gear similarly ranged between 2,167 and 7,210 sturgeon with an average of about 3,800 fish per year (ASMFC TC, 2007). However, bycatch mortality was markedly different between the two gear types. For sink gillnet fisheries, the estimated annual mortality ranged from 352 to 1,286 Atlantic sturgeon, with an average mortality of 649 sturgeon per year, or 13.8 percent of the annual Atlantic sturgeon bycatch in sink gillnet gear (ASMFC TC, 2007). The total number of Atlantic sturgeon killed in otter trawl gear could not be estimated because of the low number of observed mortalities, indicating a low mortality rate (ASMFC TC, 2007).

Approximately 15 to 19 percent of observed Atlantic sturgeon bycatch in sink gillnet and otter trawl gear in 2001 to 2006 occurred in coastal marine waters north of Chatham, MA (ASMFC TC, 2007). However, since Atlantic sturgeon of different DPSs mix in the marine environment, it is likely that sturgeon other than those belonging to the GOM DPS were caught. Likewise, sturgeon that originate from the GOM DPS are at risk of capture in sink gillnet and otter trawl gear throughout the marine range of the species.

In addition to fisheries occurring in coastal waters, there are limited gill net fisheries for menhaden, alewives, blueback herring, sea herring, and mackerel in the estuarial complex of the Kennebec and Androscoggin Rivers (ASSRT, 2007). State regulations prohibit the use of purse, drag, and stop seines, and gill nets with greater than 87.5 mm stretched mesh (ASSRT, 2007). Fixed or anchored nets must be tended continuously and hauled in and emptied every 2 hours (ASSRT, 2007). There has been no reported or observed bycatch of Atlantic sturgeon in these fisheries.

Approximately 39 to 55 percent of observed Atlantic sturgeon bycatch in sink gillnet and otter trawl gear for 2001 to 2006 occurred in coastal marine waters south of Chatham, MA and north of the Delaware-Maryland border (ASMFC TC, 2007). As described above, since Atlantic sturgeon of different DPSs mix in the marine environment, it is likely that sturgeon other than those belonging to the NYB DPS were caught in this area. Genetic analyses of tissue samples from captured fish have shown that approximately 12 percent of the fish captured in the New York Bight did not belong to the NYB DPS (T. King, unpublished, 2007). Likewise, sturgeon that originate from the NYB DPS are at risk of capture in sink gillnet and otter trawl gear throughout the marine range of the species. Genetic analyses of samples from Atlantic sturgeon caught in Mid-Atlantic sink gillnet gear revealed that the majority of fish

originated from the Hudson River (Waldman *et al.,* 1996a; Secor, 2007).

Within the riverine range of the NYB DPS, the use of gillnet gear in the Taunton River, MA, is restricted to nets of no more than 100 feet in length (2.54 m) and nets must be tended at all times (ASSRT, 2007). No overnight sets are allowed (K. Creighton, MA FEW, 2006; ASSRT, 2007). Connecticut imposed a commercial harvest moratorium for Atlantic sturgeon in 1997 (ASSRT, 2007). However, bycatch is known to take place in the commercial shad fishery that operates in the lower Connecticut River from April to June in large mesh (14 cm minimum stretched mesh) gill nets (ASSRT, 2007). Likewise, New York implemented a harvest moratorium for Atlantic sturgeon in 1996, but Atlantic sturgeon bycatch occurs in a shad gill net fishery on the Hudson River (ASSRT, 2007). However, New York State Department of Environmental Conservation (NY DEC) recently proposed to close all American shad fisheries in the Hudson River due to poor stock condition. Regulations to close the fisheries for shad are expected to be implemented by spring of 2010, and would effectively eliminate bycatch of Atlantic sturgeon (K. Hattala, NY DEC, pers. comm., 2009).

Several fisheries using gillnet gear occur in the Delaware Bay, including the striped bass, shad, white perch, Atlantic menhaden, and weakfish fisheries (ASSRT, 2007). The majority of these operate in March and April; bycatch mortality of Atlantic sturgeon during this period is typically low (C. Shirey, DNREC, pers. comm., 2005). For example, of the estimated 85 to 99 Atlantic sturgeon incidentally captured in the Delaware Bay anchored gillnet fisheries for 2002 through 2003, none of the captures resulted in mortality (ASMFC Atlantic Sturgeon Plan Review Team Report, 2004, 2005).

With respect to the CB DPS, the NEFSC analysis indicated that coastal waters south of the Chesapeake Bay to Cape Hatteras, NC, had the second highest number of observed Atlantic sturgeon captures in sink gillnet gear for 2001–2006 (ASMFC TC, 2007). While it is likely that the captured sturgeon originated from more than one DPS (Waldman *et al.,* 1996a; Secor, 2007), the data suggest that fisheries resulting in high levels of Atlantic sturgeon bycatch occur in close proximity to waters used by sturgeon belonging to the CB DPS. Interviews with local fishermen in 2007 indicated that a gillnet fishery for dogfish was known to incidentally catch sturgeon, and that fishery occurred off Chincoteague Island, VA, where more than 30 dead Atlantic sturgeon were found (Virginia Marine Police and Virginia Marine Resources Commission, pers. comm.). The spiny dogfish fishery is managed under a Federal FMP as well as an ASMFC interstate FMP. However, access to the fishery is not limited, and directed effort in the fishery is expected to increase as stock rebuilding objectives are met (ASMFC, 2009). A monkfish fishery using large mesh gillnet gear also occurs in Federal waters off Virginia as well as other Mid-Atlantic and New England states. Atlantic sturgeon entanglements in gear used in the monkfish fishery have been observed in Mid-Atlantic and New England waters (ASMFC, 2007).

In addition to fisheries occurring in marine waters, numerous fisheries operate throughout the Chesapeake Bay (ASSRT, 2007). Juvenile and subadult Atlantic sturgeon are routinely taken as bycatch throughout the Chesapeake Bay in a variety of fishing gears (ASSRT, 2007). The mortality of Atlantic sturgeon bycatch in most of these fisheries is unknown, although low rates of bycatch mortality were reported for the striped bass gill net fishery and the shad fishery within the Bay (Hager, 2006). Of the hundreds of sturgeon held for examination in the Maryland and Virginia reward programs, only a few fish were determined to be in poor physical condition, although it is important to note that the program was designed to examine live specimens for the reward to be granted (J. Skjeveland and A. Spells, FWS, pers. comm., 1998).

In summary, overutilization of Atlantic sturgeon for commercial purposes was likely the primary factor in the historical decline of the GOM, NYB, and CB DPSs. A moratorium on the possession and retention of Atlantic sturgeon for the past 10 years has effectively terminated any directed harvest of Atlantic sturgeon. However, bycatch in Federal and state regulated fisheries continues to occur. Atlantic sturgeon populations can withstand only low rates of anthropogenic (*e.g.,* fishing, bycatch) mortality (ASMFC TC, 2007). Kahnle *et al.* (2007) estimated that sustainable fishing rates on adult Atlantic sturgeon are 5 percent per year, and sustainable fishing rates for sub-adults are lower still (Boreman, 1997; ASMFC, 1998). Thus, the ASMFC TC (2007) concluded that even small rates of bycatch mortality (<5 percent) on sturgeon subpopulations could retard or curtail recovery. The best available information supports that bycatch of Atlantic sturgeon in Federal and state regulated fisheries acts as a significant threat on the GOM, NYB, and CB DPSs because it results in direct mortality. Fisheries known to incidentally catch Atlantic sturgeon occur throughout the marine range of the species and in some riverine waters as well. Therefore, adult and subadult age classes of each DPS are at risk of injury or death resulting from entanglement and/or capture in fishing gear wherever they occur.

Disease or Predation

Very little is known about natural predators of Atlantic sturgeon. The presence of bony scutes is likely an effective adaptation for minimizing predation of sturgeon greater than 25 mm TL (Gadomski and Parsley, 2005; ASSRT, 2007). Documented predators of sturgeon species (*Acipenser* sp.), in general, include sea lampreys, gar, striped bass, common carp, northern pikeminnow, channel catfish, smallmouth bass, walleye, fallfish, grey seal, and sea lion (Scott and Crossman, 1973; Dadswell *et al.,* 1984; Miller and Beckman, 1996; Kynard and Horgan, 2002; Gadomski and Parsley, 2005; Fernandes, 2006; Wurfel and Norman, 2006). Seal predation on shortnose sturgeon in the Penobscot River has been documented (Fernandes, 2008). Seven shortnose sturgeon carcasses found in the Kennebec River in August 2009 also bore wounds consistent with seal predation (A. Lictenwalner, UME, pers. comm., 2009). Although seal predation of Atlantic sturgeon has not been documented, Atlantic sturgeon that are of comparable size to shortnose (*e.g.,* subadult Atlantic sturgeon) may also be susceptible to seal predation.

The presence of introduced flathead catfish has been confirmed in the Delaware and Susquehanna River systems of the NYB and CB DPSs, respectively (Horwitz *et al.,* 2004; Brown *et al.,* 2005). However, there are no indications that the presence of flathead catfish in the Cape Fear River, NC, and Altamaha River, GA (where flatheads have been present for many years) is negatively impacting Atlantic sturgeon in those rivers (ASSRT, 2007).

Disease organisms commonly occur among wild fish populations, but under favorable environmental conditions, these organisms are not expected to cause population-threatening epidemics. There are no known diseases currently affecting any of the Atlantic sturgeon DPSs. A die-off of sturgeon, 13 shortnose and two Atlantic sturgeon, was reported for Sagadahoc Bay, ME, in July 2009, at the same time as a red tide event for the region. The dinoflagellate associated with the red tide event, *Alexandrium fundyense,* is known to produce saxitoxin, which can cause paralytic shellfish poisoning when consumed in sufficient quantity.

Stomach content analysis from the necropsied sturgeon revealed saxitoxin levels of several hundred nanograms per gram (S. Fire, NOAA, pers. comm., 2009). However, saxitoxin cannot be confirmed as the cause of death of the sturgeon, given the lack of information on saxitoxin presence in sturgeon tissues.

There is concern that non-indigenous sturgeon pathogens could be introduced to wild Atlantic sturgeon, most likely through aquaculture operations. Fungal infections and various types of bacteria have been noted to have various effects on hatchery Atlantic sturgeon. Due to the threat of impacts to wild populations, the ASMFC recommends requiring any sturgeon aquaculture operation to be certified as disease-free, thereby reducing the risk of the spread of disease from hatchery origin fish. The aquarium industry is another possible source for transfer of non-indigenous pathogens or non-indigenous species from one geographic area to another, primarily through release of aquaria fish into public waters. With millions of aquaria fish sold to individuals annually, it is unlikely that such activity could ever be effectively regulated. Definitive evidence that aquaria fish could be blamed for transmitting a non-indigenous pathogen to wild fish (sturgeon) populations would be very difficult to collect (J. Coll and J. Thoesen, USFWS, pers. comm., 1998).

Disease and predation are not presently significant threats on the GOM, NYB, or CB DPSs. While there is new evidence of seal predation on shortnose sturgeon in the Penobscot and Kennebec Rivers of the GOM DPS (Fernandes, 2008; A. Lictenwalner, UME, pers. comm., 2009), the number of mortalities is believed to be low and thus, this is a localized threat affecting a small number of fish. Likewise, we would expect that any seal predation of Atlantic sturgeon, if it is occurring, would also be low, given that Atlantic sturgeon spend less time in the rivers/estuaries relative to shortnose sturgeon. There is also new evidence of the presence of saxitoxin in sturgeon tissues. However, saxitoxin presence cannot yet be associated as a cause of injury or mortality for shortnose or Atlantic sturgeon.

Overall, the SRT concluded that there was a "low risk" that the GOM, NYB, or CB DPS was likely to become endangered within the foreseeable future as a result of disease or predation. Although there is some new information regarding disease and predation of shortnose sturgeon for waters within the range of the GOM DPS of Atlantic sturgeon, the new information does not support an increased risk that the GOM DPS of Atlantic sturgeon is likely to become endangered within the foreseeable future as a result of disease or predation.

Inadequacy of Existing Regulatory Mechanisms

As a wide-ranging anadromous species, Atlantic sturgeon are subject to numerous Federal (U.S. and Canadian), state and provincial, and inter-jurisdictional laws, regulations, and agency activities. These regulatory mechanisms are described in detail in the status review report (*see* Section 3.4), and those that impact Atlantic sturgeon the most are highlighted here.

Current regulatory mechanisms have effectively removed threats from legal, directed harvest in the United States. As previously described, the ASMFC manages Atlantic sturgeon through an interstate fisheries management plan that was developed in 1990 (Taub, 1990). The moratorium prohibiting directed catch of Atlantic sturgeon was developed as Amendment 1 to the FMP. The Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA), authorized under the terms of the ASMFC Compact, as amended (Pub. L. 103–206), provides the Secretary of Commerce with the authority to implement regulations in the EEZ, in the absence of an approved Magnuson-Stevens FMP, that are compatible to ASMFC FMPs. It was under this authority that, in 1999, NMFS implemented regulations that prohibit the retention and landing of Atlantic sturgeon bycatch from federally regulated fisheries. NMFS has discretion over the management of federally regulated fisheries and is required to address bycatch for each federally regulated fishery. Therefore, while there are currently no fishery specific regulations in place that address Atlantic sturgeon bycatch, NMFS has the authority and discretion to implement such measures, and has previously used its authority to implement measures to reduce bycatch of protected species in federally-regulated fisheries.

Some fisheries that occur within state waters are also known or suspected of taking Atlantic sturgeon as bycatch. Maine's regulations prohibit the use of purse, drag, and stop seines, and gill nets with greater than 87.5 mm stretched mesh (ASSRT, 2007). Fixed or anchored nets have to be tended continuously and hauled in and emptied every 2 hours (ASSRT, 2007). As described above, there has been no reported or observed bycatch of Atlantic sturgeon in the limited gill net fisheries for menhaden, alewives, blueback herring, sea herring, and mackerel in the estuarial complex of the Kennebec and Androscoggin Rivers (ASSRT, 2007). However, the level of observer coverage or reporting effort is unknown.

Atlantic sturgeon are also known to be taken as bycatch in the Connecticut and Hudson River shad fisheries (ASSRT, 2007). Current Connecticut regulations appear to be inadequate for addressing this bycatch. In New York, however, the NY DEC closed all shad fisheries in the Hudson River effective March 17, 2010 (NY DEC press release, March 17, 2010), thus, eliminating Atlantic sturgeon bycatch associated with shad fisheries.

Gillnet fisheries for numerous fish species occur in the Chesapeake Bay. Low rates of sturgeon bycatch mortality were reported for the striped bass gill net fishery and the shad staked gill net fishery (Hager, 2006; ASSRT, 2007), although estimates of bycatch in these fisheries as well as other fisheries in the Bay are not available. Since completion of the status review report, Virginia has closed the directed fishery for American shad to allow rebuilding of the stock. Virginia also has various time and gear restrictions for the use of gillnet gear in its tidal waters, including prohibitions on the use of staked or anchored gillnet gear in portions of the James and Rappannock Rivers from April 1 through May 31 (VA MRC Summary of Regulations, 2009), that are likely to benefit Atlantic sturgeon by reducing the likelihood of sturgeon bycatch. Similarly, regulations implemented by NMFS (69 FR 24997, May 5, 2004; 71 FR 36024, June 23, 2006) to reduce sea turtle interactions with pound net gear in the Bay and portions of the surrounding rivers (*e.g.,* James, York, and Rappahannock Rivers) likely reduce the chance that Atlantic sturgeon will be caught in the gear.

Due to existing state and Federal laws, water quality and other habitat conditions have improved in many rivers (EPA, 2008). As described above, dredging is a threat for the GOM, NYB, and CB DPSs of Atlantic sturgeon. Currently, there are no specific regulations requiring action(s) to reduce effects of dredging on Atlantic sturgeon. However, NMFS has the authority and discretion to implement such measures or require modification of dredging activities if Atlantic sturgeon are listed under the ESA.

In summary, State and Federal agencies are actively employing a variety of legal authorities to implement proactive restoration activities for Atlantic sturgeon, and coordination of these efforts is being furnished through the ASMFC. Most states within the

riverine and estuarine range of the GOM, NYB, and CB DPSs of Atlantic sturgeon have regulations for their inshore gillnet fisheries that reduce the likelihood of Atlantic sturgeon bycatch mortality in the nets. NMFS has the authority and discretion to implement measures necessary to reduce bycatch of Atlantic sturgeon in federally regulated fisheries, and we expect that such measures would yield significant benefits for Atlantic sturgeon. However, NMFS has not implemented any bycatch reduction measures specifically for Atlantic sturgeon, and existing bycatch reduction measures are inadequate for reducing bycatch of Atlantic sturgeon in federally regulated fisheries. NMFS also has the authority and discretion to require measures to reduce the effects of in-water projects (*e.g.,* dredging, tidal turbine projects) on ESA-listed species. Such measures afford some benefit to Atlantic sturgeon at times and in areas where the ESA-listed species is also present. However, currently, NMFS does not have the authority or discretion to require action to reduce the effects of in-water projects specifically for Atlantic sturgeon. Therefore, Atlantic sturgeon are afforded no protection from the effects of in-water projects if an ESA-listed species is not present. There are no measures to reduce or minimize vessel strikes (discussed in Other Natural or Manmade Factors Affecting the Species' Continued Existence section below) of Atlantic sturgeon, and we currently have limited authority and discretion by which to regulate vessel activities in areas where Atlantic sturgeon occur.

Other Natural or Manmade Factors Affecting the Species Continued Existence

The SRT considered several manmade factors that may affect Atlantic sturgeon, including impingement and entrainment, vessel strikes, and artificial propagation. Along the range of Atlantic sturgeon, most, if not all, subpopulations are at risk of possible entrainment or impingement in water withdrawal intakes for commercial uses, municipal water supply facilities, and agricultural irrigation intakes. Based on the behavior of captive larval Atlantic sturgeon (Kynard and Horgan, 2002), Atlantic sturgeon larvae may be able to avoid intake structures in most cases, since migration is active and occurs near the bottom. Effluence from power plant facilities also has the potential to affect the Atlantic sturgeon DPSs. The release of heated water can benefit sturgeon by providing a thermal refuge during the winter months, but drastic changes in water temperature have the potential to cause mortality. To date, there have been no known Atlantic sturgeon mortalities as a result of effluent discharge of heated water.

Two surveys have been conducted that provide information on the impacts of water withdrawal on Atlantic sturgeon originating from the NYB DPS: (1) Hudson River Utility Surveys, and (2) Delaware River Salem Power Plant survey. The Hudson River has six power plants located between rkm 34–74, which overlap with known nursery grounds for Atlantic sturgeon larvae and early juveniles located at rkm 43–100. Of the six power plants located in this area, the Danskammer, Roseton, Lovett, and Indian Point pose the greatest risk to Atlantic sturgeon, as the Bowline Point power plant is located farther downriver and withdraws water from a collection pond. Intensive surveys (24 hr/day, 4 to 7 days/week, and 10–12 weeks/year during the spring) conducted from 1972–1998 examining entrainment and impingement of fish species reported only 8 entrained sturgeon (larvae) and 63 impinged shortnose sturgeon (majority 200–700 mm) (Applied Science Associates, 1999). Entrained sturgeon were documented only at the Danskammer Point Plant where four shortnose larvae and four unidentified sturgeon yolk sac larvae were observed during the spring in 1983 and 1984. Impingement of sturgeon occurred most often at the Danskammer Point Plant, averaging 4.2–5.2 impinged fish per year, followed by Indian Point (1.5–2.3 fish/year), Roseton (1.5–1.8 fish/year), Bowline Point (0–0.9 fish/year) and Lovett Point (0 fish per year). During the period of 1989 to 1996, five shortnose sturgeon were impinged (0.6/year) from the Roseton and Danskammer plants. However, since 2000 when operational and physical changes were made at these two plants, no impinged Atlantic or shortnose sturgeon have been observed. Bowline Point and Lovett reported zero impingements during this period. Sampling did not occur at Indian Point after 1990 (Shortnose Sturgeon Status Review, in draft).

The Salem Nuclear Generating Station located on the Delaware River also has the potential to take sturgeon species via impingement or entrainment. The trash racks at the Station are required to be inspected every 2 hours from June 1 through October 15. The racks are cleaned three times per week from May 1 to May 31 and October 16 through November 15, and are required to be cleaned daily from June 1 to October 15. Observations are made specifically for sturgeon species during this time. During the remaining months, the trash racks are inspected daily for debris load and cleaned as necessary. From 1978 to 2007, 18 shortnose sturgeon were collected at the cooling water system intake. These fish were all juveniles greater than 400 mm TL. While shortnose sturgeon have been observed at the intakes at the Station, no Atlantic sturgeon have been observed.

Vessel strikes of Atlantic sturgeon have been documented in particular areas. Atlantic sturgeon that occur in locations that support large ports and have relatively narrow waterways seem to be more prone to vessel strikes (*e.g.,* Delaware and James Rivers). Twenty-nine mortalities believed to be the result of vessel strikes were documented in the Delaware River from 2004 to 2008 (Kahnle *et al.,* 2005; Murphy, 2006). At least 13 of these fish were large adults. Given the time of year in which the fish were observed (predominantly May through July, with two in August), it is likely that many of the adults were migrating through the river to the spawning grounds. Based on the external injuries observed, it is suspected that these strikes are from ocean going vessels and not smaller boats, although at least one boater reported hitting a large sturgeon with his small craft (C. Shirey, DNREC, pers. comm., 2005). Recreational vessels are known to have struck and killed shortnose sturgeon in the Kennebec River (G. Wipplehauser, ME DMR, pers. comm., 2009). Therefore, it is likely that Atlantic sturgeon can also suffer mortal injuries when struck by recreational vessels.

In the James River, 11 Atlantic sturgeon were reported to have been struck by vessels from 2005 through 2007 (A. Spells, FWS, pers. comm., 2007). Of the six mortalities, two were mature males (approximate lengths of 154–185 cm fork length (FL)); the other four carcasses were in an advanced state of decay and could not be sexed. However, each of the four was at least as large as the two mature males with one about 215 cm long and another appearing to have been much larger (only a section of the larger fish was retrieved as it had been severed more than once). The propeller marks present on the six fish examined indicated that the wounds were inflicted by both large and small vessels (A. Spells, FWS, pers. comm., 2007). One fish exceeding 154 cm in length had been cut completely in two. Other sources suggest an even higher rate of interaction with at least 16 Atlantic sturgeon mortalities reported for a short reach of the James River during 2007–2008 (Balazik, unpublished, in Richardson *et al.,* 2009).

Artificial propagation of Atlantic sturgeon for use in restoration of extirpated subpopulations or recovery of severely depleted wild subpopulations has the potential to be both a threat to the species and a tool for recovery. In 1991, the FWS Northeast Fisheries Center (NEFC) in Lamar, Pennsylvania began a program to capture, transport, spawn, and culture Atlantic sturgeon. This program was in response to recommendations by the ASMFC in the Atlantic Sturgeon FMP (Taub, 1990) and Special Report No. 22: *Recommendation Concerning the Culture and Stocking of Atlantic Sturgeon* (ASMFC, 1992). The first successful spawn at NEFC was achieved in 1993 using ripe Hudson River broodstock captured by commercial fishermen. Approximately 175 individuals from that year class and others are currently being maintained at NEFC for use in a future broodstock. Subsequent propagation attempts in 1994, 1995, 1996, and 1998 were also successful with as many as 160,000 fry being hatched in one year. The work at Lamar resulted in the publication of the Culture Manual for the Atlantic sturgeon (Mohler, 2004). Since NEFC's first successful spawning in 1993, many requests have been made for excess progeny both inside and outside of the Department of the Interior. These requests were filled only under the condition that a study plan be submitted to NEFC for review by the Center Director and biologists. Study plans were required to include provisions that escapement of cultured sturgeon into the wild would be prevented except where experimental stockings were conducted consistent with Federal and state regulations, and they should include a rigorous evaluation component. Accordingly, over 29,000 artificially propagated juvenile sturgeon have been shipped to 20 different organizations including Federal and state agencies, universities, public aquaria, and independent researchers.

In 1996, the Maryland Department of Natural Resources (MD DNR), FWS, and the University of Maryland-Chesapeake Biological Laboratory stocked the Nanticoke River with 3,300 hatchery-origin juveniles that were obtained from the NEFC. The stocked fish demonstrated good growth and survivability with a 14 percent recapture rate over several years (MD DNR, 2007). MD DNR then began to rear sturgeon with the intention of developing a captive spawning population for use in restoring subpopulations in Maryland. The MD DNR program has been developed using the culture and stocking guidance provided by ASMFC (2006). Approximately 50 fish are currently maintained in the captive brood population.

In summary, vessel strikes are a significant threat affecting the NYB and CB DPSs. Currently, no state or Federal regulations exist to reduce or minimize the likelihood of vessel strikes for Atlantic sturgeon. Artificial propagation and impingement/entrainment of Atlantic sturgeon have a low impact on the GOM, NYB, and CB DPSs and are, therefore, minor threats to each of the three DPSs.

Current Protective Efforts

Current conservation efforts underway to protect and recover Atlantic sturgeon must be evaluated according to the Policy for Evaluation of Conservation Efforts (PECE) and pursuant to section 4(b)(1)(A) of the ESA. The PECE is designed to guide determinations on whether any conservation efforts that have been recently adopted or implemented, but not yet proven to be successful, will result in recovering the species to the point at which listing is not warranted or contribute to forming a basis for listing a species as threatened rather than endangered (68 FR 15101; March 28, 2003). The purpose of PECE is to ensure consistent and adequate evaluation of future or recently implemented conservation efforts identified in conservation agreements, conservation plans, management plans, and similar documents when making listing decisions. The policy is expected to facilitate the development by states and other entities of conservation efforts that sufficiently improve a species' status so as to make listing the species as threatened or endangered unnecessary.

The PECE established two basic criteria: (1) The certainty that the conservation efforts will be implemented and, (2) the certainty that the efforts will be effective. Satisfaction of the criteria for implementation and effectiveness establishes a given protective effort as a candidate for consideration, but does not mean that an effort will ultimately change the risk assessment for the species. Overall, the PECE analysis ascertains whether the formalized conservation effort improves the status of the species at the time a listing determination is made.

The SRT analyzed several conservation efforts potentially affecting Atlantic sturgeon throughout its range. The 1998 Amendment to the ASMFC Atlantic Sturgeon FMP strengthens conservation efforts by formalizing the closure of the directed fishery, and by banning possession of bycatch, eliminating any incentive to retain Atlantic sturgeon. However, bycatch is known to occur in several fisheries (ASMFC TC, 2007), and it is widely accepted that bycatch is underreported (PECE Implementation criterion 5). With respect to its effectiveness, contrary to information available in 1998 when the Amendment was approved, Atlantic sturgeon bycatch mortality is a primary threat affecting the recovery of Atlantic sturgeon, despite actions taken by the states and NMFS to prohibit directed fishing and retention of Atlantic sturgeon. Therefore, there is considerable uncertainty that the Atlantic Sturgeon FMP will be effective in meeting its conservation goals (PECE Effectiveness criterion 1). In addition, there are limited resources for assessing current abundance of spawning females for each of the DPSs. Therefore, PECE effectiveness criterion 5 is not being met.

For the reasons provided above, there is no certainty of implementation and effectiveness of the intended ASMFC FMP conservation effort for the GOM, NYB, or CB DPSs of Atlantic sturgeon.

Multi-State Conservation Program

Three states, Maine, New Hampshire, and Massachusetts, have applied for and have received funding under a new Proactive Species Conservation Program grant. The project, entitled "Multi-State Collaborative to Develop and Implement a Conservation Program for Three Anadromous Fish Species of Concern in the Gulf of Maine," includes proposed research on Atlantic sturgeon within the Kennebec River. Specifically, project participants will: (1) Use acoustic biotelemetry (deploy acoustic arrays) to identify essential Atlantic sturgeon habitat in the Kennebec River/Androscoggin River complex; (2) conduct a mark-and-recapture study using PIT tags to estimate subpopulation size and external Carlin tags to investigate movements beyond the estuary; (3) investigate non-traditional population estimation methods because of spawning periodicity of adult sturgeon; and, (4) obtain tissue samples for sturgeon to conduct genetic analysis and determine stock structure.

The Atlantic sturgeon research component of the Multi-State Conservation Program is expected to provide new information on the GOM DPS of Atlantic sturgeon that could inform management decisions for future conservation efforts. However, the program, including the proposed research for Atlantic sturgeon, does not specifically describe the threats to the Atlantic sturgeon subpopulations in

question, and does not address how those threats would be reduced or eliminated (PECE Effectiveness criteria 1–6). Therefore, there is no certainty of implementation and effectiveness of a formalized conservation effort for the Penobscot River subpopulation of Atlantic sturgeon, or for the GOM DPS to which it belongs, as a result of the plan.

Penobscot River Restoration Project (PRRP)

The PRRP is the result of many years of negotiations between Pennsylvania Power and Light (PPL), U.S. Department of the Interior (*e.g.,* FWS, Bureau of Indian Affairs, National Park Service), Penobscot Indian Nation, the State of Maine (*e.g.,* Maine State Planning Office, Inland Fisheries and Wildlife, MDMR), and several non-governmental organizations (NGOs; Atlantic Salmon Federation, American Rivers, Trout Unlimited, Natural Resources Council of Maine, among others). If implemented, the PRRP would lead to the removal of the two lowermost mainstem dams on the Penobscot River (Veazie and Great Works) and would decommission the Howland Dam and construct a nature-like fishway around it. As a result, portions of historical habitat once available to Atlantic sturgeon of the GOM DPS would be reopened. While the necessary funding has been committed by the government and other private donors to achieve the purchase of the dams, a significant amount of money still must be acquired in order for the parties to exercise the option to decommission and remove the Veazie and Great Works dams as well as to construct a nature like fishway for the Howland Dam. Staffing, funding level, funding source, and other resources necessary to fully implement the PRRP are not identified at this time. Therefore, currently, the PRRP does not satisfy criteria one and seven in the certainty of implementation of the PECE. Permitting and regulatory requirements are also uncertain at this stage because they are contingent upon the ability of the parties to raise the full amount of funds necessary, FERC approval of the Trust's permit to surrender the dams, and completion of required environmental review. Thus, the PRRP does not satisfy criterion four of the PECE, which requires that all authorizations (*e.g.,* permits, land owner permission) necessary to implement the conservation effort are identified and that there is a high certainty that the parties to the agreement will obtain all necessary authorizations. Therefore, it is not possible to state at this time with a high level of certainty that this project will be fully implemented.

Hudson River Estuary Management Action Plan

A Hudson River Estuary Management Action Plan was adopted by the NYDEC in May 1996. The goal of this Plan is to protect, restore, and enhance the productivity and diversity of natural resources of the Hudson River estuary to sustain a wide array of present and future human benefits. Multiple projects have been initiated as a response to this Plan. These include: (1) Coastal sampling; (2) juvenile Atlantic sturgeon sonic tracking project; (3) broodstock sonic tagging and PIT tagging to determine broodstock movements and spawning locations; and (4) New York long-term juvenile abundance survey.

The research projects carried out under the Hudson River Estuary Management Action Plan are expected to significantly increase our knowledge of Atlantic sturgeon from the NYB DPS. Such information could help to inform management decisions for future conservation efforts. However, the Plan does not specifically describe the threats to the Hudson River sturgeon subpopulation, and does not reduce or eliminate those threats (PECE Effectiveness criteria 1–6). Therefore, there is no certainty of implementation and effectiveness of a formalized conservation effort for the Hudson River subpopulation of Atlantic sturgeon, or for the NYB DPS to which it belongs, as a result of the plan.

James River Atlantic Sturgeon Restoration Plan

In 2005, private and FWS partners began work to create a James River Atlantic Sturgeon Restoration Plan. The plan outlines several restoration goals to help preserve and recover the James River Atlantic sturgeon subpopulation. These goals include: (1) Identify essential habitats, assess subpopulation status, and refine life history investigations in the James River; (2) protect the subpopulation of James River Atlantic sturgeon and its habitat; (3) coordinate and facilitate exchange of information on James River Atlantic sturgeon conservation and restoration activities; and (4) implement the restoration program. The plan also describes several milestones for reaching these goals. Those of most interest to this review include: (1) Identifying essential habitats and protecting them using regulatory and/or incentive programs; (2) developing and implementing standardized population sampling and monitoring programs; (3) developing population models; (4) developing an experimental culture of James River Atlantic sturgeon; (5) reducing or eliminating incidental mortality; (6) identifying and eliminating known or potentially harmful chemical contaminants that impede the recovery of James River sturgeon; (7) maintaining genetic integrity and diversity of the wild and hatchery-reared stocks; and (8) designating and funding a James River Atlantic sturgeon restoration lead office.

Portions of the plan have already been implemented, including the collection of YOY and adult tissue samples for genetic analysis; electronic tracking of sturgeon to determine preferred habitat use and spawning locations; collecting spine samples to establish age distributions; and establishing a long-term YOY index survey (A. Spells, FWS, pers. comm., 2007). All of these are expected to provide new information on the CB DPS of Atlantic sturgeon that could inform management decisions for future conservation efforts. However, the plan has not been formally approved by regulatory agencies. Therefore, at this time, it is uncertain whether the plan, including necessary regulatory action, funding, and permitting (PECE Implementation criterion 1, 2, 4, and 6–8) will be fully implemented. Information to demonstrate the certainty that the conservation effort will be effective is also lacking (PECE Effectiveness criterion 1–6). Therefore, there is no certainty of implementation and effectiveness of a formalized conservation effort for the James River subpopulation of Atlantic sturgeon, or for the CB DPS of Atlantic sturgeon to which it belongs, as a result of the plan.

Summary of Protective Efforts

Various agencies, groups, and individuals are carrying out a number of efforts aimed at protecting and conserving Atlantic sturgeon belonging to the GOM, NYB, and CB DPSs. These actions are directed at reducing threats faced by Atlantic sturgeon and/or gaining additional knowledge of specific Atlantic sturgeon subpopulations. Such actions could contribute to the recovery of the GOM, NYB, and CB DPSs of Atlantic sturgeon in the future. However, there is still considerable uncertainty regarding the implementation and effectiveness of these efforts, and the extent to which any would reduce the threats to the GOM, NYB, or CB DPSs that are the cause of their (proposed) listing. Therefore, we have determined that none of these protective efforts currently contribute to making it unnecessary to list the GOM, NYB, or CB DPSs of Atlantic sturgeon.

Finding for GOM DPS

As stated previously, the range of the GOM DPS is described as watersheds from the Maine/Canadian border and extending southward to include all associated watersheds draining into the Gulf of Maine as far south as Chatham, MA, as well as all marine waters, including coastal bays and estuaries, from the Bay of Fundy, Canada, to the Saint Johns River, FL (Figure 3).

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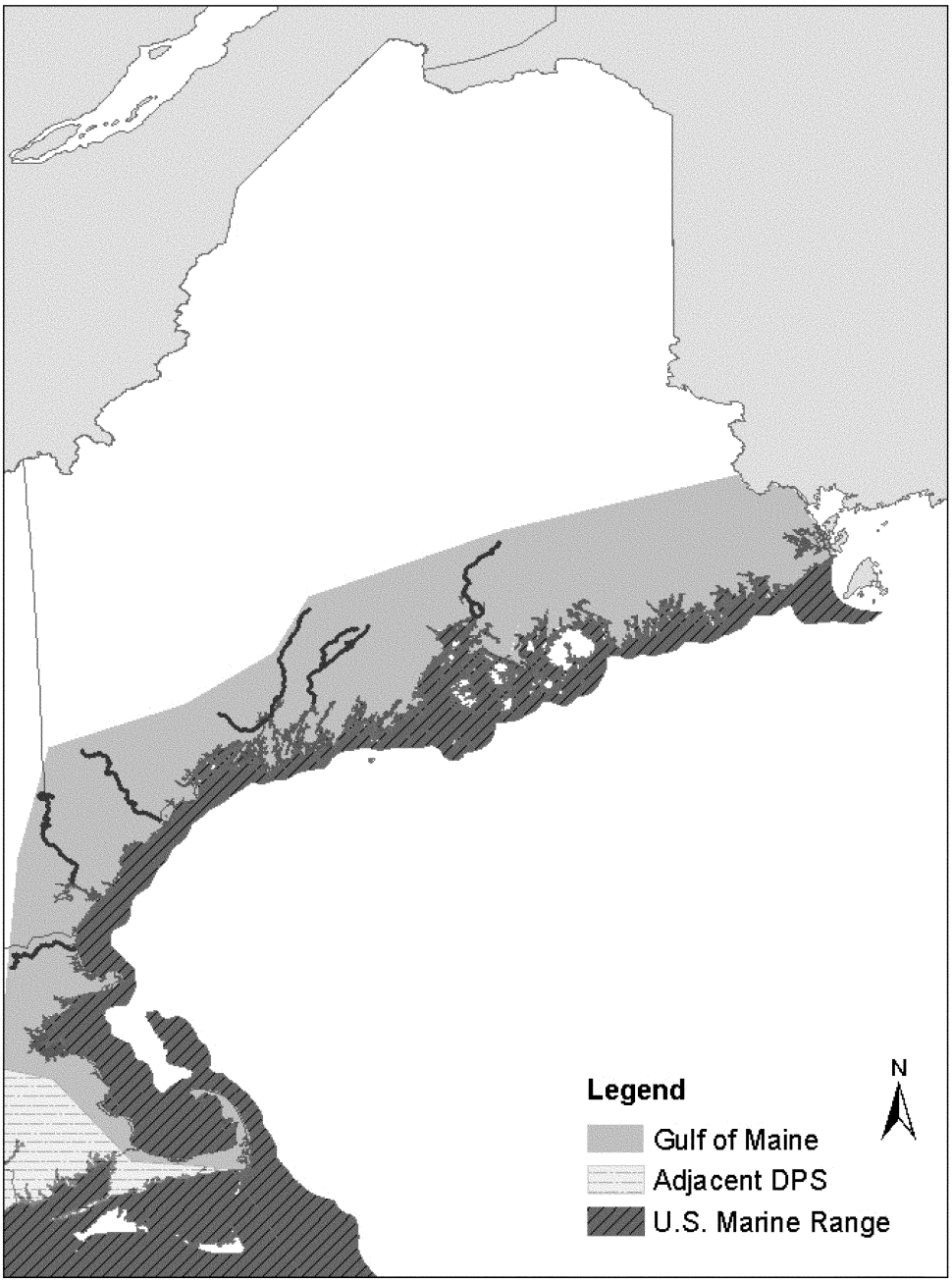

Figure 3: GOM DPS showing rivers (up to the first dam where known) in which the species is known to occur, and a portion of the marine range for the DPS. Shading denotes the general area in which other rivers used by Atlantic sturgeon belonging to the GOM DPS may occur.

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There are no current abundance estimates for the GOM DPS of Atlantic sturgeon. The Kennebec River is currently the only known spawning river for the GOM DPS. The CPUE of subadult Atlantic sturgeon in a multi-filament gillnet survey conducted on the Kennebec River was considerably greater for the period of 1998–2000

(CPUE = 7.43) compared to the CPUE for the period 1977–1981 (CPUE = 0.30). The CPUE of adult Atlantic sturgeon showed a slight increase over the same time period (1977–1981 CPUE = 0.12 versus 1998–2000 CPUE = 0.21) (Squiers, 2004).

Evidence of Atlantic sturgeon spawning in other rivers of the GOM DPS is not available. However, Atlantic sturgeon continue to use these historical spawning rivers and may represent additional spawning groups (ASSRT, 2007). There is also new evidence of Atlantic sturgeon presence in rivers (*e.g.,* the Saco River) where they have not been observed for many years.

The majority of historical Atlantic sturgeon spawning habitat is accessible in all but the Merrimack River of the GOM DPS. Whether Atlantic sturgeon spawning habitat in the GOM DPS is fully functional is difficult to quantify. In terms of threats to habitat, the SRT identified water quality and dredging as threats. While measures do not currently exist to minimize or reduce the impacts of dredging specifically for Atlantic sturgeon, the regulatory mechanisms do exist that would allow the development of such measures.

The SRT ranked bycatch as a primary threat for the GOM DPS of Atlantic sturgeon since it poses an immediate risk of death for the fish, and specific regulatory measures to remove or reduce Atlantic sturgeon bycatch have not been implemented. Subadult and adult Atlantic sturgeon of the GOM DPS may be incidentally caught in fisheries that occur throughout their marine range. Many of the fisheries that result in bycatch of Atlantic sturgeon, including the monkfish gillnet fishery, are federally regulated through FMPs. NMFS is required to reduce bycatch of federally managed fisheries. Therefore, while measures to specifically reduce bycatch of Atlantic sturgeon are not in place, the regulatory mechanisms that would allow the development of such measures do exist.

The SRT considered the factors of section 4(a)(1) of the ESA and concluded that there was a moderate risk (34–50 percent chance) that the GOM DPS of Atlantic sturgeon would become endangered over the next 20 years. However, when considering this information as well as those efforts being made to protect the species, the SRT concluded that there were insufficient data to make a recommendation as to whether listing was warranted.

Since completion of the status review report, we have received new information on Atlantic sturgeon bycatch (ASMFC, 2007) and water quality of the watersheds within the range of the GOM DPS (EPA, 2008). While the new estimates of Atlantic sturgeon bycatch are comparable to those considered by the SRT from Stein *et al.* (2004), new analyses suggest that the level of bycatch mortality is not sustainable for the GOM DPS in the long term (ASMFC, 2007).

With respect to water quality, despite the persistence of contaminants and increasing land development, many rivers and watersheds within the range of the GOM DPS have demonstrated improvement in water quality (EPA, 2008). The most recent EPA Coastal Condition Report identified water quality for coastal waters north of Cape Cod as, generally, fair to good (EPA, 2008).

We further considered what effect low abundance may be having on the GOM DPS. According to DeMaster *et al.* (2004), factors that tend to decrease population growth rates at low levels of abundance result in a process known as "depensation." Depensation occurs, for example, when: (1) It is more difficult for individuals to find mates at low levels of abundance; (2) there is a loss of average fitness because the gene pool tends to be smaller at low levels of abundance; or (3) the species is more vulnerable to catastrophic events because a species is likely to be composed of only one or a few populations at low levels of abundance. When depensatory factors prevail, even with the elimination of anthropogenic threats, the species tends toward extinction.

As described above, there is no abundance estimate for the GOM DPS. Based on information available from Atlantic sturgeon subpopulations of other DPSs, the SRT (2007) suggested that there may be less than 300 spawning adults per year for the Kennebec River subpopulation in the GOM DPS. Presuming that the SRT's assumption is correct and that the current total population abundance is low, we considered whether depensation is currently occurring for the GOM DPS of Atlantic sturgeon. We concluded that it is unlikely that the GOM DPS is currently experiencing depensation given that Atlantic sturgeon of the GOM DPS are being observed in increasing numbers (*e.g.,* in the Kennebec and the Merrimack River estuary) and in areas of the GOM DPS where they have not been observed for many years (*e.g.,* the Saco River). Such observations are uncharacteristic of a subpopulation that is being affected by depensation. In addition, we concluded that Atlantic sturgeon are less susceptible to depensation in comparison to many other species given certain life history characteristics. For example, female Atlantic sturgeon produce a large number of eggs per spawning year (400,000–4 million and potentially as many as 7–8 million; Smith *et al.,* 1982; Van Eenennaam *et al.* 1996; Van Eenennaam and Doroshov, 1998; Dadswell, 2006). Each reproductively active male Atlantic sturgeon is capable of fertilizing the eggs of multiple females within a spawning year and, as a result of natal homing, spawning adults are cued to areas where they can expect to find "mates." These characteristics help to ensure that successful reproduction can still occur even at low levels of abundance. Furthermore, Atlantic sturgeon of a single DPS are temporally and spatially separated depending on age class and reproductive condition. For example, males spawn every 1 to 2 years and females every 3 to 5 years. Spawning occurs over weeks with reproductively active females making relatively short spawning runs, thus minimizing their exposure to catastrophic events that might occur in the spawning rivers. Subadults and non-spawning adults range across a wide area of the marine environment while YOY and juveniles occur in the estuaries of their natal river. These characteristic range and habitat patterns reduce the likelihood that a single catastrophic event (*e.g.,* a flood, drought, red-tide event) would kill or injure a sufficient number of sturgeon across a single or all age classes such that the DPS would become extinct.

We also considered whether the spatial structure of the GOM DPS has been degraded to the extent that the viability of the population is threatened. According to the NMFS report, "Viable Salmonid Populations and the Recovery of Evolutionarily Significant Units" (2000), "a population's spatial structure is made up of both the geographic distribution of individuals in the population and the processes that generate that distribution. A population's spatial structure depends fundamentally on habitat quality, spatial configuration, and dynamics as well as the dispersal characteristics of individuals in the population. As one example of how a degraded spatial structure can threaten the viability of a population, consider a population divided into subpopulations. A population with a high subpopulation extinction rate can persist only if new subpopulations are founded at a rate equal to the rate at which subpopulations naturally go extinct. If human activity interferes with the

formation of new subpopulations by restricting straying patterns or destroying habitat patches suitable for colonization, the population will ultimately go extinct as subpopulations blink out one by one. However, there will be a time lag between the disruption of spatial processes and reductions in the abundance or productivity of the population because abundance will not necessarily decline until subpopulations start going extinct." Based on the best available information, human activity is not restricting straying patterns for Atlantic sturgeon belonging to the GOM DPS or destroying patches suitable for colonization. To the contrary, Atlantic sturgeon of the GOM DPS are being observed in increasing numbers (*e.g.,* in the Merrimack River estuary) and in areas (*e.g.,* the Saco River) where they have not been observed for many years.

In summary, based on the information contained in the status review report and new information on bycatch of Atlantic sturgeon as well as water quality for the watersheds of the GOM DPS, we concur with the SRT that bycatch, water quality, and dredging are the threats affecting the GOM DPS of Atlantic sturgeon. The SRT determined that there was a moderate risk (34–50 percent chance) that the GOM DPS of Atlantic sturgeon would become endangered over the next 20 years. Since completion of the status review report, fish have been documented in rivers where they were previously not reported to occur or where they were suspected of having been extirpated. The new information on water quality (EPA, 2008) indicates that water quality has improved. The new information on bycatch (ASMFC TC, 2007), however, supports that bycatch is having a greater impact on Atlantic sturgeon than that considered by the SRT. Age to maturity for Atlantic sturgeon of the GOM DPS is unknown. However, age at maturity is 11 to 21 years for Atlantic sturgeon originating from the Hudson River (Young *et al.,* 1998), and 22 to 34 years for Atlantic sturgeon that originate from the Saint Lawrence River (Scott and Crossman, 1973). Age at maturity for Atlantic sturgeon of the GOM DPS likely fall within these values given that Atlantic sturgeon subpopulations exhibit clinal variation with faster growth and earlier age to maturity for those that originate from more southern waters, and slower growth and later age to maturity for those that originate from more northern waters. Since there is only one (known) spawning group for the GOM DPS, loss of the spawning group would result in extinction of the DPS.

Given these considerations, including the original determination by the SRT, the best available information indicates the DPS is likely to become an endangered species within the foreseeable future (*i.e.,* a greater than 50 percent chance of becoming endangered over the next 20 years) throughout all or a significant portion of its range due to bycatch, water quality, and dredging. There are several indications of potential for improvement in the status of the DPS, including the following: There have been and continue to be improvements in water quality; regulatory mechanisms to address bycatch exist and could be effectively implemented to reduce associated mortalities; the effects of dredging have been and continue to be addressed for shortnose sturgeon and, therefore, provide indirect benefits for Atlantic sturgeon utilizing the same areas; and there are some indications of increased spatial distribution of Atlantic sturgeon in some areas of the DPS (*e.g.,* use of the Saco River and increased use of the Merrimack River estuary). However, given the on-going threats to the GOM DPS, we conclude that listing as threatened is warranted for the GOM DPS of Atlantic sturgeon.

Finding for NYB DPS

As stated previously, the range of the NYB DPS is described as watersheds that drain into coastal waters, including Long Island Sound, the New York Bight, and Delaware Bay, from Chatham, MA, to the Delaware-Maryland border on Fenwick Island, as well as all marine waters, including coastal bays and estuaries, from the Bay of Fundy, Canada, to the Saint Johns River, FL (Figure 4).

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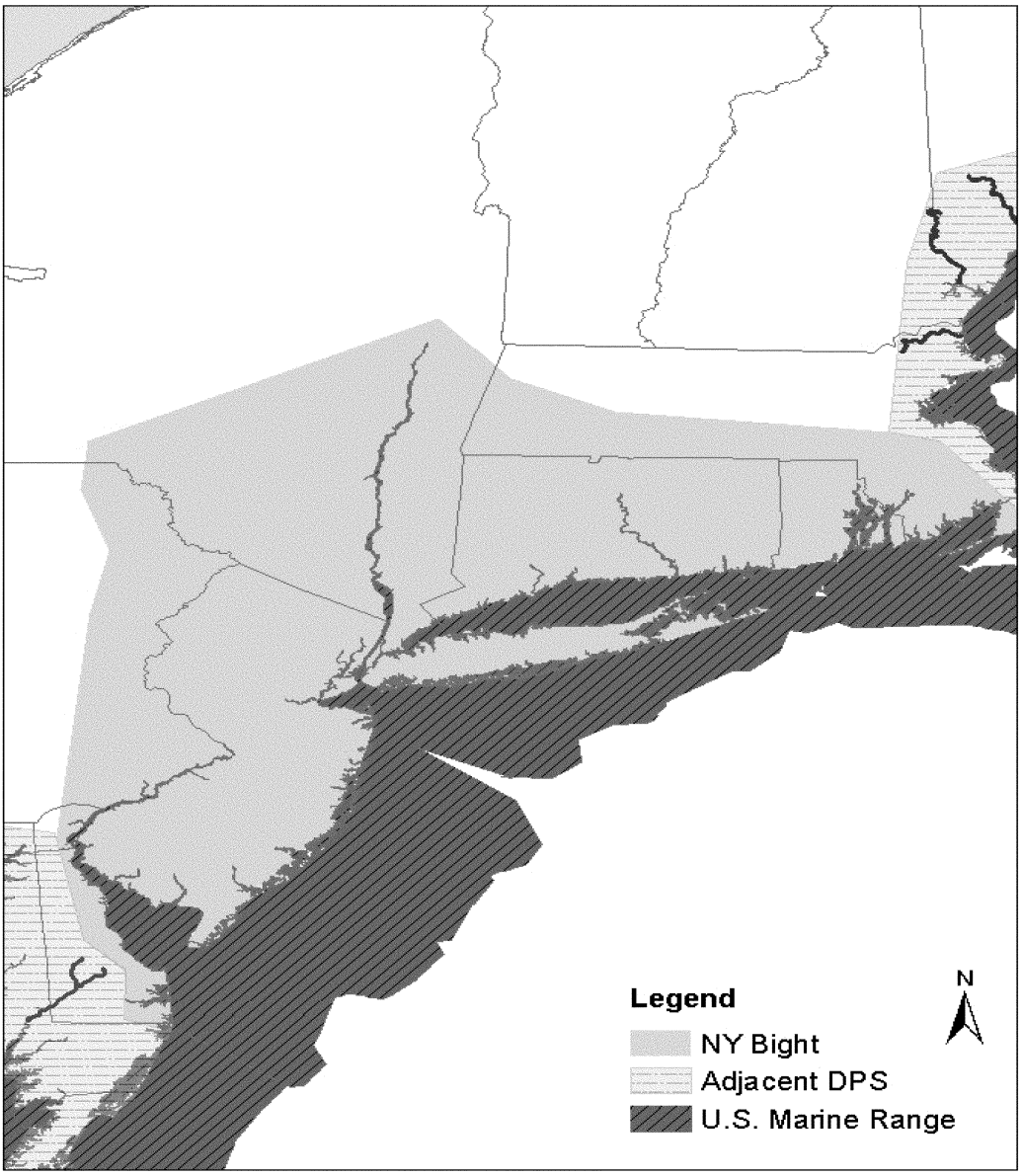

Figure 4: NYB DPS showing rivers (up to the first dam where known) in which the species is known to occur, and a portion of the marine range. Shading denotes the general area in which other rivers used by Atlantic sturgeon belonging to the NYB DPS may occur.

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The only abundance estimate for Atlantic sturgeon belonging to the NYB DPS is 870 spawning adults per year for the Hudson River subpopulation (Kahnle *et al.,* 2007). However, the estimate is based on data collected from 1985–1995 and may underestimate current conditions (Kahnle *et al.,* 2007). Data collected from the Hudson River cannot be used to estimate the total number of adults in the subpopulation since mature Atlantic sturgeon may not spawn every year (Vladykov and Greeley, 1963; Smith, 1985; Van Eenennaam *et al.,* 1996; Stevenson and Secor, 1999; Collins *et al.,* 2000; Caron *et al.,* 2002), and it is unclear to what extent mature fish in a non-spawning condition occur on the spawning grounds.

In addition to the Hudson River, Atlantic sturgeon are known to spawn in the Delaware River. Since 1991, more than 2,000 Atlantic sturgeon have been captured and tagged (DNREC, 2009) in the Delaware River. Evidence of Atlantic sturgeon spawning in the Taunton and Connecticut rivers of the NYB DPS is not available. However, Atlantic sturgeon continue to use these rivers (ASSRT, 2007).

The majority of historical Atlantic sturgeon spawning habitat for the NYB DPS is accessible. Whether Atlantic sturgeon spawning habitat in the NYB DPS is fully functional is difficult to quantify. In terms of threats to habitat, the SRT identified water quality and dredging, and in terms of threats affecting the Delaware River subpopulation of the DPS directly, the SRT identified vessel strikes. While

contaminants persist, the SRT noted several studies and reports indicating improvements in water quality within the Hudson, Delaware, Taunton, and Connecticut Rivers. Measures do not currently exist to remove or reduce the impacts of dredging and vessel strikes for Atlantic sturgeon. However, the regulatory mechanisms do exist that would allow the development of such measures.

The SRT ranked bycatch as the primary threat for the NYB DPS of Atlantic sturgeon since it poses an immediate risk of death for the fish, and specific regulatory measures to remove or reduce Atlantic sturgeon bycatch have not been implemented. Subadult and adult Atlantic sturgeon of the NYB DPS may be incidentally caught in fisheries that occur throughout their marine range. Many of the fisheries that result in bycatch of Atlantic sturgeon, including the monkfish gillnet fishery, are federally regulated through FMPs. NMFS is required to reduce bycatch of federally managed fisheries. Therefore, while measures to specifically reduce bycatch of Atlantic sturgeon are not in place, the regulatory mechanisms that would allow the development of such measures do exist.

The SRT considered the factors in section 4(a)(1) of the ESA and concluded that there was a moderate (34–50 percent chance) to moderately high risk (greater than 50 percent chance) that the NYB DPS would become endangered over the next 20 years.

Since completion of the status review report, we have received new information on Atlantic sturgeon bycatch (ASMFC, 2007) and water quality for the watersheds within the NYB DPS (EPA, 2008). While the new estimates of Atlantic sturgeon bycatch are comparable to those considered by the SRT from Stein *et al.* (2004), new analyses suggest that the level of bycatch mortality is not sustainable for the NYB DPS in the long term (ASMFC, 2007). With respect to water quality, the most recent EPA Coastal Condition Report identified that coastal water quality was fair overall for waters south of Cape Cod through Delaware (EPA, 2008). However, sampled sites in Massachusetts and Rhode Island were generally scored as good while waters from Connecticut to Delaware received fair and poor ratings (EPA, 2008). In particular, the report noted that most of the Northeast Coast sites that were rated as poor for water quality were concentrated in a few estuarine systems, including New York/New Jersey Harbor, some tributaries of the Delaware Bay, and the Delaware River (EPA, 2008).

Significant increases in abundance and distribution of shortnose sturgeon within the Hudson and Delaware Rivers suggest that improvements in water quality have resulted in benefits to the species. Available evidence further suggests that existing water quality in these rivers and surrounding estuaries is not impeding reproduction of shortnose sturgeon that occur there.

We further considered what effect low abundance may be having on the NYB DPS, and whether the NYB DPS is currently experiencing depensation. As described above, the estimate of 870 spawning adults per year for the Hudson River subpopulation is based on data collected from 1985–1995 (Kahnle *et al.,* 2007). The SRT (2007) suggested that there may be less than 300 spawning adults per year for the Delaware subpopulation of the NYB DPS. We concluded that it is unlikely that the Hudson River subpopulation of the NYB DPS is currently experiencing depensation given the available population estimate which suggests an adult spawning population of close to 1,000 sturgeon. We were unable to make a conclusion as to whether depensation is likely occurring for the Delaware subpopulation of the NYB DPS. Evidence of age-0 fish in the Delaware River in 2009 indicates that spawning continues to occur in that river. Ongoing studies may help to elucidate the abundance and/or trend in abundance of this subpopulation. However, that information is not yet available. As described in the finding for the GOM DPS, we have concluded that certain Atlantic sturgeon life history characteristics help to reduce the likelihood that depensation will occur. Thus, we expect that depensation for Atlantic sturgeon would occur at a lower level of abundance in comparison to a species that did not share these characteristics.

We also considered whether the spatial structure of the NYB DPS has been degraded to the extent that the viability of the population is threatened. Based on the best available information, human activity is not restricting straying patterns for Atlantic sturgeon belonging to the Hudson River subpopulation of the NYB DPS. It is unclear, however, to what extent human activity is restricting straying patterns of sturgeon belonging to the Delaware subpopulation of the NYB DPS, given the very limited information on abundance and the known threats affecting this subpopulation (*i.e.,* bycatch, water quality, dredging and vessel strikes).

In summary, based on the information contained in the status review report and new information on bycatch of Atlantic sturgeon and water quality for the watersheds of the NYB DPS, we concur with the SRT that bycatch, water quality, dredging, and vessel strikes act as significant threats affecting the NYB DPS of Atlantic sturgeon. The SRT determined that there was a moderate (34–50 percent chance) to moderately high risk (greater than 50 percent chance) that the NYB DPS would become endangered over the next 20 years. The new information on water quality for the area covered by the NYB DPS (EPA, 2008) is similar to that considered by the SRT for the status report. The new information on bycatch (ASMFC TC, 2007), however, supports that bycatch is having a greater impact on Atlantic sturgeon than that considered by the SRT. Additionally, since completion of the status review report, a dredging project to deepen the Delaware shipping channel in an area where Atlantic sturgeon is suspected to occur has been proposed and is in the process of attaining necessary approvals. Age to maturity for NYB DPS Atlantic sturgeon is 11 to 21 years (Young *et al.,* 1998; DNREC, 2009). Given that there are two spawning groups for the NYB DPS, loss of one spawning group will not result in the immediate extinction of the NYB DPS. Nevertheless, the loss of either spawning group would result in loss of spatial structure for the DPS as well as numbers of fish to support spawning. Therefore, both spawning groups are essential to the DPS.

Given these considerations, we find that the best available information does support that the NYB DPS is in danger of extinction throughout all or a significant portion of its range. There are several indications of potential for improvement in the status of the DPS, including the following: Regulatory mechanisms to address bycatch exist and could be effectively implemented to reduce associated mortalities; and the effects of dredging have been and continue to be addressed for shortnose sturgeon and, therefore, provide indirect benefits for Atlantic sturgeon where these species co-occur. However, given the ongoing threats to the NYB DPS, we conclude that listing as endangered is warranted for the NYB DPS of Atlantic sturgeon.

Finding for CB DPS

As stated previously, the range of the CB DPS is described as watersheds that drain into the Chesapeake Bay and into coastal waters from the Delaware-Maryland border on Fenwick Island to Cape Henry, VA, as well as all marine waters, including coastal bays and estuaries, from the Bay of Fundy,

Canada, to the Saint Johns River, FL (Figure 5).

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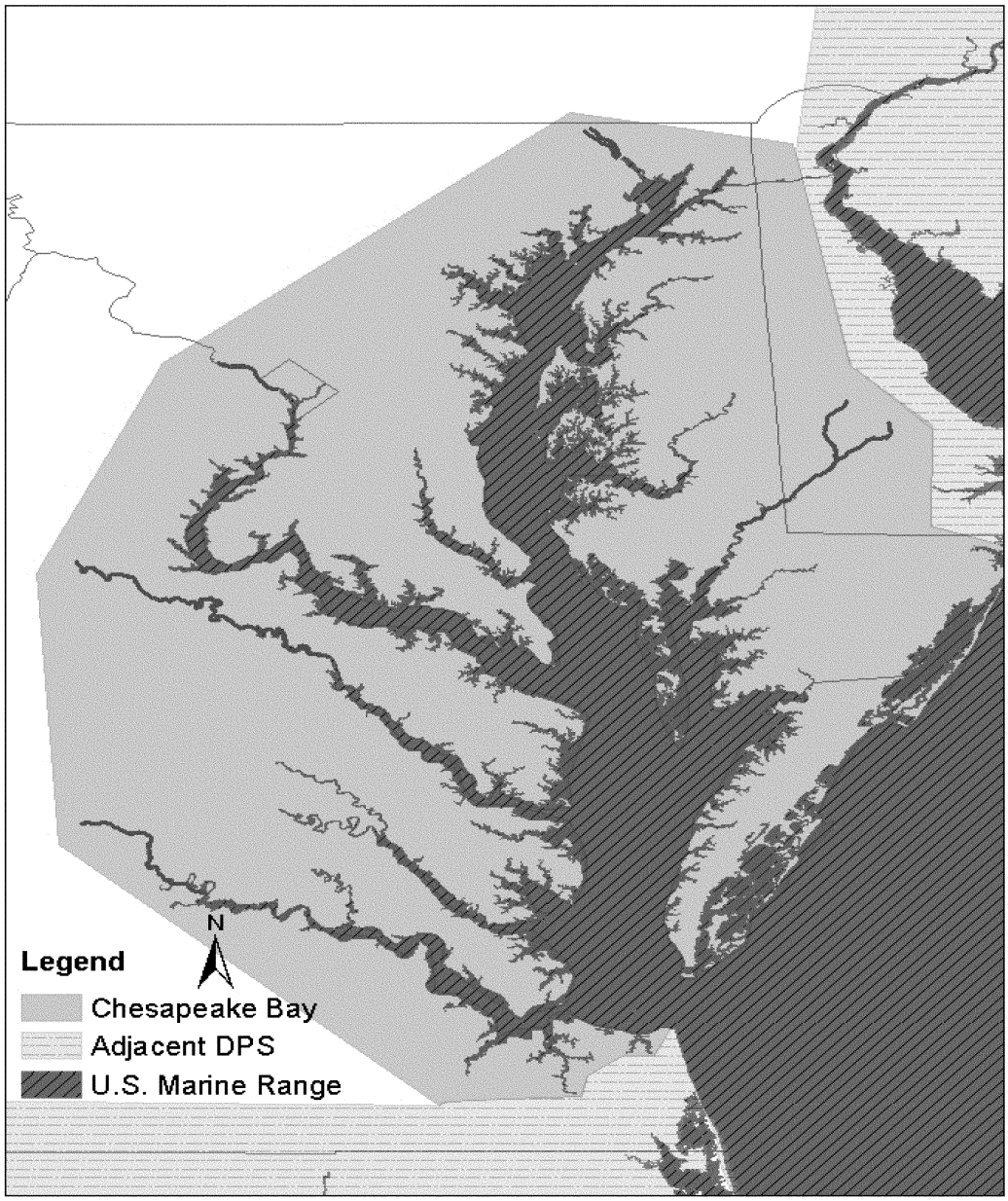

Figure 5: CB DPS showing rivers (up to the first dam where known) in which the species is known to occur, and a portion of the marine range for the DPS. Shading denotes the general area in which other rivers used by Atlantic sturgeon belonging to the CB DPS may occur.

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There are no current abundance estimates for the CB DPS. As previously stated, the FWS has been funding the Maryland Reward Program since 1996; this program has resulted in the documentation of over 1,133 wild Atlantic sturgeon. Virginia also instituted an Atlantic sturgeon reward program in the Chesapeake Bay in 1997 and 1998 (Spells, 2007). This reward program documented and measured 295 Atlantic sturgeon. However, since sturgeon from multiple DPSs occur in the Chesapeake Bay, it is unlikely that all of the sturgeon captured originated from the CB DPS.

Atlantic sturgeon of the CB DPS are known to spawn in the James River. Clear evidence of Atlantic sturgeon spawning in other rivers of the CB DPS is not available. However, Atlantic sturgeon continue to use these rivers,

and may represent additional spawning groups (ASSRT, 2007). In particular, commercial fishers have regularly reported observations of YOY or age-1 juveniles in the York River over the past few years (K. Place, Commercial Fisherman, pers. comm., 2006). Analyses of samples collected from Atlantic sturgeon juveniles in the James and York Rivers also demonstrated genetic differences between the sampled groups. The observations and genetic results suggest that spawning may be occurring in the York River.

The majority of historical Atlantic sturgeon spawning habitat for the CB DPS is accessible. Although dams are present, most are located upriver of where spawning is expected to have historically occurred. Whether Atlantic sturgeon spawning habitat in the CB DPS is fully functional is difficult to quantify. In terms of threats to habitat, the SRT identified water quality and dredging, and in terms of direct threats to the CB DPS, the SRT identified vessel strikes. Initiatives have been called for to address the condition of the Chesapeake Bay (Executive Order, May 12, 2009; NOAA's Chesapeake Bay Protection and Restoration Final Strategy, 2010). Niklitschek and Secor (2005) demonstrated that achieving the EPA's dissolved oxygen criteria for the Chesapeake Bay would increase Atlantic sturgeon available habitat by 13 percent per year (Niklitschek and Secor, 2005). Measures do not currently exist to remove or reduce the impacts of dredging and vessel strikes specifically for Atlantic sturgeon. However, the regulatory mechanisms that would allow the development of such measures do exist.

The SRT ranked bycatch as a primary threat for the CB DPS of Atlantic sturgeon because it poses an immediate risk of death for the fish, and specific regulatory measures to remove or reduce Atlantic sturgeon bycatch have not been implemented. Subadult and adult Atlantic sturgeon of the CB DPS may be incidentally caught in fisheries that occur throughout their marine range. Many of the fisheries that result in bycatch of Atlantic sturgeon, including the monkfish gillnet fishery, are federally regulated through FMPs. NMFS is required to reduce bycatch in federally managed fisheries. Therefore, while measures to specifically reduce bycatch of Atlantic sturgeon are not in place, the regulatory mechanisms that would allow the development of such measures do exist.

The SRT considered the factors in section 4(a)(1) of the ESA and concluded that there was a moderately high risk (greater than 50 percent chance) that the CB DPS would become endangered over the next 20 years.

Since completion of the status review report, we have received new information on the bycatch of Atlantics sturgeon (ASMFC, 2007) and water quality of the watersheds within the CB DPS (EPA, 2008). While the new estimates of Atlantic sturgeon bycatch are comparable to those considered by the SRT from Stein *et al.* (2004), new analyses suggest that the level of bycatch mortality is not sustainable for the CB DPS in the long term (ASMFC, 2007). With respect to water quality, the most recent EPA Coastal Condition Report identified water quality as fair to poor for the Chesapeake Bay and immediate vicinity (to the Virginia-North Carolina border) (EPA, 2008). In particular, the western and northern tributaries of the Chesapeake Bay were rated as poor (EPA, 2008). The Bay is especially vulnerable to the effects of nutrients due to its large surface area to volume ratio, relatively low exchange rates, and strong vertical stratification during the spring and summer months (ASSRT, 2007). The extensive watersheds of this historically unglaciated area funnel nutrients, sediment, and organic material into secluded, poorly flushed estuaries that are more susceptible to eutrophication (EPA, 2008).

We further considered what effect low abundance may be having on the CB DPS, and whether the CB DPS is currently experiencing depensation. As described above, there is no abundance estimate for the CB DPS. Based on information available from Atlantic sturgeon subpopulations of other DPSs, the SRT (2007) suggested that there may be less than 300 spawning adults per year for the CB DPS. Presuming that the SRT's assumption is correct and assuming that the current total population abundance is low, we considered whether the CB DPS is currently experiencing depensation. We concluded that it is unlikely that the CB DPS is currently experiencing depensation, given that increasing numbers of Atlantic sturgeon belonging to the CB DPS are being observed (Garman and Balazik, unpub. data in Richardson *et al.,* 2009). Such observations are uncharacteristic of a population that is experiencing depensation. In addition, as described in the finding for the GOM DPS, we have concluded that certain Atlantic sturgeon life history characteristics help to reduce the likelihood that depensation will occur. Thus, we expect that depensation for Atlantic sturgeon would occur at a lower level of abundance in comparison to species that did not share these characteristics.

We also considered whether the spatial structure of the CB DPS has been degraded to the extent that the viability of the population is threatened. Observations of increased numbers of juvenile and adult Atlantic sturgeon suggest that human activity is not significantly restricting straying patterns for Atlantic sturgeon belonging to the CB DPS. However, the evidence is not conclusive, given the very limited information on abundance and distribution of Atlantic sturgeon in the tributaries to the Bay, and the known threats affecting the DPS (*i.e.,* bycatch, water quality, dredging, and vessel strikes).

In summary, based on the information contained in the status review report and new information on bycatch of Atlantic sturgeon and water quality for the watersheds of the CB DPS, we concur with the SRT that bycatch, water quality, dredging, and vessel strikes act as significant threats affecting the CB DPS of Atlantic sturgeon. The SRT determined that there was a moderately high risk (greater than 50 percent chance) that the CB DPS would become endangered over the next 20 years. The new information on water quality for the area covered by the CB DPS (EPA, 2008) is similar to that considered by the SRT for the status review report. In addition, the new information on bycatch (ASMFC TC, 2007) supports that bycatch is having a greater impact on Atlantic sturgeon than that considered by the SRT. Age at maturity for Atlantic sturgeon originating from the Chesapeake Bay DPS is unknown. However, age at maturity is 5 to 19 years for Atlantic sturgeon originating from South Carolina rivers (Smith *et al.,* 1982), and 11 to 21 years for Atlantic sturgeon originating from the Hudson River (Young *et al.,* 1998). Age at maturity for Atlantic sturgeon of the CB DPS likely fall within these values given that Atlantic sturgeon subpopulations exhibit clinal variation with faster growth and earlier age to maturity for those that originate from more southern waters, and slower growth and later age to maturity for those that originate from more northern waters. Since there is only one (known) spawning river for the CB DPS, loss of that spawning group would result in extinction of the DPS.

Given these considerations, we find that the best available information does support that the CB DPS is in danger of extinction throughout all or a significant portion of its range. There are several indications of potential for improvement in the status of the DPS, including the following: Regulatory

mechanisms to address bycatch exist and could be effectively implemented to reduce associated mortalities; and the effects of dredging have been and continue to be addressed for shortnose sturgeon and, therefore, provide indirect benefits for Atlantic sturgeon where these species co-occur. However, given the ongoing threats to the CB DPS, we conclude that listing as endangered is warranted for the CB DPS of Atlantic sturgeon.

Role of Peer Review

In December 2004, the Office of Management and Budget (OMB) issued a Final Information Quality Bulletin for Peer Review establishing minimum peer review standards, a transparent process for public disclosure of peer review planning, and opportunities for public participation. The OMB Bulletin, implemented under the Information Quality Act (Pub. L. 106–554), is intended to enhance the quality and credibility of the Federal government's scientific information, and applies to influential or highly influential scientific information disseminated on or after June 16, 2005. To satisfy our requirements under the OMB Bulletin, the Atlantic sturgeon status review report was peer reviewed by six experts in the field, with their substantive comments incorporated in the final status review report.

On July 1, 1994, the NMFS and USFWS published a series of policies regarding listings under the ESA, including a policy for peer review of scientific data (59 FR 34270). The intent of the peer review policy is to ensure that listings are based on the best scientific and commercial data available. Prior to a final listing, NMFS will solicit the expert opinions of three qualified specialists selected from the academic and scientific community, Federal and State agencies, and the private sector on listing recommendations to ensure the best biological and commercial information is being used in the decisionmaking process, as well as to ensure that reviews by recognized experts are incorporated into the review process of rulemakings developed in accordance with the requirements of the ESA.

Effects of Listing

Conservation measures provided for species listed as endangered or threatened under the ESA include recovery actions (16 U.S.C. 1533(f)), critical habitat designations, Federal agency consultation requirements (16 U.S.C. 1536), and prohibitions on taking (16 U.S.C. 1538). Recognition of the species' plight through listing promotes conservation actions by Federal and state agencies, private groups, and individuals. Should the proposed listings be made final, a recovery program would be implemented, and critical habitat may be designated. Federal, state, and the private sectors will need to cooperate to conserve listed Atlantic sturgeon and the ecosystems upon which they depend.

Critical habitat is defined in section 3 of the ESA (16 U.S.C. 1532(3)) as: (1) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the ESA, on which are found those physical or biological features (a) essential to the conservation of the species and (b) that may require special management considerations or protection; and (2) specific areas outside the geographical area occupied by a species at the time it is listed upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the ESA is no longer necessary. Section 4(a)(3)(a) of the ESA (16 U.S.C. 1533(a)(3)(A)) requires that, to the extent prudent and determinable, critical habitat be designated concurrently with the listing of a species. If we determine that it is prudent and determinable, we will publish a proposed designation of critical habitat for Atlantic sturgeon in a separate rule. Public input on features and areas that may meet the definition of critical habitat for the Gulf of Maine, New York Bight, and Chesapeake Bay DPSs is invited.

Identifying the DPS(s) Potentially Affected by an Action During Section 7 Consultation

The GOM, NYB, and CB DPSs are distinguished based on genetic data and spawning locations. However, extensive mixing of the populations occurs in coastal waters. Therefore, the distributions of the DPSs outside of natal waters generally overlap with one another, and with fish from Southeast river populations. This presents a challenge in conducting ESA section 7 consultations because fish from any DPS could potentially be affected by a proposed project. Project location alone will likely not inform the section 7 biologist as to which populations to consider in the analysis of a project's potential direct and indirect effects on Atlantic sturgeon and their habitat. This will be especially problematic for projects where take could occur because it is critical to know which Atlantic sturgeon population(s) to include in the jeopardy analysis. One conservative, but potentially cumbersome, method would be to analyze the total anticipated take from a proposed project as if all Atlantic sturgeon came from a single DPS and repeat the jeopardy analysis for each DPS the taken individuals could have come from. However, recently funded research may shed some light on the composition of mixed stocks of Atlantic sturgeon, relative to their rivers of origin, in locations along the East Coast. The specific purpose of the study is to evaluate the vulnerability to coastal bycatch of Hudson River Atlantic sturgeon, thought to be the largest stock contributing to coastal aggregations from the Bay of Fundy to Georgia. However, the mixed stock analysis will also allow NMFS to better estimate a project's effects on different components of a mixed stock of Atlantic sturgeon in coastal waters or estuaries other than where they were spawned. Results from the study are expected in February 2011. Genetic mixed stock analysis, such as proposed in this study, requires a high degree of resolution among stocks contributing to mixed aggregations and characterization of most potential contributory stocks. Fortunately, almost all extant populations, at least those with reasonable population sizes, have been characterized in previous genetic studies, though some additional populations will be characterized in this study. Genetic testing of mixed stocks will be conducted in eight coastal locales in both the Northeast and Southeast Regions. Coastal fisheries and sites were selected based on sample availabilities, bycatch concerns, and specific biological questions (*i.e.,* real uncertainty as to stock origins of the coastal aggregation). We are specifically seeking public input on the mixing of fish from different DPSs in parts of their ranges, particularly in the marine environment.

Identification of Those Activities That Would Constitute a Violation of Section 9 of the ESA

On July 1, 1994, we and USFWS published a policy to identify, to the maximum extent possible, those activities that would or would not constitute a violation of section 9 of the ESA (59 FR 34272). The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the species' range. We will identify, to the extent known at the time of the final rule, specific activities that will not be considered likely to result in violation of section 9, as well as activities that will be considered likely to result in violation. Activities that we believe

could result in violation of section 9 prohibitions against "take" of the Atlantic sturgeon in the NYB and CB DPSs include, but are not limited to, the following: (1) Bycatch associated with commercial and recreational fisheries; (2) poaching of individuals for meat or caviar; (3) marine vessel strikes; (4) destruction of riverine, estuarine, and marine habitat through such activities as agricultural and urban development, commercial activities, diversion of water for hydropower and public consumption, and dredge and fill operations; (5) impingement and entrainment in water control structures; (6) unauthorized collecting or handling of the species (permits to conduct these activities are available for purposes of scientific research or to enhance the propagation or survival of the DPSs); (7) releasing a captive Atlantic sturgeon into the wild; and (8) harming captive Atlantic sturgeon by, among other things, injuring or killing them through veterinary care, research, or breeding activities outside the bounds of normal animal husbandry practices. We intend to undergo a rulemaking process under section 4(d) to issue protective regulations for the GOM DPS, which is being proposed as threatened under the ESA, and it is likely that these same activities would result in violation of take prohibitions that we may extend to the GOM DPS in such a section 4(d) rule.

We believe that, based on the best available information, the following actions will not result in a violation of section 9: (1) Possession of Atlantic sturgeon acquired lawfully by permit issued by NMFS pursuant to section 10 of the ESA, or by the terms of an incidental take statement in a biological opinion pursuant to section 7 of the ESA; (2) Federally approved projects that involve activities such as agriculture, managed fisheries, road construction, discharge of fill material, stream channelization, or diversion for which consultation under section 7 of the ESA has been completed, and when such activity is conducted in accordance with any terms and conditions given by NMFS in an incidental take statement in a biological opinion pursuant to section 7 of the ESA; (3) continued possession of live Atlantic sturgeon that were in captivity or in a controlled environment (*e.g.,* in aquaria) at the time of this listing, so long as the prohibitions under an ESA section 9(a)(1) are not violated. If listed, NMFS will provide contact information for facilities to submit information on Atlantic sturgeon in their possession, to establish their claim of possession; and (4) provision of care for live Atlantic sturgeon that were in captivity at the time of this listing.

Section 9(b)(1) of the ESA provides a narrow exemption for animals held in captivity at the time of listing: Those animals are not subject to the import/export prohibition or to protective regulations adopted by the Secretary, so long as the holding of the species in captivity, before and after listing, is not in the course of a commercial activity; however, 180 days after listing, there is a rebuttable presumption that the exemption does not apply. Thus, in order to apply this exemption, the burden of proof for confirming the status of animals held in captivity prior to listing lies with the holder. The section 9(b)(1) exemption for captive wildlife would not apply to any progeny of the captive animals that may be produced post-listing.

References Cited

A complete list of the references used in this proposed rule is available upon request (*see* **ADDRESSES**).

Classification

National Environmental Policy Act

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation* v. *Andrus,* 675 F. 2d 825 (6th Cir. 1981), NMFS has concluded that ESA listing actions are not subject to the environmental assessment requirements of the National Environmental Policy Act (NEPA). (*See* NOAA Administrative Order 216–6.)

Executive Order 12866, Regulatory Flexibility Act and Paperwork Reduction Act

As noted in the Conference Report on the 1982 amendments to the ESA, economic impacts cannot be considered when assessing the status of a species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act are not applicable to the listing process. In addition, this proposed rule is exempt from review under Executive Order 12866. This proposed rule does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act.

Federalism

E.O. 13132 requires agencies to take into account any federalism impacts of regulations under development. It includes specific consultation directives for situations where a regulation will preempt state law, or impose substantial direct compliance costs on state and local governments (unless required by statute). Pursuant to the Executive Order on Federalism, E.O. 13132, the Assistant Secretary for Legislative and Intergovernmental Affairs will provide notice of the proposed action and request comments from the governors of the states in which the three DPSs proposed to be listed occur.

Environmental Justice

Executive Order 12898 requires that Federal actions address environmental justice in decision-making process. In particular, the environmental effects of the actions should not have a disproportionate effect on minority and low-income communities. The proposed listing determination is not expected to have a disproportionately high effect on minority populations or low-income populations.

Coastal Zone Management Act (16 U.S.C. 1451 et seq.)

Section 307(c)(1) of the Federal Coastal Zone Management Act of 1972 requires that all Federal activities that affect any land or water use or natural resource of the coastal zone be consistent with approved state coastal zone management programs to the maximum extent practicable. NMFS has determined that this action is consistent to the maximum extent practicable with the enforceable policies of approved Coastal Zone Management Programs of each of the states within the range of the three DPSs. Letters documenting NMFS' determination, along with the proposed rule, were sent to the coastal zone management program offices in each affected state. A list of the specific state contacts and a copy of the letters are available upon request.

List of Subjects

50 CFR Part 223

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

50 CFR Part 224

Endangered and threatened species, Exports, Imports.

Dated: September 23, 2010.

Eric C. Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 223 and 224 are proposed to be amended as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531–1543; subpart B, § 223.201–202 also issued under 16 U.S.C. 1361 *et seq.;* 16 U.S.C. 5503(d) for § 223.206(d)(9).

2. In § 223.102, paragraph (c)(29) is added to read as follows:

§ 223.102 Enumeration of threatened marine and anadromous species.

* * * * *

Species [1]		Where listed	Citation(s) for listing determination(s)	Citation(s) for critical habitat designation(s)
Common name	Scientific name			
*	*	* * *	*	*
(c) * * *				
(29) Atlantic Sturgeon—Gulf of Maine DPS*.	*Acipenser oxyrinchus oxyrinchus*.	Gulf of Maine Distinct Population Segment. The GOM DPS includes the following: All anadromous Atlantic sturgeon whose range occurs in watersheds from the Maine/Canadian border and extending southward to include all associated watersheds draining into the Gulf of Maine as far south as Chatham, MA, as well as wherever these fish occur in coastal bays and estuaries and the marine environment. Within this range, Atlantic sturgeon have been documented from the following rivers: Penobscot, Kennebec, Androscoggin, Sheepscot, Saco, Piscataqua, and Merrimack. The marine range of Atlantic sturgeon from the GOM DPS extends from the Bay of Fundy, Canada to the Saint Johns River, FL. The GOM DPS also includes Atlantic sturgeon held in captivity (*e.g.,* hatcheries, scientific institutions) and which are identified as fish belonging to the GOM DPS based on genetics analyses, previously applied tags, previously applied marks, or documentation to verify that the fish originated from (hatched in) a river within the range of the GOM DPS, or is the progeny of any fish that originated from a river within the range of the GOM DPS.	[INSERT FR CITATION & DATE WHEN PUBLISHED AS A FINAL RULE].	
*	*	* * *	*	*

[1] Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, *see* 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, *see* 56 FR 58612, November 20, 1991).

* * * * *

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

3. The authority citation for part 224 continues to read as follows:

Authority: 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 *et seq.*

4. In § 224.101(a), amend the table by adding entries for Atlantic Sturgeon–New York Bight DPS, and Atlantic Sturgeon–Chesapeake Bay DPS at the end of the table to read as follows:

§ 224.101 Enumeration of endangered marine and anadromous species

* * * * *

(a) * * *

Species [1]		Where listed	Citation(s) for listing determination(s)	Citation(s) for critical habitat designation(s)
Common name	Scientific name			
*	*	* * *	*	*
Atlantic Sturgeon—New York Bight DPS.	*Acipenser oxyrinchus oxyrinchus*.	New York Bight Distinct Population Segment. The NYB DPS includes the following: All anadromous Atlantic sturgeon whose range occurs in the watersheds that drain into coastal waters, including Long Island Sound, the New York Bight, and Delaware Bay, from Chatham, MA to the Delaware-Maryland border on Fenwick Island. Within this range, Atlantic sturgeon have been documented from the Hudson and Delaware rivers as well as at the mouth of the Connecticut and Taunton rivers, and throughout Long Island Sound. The marine range of Atlantic sturgeon from the NYB DPS extends from the Bay of Fundy, Canada to the Saint Johns River, FL. The NYB DPS also includes Atlantic sturgeon held in captivity (*e.g.,* hatcheries, scientific institutions) and which are identified as fish belonging to the NYB DPS based on genetics analyses, previously applied tags, previously applied marks, or documentation to verify that the fish originated from (hatched in) a river within the range of the NYB DPS, or is the progeny of any fish that originated from a river within the range of the NYB DPS.	[INSERT FR CITATION & DATE WHEN PUBLISHED AS A FINAL RULE].	NA
Atlantic Sturgeon—Chesapeake Bay DPS.	*Acipenser oxyrinchus oxyrinchus*.	Chesapeake Bay Distinct Population Segment. The CB DPS includes the following: All anadromous Atlantic sturgeon whose range occurs in the watersheds that drain into the Chesapeake Bay and into coastal waters from the Delaware-Maryland border on Fenwick Island to Cape Henry, VA, as well as wherever these fish occur in coastal bays and estuaries and the marine environment. Within this range, Atlantic sturgeon have been documented from the James, York, Potomac, Rappahannock, Pocomoke, Choptank, Little Choptank, Patapsco, Nanticoke, Honga, and South rivers as well as the Susquehanna Flats. The marine range of Atlantic sturgeon from the CB DPS extends from the Bay of Fundy, Canada to the Saint Johns River, FL. The CB DPS also includes Atlantic sturgeon held in captivity (*e.g.,* hatcheries, scientific institutions) and which are identified as fish belonging to the CB DPS based on genetics analyses, previously applied tags, previously applied marks, or documentation to verify that the fish originated from (hatched in) a river within the range of the CB DPS, or is the progeny of any fish that originated from a river within the range of the CB DPS.	[INSERT FR CITATION & DATE WHEN PUBLISHED AS A FINAL RULE].	NA

[1] Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, *see* 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, *see* 56 FR 58612, November 20, 1991).

* * * * *

[FR Doc. 2010–24459 Filed 10–5–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 224

RIN 0648–XN50

[Docket No. 090219208–9210–01]

Endangered and Threatened Wildlife and Plants; Proposed Listings for Two Distinct Population Segments of Atlantic Sturgeon (Acipenser oxyrinchus oxyrinchus) in the Southeast

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

ACTION: Proposed rule; request for comments.

SUMMARY: In 2007, a Status Review Team (SRT) consisting of Federal biologists from NMFS, U.S. Geological Survey (USGS), and U.S. Fish and Wildlife Service (USFWS) completed a status review report on Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*) in the United States. We, NMFS, have reviewed this status review report and all other best available information to determine if listing Atlantic sturgeon under the Endangered Species Act (ESA) as either threatened or endangered is warranted. The SRT recommended that Atlantic sturgeon in the United States be divided into the following five distinct population segments (DPSs): Gulf of Maine; New York Bight; Chesapeake Bay; Carolina; and South Atlantic, and we agree with this DPS structure. After reviewing the available information on the Carolina and South Atlantic DPSs, the two DPSs located within the NMFS Southeast Region, we have determined that listing these two DPSs as endangered is warranted. Therefore, we propose to list these two DPSs as endangered under the ESA. We have published a separate listing determination for the DPSs within the NMFS Northeast Region in today's **Federal Register.**

DATES: Comments on this proposed rule must be received by January 4, 2011. At least one public hearing will be held in a central location for each DPS; notice of the location(s) and time(s) of the hearing(s) will be subsequently published in the **Federal Register** not less than 15 days before the hearing is held.

ADDRESSES: You may submit comments, identified by the XRIN 0648–XN50, by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail or hand-delivery:* Assistant Regional Administrator for Protected Resources, NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.
- *Facsimile (fax) to:* 727–824–5309.

Instructions: All comments received are considered part of the public record and will generally be posted to *http://www.regulations.gov.* All Personal Identifying Information (*i.e.,* name, address, etc.) voluntarily submitted may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. We will accept anonymous comments (enter "n/a" in the required fields if you wish to remain anonymous). Please provide electronic attachments using Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only. This proposed rule, the list of references, and the status review report are also available electronically at the NMFS Web site at *http://sero.nmfs.noaa.gov/pr/sturgeon.htm.*

FOR FURTHER INFORMATION CONTACT: Kelly Shotts, NMFS, Southeast Regional Office (727) 824–5312 or Marta Nammack, NMFS, Office of Protected Resources (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate as possible and informed by the best available scientific and commercial information. Therefore, we request comments or information from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) The abundance of Atlantic sturgeon in the various river systems in the Carolina and South Atlantic DPSs;

(2) The mixing of fish from different DPSs in parts of their ranges, particularly in the marine environment;

(3) Information concerning the viability of and/or threats to Atlantic sturgeon in the Carolina and South Atlantic DPSs; and

(4) Efforts being made to protect Atlantic sturgeon in the Carolina and South Atlantic DPSs.

Public Hearings

One public hearing will be held in a central location for each DPS. We will schedule the public hearings on this proposal and announce the dates, times, and locations of those hearings, as well as how to obtain reasonable accommodations for disabilities, in the **Federal Register** and local newspapers at least 15 days before the first hearing.

Background

Initiation of the Status Review

We first identified Atlantic sturgeon as a candidate species in 1991. On June 2, 1997, NMFS and USFWS (collectively, the Services) received a petition from the Biodiversity Legal Foundation requesting that we list Atlantic sturgeon in the United States, where it continues to exist, as threatened or endangered and designate critical habitat within a reasonable period of time following the listing. A notice was published in the **Federal Register** on October 17, 1997, stating that the Services had determined substantial information existed indicating the petitioned action may be warranted (62 FR 54018). In 1998, after completing a comprehensive status review, the Services published a 12-month determination in the **Federal Register** announcing that listing was not warranted at that time (63 FR 50187; September 21, 1998). We retained Atlantic sturgeon on the candidate species list (and subsequently transferred it to the Species of Concern List (69 FR 19975; April 15, 2004)). Concurrently, the Atlantic States Marine Fisheries Commission (ASMFC) completed Amendment 1 to the 1990 Atlantic Sturgeon Fishery Management Plan (FMP) that imposed a 20- to 40-year moratorium on all Atlantic sturgeon fisheries until the Atlantic Coast spawning stocks could be restored to a level where 20 subsequent year classes of adult females were protected (ASMFC, 1998). In 1999, pursuant to section 804(b) of the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA) (16 U.S.C. 5101 *et seq.*), we followed this action by closing the Exclusive Economic Zone (EEZ) to Atlantic sturgeon retention. In 2003, we sponsored a workshop in Raleigh, North Carolina, with USFWS and ASMFC entitled, "The Status and Management of Atlantic Sturgeon," to discuss the status of sturgeon along the Atlantic Coast and determine what obstacles, if any, were impeding their recovery (Kahnle *et al.,* 2005). The workshop revealed mixed results in regards to the status of Atlantic sturgeon populations, despite the coastwide fishing

moratorium. Some populations seemed to be recovering while others were declining. Bycatch and habitat degradation were noted as possible causes for continued population declines.

Based on the information gathered from the 2003 workshop on Atlantic sturgeon, we decided that a new review of Atlantic sturgeon status was needed to determine if listing as threatened or endangered under the ESA was warranted. The SRT, consisting of four NMFS, four USFWS, and three USGS biologists prepared a draft status review report. The draft report was then reviewed and supplemented by eight state and regional experts who provided their individual expert opinions on the scientific facts contained in the report and provided additional information to ensure the report provided the best available data. Lastly, the report was peer reviewed by six experts from academia. A Notice of Availability of the final status review report was published in the **Federal Register** on April 3, 2007 (72 FR 15865). On October 6, 2009, we received a petition from the Natural Resources Defense Council to list Atlantic sturgeon as endangered under the ESA. As an alternative, the petitioner requested that the species be delineated and listed as the five DPSs described in the 2007 Atlantic sturgeon status review report (ASSRT, 2007): Gulf of Maine, New York Bight, Chesapeake Bay, Carolina, and South Atlantic DPSs, with the Gulf of Maine and South Atlantic DPSs listed as threatened, and the remaining three DPSs listed as endangered. The petitioner also requested that critical habitat be designated for Atlantic sturgeon under the ESA. We published a Notice of 90-Day Finding on January 6, 2010 (75 FR 838), stating that the petition presented substantial scientific or commercial information indicating that the petitioned actions may be warranted.

Listing Species Under the Endangered Species Act

We are responsible for determining whether Atlantic sturgeon are threatened or endangered under the ESA (16 U.S.C. 1531 *et seq.*) To be considered for listing under the ESA, a group of organisms must constitute a "species," which is defined in section 3 of the ESA to include "any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature." On February 7, 1996, the Services adopted a policy describing what constitutes a DPS of a taxonomic species (61 FR 4722). The joint DPS policy identified two elements that must be considered when identifying a DPS: (1) The discreteness of the population segment in relation to the remainder of the species (or subspecies) to which it belongs; and (2) the significance of the population segment to the remainder of the species (or subspecies) to which it belongs. As stated in the joint DPS policy, Congress expressed its expectation that the Services would exercise authority with regard to DPSs sparingly and only when the biological evidence indicates such action is warranted.

Section 3 of the ESA defines an endangered species as "any species which is in danger of extinction throughout all or a significant portion of its range" and a threatened species as one "which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." The statute requires us to determine whether any species is endangered or threatened as a result of any one or a combination of the following five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence (section 4(a)(1)(A)(E)). Section 4(b)(1)(A) of the ESA requires us to make listing determinations based solely on the best scientific and commercial data available after conducting a review of the status of the species and after taking into account efforts being made to protect the species. Accordingly, we have followed a stepwise approach in making our listing determination for Atlantic sturgeon. Considering biological evidence, such as the separation between river populations during spawning and the possibility of multiple distinct interbreeding Atlantic sturgeon populations, we evaluated whether Atlantic sturgeon population segments met the DPS Policy criteria. We then determined the status of each DPS (each "species") and identified the factors and threats contributing to their status per section 4(a)(1) of the ESA. Finally, we assessed efforts being made to protect the species, determining if these efforts are adequate to mitigate impacts and threats to the species' status. We evaluated ongoing conservation efforts using the criteria outlined in the Policy for Evaluating Conservation Efforts (PECE; 68 FR 15100; March 28, 2003) to determine their certainties of implementation and effectiveness.

We reviewed the status review report, its cited references and peer review comments, and information that has become available since the status review report was finalized in 2007. Thus, we believe this proposed rule is based on the best available scientific and commercial information. Much of the information discussed below on Atlantic sturgeon biology, distribution, historical abundance and threats is attributable to the status review report. However, we have independently applied the statutory provisions of the ESA, our regulations regarding listing determinations, and our policy on identification of distinct population segments, in making the proposed listing determinations.

Taxonomy and Life History

There are two subspecies of Atlantic sturgeon—the Gulf sturgeon *(Acipenser oxyrinchus desotoi*) and the Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*). Historically, the Gulf sturgeon occurred from the Mississippi River east to Tampa Bay. Its present range extends from Lake Pontchartrain and the Pearl River system in Louisiana and Mississippi east to the Suwannee River in Florida. The Gulf sturgeon was listed as threatened under the ESA in 1991. The finding in this proposed rule addresses the subspecies *Acipenser oxyrinchus oxyrinchus* (referred to as Atlantic sturgeon), which is distributed along the eastern coast of North America. Historically, sightings have been reported from Hamilton Inlet, Labrador, south to the St. Johns River, Florida. Occurrences south of the St. Johns River, Florida, and in Labrador may have always been rare.

Atlantic sturgeon is a long-lived, late-maturing, estuarine-dependent, anadromous species. Atlantic sturgeon may live up to 60 years, reach lengths up to 14 feet (ft; 4.27 meters (m)), and weigh over 800 pounds (lbs; 363 kilograms (kg)). They are distinguished by armor-like plates and a long protruding snout that is ventrally located, with four barbels crossing in front. Sturgeon are omnivorous benthic (bottom) feeders and filter quantities of mud along with their food. Adult sturgeon diets include mollusks, gastropods, amphipods, isopods, and fish. Juvenile sturgeon feed on aquatic insects and other invertebrates (ASSRT, 2007).

Vital parameters of Atlantic sturgeon populations show clinal variation with faster growth and earlier age at maturation in more southern systems, though not all data sets conform to this

trend. Atlantic sturgeon mature between the ages of 5 and 19 years in South Carolina (Smith *et al.,* 1982), between 11 and 21 years in the Hudson River (Young *et al.,* 1988), and between 22 and 34 years in the St. Lawrence River (Scott and Crossman, 1973). Atlantic sturgeon likely do not spawn every year. Multiple studies have shown that spawning intervals range from 1 to 5 years for males (Smith, 1985; Collins *et al.,* 2000; Caron *et al.,* 2002) and 2 to 5 years for females (Vladykov and Greeley, 1963; Van Eenennaam *et al.,* 1996; Stevenson and Secor, 1999). Fecundity of Atlantic sturgeon has been correlated with age and body size, with egg production ranging from 400,000 to 8 million eggs per year (Smith *et al.,* 1982; Van Eenennaam and Doroshov, 1998; Dadswell, 2006). The average age at which 50 percent of maximum lifetime egg production is achieved is estimated to be 29 years, approximately 3 to 10 times longer than for other bony fish species examined (Boreman, 1997).

Spawning adults migrate upriver in the spring, which occurs during February and March in southern systems, April and May in mid-Atlantic systems, and May and July in Canadian systems (Murawski and Pacheco, 1977; Smith, 1985; Bain, 1997; Smith and Clugston, 1997; Caron *et al.,* 2002). In some southern rivers, a fall spawning migration may also occur (Rogers and Weber, 1995; Weber and Jennings, 1996; Moser *et al.,* 1998). Spawning is believed to occur in flowing water between the salt front and fall line of large rivers, where optimal flows are 18 to 30 inches (in) per second (46 to 76 centimeters (cm) per second) and depths are 36 to 89 ft (11 to 27 m) (Borodin, 1925; Leland, 1968; Scott and Crossman, 1973; Crance, 1987; Bain *et al.,* 2000). The fall line is the boundary between an upland region of continental bedrock and an alluvial coastal plain, sometimes characterized by waterfalls or rapids. Sturgeon eggs are highly adhesive and are deposited on the bottom substrate, usually on hard surfaces (*e.g.,* cobble) (Gilbert, 1989; Smith and Clugston, 1997). Hatching occurs approximately 94 to 140 hours after egg deposition at corresponding temperatures of 68.0 to 64.4 degrees Fahrenheit (20 to 18 degrees Celsius). The newly emerged larvae assume a demersal existence (Smith *et al.,* 1980). The yolksac larval stage is completed in about 8 to 12 days, during which time the larvae move downstream to rearing grounds (Kynard and Horgan, 2002). During the first half of their migration downstream, movement is limited to night. During the day, larvae use benthic structure (*e.g.,* gravel matrix) as refugia (Kynard and Horgan, 2002). During the latter half of migration, when larvae are more fully developed, movement to rearing grounds occurs both day and night. Juvenile sturgeon continue to move further downstream into brackish waters and eventually become residents in estuarine waters for months to years.

Recovery of depleted populations is an inherently slow process for a late-maturing species such as Atlantic sturgeon. Their late age at maturity provides more opportunities for individuals to be removed from the population before reproducing. However, a long life-span also allows multiple opportunities to contribute to future generations provided the appropriate spawning habitat and conditions are available.

Distribution and Abundance

Historically, Atlantic sturgeon were present in approximately 38 rivers throughout their range, of which 35 rivers have been confirmed to have had a historical spawning population. More recently, presence has been documented in 36 rivers with spawning taking place in at least 18 rivers. Spawning has been confirmed in the St. Lawrence, Annapolis, St. John, Kennebec, Hudson, Delaware, James, Roanoke, Tar-Pamlico, Cape Fear, Waccamaw, Great Pee Dee, Combahee, Edisto, Savannah, Ogeechee, Altamaha, and Satilla rivers. Rivers with possible, but unconfirmed, spawning populations include the St. Croix, Penobscot, Androscoggin, Sheepscot, York, Neuse, Santee and Cooper Rivers; spawning may occur in the Santee and/or the Cooper Rivers, but it may not result in successful recruitment.

Historical records from the 1700s and 1800s document large numbers of sturgeon in many rivers along the Atlantic Coast. Atlantic sturgeon underwent significant range-wide declines from historical abundance levels due to overfishing in the late 1800s, as discussed more fully below. Sturgeon stocks were further impacted through environmental degradation, especially due to habitat loss and reduced water quality from the construction of dams in the early to mid-1900s. The species persisted in many rivers, though at greatly reduced levels (1 to 5 percent of their earliest recorded numbers), and commercial fisheries were active in many rivers during all or some of the years 1962 to 1997. Many of these contemporary fisheries resulted in continued overfishing, which prompted ASMFC to impose the Atlantic sturgeon fishing moratorium in 1998 and NMFS to close the EEZ to Atlantic sturgeon retention in 1999.

Abundance estimates of Atlantic sturgeon are currently only available for the Hudson (NY) and Altamaha (GA) rivers, where adult spawning populations are estimated to be approximately 870 and 343 fish per year, respectively (Kahnle *et al.,* 2007; Schueller and Peterson, 2006). Surveys from other rivers in the species' U.S. range are more qualitative, primarily focusing on documentation of multiple year classes and reproduction, as well as the presence of very large adults and gravid females, in the river systems. In the Southeast Region, spawning has been confirmed in 11 rivers (Roanoke, Tar-Pamlico, Cape Fear, Waccamaw, Great Pee Dee, Combahee, Edisto, Savannah, Ogeechee, Altamaha, and Satilla rivers), with possible spawning occurring in 3 additional river (the Neuse, Santee and Cooper Rivers). Based on a comprehensive review of the available data, the literature, and information provided by local, state, and Federal fishery management personnel, the Altamaha River is believed to have the largest population in the Southeast (ASSRT, 2007). The larger size of this population relative to the other river populations in the Southeast is likely due to the absence of dams, the lack of heavy development in the watershed, and relatively good water quality, as Atlantic sturgeon populations in the other rivers in the Southeast have been affected by one or more of these factors. Trammel net surveys, as well as independent monitoring of incidental take in the American shad fishery, suggest that the Altamaha population is neither increasing nor decreasing. Though abundance estimates are not available for the other river populations, because the Altamaha spawning population is the largest, we believe a conservative estimate of the other spawning populations in the Southeast Region is no more than 300 adults spawning per year.

Historically, Atlantic sturgeon were abundant in most North Carolina coastal rivers and estuaries, with the largest fisheries occurring in the Roanoke River/Albemarle Sound system and in the Cape Fear River (Kahnle *et al.,* 1998). Historical landings records from the late 1800s indicated that Atlantic sturgeon were very abundant within Albemarle Sound (approximately 135,600 lbs or 61,500 kg landed per year). Abundance estimates derived from these historical landings records indicated that between 7,200 and 10,500 adult females were present within North Carolina prior to 1890 (Armstrong and

Hightower, 2002; Secor, 2002). The North Carolina Division of Marine Fisheries (NCDMF) has conducted the Albemarle Sound Independent Gill Net Survey (IGNS), initially designed to target striped bass, since 1990. During that time, 842 young-of-the-year (YOY) and subadult sturgeon have been captured. Incidental take of Atlantic sturgeon in the IGNS, as well as multiple observations of YOY from the Albemarle Sound and Roanoke River, provide evidence that spawning continues, and catch records indicate that this population seemed to be increasing until 2000, when recruitment began to decline. Catch records and observations from other river systems in North Carolina exist (*e.g.,* Hoff, 1980, Oakley, 2003, in the Tar and Neuse rivers; Moser *et al.,* 1998, and Williams and Lankford, 2003, in the Cape Fear River) and provide evidence for spawning, but based on the relatively low numbers of fish caught, it is difficult to determine whether the populations in those systems are declining, rebounding, or remaining static. Also, large survey captures during a single year are difficult to interpret. For instance, abundance of Atlantic sturgeon below Lock and Dam #1 in the Cape Fear River seemed to have increased dramatically during the 1990–1997 surveys (Moser *et al.,* 1998) as the catch per unit effort (CPUE) of Atlantic sturgeon was up to eight times greater during 1997 than in the earlier survey years. Since 1997, Atlantic sturgeon CPUE doubled between the years of 1997 and 2003 (Williams and Lankford, 2003). However, it is unknown whether this is an actual population increase reflecting the effects of North Carolina's ban on Atlantic sturgeon fishing that began in 1991, or whether the results were skewed by one outlier year. There was a large increase observed in 2002, though the estimates were similar among all other years of the 1997 to 2003 study.

Atlantic sturgeon were likely present in many South Carolina river/estuary systems historically, but it is not known where spawning occurred. Secor (2002) estimated that 8,000 spawning females were likely present prior to 1890, based on U.S. Fish Commission landing records. Since the 1800s, however, populations have declined dramatically (Collins and Smith, 1997). Recorded landings of Atlantic sturgeon in South Carolina peaked at 481,050 lbs (218,200 kg) in 1897, but 5 years later, only 93,920 lbs (42,600 kg) were reported landed (Smith *et al.,* 1984). Landings remained depressed throughout the 1900s, with between 4,410 and 99,210 lbs (2,000 and 45,000 kg) of Atlantic sturgeon reported annually between 1958 and 1982 (Smith *et al.,* 1984). During the last two decades, Atlantic sturgeon have been observed in most South Carolina coastal rivers, although it is not known if all rivers support a spawning population (Collins and Smith, 1997). Recent sampling for shortnose sturgeon (*Acipenser brevirostrum*) conducted in Winyah Bay captured two subadult Atlantic sturgeon in 2004. Captures of age-1 juveniles from the Waccamaw River during the early 1980s suggest that a reproducing population of Atlantic sturgeon may persist in that river, although the fish could have been from the nearby Great Pee Dee River (Collins and Smith, 1997). Until recently, there was no evidence that Atlantic sturgeon spawned in the Great Pee Dee River, although subadults were frequently captured and large adults were often observed by fishers. However, a fishery survey conducted by Progress Energy Carolinas Incorporated captured a running ripe male in October 2003 and observed other large sturgeon, perhaps revealing a fall spawning run (ASSRT, 2007). There are no data available regarding the presence of YOY or spawning adult Atlantic sturgeon in the Sampit River, although it did historically support a population and is thought to serve as a nursery ground for local stocks (ASMFC, 2009).

The Santee-Cooper system had some of the highest historical landings of Atlantic sturgeon in the Southeast. Data from the U.S. Fish Commission shows that greater than 220,460 lbs (100,000 kg) of Atlantic sturgeon were landed in 1890 (Secor, 2002). The capture of 151 subadults, including age-1 juveniles, in the Santee River in 1997 suggests that an Atlantic sturgeon population still exists in this river (Collins and Smith, 1997). The status review report documents that three adult Atlantic sturgeon carcasses were found above the Wilson and Pinopolis dams in Lake Moultrie (a Santee-Cooper reservoir) during the 1990s, and also states that there is little information regarding a land-locked population existing above the dams. There is no effective fish passage for sturgeon on the Santee and Cooper Rivers, and the lowest dams on these rivers are well below the fall line, thus limiting the amount of freshwater spawning and developmental habitat for fish below the dams. In 2007, an Atlantic sturgeon entered the lock at the St. Stephens dam; it was physically removed and translocated downstream into the Santee River (A. Crosby, SCDNR, pers. comm.) In 2004, 15 subadult Atlantic sturgeon were captured in shortnose sturgeon surveys in the Santee River estuary. The previous winter, four juvenile (YOY and subadults) Atlantic sturgeon were captured from the Santee (one fish) and Cooper (three fish) rivers. These data support previous hypotheses that a fall spawning run occurs within this system, similar to that observed in other southern river systems. However, the status review report notes that SCDNR biologists have some doubt whether smaller sturgeon from the Santee-Cooper are resident YOY, as flood waters from the Pee-Dee or Waccamaw Rivers could have transported these YOY to the Santee-Cooper system via Winyah Bay and the Intracoastal Waterway (McCord, 2004). Resident YOY could, however, be evidence of a spawning population above the dams, as is the case with shortnose sturgeon (S. Bolden, pers. comm.).

From 1994 to 2001, over 3,000 juveniles have been collected in the Ashepoo-Combahee-Edisto Rivers (ACE) Basin, including 1,331 YOY sturgeon (Collins and Smith, 1997; ASSRT, 2007). Sampling for adults began in 1997, with two adult sturgeon captured in the first year of the survey, including one gravid female captured in the Edisto River and one running ripe male captured in the Combahee River. The running ripe male in the Combahee River was recaptured one week later in the Edisto River, which suggests that the three rivers that make up the ACE Basin may support a single population that spawns in at least two of the rivers. In 1998, an additional 39 spawning adults were captured (ASSRT, 2007). These captures show that a current spawning population exists in the ACE Basin, as both YOY and spawning adults are regularly captured.

The Ashley River, along with the Cooper River, drains into Charleston Bay; only shortnose sturgeon have been sampled in these rivers. While the Ashley River historically supported an Atlantic sturgeon spawning population, it is unknown whether the population still exists. There has been little or no scientific sampling for Atlantic sturgeon in the Broad/Coosawatchie River. One fish of unknown size was reported from a small directed fishery during 1981 to 1982 (Smith and Dingley, 1984).

Prior to the collapse of the fishery in the late 1800s, the sturgeon fishery was the third largest fishery in Georgia. Secor (2002) estimated from U.S. Fish Commission landing reports that approximately 11,000 spawning females were likely present prior to 1890. The sturgeon fishery was mainly centered on the Altamaha River, and in more recent years, peak landings were recorded in

1982 (13,000 lbs, 5,900 kg). Based on juvenile presence and abundance, the Altamaha River currently supports one of the healthier Atlantic sturgeon populations in the southeast (ASSRT, 2007). Atlantic sturgeon are also present in the Ogeechee River; however, the absence of age-1 fish during some years and the unbalanced age structure suggests that the population is highly stressed (Rogers and Weber, 1995). Sampling results indicate that the Atlantic sturgeon population in the Satilla River is also highly stressed (Rogers and Weber, 1995). Only four spawning adults or YOY, which were used for genetic analysis (Ong *et al.,* 1996), have been collected from this river since 1995. In Georgia, Atlantic sturgeon are believed to spawn in the Savannah, Ogeechee, Altamaha, and Satilla rivers. The Savannah River supports a reproducing population of Atlantic sturgeon (Collins and Smith, 1997). According to NOAA's National Ocean Service, 70 Atlantic sturgeon have been captured since 1999 (ASSRT, 2007). Twenty-two of these fish have been YOY. A running ripe male was captured at the base of the dam at Augusta during the late summer of 1997, which supports the hypothesis that spawning occurs there in the fall.

Reproducing Atlantic sturgeon populations are no longer believed to exist south of the Satilla River in Georgia. Recent sampling of the St. Marys River failed to locate any sturgeon, which suggests that the spawning population may be extirpated (Rogers *et al.,* 1994; NMFS 2009). In January 2010, 12 sturgeon, believed to be Atlantics, were captured at the mouth of the St. Marys during relocation trawling associated with a dredging project (J. Wilcox, Florida Fish and Wildlife Conservation Commission, Pers. Comm.), the first capture of Atlantics in the St. Marys in decades. However, because they were not YOY or adults captured upstream, these trawl-captured sturgeon do not provide new evidence of a spawning population in the St. Marys. There have been reports of Atlantic sturgeon tagged in the Edisto River (South Carolina) being recaptured in the St. Johns River, indicating this river may serve as a nursery ground; however, there are no data to support the existence of a current spawning population (*i.e.,* YOY or running ripe adults) in the St. Johns (Rogers and Weber, 1995; Kahnle *et al.,* 1998).

Identification of Distinct Population Segments

The ESA's definition of "species" includes "any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature." The high degree of reproductive isolation of Atlantic sturgeon (*i.e.,* homing to their natal rivers for spawning) (ASSRT, 2007; Wirgin *et al.,* 2000; King *et al.,* 2001; Waldman *et al.,* 2002), as well as the ecological uniqueness of those riverine spawning habitats, the genetic diversity amongst subpopulations, and the differences in life history characteristics, provide evidence that discrete reproducing populations of Atlantic sturgeon exist, which led the Services to evaluate application of the DPS policy in its 2007 status review. To determine whether any populations qualify as DPSs, we evaluated populations pursuant to the joint DPS policy, and considered: (1) The discreteness of any Atlantic sturgeon population segment in relation to the remainder of the subspecies to which it belongs; and (2) the significance of any Atlantic sturgeon population segment to the remainder of the subspecies to which it belongs.

Discreteness

The joint DPS policy states that a population of a vertebrate species may be considered discrete if it satisfies either one of the following conditions: (1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors (quantitative measures of genetic or morphological discontinuity may provide evidence of this separation) or (2) it is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of Section 4(a)(1)(D) of the ESA.

Atlantic sturgeon throughout their range exhibit ecological separation during spawning that has resulted in multiple genetically distinct interbreeding population segments. Tagging studies and genetic analyses provide the evidence of this ecological separation (Wirgin *et al.,* 2000; King *et al.,* 2001; Waldman *et al.,* 2002; ASSRT, 2007; Grunwald *et al.,* 2008). As previously discussed, though adult and subadult Atlantic sturgeon originating from different rivers mix in the marine environment (Stein *et al.,* 2004a), the vast majority of Atlantic sturgeon return to their natal rivers to spawn, with some studies showing one or two individuals per generation spawning outside their natal river system (Wirgin *et al.,* 2000; King *et al.,* 2001; Waldman *et al.,* 2002). In addition, spawning in the various river systems occurs at different times, with spawning occurring earliest in southern systems and occurring as much as 5 months later in the northernmost river systems (Murawski and Pacheco, 1977; Smith, 1985; Rogers and Weber, 1995; Weber and Jennings, 1996; Bain, 1997; Smith and Clugston, 1997; Moser *et al.,* 1998; Caron *et al.,* 2002). Therefore, the ecological separation of the interbreeding units of Atlantic sturgeon results primarily from spatial separation (*i.e.,* very few fish spawning outside their natal river systems), as well as temporal separation (spawning populations becoming active at different times along a continuum from north to south).

Genetic analyses of mitochondrial DNA (mtDNA), which is maternally inherited, and nuclear DNA (nDNA), which reflects the genetics of both parents, provides evidence of the separation amongst Atlantic sturgeon populations in different rivers (Bowen and Avise, 1990; Ong *et al.,* 1996; Waldman *et al.,* 1996a; Waldman *et al.,* 1996b; Waldman and Wirgin, 1998; Waldman *et al.,* 2002; King *et al.,* 2001; Wirgin *et al.,* 2002; Wirgin *et al.,* 2005; Wirgin and King, 2006; Grunwald *et al.,* 2008). Overall, these studies consistently found Atlantic sturgeon to be genetically diverse, and offered that between seven and ten Atlantic sturgeon population groupings can be statistically differentiated range-wide (King *et al.,* 2001; Waldman *et al.,* 2002; Wirgin *et al.,* 2002; Wirgin *et al.,* 2005; ASSRT, 2007 (Tables 4 and 5); Grunwald *et al.,* 2008).

Given a number of key differences amongst the studies (*e.g.,* the analytical and/or statistical methods used, the number of rivers sampled, and whether samples from subadults were included), it is not unexpected that each reached a different conclusion as to the number of Atlantic sturgeon population groupings. Wirgin and King (2006) refined the genetic analyses for Atlantic sturgeon to address such differences in prior studies. Most notably, they increased sample sizes from multiple rivers and limited the samples analyzed to those collected from YOY and mature adults (greater than 130 cm total length) to ensure that the fish originated from the river in which it was sampled. The results of the refined analysis by Wirgin and King (2006) are presented in the status review report (ASSRT, 2007; *e.g.,* Table 6 and Figure 17); both the mtDNA haplotype and nDNA allelic frequencies analyzed by Wirgin and King (2006) indicated that Atlantic sturgeon river populations are genetically differentiated. The results of the mtDNA analysis used for the status review

report were also subsequently published by Grunwald *et al.* (2008). In comparison to the mtDNA analyses of the status review report, Grunwald *et al.* (2008) used additional samples, some from fish in the size range (less than 130 cm) excluded by Wirgin and King because they were smaller than those considered to be mature adults. Nevertheless, the results were qualitatively the same and demonstrated that each of the 12 sampled Atlantic sturgeon populations could be genetically differentiated (Grunwald *et al.,* 2008).

Genetic distances and statistical analyses (bootstrap values and assignment test values) were used to investigate significant relationships among, and differences between, Atlantic sturgeon river populations (ASSRT, 2007; Table 6 and Figures 16–18). Overall, the genetic markers used in this analysis resulted in an average accuracy of only 88 percent for determining a sturgeon's natal river origin, but an average accuracy of 94 percent for correctly classifying it to one of five groups of populations (Kennebec River, Hudson River, James River, Albemarle Sound, and Savannah/Ogeechee/Altamaha Rivers) when using microsatellite data collected only from YOY and adults (ASSRT, 2007; Table 6). A phylogenetic tree (a neighbor joining tree) was produced from only YOY and adult samples (to reduce the likelihood of including strays from other populations) using the microsatellite analysis (ASSRT, 2007; Figure 17). Bootstrap values (which measure how consistently the data support the tree structure) for this tree were high (equal to or greater than 87 percent, and all but one over 90 percent) (ASSRT, 2007). Regarding sturgeon from southeast rivers, this analysis resulted in a range of 60 to 92 percent accuracy in determining a sturgeon's natal river origin, but 92 and 96 percent accuracy in correctly classifying a sturgeon from four sampled river populations (the Albemarle Sound, Savannah, Ogeechee, and Altamaha River populations) to two groupings of river populations (Albemarle Sound and Savannah/Ogeechee/Altamaha Rivers). These two groupings exhibited clear separation from northern populations and from each other.

Genetic samples for YOY and spawning adults were not available for river populations originating between the Albemarle Sound and the other three rivers. However, nDNA from an expanded dataset that included juvenile Atlantic sturgeon was used to produce a neighbor-joining tree with bootstrap values (ASSRT, 2007; Figure 18). This dataset included additional samples from the Santee-Cooper, Waccamaw, and Edisto populations in the Southeast. Atlantic sturgeon river populations also grouped into five population segments in this analysis. Atlantic sturgeon from the Santee-Cooper system grouped with the Albemarle Sound population, while the other two river populations grouped with the Savannah/Ogeechee/Altamaha River population segment. With the exception of the Waccamaw River population, all river populations sampled within each population segment along the entire East Coast were geographically adjacent. The Waccamaw River population grouped with the Edisto/Savannah/Ogeechee/Altamaha River population segment, even though it is geographically located between Albemarle Sound and the Santee and Cooper Rivers. However, we attributed this to the small sample size (21 fish) from the Waccamaw River. From the seven Southeast river populations included in the analysis, we determined that river populations from the ACE Basin southward grouped together and that river populations between the Santee-Cooper system and Albemarle Sound (Roanoke River) grouped together.

The higher accuracy in identifying Atlantic sturgeon to one of two population groupings (Albemarle Sound/Santee-Cooper Rivers and Ogeechee/Savannah/Altamaha/Edisto Rivers) compared to their natal rivers supports the fact that these multiple-river population segments are discrete from each other.

We have considered the information on Atlantic sturgeon population structuring provided in the status review report and Grunwald *et al.* (2008). The nDNA analyses described in the status review report provide additional genetics information, and include chord distances and bootstrap values to support the findings for population structuring of Atlantic sturgeon within the United States. Therefore, based on genetic differences observed between certain river populations and the assumption that adjacent river populations are more likely to breed with one another than river populations from rivers that are not adjacent to each other, five discrete Atlantic sturgeon population segments in the United States meet the DPS Policy's Discreteness criterion, with two located in the Southeast: (1) The "Carolina" population segment, which includes Atlantic sturgeon originating from the Roanoke, Tar/Pamlico, Cape Fear, Waccamaw, Pee Dee, and Santee-Cooper Rivers, and (2) the "South Atlantic" population segment, which includes Atlantic sturgeon originating from the ACE Basin (Ashepoo, Combahee, and Edisto rivers), Savannah, Ogeechee, Altamaha, and Satilla Rivers.

Significance

When the discreteness criterion is met for a potential DPS, as it is for the Carolina and South Atlantic population segments in the Southeast identified above, the second element that must be considered under the DPS policy is significance of each DPS to the taxon as a whole. The DPS policy cites examples of potential considerations indicating significance, including: (1) Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon; (2) evidence that loss of the discrete population segment would result in a significant gap in the range of the taxon; (3) evidence that the DPS represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; or, (4) evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

We believe that the Carolina and South Atlantic population segments persist in ecological settings unique for the taxon. This is evidenced by the fact that spawning habitat of each population grouping is found in separate and distinct ecoregions that were identified by The Nature Conservancy (TNC) based on the habitat, climate, geology, and physiographic differences for both terrestrial and marine ecosystems throughout the range of the Atlantic sturgeon along the Atlantic coast (Figure 1). TNC descriptions do not include detailed information on the chemical properties of the rivers within each ecoregion, but include an analysis of bedrock and surficial geology type because it relates to water chemistry, hydrologic regime, and substrate. It is well established that waters have different chemical properties (*i.e.,* identities) depending on the geology of where the waters originate.

Riverine spawning habitat of the Carolina population segment occurs within the Mid-Atlantic Coastal Plain ecoregion, which is described as consisting of bottomland hardwood forests, swamps, and some of the world's most active coastal dunes, sounds, and estuaries. Natural fires, floods, and storms are so dominant in this region that the landscape changes very quickly. Rivers routinely change their courses and emerge from their banks. The TNC lists the most

significant threats (sources of biological and ecological stress) in the region as: global climate change and rising sea-level; altered surface hydrology and landform alteration (*e.g.,* flood-control and hydroelectric dams, inter-basin transfers of water, drainage ditches, breached levees, artificial levees, dredged inlets and river channels, beach renourishment, and spoil deposition banks and piles); a regionally receding water table, probably resulting from both over-use and inadequate recharge; fire suppression; land fragmentation, mainly by highway development; land-use conversion (*e.g.,* from forests to timber plantations, farms, golf courses, housing developments, and resorts); the invasion of exotic plants and animals; air and water pollution, mainly from agricultural activities including concentrated animal feed operations; and over-harvesting and poaching of species. Many of the Carolina population segment's spawning rivers, located in the Mid-Coastal Plain, originate in areas of marl. Waters draining calcareous, impervious surface materials such as marl are likely to be alkaline, dominated by surface run-off, have little groundwater connection, and be seasonally ephemeral.

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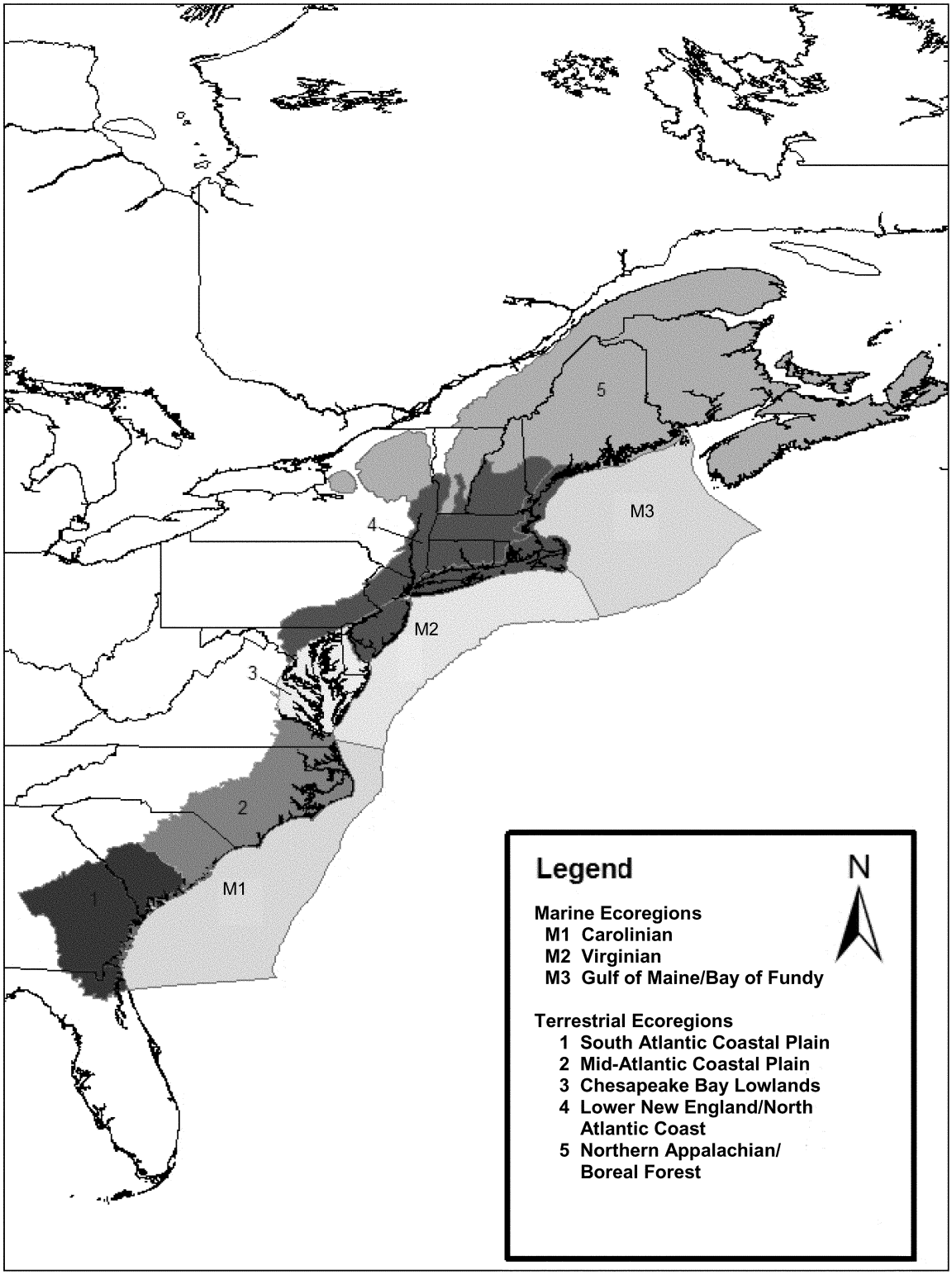

Figure 1: Map of TNC Marine and Terrestrial Ecoregions

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The riverine spawning habitat of the South Atlantic population segment occurs within the South Atlantic Coastal Plain ecoregion. TNC describes the South Atlantic Coastal Plain ecoregion as fall-line sandhills to rolling longleaf pine uplands to wet pine flatwoods; from small streams to large river systems to rich estuaries; from isolated depression wetlands to Carolina bays to the Okefenokee Swamp. Other ecological systems in the ecoregion include maritime forests on barrier islands, pitcher plant seepage bogs and Altamaha grit (sandstone) outcrops. The primary threats to biological diversity in the South Atlantic Coastal Plain listed

by TNC are intensive silvicultural practices, including conversion of natural forests to highly managed pine monocultures and the clear-cutting of bottomland hardwood forests. Changes in water quality and quantity, caused by hydrologic alterations (impoundments, groundwater withdrawal, and ditching), and point and nonpoint pollution, are threatening the aquatic systems. Development is a growing threat, especially in coastal areas. Agricultural conversion, fire regime alteration, and the introduction of nonnative species are additional threats to the ecoregion's diversity. The South Atlantic DPS' spawning rivers, located in the South Atlantic Coastal Plain, are primarily of two types: brownwater (with headwaters north of the Fall Line, silt-laden) and blackwater (with headwaters in the coastal plain, stained by tannic acids).

Therefore, the ecoregion delineations support that the physical and chemical properties of the Atlantic sturgeon spawning rivers utilized by the Carolina and South Atlantic DPSs are unique to each population segment. Since reproductive isolation accounts for the discreteness of each population segment, the Carolina and South Atlantic population segments of Atlantic sturgeon are "significant" as defined in the DPS policy given that the spawning rivers for each population segment occur in a unique ecological setting.

The loss of either the Carolina or the South Atlantic population segments of Atlantic sturgeon would create a significant gap in the range of the taxon. The loss of the Carolina population segment would result in a 475-mile (764-kilometer (km)) gap between the northern population segments and the South Atlantic population segment. The loss of the South Atlantic population segment would truncate the southern range of Atlantic sturgeon by greater than 150 miles (241 km). Though Atlantic sturgeon travel great distances in the marine environment and may use multiple river systems for foraging and nursery habitat, the range occupied by the Carolina and South Atlantic population segments would likely not be recolonized by a new, viable spawning population if either population segment was lost. Based on genetic analyses showing that fewer than two individuals per generation spawn outside their natal rivers (Secor and Waldman, 1999), we do not expect Atlantic sturgeon that originate from other population segments to re-colonize extirpated systems and establish new spawning populations, except perhaps over a long time frame (*i.e.,* many Atlantic sturgeon generations). Therefore, the loss of either the Carolina or South Atlantic population segments would result in a significant gap in the range of Atlantic sturgeon over a long time frame, and negatively impact the species as a whole because the loss of either population segment would constitute an important loss of genetic diversity for the Atlantic sturgeon.

The information presented above describes: (1) Persistence of the Carolina and South Atlantic population segments in ecological settings that are unique for the Atlantic sturgeon as a whole; and (2) evidence that loss of either population segment would result in a significant gap in the range of the taxon. Based on this information, we concur with the SRT's conclusion that the Carolina and South Atlantic population segments meet the discreteness and significance criteria outlined in the DPS policy. We hereafter refer to these DPSs as the Carolina and South Atlantic DPSs. Figure 2 shows the riverine and U.S. marine ranges of the Carolina and South Atlantic DPSs.

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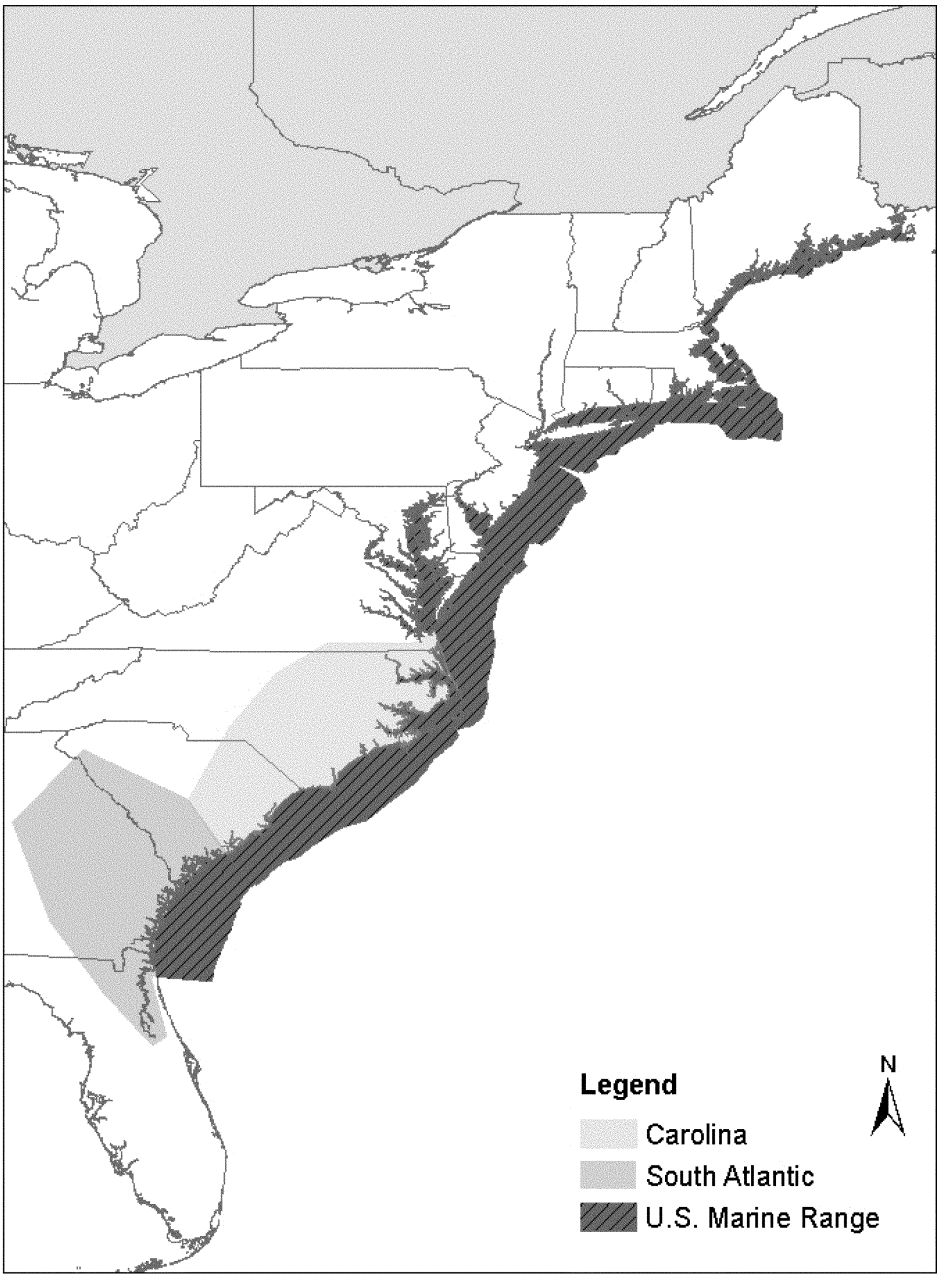

Figure 2: Depiction of the U.S. Atlantic sturgeon DPSs showing rivers in which the species are known to occur. Shading denotes the general area for each DPS in which other rivers used by Atlantic sturgeon belonging to that DPS may occur.

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Conservation Status

We will now consider the conservation status of the two DPSs in the Southeast Region's jurisdiction, the Carolina and South Atlantic DPSs, in relation to the ESA's standards for listing. We will determine whether each DPS meets the definition of "endangered" or "threatened" as defined in section 3 of the ESA, and whether that status is a result of one or a combination of the factors listed under section 4(a)(1) of the ESA. An endangered species is "any species which is in danger of extinction throughout all or a significant portion of its range" and a threatened species is one "which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range."

The abundance of Atlantic sturgeon has decreased dramatically within the last 150 years. A major fishery for Atlantic sturgeon developed in 1870 when a caviar market was established (Smith and Clugston, 1997). Record landings in the U.S. were reported in 1890, with over 7,385,000 lbs (3,350,000 kg) of Atlantic sturgeon landed from coastal rivers along the entire Atlantic Coast (Smith and Clugston, 1997; Secor and Waldman, 1999). Ten years after peak landings, the fishery collapsed in 1901, when less than 10 percent (650,365 lbs, 295,000 kg) of the U.S. 1890 peak landings were reported. The landings continued to decline coastwide, reaching about 5 percent of the peak in 1920. During the 1950s, the remaining U.S. fishery switched to targeting sturgeon for flesh, rather than caviar, and coastwide landings remained between 1 and 5 percent of the 1890 peak levels until the Atlantic sturgeon fishery was closed by ASMFC in 1998.

The Carolina DPS includes all Atlantic sturgeon that spawn in the watersheds from the Roanoke River, Virginia, southward along the southern Virginia, North Carolina, and South Carolina coastal areas to the Cooper River. The marine range of Atlantic sturgeon from the Carolina DPS extends from the Bay of Fundy, Canada, to the Saint Johns River, Florida. While Atlantic sturgeon exhibit a high degree of spawning fidelity to their natal rivers, multiple riverine, estuarine, and marine habitats may serve various life (*e.g.,* nursery, foraging, and migration) functions. Rivers known to have current spawning populations within the range of this DPS include the Roanoke, Tar-Pamlico, Cape Fear, Waccamaw, and Pee Dee Rivers. There may also be spawning populations in the Neuse, Santee and Cooper Rivers, though it is uncertain at this time. Historically, both the Sampit and Ashley Rivers were documented to have spawning populations at one time. However, the spawning population in the Sampit River is believed to be extirpated and the current status of the spawning population in the Ashley River is unknown. Both rivers may be used as nursery habitat by young Atlantic sturgeon originating from other spawning populations. This represents our current knowledge of the river systems utilized by the Carolina DPS for specific life functions, such as spawning, nursery habitat, and foraging. However, fish from the Carolina DPS likely use other river systems than those listed here for their specific life functions. The Carolina DPS also includes Atlantic sturgeon held in captivity (*e.g.,* aquaria, hatcheries, and scientific institutions) and which are identified as fish belonging to the Carolina DPS based on genetics analyses, previously applied tags, previously applied marks, or documentation to verify that the fish originated from (hatched in) a river within the range of the Carolina DPS, or is the progeny of any fish that originated from a river within the range of the Carolina DPS. NMFS has no records of Atlantic sturgeon from the Carolina DPS being held in captivity.

Historical landings data indicate that between 7,000 and 10,500 adult female Atlantic sturgeon were present in North Carolina prior to 1890 (Armstrong and Hightower, 2002; Secor, 2002). Secor (2002) estimates that 8,000 adult females were present in South Carolina during that same timeframe. Prior reductions from the commercial fishery and ongoing threats have drastically reduced the numbers of Atlantic sturgeon within the Carolina DPS. Currently, the Atlantic sturgeon spawning population in at least one river system within the Carolina DPS has been extirpated, with a potential extirpation in an additional system. The abundance of the remaining river populations within the DPS, each estimated to have fewer than 300 spawning adults, is estimated to be less than 3 percent of what it was historically (ASSRT, 2007). Though directed fishing and possession of Atlantic sturgeon is no longer legal, the Carolina DPS continues to face threats such as habitat alteration and bycatch. The presence of dams has resulted in the loss of over 60 percent of the historical sturgeon habitat on the Cape Fear River and in the Santee-Cooper system. This has resulted in the loss of important spawning and juvenile developmental habitat and has reduced the quality of the remaining habitat by affecting water quality parameters (such as depth, temperature, velocity, and dissolved oxygen) that are important to sturgeon.

The South Atlantic DPS includes all Atlantic sturgeon that spawn in the watersheds of the ACE Basin in South Carolina to the St. Johns River, Florida. The marine range of Atlantic sturgeon from the South Atlantic DPS extends from the Bay of Fundy, Canada, to the Saint Johns River, Florida. While Atlantic sturgeon exhibit a high degree of spawning fidelity to their natal rivers, multiple riverine, estuarine, and marine habitats may serve various life (*e.g.,* nursery, foraging, and migration) functions. Rivers known to have current spawning populations within this DPS include the Combahee, Edisto, Savannah, Ogeechee, Altamaha, and Satilla Rivers. Historically, both the Broad-Coosawatchie and St. Marys Rivers were documented to have spawning populations at one time; there is also evidence that spawning may have occurred in the St. Johns River or one of its tributaries. However, the spawning population in the St. Marys River, as well as any historical spawning population present in the St. Johns, is believed to be extirpated, and the status of the spawning population in the Broad-Coosawatchie is unknown. Both the St. Marys and St. Johns Rivers are used as nursery habitat by young Atlantic sturgeon originating from other spawning populations. The use of the Broad-Coosawatchie by sturgeon from other spawning populations is unknown at this time. The presence of historical and current spawning populations in the Ashepoo River has not been documented; however, this river may currently be used for nursery habitat by young Atlantic sturgeon originating from other spawning populations. This represents our current knowledge of the river systems utilized by the South Atlantic DPS for specific life functions, such as spawning, nursery habitat, and foraging. However, fish from the South Atlantic DPS likely use other river systems than those listed here for their specific life functions. The South Atlantic DPS also includes Atlantic sturgeon held in captivity (*e.g.,* aquaria, hatcheries, and scientific institutions) and which are identified as fish belonging to the South Atlantic DPS based on genetics analyses, previously applied tags, previously applied marks, or documentation to verify that the fish originated from (hatched in) a river within the range of the South Atlantic DPS, or is the progeny of any fish that originated from a river within the range of the South Atlantic DPS. Ten Atlantic sturgeon taken from the Altamaha River are currently being held at the Bears Bluff National Fish Hatchery in Warm Springs, Georgia, though it is not certain whether those fish were spawned in the Altamaha or were migrants from another river system. NMFS has no other records of Atlantic sturgeon from the South Atlantic DPS being held in captivity.

Secor (2002) estimated that 8,000 spawning female Atlantic sturgeon were present in South Carolina. Historically, the population of spawning female Atlantic sturgeon in Georgia was estimated at 11,000 fish per year prior to 1890 (Secor, 2002). Prior reductions from the commercial fishery and ongoing threats have drastically reduced

the numbers of Atlantic sturgeon within the South Atlantic DPS. Currently, the Atlantic sturgeon spawning population in one (possibly two) river systems within the South Atlantic DPS have been extirpated. The Altamaha River, with an estimated 343 spawning adults per year, is suspected to be less than 6 percent of its historical abundance, extrapolated from the 1890s commercial landings; the abundance of the remaining river populations within the DPS, each estimated to have fewer than 300 spawning adults, is estimated to be less than 1 percent of what it was historically (ASSRT, 2007). While the directed fishery that originally drastically reduced the numbers of Atlantic sturgeon has been closed, other impacts have contributed to their low population numbers, may have contributed to the extirpation of some spawning populations, and are likely inhibiting recovery of extant river populations. Historically, Atlantic sturgeon likely accessed all parts of the St. Johns River, as American shad were reported as far upstream as Lake Poinsett (reviewed in McBride, 2000). However, the construction of Kirkpatrick Dam (originally Rodman Dam) at river mile (RM) 95 (river km (RKM) 153) restricted migration to potential spawning and juvenile developmental habitat upstream. Approximately 63 percent of historical sturgeon habitat is believed to be blocked due to the dam (ASSRT, 2007), and there is no longer a spawning population in the St. Johns River.

Small numbers of individuals resulting from drastic reductions in populations, such as occurred with Atlantic sturgeon due to the commercial fishery, can remove the buffer against natural demographic and environmental variability provided by large populations (Berry, 1971; Shaffer, 1981; Soule, 1980). Though the Carolina and South Atlantic DPSs, made up of multiple river populations of Atlantic sturgeon, were determined to be genetically discrete, interbreeding population units, the vast majority of Atlantic sturgeon return to their natal rivers to spawn, with fewer than two migrants per generation spawning outside their natal system (Wirgin *et al.,* 2000; King *et al.,* 2001; Waldman *et al.,* 2002). Therefore, it is important to look at each riverine spawning population within each DPS when considering the effects of a small population size on the extinction risk for the DPS. Though there is no absolute population size above which populations are "safe" and below which they face an unacceptable risk of extinction (Gilpin and Soule, 1986; Soule and Simberloff, 1986; Ewens *et al.,* 1987; Goodman, 1987; Simberloff, 1988; Thomas, 1990), some have argued that "rules of thumb" can and should be applied (Soule, 1987; Thompson, 1991). Salwasser *et al.* (1984) prescribe a minimum viable population size of at least 1,000 adults. Belovsky (1987) indicates that a minimum viable population in the range of 1,000 to 10,000 adults should be sufficient for a mid-sized vertebrate species. Soule (1987) suggests that minimum viable population sizes for vertebrate species should be in the "low thousands" or higher. Thomas (1990) offers a population size of 5,500 as "a useful goal," but suggests that where uncertainty is extreme "we should usually aim for population sizes from several thousand to ten thousand." In a NOAA Technical Memorandum "Determining Minimum Viable Populations under the ESA," Thompson (1991) states the "50/500" rule of thumb initially advanced by Franklin (1980) and Soule (1980) comes the closest of any to attaining "magic number" status. Franklin (1980) has suggested that, simply to maintain short-term fitness (*i.e.,* prevent serious in-breeding and its deleterious effects), the minimum effective population size should be around 50. He further recommended that, to maintain sufficient genetic variability for adaptation to changing environmental conditions, the minimum effective population size should be around 500. Soule (1980) has pointed out that, above and beyond preserving short-term fitness and genetic adaptability, long-term evolutionary potential (at the species level) may well require a number of substantially larger populations. It is important to note that the 50/500 rule is cast in terms of effective population size, a concept introduced by Wright (1931). The effective population size refers to an ideal population of breeding individuals produced each generation by random union of an equal number of male and female gametes randomly drawn from the previous generation. To the extent that this ideal is violated in nature, the effective population size is generally smaller than the overall number of mature individuals in the population. It is not possible to calculate the effective population sizes of the riverine spawning populations in the Carolina or the South Atlantic DPS. However, even under ideal circumstances where the effective population size is equal to the overall numbers of adults, the spawning populations are all believed to be smaller than the 500 recommended by Thompson (1991) to maintain sufficient genetic variability for adaptation to changing environmental conditions, and certainly smaller than the 1,000 to 10,000 recommended by other authors. It is not known if certain riverine populations are at an abundance smaller than the minimum effective population size of 50 that would prevent serious in-breeding (Thompson, 1991). Moreover, in some rivers, spawning by Atlantic sturgeon may not be contributing to population growth because of lack of suitable habitat and other stressors on juvenile survival and development.

The concept of a viable population able to adapt to changing environmental conditions is critical to Atlantic sturgeon, and the low population numbers of every river population in the Carolina and South Atlantic DPSs put them in danger of extinction throughout their ranges; none of the populations are large or stable enough to provide with any level of certainty for continued existence of Atlantic sturgeon in this part of its range. While the directed fishery that originally drastically reduced the numbers of Atlantic sturgeon has been closed, recovery of depleted populations is an inherently slow process for a late-maturing species such as Atlantic sturgeon, and they continue to face a variety of other threats that contribute to their risk of extinction. Their late age at maturity provides more opportunities for individual Atlantic sturgeon to be removed from the population before reproducing. While a long life-span also allows multiple opportunities to contribute to future generations, it also increases the timeframe over which exposure to the multitude of threats facing the Carolina and South Atlantic DPS can occur. These threats include the loss, reduction, and degradation of habitat resulting from dams, dredging, and changes in water quality parameters (such as depth, temperature, velocity, and dissolved oxygen). Even with a moratorium on directed fisheries, bycatch is a threat to both the Carolina and South Atlantic DPSs. Fisheries known to incidentally catch Atlantic sturgeon occur throughout the marine range of the species and in some riverine waters as well. Because Atlantic sturgeon mix extensively in marine waters and may use multiple river systems for spawning, foraging, and other life functions, they are subject to being caught in multiple fisheries throughout their range. In addition to direct mortality, stress or injury to Atlantic sturgeon taken as bycatch but released alive may result in increased susceptibility to other threats, such as

poor water quality (*e.g.,* exposure to toxins). This may result in reduced ability to perform major life functions, such as foraging and spawning, or even post-capture mortality. While some of the threats to the Carolina and South Atlantic DPS have been ameliorated or reduced due to the existing regulatory mechanisms, such as the moratorium on directed fisheries for Atlantic sturgeon, bycatch is currently not being addressed through existing mechanisms. Further, water quality continues to be a problem even with existing controls on some pollution sources and water withdrawal, and dams continue to curtail and modify habitat, even with the Federal Power Act.

We have reviewed the status review report, as well as other available literature and information, and have consulted with scientists and fishery resource managers familiar with Atlantic sturgeon in the Carolina and South Atlantic DPSs. After reviewing the best scientific and commercial information available, we find that both the Carolina and South Atlantic DPSs are in danger of extinction throughout their ranges and thus meet the ESA's definition of an endangered species. Atlantic sturgeon populations declined precipitously decades ago due to directed commercial fishing. The failure of Atlantic sturgeon numbers within the Carolina and South Atlantic DPSs to rebound even after the moratorium on directed fishing was established in 1998 indicates that impacts and threats from limits on habitat for spawning and development, habitat alteration, and bycatch are responsible for the risk of extinction faced by both DPSs. In addition, the persistence of these impacts and threats points to the inadequacy of existing regulatory mechanisms to address and reduce habitat alterations and bycatch. We will address the threats of habitat alteration, bycatch, and the inadequacy of regulatory mechanisms and their contributions to the endangered statuses of the Carolina and South Atlantic DPSs in detail in the following sections of this proposed rule.

Analysis of Section 4(a)(1) Factors' Effects on the Species

The ESA requires us to determine whether any species is endangered or threatened because of any of the following factors: (A) Present or threatened destruction, modification, or curtailment of habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. Listing determinations are made solely on the best scientific and commercial data available and after taking into account any efforts being made by any state or foreign nation to protect the species. The SRT examined each of the aforementioned five factors for their impacts on the Atlantic sturgeon DPSs. The following is a summary of its relevant findings, any additional information that has become available since the status review report was published, and the conclusions that we have made based on the available information.

A. Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

Habitat alterations considered by the SRT that affect the status of sturgeon populations include: dam and tidal turbine construction and operation; dredging, disposal, and blasting; and water quality modifications, such as changes in levels of DO, water temperature, and contaminants. Atlantic sturgeon, like all anadromous fish, are vulnerable to a host of habitat impacts because they use rivers, estuaries, bays, and the ocean at various points of their life. In addition to the habitat alterations considered by the SRT, other emerging threats to habitat considered in this section are drought, intra- and inter-state water allocation issues, and climate change. These threats have the potential to further exacerbate habitat modifications evaluated by the SRT. Because they were not evaluated in the status review report, they are considered in more detail in this section. In this section, we summarize the threats for each DPS that we believe represent a present or threatened destruction, modification or curtailment of the DPS's habitat or range and are contributing to the endangered status of both DPSs.

Dams

Dams are a threat to the Carolina and South Atlantic DPS that contributes to their endangered status by curtailing the extent of available habitat, as well as modifying sturgeon habitat downstream through a reduction in water quality. As noted in the status review report, dams for hydropower generation, flood control, and navigation adversely affect Atlantic sturgeon habitat by impeding access to spawning, developmental and foraging habitat, modifying free-flowing rivers to reservoirs, physically damaging fish on upstream and downstream migrations, and altering water quality in the remaining downstream portions of spawning and nursery habitat. Attempts to minimize the impacts of dams using measures such as fish passage have not proven beneficial to Atlantic sturgeon, as they do not regularly use existing fish passage devices, which are generally designed to pass pelagic fish. To date, only four Atlantic sturgeon have been documented to have passed via a fish lift (three at the St. Stephens fish lift in South Carolina and one at the Holyoke Dam in Massachusetts), as these passage facilities are not designed to accommodate adult-sized sturgeon. While there has not been a large loss of Atlantic sturgeon habitat throughout the entire species' range due to the presence of dams, individual riverine systems have been severely impacted by dams, as access to large portions of historical sturgeon spawning and juvenile developmental habitat has been eliminated or restricted. The SRT used GIS tools and dam location data collected by Oakley (2003) as reference points for river kilometer measurements to map historical rivers in which Atlantic sturgeon spawned. This information was then used to determine the number of kilometers of available habitat. Within the Carolina and South Atlantic DPSs, the Cape Fear, Santee-Cooper, and St. Johns River systems have lost greater than 60 percent of the habitat historically used for spawning and juvenile development.

The Cape Fear River has three locks and dams (constructed from 1915 to 1935) between Wilmington and Fayetteville that are located below the fall line; two additional dams, Buckhorn and B. Everette Jordan, are located above the fall line. Atlantic sturgeon movement is blocked at the first lock and dam located in Riegelwood, North Carolina, which was constructed in 1915. Pelagic species can pass over the three locks and dams during high water, but the benthic Atlantic sturgeon is not known to pass over these three locks/dams. No Atlantic sturgeon have been captured upstream of Lock and Dam #1 despite extensive sampling efforts (Moser *et al.,* 1998). Exact historical spawning locations are unknown in the Cape Fear River, but Atlantic sturgeon spawning is generally believed to occur in flowing water between the salt front and fall line of large rivers (Borodin, 1925; Leland, 1968; Scott and Crossman, 1973; Crance, 1987; Bain *et al.,* 2000). Therefore, sturgeon researchers judge the fall line to be the likely upper limit of spawning habitat. Using the fall line as a guide, only 36 percent of the historical habitat is available to Atlantic sturgeon. In some years, the salt water interface reaches the first lock and dam; therefore, spawning adults in the Cape Fear River either do not spawn in such

years or spawn in the major tributaries of the Cape Fear River (*i.e.,* Black River or Northeast Cape Fear Rivers) that are not obstructed by dams.

The Santee-Cooper Hydroelectric Project is located in the coastal plain of the Santee Basin on the Santee and Cooper Rivers, South Carolina. The project was finished in 1942 and includes Lake Marion, which is impounded by the Santee Dam (Wilson Dam) on the Santee River at RM 87 (RKM 140), and Lake Moultrie, which is impounded by the Pinopolis Dam on the Cooper River at RM 48 (RKM 77). Using the fall line as the upper region of spawning habitat, it is estimated that only 38 percent of the historical habitat is available to Atlantic sturgeon today. Although fish lifts operate at the Pinopolis and St. Stephens Dams during the spring, observations of sturgeon in the lifts are extremely rare (traditional fish passage designs are not typically successful for sturgeon). There is no record of an adult Atlantic sturgeon being lifted, although three dead Atlantic sturgeon were observed in Lake Marion between 1995 and 1997, and in 2007, an Atlantic sturgeon entered the St. Stephens fishway and was physically removed and translocated downstream into the Santee River (A. Crosby, SCDNR, Pers. Comm.)

In addition to blocking access to habitat, dams can degrade spawning, nursery, and foraging habitat downstream by reducing water quality. Flow, water temperature, and oxygen levels in the Roanoke River are affected by the Kerr Dam and the Gaston Dam/Roanoke Rapids facilities, which engage in peaking operations. Riverine water flow has already been modified by the dam operators during the striped bass spawning season to simulate natural flow patterns; these modifications undoubtedly benefit Atlantic sturgeon. Regardless of the temporary modifications, lower water temperatures resulting from the hypolimnetic discharge from Kerr Dam have caused temporal shifts in the spawning peaks for both American shad and striped bass and likely have had the same impact for other diadromous species, including Atlantic sturgeon (ASSRT, 2007). High flows from Kerr Dam during the summer are coupled with high ambient temperatures and an influx of swamp water with low DO, creating a large, hypoxic plume within the river. Fish kills have been documented to occur during this time (ASSRT, 2007), and sturgeon are more highly sensitive to low DO (less than 5 milligrams per liter (mg/L)) than other fish species (Niklitschek and Secor, 2009a, 2009b). Low DO in combination with high temperature is particularly problematic for Atlantic sturgeon, and studies have shown that juvenile Atlantic sturgeon experience lethal and sublethal (metabolic, growth, feeding) effects as DO drops and temperatures rise (Niklitschek and Secor, 2009a, 2009b; Niklitschek and Secor, 2005; Secor and Gunderson, 1998). Therefore, it is likely that dam operations are negatively affecting Atlantic sturgeon nursery habitat in the lower Roanoke River.

Dredging

Dredging is a present threat to both the Carolina and South Atlantic DPSs and is contributing to their endangered status by modifying the quality and availability of Atlantic sturgeon habitat. Riverine, nearshore, and offshore areas are often dredged to support commercial shipping and recreational boating, construction of infrastructure, and marine mining. Environmental impacts of dredging include the direct removal/burial of organisms; turbidity/siltation effects; contaminant resuspension; noise/disturbance; alterations to hydrodynamic regime and physical habitat; and actual loss of riparian habitat (Chytalo, 1996; Winger *et al.,* 2000). According to Smith and Clugston (1997), dredging and filling impact important habitat features of Atlantic sturgeon as they disturb benthic fauna, eliminate deep holes, and alter rock substrates. To reduce the impacts of dredging on anadromous fish species, most of the Atlantic states impose work restrictions during sensitive time periods (spawning, migration, feeding) when anadromous fish are present. NMFS also imposes seasonal restrictions to protect shortnose sturgeon populations (where present) through Section 7 consultations that may have the added benefit of protecting Atlantic sturgeon where the two species co-occur. Within the Carolina DPS, dredging operations (including the blasting of rock) on the lower Cape Fear River, Brunswick River, and port facilities at the U.S. Army's Sunny Point Military Ocean Terminal and Port of Wilmington are extensive. To protect diadromous fish, restrictions are placed on dredging to avoid sensitive seasons and locations, such as potential spawning habitat (February 1 through June 30) and suspected nursery grounds (April 1 through September 30). However, while the restrictions prevent dredging from occurring when Atlantic sturgeon are expected to be present, the effects of dredging on Atlantic sturgeon habitat remain long after the dredging has been completed. Moser and Ross (1995) found that some of the winter holding sites favored by sturgeon in the lower Cape Fear River estuary also support very high levels of benthic infauna and may be important feeding stations. Repeated dredging in the Cape Fear River can modify sturgeon habitat through the removal or burial of benthic infauna in feeding grounds and creation of unsuitable substrate in spawning grounds (ASSRT, 2007). Similar habitat modifications are occurring in the Cooper River, which flows into Charleston Harbor, one of the busiest ports on the Atlantic Coast, and is dredged regularly. The river channel is maintained by dredging all the way to the Pinopolis Dam. No seasonal restrictions are placed on dredging in the Cooper River, potentially interrupting spawning activities (ASSRT, 2007).

In the South Atlantic DPS, maintenance dredging in Atlantic sturgeon nursery habitat in the Savannah River is frequent, and substantial channel deepening took place in 1994. The Georgia Ports Authority is seeking to expand its port facility on the Savannah River. Within the 1999 Water Resources Development Act, Congress authorized the deepening of the Savannah Navigation Channel from the current depth of –42 to –48 ft (–12.8 to –14.6 m) mean low water. Hydrodynamic and water quality models have been developed to predict changes in water quality across depth and throughout the channel. The channel deepening is predicted to alter overall water quality (*e.g.,* salinity and DO), creating inhospitable foraging/resting habitat in the lower Savannah River for sturgeon. The lower Savannah River is heavily industrialized and serves as a major shipping port. Nursery habitat in the lower river has been heavily impacted by diminished water quality and channelization. Reduced DO levels and upriver movement of the salt wedge are predicted to result from channel deepening. Sturgeon are highly sensitive to low DO, more so than other fish species (Niklitschek and Secor, 2009a, 2009b). Because Atlantic sturgeon spawn above the interface between fresh water and salt water, the upriver movement of the salt wedge will curtail the extent of Atlantic sturgeon habitat in the Savannah River. Dredging also commonly occurs within the St. Johns River and has been linked to the reduction in submerged aquatic vegetation where Atlantic sturgeon likely forage (Jordan, 2002). Though there is currently no resident spawning population in the St. Johns, it still provides nursery habitat for juvenile Atlantic sturgeon in the South Atlantic DPS (NMFS and USFWS, 1998). Over 60

percent of the historical sturgeon habitat in the St. Johns River has already been curtailed by the presence of a dam, and dredging modifies the quality of the remaining nursery habitat in the river.

Water Quality

Degraded water quality is a present threat to the Carolina and South Atlantic DPSs and is contributing to their endangered status by modifying and curtailing the extent of available habitat for spawning and nursery areas. Atlantic sturgeon rely on a variety of water quality parameters to successfully carry out their life functions. Low DO and the presence of contaminants modify the quality of Atlantic sturgeon habitat and in some cases, curtail the extent of suitable habitat for life functions. Secor (1995) noted a correlation between low abundances of sturgeon during this century and decreasing water quality caused by increased nutrient loading and increased spatial and temporal frequency of hypoxic conditions. Of particular concern is the high occurrence of low DO coupled with high temperatures in the river systems throughout the range of the Carolina and South Atlantic DPSs. Sturgeon are more highly sensitive to low DO than other fish species (Niklitschek and Secor, 2009a, 2009b) and low DO in combination with high temperature is particularly problematic for Atlantic sturgeon. Studies have shown that juvenile Atlantic sturgeon experience lethal and sublethal (metabolic, growth, feeding) effects as DO drops and temperatures rise (Niklitschek and Secor, 2009a, 2009b; Niklitschek and Secor, 2005; Secor and Gunderson, 1998). Water quality within the river systems in the range of the Carolina and South Atlantic DPSs is also negatively impacted by contaminants and large water withdrawals.

For the Carolina DPS, water quality in the Pamlico system, especially in the lower Neuse River, is highly degraded (Paerl *et al.,* 1998; Qian *et al.,* 2000; Glasgow *et al.,* 2001). The entire basin has been designated as nutrient-sensitive, and additional regulatory controls are being implemented to improve water quality. Both the Neuse and Pamlico portions of the estuary have been subject to seasonal episodes of anoxia that significantly affect the quality of Atlantic sturgeon nursery habitat. Concentrated animal feeding operations (CAFOs) cause at least some portion of the current water quality problems in the Pamlico watershed (Mallin and Cahoon, 2003). Farms that produce hogs, turkeys, and chickens have proliferated throughout the coastal portion of the basin in the last decade, with increases in both aquatic and atmospheric deposition of nitrogenous waste products. North Carolina passed a moratorium in 1997 limiting additional hog operations and is conducting a study of measures to address the problem; the moratorium was renewed in 1999 and 2003. Water quality in the Cape Fear River is poor for aquatic life, due largely to industrial development and use, including the Port of Wilmington and numerous industrial point-source discharges. Development of CAFOs in the coastal portion of the Cape Fear River basin has been especially heavy (most concentrated operations of CAFOs occur in the Cape Fear River drainage within North Carolina) and contributes to both atmospheric and aquatic inputs of nitrogenous contamination, possibly causing DO levels to regularly fall below the 5 mg/L state standard (Mallin and Cahoon, 2003). In recent years, fish kills have been observed, usually as a result of blackwater swamps (with low DO) being flushed after heavy rainfall.

Industrialization also threatens the habitat of the Carolina DPS. Paper and steel mills in the Winyah Bay system, which includes the Waccamaw, Pee Dee, and Sampit rivers, have impacted water quality. Riverine sediment samples contain high levels of various toxins including dioxins (NMFS and USFWS, 1998). Though the effects of these contaminants on Atlantic sturgeon are unknown, Atlantic sturgeon are particularly susceptible to impacts from contaminated sediments due to their benthic foraging behavior and long-life span, and effects from these compounds on fish include production of acute lesions, growth retardation, and reproductive impairment (Cooper, 1989; Sinderman, 1994). It should be noted that the effect of multiple contaminants or mixtures of compounds at sublethal levels on fish has not been adequately studied. Atlantic sturgeon use marine, estuarine, and freshwater habitats and are in direct contact through water, diet, or dermal exposure with multiple contaminants throughout their range.

Habitat utilized by the South Atlantic DPS in the Savannah River has also been modified by mercury contamination (ASSRT, 2007). While water quality in the Altamaha River is good at this time, the drainage basin is dominated by silviculture and agriculture, with two paper mills and over two dozen other industries or municipalities discharging effluent into the river. Nitrogen and phosphorus concentrations are increasing, and eutrophication and loss of thermal refugia are growing concerns for the South Atlantic DPS. In the Ogeechee River, the primary source of pollution results from non-point sources, which results in nutrient-loading and decreases in DO. These problems result from the cumulative effect of activities of many individual landowners or managers. The Ogeechee River Basin Watershed Protection Plan developed by the Georgia Environmental Protection Division (GAEPD, 2001b) states that because there are so many small sources of non-point loading spread throughout the watershed, non-point sources of pollution cannot effectively be controlled by state agency permitting and enforcement, even where regulatory authority exists. The increases in nutrients and resulting decreases in DO are coupled with increases in water temperature resulting from clearing of the riparian canopy and increased paved surface areas. Downstream sturgeon nursery habitat is compromised during hot, dry summers when water flow is minimal, and non-point sources of hypoxic waters have a greater impact on the system as potential thermal refugia are lost when the aquifer is lowered. Since 1986, average summer DO levels in the Ogeechee have dropped to approximately 4 mg/L (GAEPD, 2001b). Low DO (less than 5 mg/L), most likely due to non-point sources, was a common occurrence observed during 1998 and 1999 water quality surveys (GAEPD, 2002) in the Satilla River, which serves as both spawning and nursery habitat for sturgeon in the South Atlantic DPS. The extirpation of the Atlantic sturgeon spawning population in the St. Marys River is believed to have been caused by reduced DO levels during the summer in the nursery habitat, probably due to eutrophication from non-point source pollution (ASSRT, 2007). Both the St. Marys and St. Johns Rivers continue to be used as nursery habitat by Atlantic sturgeon in the South Atlantic DPS; however, low DO is a common occurrence during the summer months when water temperatures rise. At times, it is so severe in the St. Marys that it completely eliminates juvenile nursery habitat during the summer (D. Peterson, UGA, Pers. Comm.).

Water allocation issues are a growing threat in the Southeast and exacerbate existing water quality problems. Taking water from one basin and transferring it to another fundamentally and irreversibly alters natural water flows in both the originating and receiving basins, which can affect DO levels, temperature, and the ability of the basin of origin to assimilate pollutants

(Georgia Water Coalition, 2006). Water allocation issues increasingly threaten to exacerbate the present threat of degraded water quality on the endangered status of the Carolina DPS. Even with its generous natural supply of water, North Carolina is experiencing problems where somewhat limited natural availability of water is coupled with high demand or competition among water users. Some of these emerging pressure points are the Central Coastal Plain, where the Cretaceous aquifers have a relatively slow recharge rate; the headwater areas of the Piedmont river basins, where streamflows are greatly reduced during dry weather; and some areas near the coast and on the Outer Banks, where the natural availability of fresh water is limited (NCDENR, 2001a). Interbasin water transfers are increasingly being looked at to deal with the inadequate water availability. In 1993, the North Carolina Legislature adopted the Regulation of Surface Water Transfers Act (G.S. § 143–215.22I). This law regulates large surface water transfers between river basins by requiring a certificate from the North Carolina Environmental Management Commission. The act has been modified several times since it was first adopted, most recently in 2007 when G.S. § 143–215.22I was repealed and replaced with G.S. § 143–215.22L. A transfer certificate is required for a new transfer of 2 million gallons per day (mgd) (7,600 m^3pd) or more and for an increase in an existing transfer by 25 percent or more (if the total including the increase is more than 2 mgd). Certificates are not required for facilities that existed or were under construction prior to July 1, 1993, up to the full capacity of that facility to transfer water, regardless of the transfer amount.

The North Carolina Department of Environment and Natural Resources reports that 20 facilities, with a combined average (not maximum) daily transfer of 66.5 mgd (252,000 m^3pd), were grandfathered in when G.S. § 143–215.22I was enacted (NCDENR, 2009). Since then, five additional facilities have received certificates to withdraw up to a combined maximum total of 167.5 mgd (634,000 m^3pd). The most significant certified interbasin transfer in this group is the withdrawal of 60 mgd (227,000 m^3pd) of water from Lake Gaston (part of the Roanoke River Basin) by Virginia Beach, Virginia. Virginia Beach began pumping in 1998 following a very lengthy and contested Federal Energy Regulatory Commission (FERC) approval process, during which North Carolina opposed the withdrawals (NCDENR, 2001b). Certificates are pending for three facilities, totaling almost 60 mgd (227,000 m^3pd). This includes the Kerr Lake Regional Water System (KLRWS), a regional provider of drinking water. The KLRWS has an existing, grandfathered, surface water transfer capacity of 10 mgd (38,000 m^3pd). The grandfathered capacity allows the system to move water from the Roanoke River Basin (Kerr Lake) to sub-basins of the Tar-Pamlico River Basin. On February 18, 2009, KLRWS submitted a Notice of Intent to Request an Interbasin Transfer Certificate to the Environmental Management Commission. In that notice, KLRWS requested to increase the authorized transfer from 10 mgd to 24 mgd (38,000 m^3pd to 91,000 m^3pd), and to transfer 2.4 mgd (9,100 m^3pd) from the Roanoke River Basin to the Neuse River Basin. These transfer amounts are based on water use projections to the year 2040.

Water allocation issues also increasingly threaten to exacerbate the present threat of degraded water quality on the endangered status of the South Atlantic DPS. Water allocation issues are occurring on the Atlantic Coast of South Carolina and Georgia (Ruhl, 2003). This area is served by five major rivers—the Savannah, Altamaha (including its two major tributaries, the Oconee and Ocmulgee rivers), Ogeechee, Satilla, and St. Marys Rivers. A 2006 study by the Congressional Budget Office (CBO) reported that Georgia had the sixth highest population growth (26.4 percent) in the nation, followed by Florida (23.5 percent) (CBO, 2006). The University of Georgia (UGA) reports that the per capita water use in Georgia has been estimated to be 8 to 10 percent greater than the national average, and 17 percent higher than per capita use in neighboring states (UGA, 2002). Water shortages have already occurred and are expected to continue due to increasing periods of drought coupled with the rapid population growth expected in the region over the next 50 years (Cummings *et al.,* 2003). Two of the largest and most rapidly expanding urban areas in the Savannah River basin, Augusta-Richmond County and Savannah, currently utilize both ground water and surface water for drinking water uses (GAEPD, 2001a). Surface water use in the Savannah River basin is expected to increase in the near future, due to a population increase in the basin. Predictions for 2050 estimate the population will increase to nearly 900,000 (GAEPD, 2001a). It is important to note that the two water supply sources are not independent, because ground water discharge to streams is important in maintaining dry-weather flow. Thus, withdrawal of ground water also results in reduction in surface water flow.

The Vogtle Electric Generating Plant consists of two nuclear reactors and currently uses up to 64 mgd of water from the Savannah River to generate power. In March 2008, the Southern Nuclear Operating Company applied to the Nuclear Regulatory Commission for a license to build two additional nuclear reactors at the plant, increasing the potential water usage to 80 mgd. Up to 100 mgd (379,000 m^3pd) of Savannah River water may be withdrawn to support the growth of South Carolina communities located outside of the Savannah River basin, such as Greenville and Beaufort County (Spencer and Muzekari, 2002). While Georgia has laws restricting interbasin transfers of water, South Carolina has yet to adopt stream flow protections and does not regulate surface water withdrawals (Rusert and Cummings, 2004). Savannah has been withdrawing water from its coastal aquifer since the city became established. However, Savannah has grown to the point that the aquifer has been depleted over 100 ft (31 m) beneath the city due to growth and increased water usage. This decrease in aquifer storage water has resulted in salt water intrusion into the water wells used by Hilton Head, just north of Savannah. Currently, 5 of Hilton Head's 12 wells are unusable and the problem is expected to escalate if no action is taken to prevent further salt water intrusion. The South Carolina team on the Savannah River Basin Advisory Group has begun looking at withdrawing surface water from the Savannah River to ease the aquifer problem (State of South Carolina, 2007; Spencer and Muzekari, 2002).

New surface water withdrawal permits in the Savannah, Ogeechee, and Altamaha Rivers pose potential threats to water quality in those rivers (Alber and Smith, 2001). Approximately 126,500 people depend on the Altamaha basin for water. The Ocmulgee River, a tributary of the Altamaha, is located in North Georgia and passes through Atlanta and Macon before joining the Altamaha River. Of the seven river basins in Georgia, the Ocmulgee River Basin has the highest population of 1,714,722 people. The Ocmulgee River Basin is home to a diverse industrial and attraction base, from agriculture to defense. It has the highest agriculture production and the most agricultural water withdrawal permits in Georgia (Fisher *et al.,* 2003).

It is not known how much water is already being removed from rivers utilized by the South Atlantic DPS for spawning and nursery habitat because there is little information concerning actual withdrawals and virtually no information concerning water discharges. This is particularly the case for municipal and industrial uses because water use permits are not required for withdrawals less than 100,000 gpd (379 m^3pd) (Cummings *et al.,* 2003) and discharge permits are not required unless discharge contains selected toxic materials. Agricultural water use permits are not quantified in any meaningful way, thus neither water withdrawals nor return flows are measured (Fisher *et al.,* 2003). Large withdrawals of water (such as those for municipal use) result in reduced water quality (altered flows, higher temperatures, and lowered DO), and reduced water quality is already contributing to the endangered status of the South Atlantic DPS. Therefore, water withdrawals from the rivers in the range of the South Atlantic DPS, which are highly likely to occur based on current water shortages and increasing demand, threaten to exacerbate water quality problems that are currently modifying and curtailing Atlantic sturgeon habitat in the South Atlantic DPS.

Climate Change

Climate change threatens to exacerbate the effects of modification and curtailment of Atlantic sturgeon habitat caused by dams, dredging, and reduced water quality on the endangered status of the Carolina and South Atlantic DPSs. A major advance in climate change projections is the large number of simulations available from a broader range of climate models, run for various emissions scenarios. The Intergovernmental Panel on Climate Change (IPCC) reports in its technical paper "Climate Change and Water" that best-estimate projections from models indicate that decadal average warming over each inhabited continent by 2030 (*i.e.,* over the next 20-year period) is insensitive to the choice of emissions scenarios and is "very likely" to be at least twice as large (around 0.36 degrees Fahrenheit or 0.2 degrees Celsius per decade) as the corresponding model-estimated natural variability during the 20th century (IPCC, 2008). Continued greenhouse gas emissions at or above current rates under non-mitigation emissions scenarios would cause further warming and induce many changes in the global climate system during the 21st century, with these changes "very likely" to be larger than those observed during the 20th century. In addition, the IPCC expects the rate of warming to accelerate in the coming decades. Because 20 years is equal to at least one generation of Atlantic sturgeon (ASSRT, 2007), and possibly multiple generations in the Southeast where Atlantic sturgeon may mature as early as 5 years (Smith *et al.,* 1982), the modifying effects of climate change over the next 20 years on vital parameters of the Carolina and South Atlantic DPS' habitat will occur on a scale relevant to their endangered status. Researchers anticipate that the frequency and intensity of droughts and floods will change across the nation (CBO, 2006). The IPCC report states that the most important societal and ecological impacts of climate change in North America stem from changes in surface and groundwater hydrology (IPCC, 2008).

Both the Carolina and South Atlantic DPSs are within a region the IPCC predicts will experience decreases in precipitation. Since the status review report was completed, the Southeast experienced approximately 3 years of drought. During this time, South Carolina experienced drought conditions that ranged from moderate to extreme (South Carolina State Climatology Office, 2008). From 2006 until mid-2009, Georgia experienced the worst drought in its history. In September 2007, many of Georgia's rivers and streams were at their lowest levels ever recorded for the month, and new record low daily streamflows were recorded at 15 rivers with 20 or more years of data in Georgia (USGS, 2007). The drought worsened in September 2008. All streams in Georgia except those originating in the extreme southern counties were extremely low. While Georgia has periodically undergone periods of drought—there have been 6 periods of drought lasting from 2 to 7 years since 1903 (USGS, 2000)—drought frequency appears to be increasing (Ruhl, 2003). Abnormally low stream flows restrict access to habitat areas, reduce thermal refugia, and exacerbate water quality issues, such as water temperature, reduced DO, nutrient levels, and contaminants.

The Carolina and South Atlantic DPSs are already threatened by reduced water quality resulting from dams, inputs of nutrients, contaminants from CAFOs, industrial activities, and non-point sources, and interbasin transfers of water. The IPCC report projects with high confidence that higher water temperatures and changes in extremes in this region, including floods and droughts, will affect water quality and exacerbate many forms of water pollution—from sediments, nutrients, dissolved organic carbon, pathogens, pesticides, and salt, as well as thermal pollution, with possible negative impacts on ecosystems. In addition, sea-level rise is projected to extend areas of salinization of groundwater and estuaries, resulting in a decrease of freshwater availability for humans and ecosystems in coastal areas. Some of the most populated areas of this region are low-lying, and the threat of salt water entering into its aquifers with projected sea-level rise is a concern (U.S. Global Research Group, 2004). Existing water allocation issues would be exacerbated, leading to an increase in reliance on interbasin water transfers to meet municipal water needs, further stressing water quality. Dams, dredging, and poor water quality have already modified and curtailed the extent of suitable habitat for Atlantic sturgeon spawning and nursery habitat. Changes in water availability (depth and velocities) and water quality (temperature, salinity, DO, contaminants, etc.) in rivers and coastal waters inhabited by Atlantic sturgeon resulting from climate change will further modify and curtail the extent of suitable habitat for the Carolina DPS. Effects could be especially harmful since these populations have already been reduced to low numbers. The spawning populations within the Carolina DPS are all estimated to number fewer than the 500 recommended by Thompson (1991) to maintain sufficient genetic variability for adaptation to changing environmental conditions, and certainly smaller than the 1,000 to 10,000 recommended by other authors (Salwasser *et al.,* 1984; Belovsky, 1987; Soule, 1987; Thomas, 1990).

The SRT concluded that habitat modifications due to the placement of dams, dredging, and degraded water quality present a moderate to moderately high threat to all river populations within the Carolina DPS, with the exception of the Roanoke River. For the South Atlantic DPS, the SRT concluded that dredging and water quality issues are having a moderately low to moderate impact on the river populations. We believe that the modification and curtailment of Atlantic sturgeon habitat resulting from dams, dredging, and degraded water quality is contributing to the endangered status of both the Carolina and South Atlantic DPSs. Further, additional threats arising from water allocation and climate change threaten to exacerbate water quality problems already present throughout the range of both DPSs. Existing water allocation issues will

likely be compounded by population growth and potentially climate change. Climate change is also predicted to elevate water temperatures and exacerbate nutrient-loading, pollution inputs, and lower DO, all of which are current threats to the Carolina and South Atlantic DPSs.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Overutilization for commercial purposes is a factor that contributed to the historical drastic decline in Atlantic sturgeon populations throughout the species' range. Data on the total weight of Atlantic and shortnose sturgeon harvested were collected by each state starting in 1880, and in the late 1800s commercial fisheries were landing upwards of 6,800,000 lbs (3,084 kg) of sturgeon annually (Murawski and Pacheco, 1977). By 1905, only 15 years later, this number had dropped to 20,000 lbs (9,071 kg). The population sizes were then further reduced by overfishing in the 1900s, when the landings drastically fell to a total of 215 lbs (98 kg) in 1990 (Stein *et al.,* 2004b). The total landings recorded include shortnose sturgeon as well as Atlantic sturgeon; however, the harvest is thought to have been primarily Atlantic sturgeon due to the large mesh-size nets commonly used at that time. A complete moratorium on possession of Atlantic sturgeon has been implemented in both state and Federal waters since 1998 to eliminate the threat of directed catch and incentives to retain Atlantic sturgeon bycatch. However, Atlantic sturgeon are taken as bycatch in various commercial fisheries along the entire U.S. Atlantic Coast within inland, coastal, and Federal waters. While Atlantic sturgeon caught incidentally can no longer be legally landed, bycatch may still be a threat if fish are injured or killed in the act of being caught.

Based on their life history, Atlantic sturgeon are more sensitive to fishing mortality than other coastal fish species. They are a long-lived species, have an older age at full maturity, have lower maximum fecundity values, with 50 percent of the lifetime egg production for Atlantic sturgeon occurring later in life (Boreman, 1997). Boreman (1997) looked at the relationship between fishing mortality (F) and the corresponding percentage of the maximum lifetime egg production of an age 1 female. The F_{50} is the fishing rate at which a cohort produces 50 percent of the eggs that it would produce with no fishing effort. Boreman calculated a sustainable fishing (bycatch) mortality rate of 5 percent per year for adult Atlantic sturgeon based on the F_{50}. While many fishery models use a less conservative target fishing level of F_{30} or F_{20}, the more conservative choice of F_{50} for Atlantic sturgeon is justified by their late age at maturity and because they are periodic spawners (Boreman, 1997).

We currently do not have all the data necessary to determine whether the percentage of Atlantic sturgeon populations lost annually due to bycatch mortality exceeds a sustainable rate of 5 percent per year suggested by Boreman (1997) as we do not have abundance estimates for the Carolina and South Atlantic DPSs and bycatch remains highly underreported. However, bycatch is occurring throughout the range of the Carolina and South Atlantic DPSs of Atlantic sturgeon, and the bycatch mortality associated with the dominant fishing gear in the Southeast is relatively high. All the spawning populations in the Southeast Region are quite small, which means that the loss of a small number of fish to bycatch mortality could exceed the sustainable rate of 5 percent per year. Overutilization of Atlantic sturgeon through commercial bycatch is presently a threat to the Carolina and South Atlantic DPSs, and we believe it is contributing to their endangered status.

Mortality rates of Atlantic sturgeon taken as bycatch in various types of fishing gear range between 0 and 51 percent, with the greatest mortality occurring in sturgeon caught by sink gillnets (Stein *et al.,* 2004b; ASMFC, 2007). The ASMFC Sturgeon Technical Committee (TC) determined that bycatch losses principally occur in sink gillnet fisheries, though there may be losses in the trawl fisheries, as well. Atlantic sturgeon are particularly vulnerable to sink gillnets due to their demersal nature (tendency to be at the bottom of the water column). If the nets are not tended often enough, it can be detrimental to the sturgeon, resulting in suffocation because their operculum or gills can be held closed by the net. Using the NMFS ocean observer dataset, the NEFSC estimated that bycatch mortality of sturgeon captured in sink gillnets between 2001 and 2006 was 13.8 percent (ASMFC, 2007). The ASMFC Sturgeon TC notes that any estimate of bycatch from the NMFS ocean observer dataset will be an underestimate because bycatch is under-reported in state waters and no observer coverage exists in the South Atlantic (North Carolina to Florida) Federal waters. In addition, bycatch mortality estimates do not account for post-capture mortality. The 13.8 percent mortality rate for sink gillnets estimated by the NEFSC may further underestimate the mortality rate in sink gillnets in the Carolina and South Atlantic DPSs because bycatch survival is greater in colder water temperatures of the north compared to warmer southern waters occupied by these DPSs (ASSRT, 2007). Mortality of Atlantic sturgeon captured by trawls seems to be low, with most surveys reporting 0 percent mortality. However, these studies do not include post-capture mortality, and studies of mortality from trawl fisheries conducted in the south, where tow times are longer and water temperatures are higher, are very limited.

Sink gillnets and trawls are used throughout riverine, estuarine, and marine waters in the range of the Carolina DPS to target a wide array of finfish and shellfish. Data on Atlantic sturgeon bycatch in Albemarle and Pamlico Sound commercial fisheries come from three sources: (1) NCDMF independent gillnet surveys (IGNS) that were initially designed to monitor striped bass; (2) the NCDMF Observer Program; and (3) the NC Sea Grant Fishery Resource Grant project that examined sturgeon bycatch in the flounder fishery (White and Armstrong, 2000). The Albemarle and Pamlico IGNS used sink and drift gillnets, similar to those used by the shad/herring and the flounder fisheries. Only a few fish have been captured in the Pamlico Sound gillnet survey since 2000, although 842 Atlantic sturgeon were captured in the Albemarle Sound between 1990 and 2005. The NCDMF Observer Program sampled both the Albemarle and Pamlico Sound monthly from April 2004 to December 2005. Thirty Atlantic sturgeon were observed in Albemarle Sound, and 12 Atlantic sturgeon were observed in Pamlico Sound. Overall, five observed mortalities (12 percent of captures) occurred in June 2004 and April, August, January, and March 2005. No overall bycatch estimates have been extrapolated from these observer data. Commercial fishermen in Albemarle and Pamlico Sound and Cape Fear River reported catches of zero to two sturgeon per fishery per year. However, White and Armstrong (2000) reported that sturgeon bycatch in flounder gillnets fished from 1998 to 2000 by a single fishermen in the Albemarle Sound flounder fishery included the capture of 131 Atlantic sturgeon. Of the 131 Atlantic sturgeon captured, no mortalities were reported, although four individuals were noted as having minor injuries. These data indicate that underreporting of sturgeon bycatch is occurring in this area.

A sink gillnet survey conducted in the Cape Fear River by UNCW personnel noted that 25 percent of sturgeon intercepted (22 of 88 caught) were killed. The gillnets were set one day, checked the second, and retrieved on the third. The greatest mortality occurred during periods of highest water temperature (Moser *et al.,* 1998). This survey was continued by the NCDMF, and it has reported mortality rates of 37 percent overall. Similar to earlier findings, mortality was greatest during the summer months (June through August), averaging 49 percent (34 of 69 sturgeon died) (ASSRT, 2007). This study has been discontinued due to lack of funding. There are no estimates of bycatch in fishery dependent surveys.

Winyah Bay is currently fished for American shad (*Alosa sapidissima*) using both sink and drift gillnets. This fishery has an estimated bycatch of 158 Atlantic sturgeon per year, of which 16 percent (25 fish) die and another 20 percent are injured to some degree, although this estimate is dated (Collins *et al.,* 1996). Shad fishers also operate within the rivers, but neither fishing effort nor average numbers of Atlantic sturgeon encountered are known. Poaching of adult Atlantic sturgeon has been reported from the Winyah Bay area in recent years. Carcasses of large females have been found with the ovaries (caviar) removed.

The mouth of the Santee River, just south of Winyah Bay, has the largest shad landings in the Southeast (ASSRT, 2007), likely resulting in mortality and injury of sturgeon similar to that in the Winyah Bay shad fishery. Upriver bycatch levels are unknown. The Cooper River also has an active hook and line shad fishery because gillnets are restricted (ASSRT, 2007).

The two largest commercial fisheries likely to capture Atlantic sturgeon from the South Atlantic DPS in the state waters of South Carolina and Georgia are the American shad gillnet and shrimp trawl fisheries. Studies in Georgia on commercial gillnet fisheries for American shad showed that they accounted for 52 percent of Atlantic sturgeon bycatch and the shrimp trawl fisheries accounted for 39 percent (Collins *et al.,* 1996). The American shad fisheries use sink gillnets and drift gillnets. Collins *et al.* (1996) documented a 16 percent capture-induced mortality rate for sturgeon in the American shad fishery.

There was a directed commercial fishery for Atlantic sturgeon in the ACE Basin prior to the 1985 fishery closure. The commercial sturgeon fishery operated in the lower and middle portions of both the Combahee and Edisto rivers. Commercial shad fisheries captured some juvenile Atlantic sturgeon, but most fishermen operate upriver from the areas of greatest abundance during that time of year. The shrimp trawl fishery in St. Helena Sound also captures juveniles, as evident from tag returns (ASSRT, 2007).

Although a few commercial sturgeon fishers apparently operated in the Port Royal river system prior to 1985, the landing of only one Atlantic sturgeon has been recorded (Smith and Dingley, 1984). Little, if any, shad fishing takes place in this system. It is not known whether there is any significant bycatch in the shrimp trawl fishery in this area.

During 1989 to 1991, the commercial shad gillnet fishery's bycatch in the Savannah River included more endangered shortnose sturgeon than juvenile Atlantic sturgeon. Collins *et al.* (1996) reported that two commercial fishermen collected 14 Atlantic and 189 shortnose sturgeon over the period of 1990 to 1992. It appears that abundance within the Savannah River is extremely low, as evidenced from low bycatch and reported captures over the last 15 years. Thus, bycatch may be a more serious impact if abundance is low and fishing effort is high.

Bycatch in the shad fishery in the Ogeechee River is a heightened concern because evidence suggests that this Atlantic sturgeon population is stressed and that complete recruitment failure has occurred in some years (ASSRT, 2007). Bycatch mortality in the estuarine and lower river shad fishery is suspected to be high, but no estimates of take are available (ASSRT, 2007).

Estimated annual total bycatch of Atlantic and shortnose sturgeon in the shad gillnet fishery in the tidal portion of the Altamaha River during 1982 and 1983 averaged 372 sturgeon (Collins *et al.,* 1996). Percent mortality was not determined. During a study conducted between 1986 and 1992 in the Altamaha River, 97 of 1,534 tagged juvenile Atlantic sturgeon were recaptured primarily by shad gillnets (52 percent) and shrimp trawls (39 percent) (Collins *et al.,* 1996). Juvenile Atlantic sturgeon from the Altamaha are relatively abundant in comparison to other rivers in the region, so a large percentage of the individuals in winter mixed-stock aggregations on the shelf are likely from this river. Most sturgeon occurring as shrimp trawl bycatch are from mixed-stock aggregations. Using the percentages of Atlantic and shortnose sturgeon from the 1986 to 1992 Altamaha catch data and applying them to the 1982 and 1983 total estimated sturgeon bycatch, it is expected that 89 percent (331 fish) of the catch consisted of Atlantic sturgeon (ASSRT, 2007). Also, assuming a 10 percent bycatch mortality rate for Atlantic sturgeon from drift nets (Stein *et al.,* 2004b), the dominant gear used in the shad gillnet fishery, it is estimated that 33 Atlantic sturgeon would die each year from the fishery.

Shad fishing effort is low in the Satilla River due to an apparently depleted shad population. However, because the Atlantic sturgeon population is depleted and highly stressed, any bycatch mortality could have an impact on the population (ASSRT, 2007).

The SRT concluded that bycatch presents a moderate threat to the Carolina DPS, while the threat of bycatch to the South Atlantic DPS was characterized as moderately low in each of the populations, with the exception of the Altamaha, where bycatch was deemed to pose a moderate threat. Overutilization of Atlantic sturgeon from directed fishing caused initial severe declines in Atlantic sturgeon populations in the southeast, from which they have never rebounded. Further, we believe continued overutilization of Atlantic sturgeon from bycatch in commercial fisheries is an ongoing impact to the Carolina and South Atlantic DPSs that is contributing to their endangered status. Atlantic sturgeon are particularly vulnerable to being caught in sink gillnets; therefore, fisheries using this type of gear account for a high percentage of Atlantic sturgeon bycatch. Little data exist on bycatch in the Southeast, and high levels of bycatch underreporting are suspected. Further, total population abundances for the Carolina and South Atlantic DPSs are not available; therefore, it is not possible to calculate the percentages of the Carolina and South Atlantic DPSs subject to bycatch mortality based on the available bycatch mortality rates for individual fisheries. However, fisheries known to incidentally catch Atlantic sturgeon occur throughout the marine range of the species and in some riverine waters as well. Because Atlantic sturgeon mix extensively in marine waters and may access multiple river systems, they are subject to being caught in multiple fisheries throughout their range. Atlantic sturgeon taken as bycatch may suffer immediate mortality. In addition, stress or injury to Atlantic sturgeon taken as bycatch but released alive may result in increased susceptibility to other threats, such as poor water quality (*e.g.,* exposure to toxins and low DO). This may result in reduced ability to perform major life functions, such as foraging and spawning, or even post-

capture mortality. Several of the systems in the South Atlantic DPS (*e.g.,* the Ogeechee and the Satilla) are stressed to the degree that any level of bycatch could have an adverse impact on the status of the DPS (ASSRT, 2007).

C. Disease or Predation

Very little is known about natural predators of Atlantic sturgeon. The presence of bony scutes is likely an effective adaptation for minimizing predation of sturgeon greater than 25 mm (Gadomski and Parsley, 2005). Gadomski and Parsley (2005) have shown that catfish and other species do prey on juvenile sturgeon, and concerns have been raised regarding the potential for increased predation on juvenile Atlantic sturgeon by introduced flathead catfish (Brown *et al.,* 2005). Atlantic sturgeon populations are persisting in the Cape Fear River, North Carolina, and Altamaha River, Georgia, where flatheads have been present for many years, at least in the absence of any directed fisheries for Atlantic sturgeon. Thus, further research is warranted to determine at what level, if any, flatheads and other exotic species prey upon juvenile Atlantic sturgeon and to what extent such predation is affecting the sturgeon populations.

While some disease organisms have been identified from wild Atlantic sturgeon, they are unlikely to threaten the survival of the wild populations. Disease organisms commonly occur among wild fish populations, but under favorable environmental conditions, these organisms are not expected to cause population-threatening epidemics. There is concern that non-indigenous sturgeon pathogens could be introduced, most likely through aquaculture operations. Fungal infections and various types of bacteria have been noted to have various effects on hatchery Atlantic sturgeon. Due to this threat of impacts to wild populations, the ASMFC recommends requiring any sturgeon aquaculture operation to be certified as disease-free, thereby reducing the risk of the spread of disease from hatchery origin fish. The aquarium industry is another possible source for transfer of non-indigenous pathogens or non-indigenous species from one geographic area to another, primarily through release of aquaria fish into public waters. With millions of aquaria fish sold to individuals annually, it is unlikely that such activity could ever be effectively regulated. Definitive evidence that aquaria fish could be blamed for transmitting a non-indigenous pathogen to wild fish (sturgeon) populations would be very difficult to collect (ASSRT, 2007).

In their extinction risk analysis, the SRT ranked the threat from disease and predation as a low risk. While information on the impacts of disease and predation on Atlantic sturgeon is limited, there is nothing to indicate that either of these factors is currently having any measurable adverse impact on Atlantic sturgeon. Therefore, we concur with the SRT, and we conclude that disease and predation are not contributing to the endangered status of either the Carolina or the South Atlantic DPS.

D. Inadequacy of Existing Regulatory Mechanisms

As a wide-ranging anadromous species, Atlantic sturgeon are subject to numerous Federal (U.S. and Canadian), state and provincial, and inter-jurisdictional laws, regulations, and agency activities. These regulatory mechanisms are described in detail in the status review report (*see* Section 3.4). We believe that the inadequacy of regulatory mechanisms to control bycatch and the modification and curtailment of Atlantic sturgeon habitat is contributing to the endangered status of the Carolina and South Atlantic DPSs.

Current regulatory mechanisms have effectively removed threats from legal, directed harvest in the United States, as well as incentives for retention of bycatch. The ASMFC was given management authority in 1993 under the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA) (16 U.S.C. 5101–5108), and it manages Atlantic sturgeon through an interstate fisheries management plan (IFMP). The moratorium prohibiting directed catch of Atlantic sturgeon was developed as an Amendment to the IFMP. The ACFCMA, authorized under the terms of the ASMFC Compact, as amended (Pub. L. 103–206), provides the Secretary of Commerce with the authority to implement regulations that are compatible to ASMFC FMPs in the Exclusive Economic Zone (EEZ) in the absence of an approved Magnuson-Stevens FMP. In 1999, it was under this authority that a similar moratorium was implemented for Atlantic sturgeon in Federal waters. The Amendment includes a stock rebuilding target of at least 20 protected mature age classes in each spawning stock, which is to be achieved by imposing a harvest moratorium. The Amendment requires states to monitor, assess, and annually report Atlantic sturgeon bycatch and mortality in other fisheries. The Amendment also requires that states annually report habitat protection and enhancement efforts. Finally, the Amendment states that each jurisdiction with a reproducing population should conduct juvenile assessment surveys (including CPUE estimates, tag and release programs, and age analysis), and states with rivers that lack a reproducing sturgeon population(s) but support nursery habitat for migrating juveniles should also conduct sampling.

While the ASMFC and NMFS have made significant strides in reducing the threats from direct harvest and retention of bycatch, those threats have not been eliminated, and continued bycatch of Atlantic sturgeon is contributing to the endangered status of the Carolina and South Atlantic DPSs. Although the FMP contains requirements for reporting bycatch, fishery managers, such as the ASMFC Atlantic Sturgeon Management Board, widely accept that Atlantic sturgeon bycatch is underreported or not reported at all based on research and anecdotal evidence (ASMFC, 2005; ASSRT, 2007; White and Armstrong, 2000). Abundance estimates are available only for two river systems (the Hudson and the Altamaha) even though the FMP states that each jurisdiction with a reproducing population should conduct juvenile assessment surveys (including CPUE estimates, tag and release programs, and age analysis). While the aforementioned mechanisms have addressed impacts to Atlantic sturgeon through directed fisheries, there are currently no mechanisms in place to address the significant impacts and risks posed to Atlantic sturgeon from commercial bycatch.

State and Federal agencies are actively employing a variety of legal authorities to implement proactive restoration activities for this species, and coordination of these efforts is being furnished through the ASMFC. Due to existing state and Federal laws, water quality and other habitat conditions have improved in many riverine habitats, although many systems still have DO and toxic contaminants issues, and habitat quality and quantity continue to be affected by dams, dredging, and/or altering natural flow conditions.

Though statutory and regulatory mechanisms exist that authorize reducing the impact of dams on riverine and anadromous species, such as Atlantic sturgeon, and their habitat, these mechanisms have proven inadequate for preventing dams from blocking access to habitat upstream and degrading habitat downstream. Hydropower dams are regulated by the FERC. The Federal Power Act (FPA), originally enacted in 1920, provides for cooperation between FERC and other Federal agencies, including resource

agencies, in licensing and relicensing power projects. The FPA authorizes NMFS to recommend hydropower license conditions to protect, mitigate damages to, and enhance anadromous fish, including related habitat. The FPA also provides authority for NMFS to issue mandatory fishway prescriptions. FERC licenses have a term of 30 to 50 years, so NMFS' involvement in the licensing process to ensure the protection and accessibility of upstream habitat, and to improve habitat degraded by changes in water flow and quality from dam operations, only occurs twice or thrice a century. The FPA does not apply to non-hydropower dams, such as those operated by the Army Corps of Engineers for navigation purposes. Even where fish passage currently exists, evidence is rare that they effectively pass sturgeon, including Atlantic sturgeon. As mentioned in previous sections, dams in the Southeast are currently blocking over 60 percent of the habitat in three rivers with historical and/or current spawning Atlantic sturgeon populations (the Cape Fear River and Santee-Cooper System in the Carolina DPS and the St. Johns River in the South Atlantic DPS). In addition to the loss of important spawning and juvenile developmental habitat upstream, dam operations reduce the quality of the remaining habitat downstream by affecting water quality parameters (such as depth, temperature, velocity, and DO) that are important to Atlantic sturgeon. Therefore, the inadequacy of regulatory mechanisms to ensure safe and effective upstream and downstream passage to Atlantic sturgeon and prevent degradation of habitat downstream from dam operations in riverine habitat is contributing to the endangered status of the Carolina and South Atlantic DPSs.

Inadequacies in the regulation of water allocation also impact the South Atlantic DPS. Data concerning consumptive water use in this region are, at best, very limited. While extensive data exist concerning permitted water withdrawals, there is little information concerning actual withdrawals and virtually no information concerning water discharges. This is particularly the case for municipal and industrial uses because water use permits are not required for withdrawals less than 100,000 gpd (379 m^3pd) (Cummings *et al.,* 2003) and discharge permits are not required unless discharge contains selected toxic materials. Agricultural water use permits are not quantified in any meaningful way, thus neither water withdrawals nor return flows are measured (Fisher *et al.,* 2003). While several other states have similar permitting thresholds, the majority require permits for water withdrawals less than 100,000 gpd (379 m^3pd) and some require a permit for any water withdrawal. The State of Georgia allows access to water in amounts required to satisfy the household needs of more than 300 households without a permit (Cummings *et al.,* 2003).

Even the most fundamental requisites for basin water planning—data for historical, unimpaired flows in the coastal regions' rivers—simply do not exist (Fisher *et al.,* 2003). There are 125 river gauges in the region's 7 river basins. However, 72 of these gauges are inactive, and 28 of the remaining 53 gauges do not provide consistent flow information. Moreover, historical data from many gauges have gaps, reflecting periods (sometimes extending over months) during which the gauge was inoperative. Also, there are extensive discharge areas between the last gauge in each river system and the point at which the river discharges into the ocean—thus, there are potentially large water supplies about which absolutely nothing is known (Fisher *et al.,* 2003).

Water quality continues to be a problem, even with existing controls on some pollution sources. Data required to evaluate water allocation issues are either very weak, in terms of determining the precise amounts of water currently being used, or non-existent, in terms of our knowledge of water supplies available for use under historical hydrologic conditions in the region. Current regulatory regimes are not necessarily effective in controlling water allocation (*e.g.,* no permit requirements for water withdrawals under 100,000 gpd (379 m^3pd) in Georgia and no restrictions on interbasin water transfers in South Carolina).

In their extinction risk analysis, the SRT ranked the threat from the inadequacy of regulatory mechanisms as moderately low to moderate. While some of the threats to the Carolina and South Atlantic DPSs have been ameliorated or reduced through the existing regulatory mechanisms, such as the moratorium on directed fisheries for Atlantic sturgeon, bycatch is currently not being addressed through existing mechanisms. Further, water quality continues to be a problem even with existing controls on some pollution sources and water withdrawal, and dams continue to curtail and modify habitat, even with the Federal Power Act.

E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

The SRT considered several manmade factors that may affect Atlantic sturgeon, including impingement and entrainment, ship strikes, and artificial propagation. The vast withdrawal of water from rivers that support Atlantic sturgeon populations was considered to pose a threat of impingement and entrainment; however, data are lacking to determine the overall impact of this threat on sturgeon populations, as impacts are dependent on a variety of factors (*e.g.,* the species, time of year, location of the intake structure, and strength of the intake current). Multiple suspected boat/ship strikes have been reported in several rivers. A large number of the mortalities observed in these rivers from potential ship strikes have been of large adult Atlantic sturgeon. Lastly, potential artificial propagation of Atlantic sturgeon was also a concern to SRT members, as both stock enhancement programs and commercial aquaculture can have negative impacts on a recovering population (*e.g.,* fish disease, escapement, outbreeding depression). In order to circumvent these potential threats, stock enhancement programs follow culture and stocking protocols approved by the ASMFC. Commercial aquaculture facilities are expected to maintain disease-free facilities and have safeguards in place to prevent escapement of sturgeon into the wild. While in at least one instance cultured Atlantic sturgeon have gone unaccounted for from a commercial aquaculture facility in Florida, this is not considered to be a significant threat, as this was a rare event. Mechanisms are in place at all facilities to prevent escapement of sturgeon; facilities are all land based, and most are not located in close proximity to any Atlantic sturgeon rivers.

Along the range of Atlantic sturgeon from the Carolina and South Atlantic DPSs, most, if not all, populations are at risk of possible entrainment or impingement in water withdrawal intakes for commercial uses, municipal water supply facilities, and agricultural irrigation intakes. In North Carolina, over two billion gallons of water per day were withdrawn from the Cape Fear, Neuse, Tar, and Roanoke rivers in 1999 by agriculture and non-agricultural industries (NCDENR, 2006). Currently, there are only three surveys that have shown the direct impacts of water withdrawal on Atlantic sturgeon: (1) Hudson River Utility Surveys, (2) Delaware River Salem Power Plant

survey, and (3) Edwin I. Hatch Nuclear Power Plant (HNP) survey. The Edwin I. Hatch Nuclear power plant is located 11 miles north of Baxley, Georgia. The HNP uses a closed-loop system for main condenser cooling that withdraws from, and discharges to, the Altamaha River. Pre-operational drift surveys were conducted and only two *Acipenser* sp. larvae were collected. Entrainment samples at HNP were collected for the years 1975, 1976, and 1980, and no *Acipenser* sp. were observed in the samples (Sumner, 2004). Though most rivers have multiple intake structures which remove millions of gallons a day during the spring and summer months, it is believed that the migratory behavior of larval sturgeon allows them to avoid intake structures, since migration is active and occurs in deep water (Kynard and Horgan, 2002). Effluent from these facilities can also affect populations, as some facilities release heated water that acts as a thermal refuge during the winter months, but drastic changes in water temperature have the potential to cause mortality.

Locations that support large ports and have relatively narrow waterways are more prone to ship strikes (*e.g.,* Delaware, James, and Cape Fear rivers). One ship strike per 5 years is reported for the Cape Fear River within the Carolina DPS. Ship strikes have not been documented in any of the rivers within the South Atlantic DPS. While it is possible that ship strikes may have occurred that have gone unreported or unobserved, the lack of large ship traffic on narrow waterways within the range of the DPS may limit potential interactions.

Artificial propagation of Atlantic sturgeon for use in restoration of extirpated populations or recovery of severely depleted wild populations has the potential to be both a threat to the species and a tool for recovery. Within the range of the Carolina DPS, several attempts were made by Smith *et al.* (1980 and 1981) to hormonally-induce spawning and culture Atlantic sturgeon captured in the Atlantic Ocean off the Winyah Bay jetties. Fry were hatched in each instance, but lived less than a year. As a result of successful spawning of Hudson River Atlantic sturgeon from 1993 to 1998, USFWS' Northeast Fisheries Center (NEFC) is currently rearing five year-classes of domestic fish. These fish could potentially be used as broodstock for aquaculture operations and stock enhancement, provided that there is no risk to wild fish. Aquaculturists along the East Coast, including some in North Carolina and South Carolina, have contacted the NEFC and expressed interest in initiating commercial production of Atlantic sturgeon. In 2006, La Paz Aquaculture Group was approved by North Carolina state resource agencies and ASMFC to produce Atlantic sturgeon for flesh and caviar sales. However, their first year of production was halted because remnant storms from Hurricane Katrina destroyed their fry stock. In August 2006, ASMFC reevaluated the La Paz permit, and voted to draft an addendum to allow La Paz to acquire Atlantic sturgeon from multiple Canadian aquaculture companies (previously restricted to one company), allowing them to resume Atlantic sturgeon culture. Resource managers who reviewed the permit found the La Paz facility to pose little threat to Atlantic sturgeon or shortnose populations due to the facility location (far inland), use of a recirculating system, and land application of any discharge (ASSRT, 2007).

In the range of the South Atlantic DPS, artificial propagation has been attempted for the purposes of both restoration and commercial profit. The St. Marys Fish Restoration Committee (SMFRC) is working with Florida and Georgia to reestablish Atlantic sturgeon in the St. Marys River. Efforts are currently underway to refine restoration approaches within the system. Phase 1 of the restoration plan includes a population and habitat assessment. Field investigations are being funded through ESA Section 6 and coordinated through Georgia DNR. The State of Florida has been involved in fish sampling and will continue to explore and refine sturgeon sampling strategies. Aquatic habitat and water quality surveillance work will continue to be accomplished by the St. Johns River Water Management District, the Environmental Protection Agency, Florida Department of Environmental Protection, USFWS, TNC, and the St. Marys River Management Committee. Phase 2 of the plan would include experimental transplanting of Atlantic sturgeon to assess environmental factors, habitat use at different life-stages, contaminants, migration-homing, etc. Upon approval from the ASMFC, the SMFRC transferred 12 Atlantic sturgeon from the Altamaha River in Georgia to the Bears Bluff National Fish Hatchery in South Carolina. The SMFRC hopes to develop and refine captive propagation techniques for predictable spawning and provide fish to approved researchers.

Aquaculturists in South Carolina and Florida have also contacted the NEFC and expressed interest in initiating commercial production of Atlantic sturgeon through use of the Hudson River broodstock. In 2001, the Canadian Caviar Company shipped 18,000 Atlantic sturgeon sac fry to the University of Florida. These fry were used to conduct early larval and feeding trials. Survivors of these experiments were transferred to four aquacultural businesses: (1) Evan's Fish Farm in Pierson, Florida; (2) Watts Aquatics in Tampa, Florida; (3) Hi-Tech Fisheries of Florida in Lakeland, Florida; and (4) Rokaviar in Homestead, Florida. Evan's Fish Farm experienced a catastrophic systems failure in 2004 and currently has five Atlantic sturgeon on its premises. The farm intends to use these remaining sturgeon as broodstock and would like to acquire more Atlantic sturgeon. Watts Aquatics went out of business, and the status of the Atlantic sturgeon this farm received is unknown. Hi-Tech Fisheries of Florida currently has around 300 Atlantic sturgeon which have been transferred to a quarry, and the company is in the process of evaluating stock size and health condition. Rokaviar originally received 100 sturgeon, but due to a malfunction with the life support systems, the company now holds only 20 Atlantic sturgeon. All of these facilities are periodically screened for disease by a University of Florida Institute for Food and Agricultural Science (IFAS) veterinarian. None have reported diseases. All facilities are above the 100-year flood plain and have zero discharge, where tank culture or quarry culture is utilized (Roberts and Huff, 2004). These facilities may sell meat, fingerlings, and caviar in accordance with state, Federal, and international laws.

The SRT ranked the threats from impingement/entrainment, ship strikes, and artificial propagation as low for both DPSs, with the exception of the threat from ship strikes as moderately low for the Carolina DPS. We concur with these rankings and conclude that none of these threats are contributing to the endangered status of the DPS.

Current Protective Efforts

Section 4(b)(1)(A) of the ESA requires the Secretary, when making a listing determination for a species, to take into account those efforts, if any, being made by any State or foreign nation to protect the species. In judging the efficacy of existing protective efforts, we rely on the Services' joint "Policy for Evaluation of Conservation Efforts When Making Listing Decisions" ("PECE;" 68 FR 15100; March 28, 2003). The PECE is designed to guide determinations on whether any conservation efforts that have been recently adopted or implemented, but not yet proven to be

successful, will result in recovering the species to the point at which listing is not warranted or contribute to forming a basis for listing a species as threatened rather than endangered. The purpose of the PECE is to ensure consistent and adequate evaluation of future or recently implemented conservation efforts identified in conservation agreements, conservation plans, management plans, and similar documents when making listing decisions. The PECE provides direction for the consideration of such conservation efforts that have not yet been implemented, or have been implemented but have not yet demonstrated effectiveness. The policy is expected to facilitate the development by states and other entities of conservation efforts that sufficiently improve a species' status so as to make listing the species as threatened or endangered unnecessary.

The PECE established two basic criteria: (1) The certainty that the conservation efforts will be implemented, and (2) the certainty that the efforts will be effective. Satisfaction of the criteria for implementation and effectiveness establishes a given protective effort as a candidate for consideration, but does not mean that an effort will ultimately change the risk assessment for the species. Overall, the PECE analysis ascertains whether the formalized conservation effort improves the status of the species at the time a listing determination is made.

We evaluated the current conservation efforts underway to protect and recover Atlantic sturgeon in making our listing determination. We determined that only the following conservation efforts warrant consideration under the PECE for the Carolina and South Atlantic DPSs: the 1998 ASMFC FMP and the proposal by the SMFRC to restore Atlantic sturgeon to the St. Marys River.

The 1998 Amendment to the ASMFC Atlantic Sturgeon FMP strengthens conservation efforts by formalizing the closure of the directed fishery, and by banning possession of bycatch, eliminating any legal incentive to retain Atlantic sturgeon. However, bycatch is known to occur in several fisheries (ASMFC, 2007) and it is widely accepted that bycatch is underreported. With respect to its effectiveness, contrary to information available in 1998 when the Amendment was approved, Atlantic sturgeon bycatch mortality is a major stressor affecting the recovery of Atlantic sturgeon, despite actions taken by the states and NMFS to prohibit directed fishing and retention of Atlantic sturgeon. Therefore, there is considerable uncertainty that the Atlantic Sturgeon FMP will be effective in meeting its conservation goals. In addition, though the 1998 Amendment contains requirements for population surveys, it is highly uncertain these will be implemented, as there are limited resources for assessing current abundance of spawning females for each of the DPSs and to date, abundance estimates have only been completed for one river within the range of the two DPSs considered here. For these reasons, there is no certainty of implementation and effectiveness of the intended ASMFC FMP conservation effort for the Carolina and South Atlantic DPSs of Atlantic sturgeon.

The SMFRC is working with Florida and Georgia with the intention of reestablishing Atlantic sturgeon in the St. Marys River. Efforts are currently underway to refine restoration approaches within the system. As discussed in Section E, Phase 1 of the restoration plan includes a population and habitat assessment, and Phase 2 includes experimental transplanting of Atlantic sturgeon to assess environmental factors, habitat use at different life-stages, contaminants, migration-homing, etc. Atlantic sturgeon are believed to be extirpated in the St. Marys River. This conservation effort may increase our knowledge and understanding of Atlantic sturgeon status and habitat conditions in the St. Marys River, as well as provide methods for restoring a population there in the future. As previously discussed, artificial propagation of Atlantic sturgeon for use in restoration of extirpated populations or recovery of severely depleted wild populations has the potential to be both a threat to the species and a tool for recovery. Because it is in the earliest stages of planning, development, and authorization, the feasibility of any project or the potential degree of success for this effort is unknown. Therefore, the SMRFC efforts do not satisfy the PECE policy's standards for certainty of implementation or effectiveness.

Conclusion

Finding for the Carolina DPS

The Carolina DPS is estimated to number less than 3 percent of its historical population size (ASSRT, 2007). Prior to 1890, Secor (2002) estimated there were between 7,000 and 10,000 adult females in North Carolina and 8,000 adult females in South Carolina. Currently, there are estimated to be less than 300 spawning adults (total of both sexes) in each of the major river systems occupied by the DPS, whose freshwater range occurs in the watersheds from the Roanoke River southward along the southern Virginia, North Carolina, and South Carolina coastal areas to the Cooper River. We have reviewed the status review report, as well as other available literature and information, and have consulted with scientists and fishery resource managers familiar with the Atlantic sturgeon in the Carolina DPS. After reviewing the best scientific and commercial information available, we find that the Atlantic sturgeon Carolina DPS is in danger of extinction throughout its range as a result of a combination of habitat curtailment and alteration, overutilization in commercial fisheries, and inadequacy of regulatory mechanisms in ameliorating these impacts and threats, and we propose to list it as endangered.

Finding for the South Atlantic DPS

The South Atlantic DPS is estimated to number less than 6 percent of its historical population size (ASSRT, 2007), with all river populations except the Altamaha estimated to be less than 1 percent of historical abundance. Prior to 1890, Secor (2002) estimated there were 8,000 adult spawning females in South Carolina and 11,000 adult spawning females in Georgia. Currently, there are an estimated 343 spawning adults in the Altamaha and less than 300 spawning adults (total of both sexes) in each of the other major river systems occupied by the DPS, whose freshwater range occurs in the watersheds of the ACE Basin in South Carolina to the St. Johns River, Florida. We have reviewed the status review report, as well as other available literature and information, and have consulted with scientists and fishery resource managers familiar with the Atlantic sturgeon in the South Atlantic DPS. After reviewing the best scientific and commercial information available, we find that the Atlantic sturgeon South Atlantic DPS is in danger of extinction throughout its range as a result of a combination of habitat curtailment and alteration, overutilization in commercial fisheries, and inadequacy of regulatory mechanisms in ameliorating these impacts and threats, and we propose to list it as endangered.

Role of Peer Review

In December 2004, the Office of Management and Budget (OMB) issued a Final Information Quality Bulletin for Peer Review establishing minimum peer review standards, a transparent process for public disclosure of peer review planning, and opportunities for public participation. The OMB Bulletin, implemented under the Information

Quality Act (Pub. L. 106–554), is intended to enhance the quality and credibility of the Federal government's scientific information, and applies to influential or highly influential scientific information disseminated on or after June 16, 2005. To satisfy our requirements under the OMB Bulletin, the Atlantic sturgeon status review report was peer reviewed by six experts in the field, with their substantive comments incorporated in the final status review report.

On July 1, 1994, the NMFS and USFWS published a series of policies regarding listings under the ESA, including a policy for peer review of scientific data (59 FR 34270). The intent of the peer review policy is to ensure that listings are based on the best scientific and commercial data available. Prior to a final listing, NMFS will solicit the expert opinions of three qualified specialists selected from the academic and scientific community, Federal and State agencies, and the private sector on listing recommendations to ensure the best biological and commercial information is being used in the decisionmaking process, as well as to ensure that reviews by recognized experts are incorporated into the review process of rulemakings developed in accordance with the requirements of the ESA.

Effects of Listing

Conservation measures provided for species listed as endangered or threatened under the ESA include recovery actions (16 U.S.C. 1533(f)), critical habitat designations, Federal agency consultation requirements (16 U.S.C. 1536), and prohibitions on taking (16 U.S.C. 1538). Recognition of the species' plight through listing promotes conservation actions by Federal and state agencies, private groups, and individuals. Should the proposed listings be made final, a recovery program would be implemented, and critical habitat may be designated. Federal, state, and the private sectors will need to cooperate to conserve listed Atlantic sturgeon and the ecosystems upon which they depend.

Critical habitat is defined in section 3 of the ESA (16 U.S.C. 1532(3)) as: (1) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the ESA, on which are found those physical or biological features (a) essential to the conservation of the species and (b) that may require special management considerations or protection; and (2) specific areas outside the geographical area occupied by a species at the time it is listed upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the ESA is no longer necessary. Section 4(a)(3)(a) of the ESA (16 U.S.C. 1533(a)(3)(A)) requires that, to the extent prudent and determinable, critical habitat be designated concurrently with the listing of a species. If we determine that it is prudent and determinable, we will publish a proposed designation of critical habitat for Atlantic sturgeon in a separate rule. Public input on features and areas that may meet the definition of critical habitat for the Carolina and South Atlantic DPSs is invited.

Identifying the DPS(s) Potentially Affected by an Action During Section 7 Consultation

The Carolina and South Atlantic DPSs are distinguished based on genetic data and spawning locations. However, extensive mixing of the populations occurs in coastal waters. Therefore, the distributions of the DPSs outside of natal waters generally overlap with one another, and with fish from Northeast river populations. This presents a challenge in conducting ESA section 7 consultations because fish from any DPS could potentially be affected by a proposed project. Project location alone will likely not inform the section 7 biologist as to which populations to consider in the analysis of a project's potential direct and indirect effects on Atlantic sturgeon and their habitat. This will be especially problematic for projects where take could occur because it is critical to know which Atlantic sturgeon population(s) to include in the jeopardy analysis. One conservative, but potentially cumbersome, method would be to analyze the total anticipated take from a proposed project as if all Atlantic sturgeon came from a single DPS and repeat the jeopardy analysis for each DPS the taken individuals could have come from. However, recently funded research may shed some light on the composition of mixed stocks of Atlantic sturgeon, relative to their rivers of origin, in locations along the East Coast. The specific purpose of the study is to evaluate the vulnerability to coastal bycatch of Hudson River Atlantic sturgeon, thought to be the largest stock contributing to coastal aggregations from the Bay of Fundy to Georgia. However, the mixed stock analysis will also allow NMFS to better estimate a project's effects on different components of a mixed stock of Atlantic sturgeon in coastal waters or estuaries other than where they were spawned. Results from the study are expected in February 2011. Genetic mixed stock analysis, such as proposed in this study, requires a high degree of resolution among stocks contributing to mixed aggregations and characterization of most potential contributory stocks. Fortunately, almost all extant populations, at least those with reasonable population sizes, have been characterized in previous genetic studies, though some additional populations will be characterized in this study. Genetic testing of mixed stocks will be conducted in eight coastal locales in both the Northeast and Southeast Regions. Coastal fisheries and sites were selected based on sample availabilities, bycatch concerns, and specific biological questions (*i.e.,* real uncertainty as to stock origins of the coastal aggregation). We are specifically seeking public input on the mixing of fish from different DPSs in parts of their ranges, particularly in the marine environment.

Identification of Those Activities That Would Constitute a Violation of Section 9 of the ESA

On July 1, 1994, we and USFWS published a policy to identify, to the maximum extent possible, those activities that would or would not constitute a violation of section 9 of the ESA (59 FR 34272; July 1, 1994). The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the species' range. We will identify, to the extent known at the time of the final rule, specific activities that will not be considered likely to result in violation of section 9, as well as activities that will be considered likely to result in violation. Activities that we believe could result in violation of section 9 prohibitions against "take" of the Atlantic sturgeon in the Carolina and South Atlantic DPSs include, but are not limited to, the following: (1) Bycatch associated with commercial and recreational fisheries; (2) poaching of individuals for meat or caviar; (3) marine vessel strikes; (4) destruction of riverine, estuarine, and marine habitat through such activities as agricultural and urban development, commercial activities, diversion of water for hydropower and public consumption, and dredge and fill operations; (5) impingement and entrainment in water control structures; (6) unauthorized collecting or handling of the species (permits to conduct these activities are available for purposes of scientific research or to enhance the propagation or survival of the DPSs); (7) releasing a captive Atlantic sturgeon into the wild; and (8) harming captive Atlantic

sturgeon by, among other things, injuring or killing them through veterinary care, research, or breeding activities outside the bounds of normal animal husbandry practices. We believe that, based on the best available information, the following actions will not result in a violation of section 9: (1) Possession of Atlantic sturgeon acquired lawfully by permit issued by NMFS pursuant to section 10 of the ESA, or by the terms of an incidental take statement in a biological opinion pursuant to section 7 of the ESA; (2) Federally approved projects that involve activities such as agriculture, managed fisheries, road construction, discharge of fill material, stream channelization, or diversion for which consultation under section 7 of the ESA has been completed, and when such activity is conducted in accordance with any terms and conditions given by NMFS in an incidental take statement in a biological opinion pursuant to section 7 of the ESA; (3) continued possession of live Atlantic sturgeon that were in captivity or in a controlled environment (*e.g.,* in aquaria) at the time of this listing, so long as the prohibitions under an ESA section 9(a)(1) are not violated. If listed, NMFS will provide contact information for facilities to submit information on Atlantic sturgeon in their possession, to establish their claim of possession; and (4) provision of care for live Atlantic sturgeon that were in captivity at the time of this listing.

Section 9(b)(1) of the ESA provides a narrow exemption for animals held in captivity at the time of listing: Those animals are not subject to the import/export prohibition or to protective regulations adopted by the Secretary, so long as the holding of the species in captivity, before and after listing, is not in the course of a commercial activity; however, 180 days after listing, there is a rebuttable presumption that the exemption does not apply. Thus, in order to apply this exemption, the burden of proof for confirming the status of animals held in captivity prior to listing lies with the holder. The section 9(b)(1) exemption for captive wildlife would not apply to any progeny of the captive animals that may be produced post-listing.

References

A complete list of the references used in this proposed rule is available upon request (*see* **ADDRESSES**).

Classification

National Environmental Policy Act

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation* v. *Andrus,* 675 F. 2d 825 (6th Cir. 1981), NMFS has concluded that ESA listing actions are not subject to the environmental assessment requirements of the National Environmental Policy Act (NEPA). (*See* NOAA Administrative Order 216–6.)

Executive Order 12866, Regulatory Flexibility Act and Paperwork Reduction Act

As noted in the Conference Report on the 1982 amendments to the ESA, economic impacts cannot be considered when assessing the status of a species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act are not applicable to the listing process. In addition, this proposed rule is exempt from review under Executive Order 12866. This proposed rule does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act.

Federalism

E.O. 13132 requires agencies to take into account any federalism impacts of regulations under development. It includes specific consultation directives for situations where a regulation will preempt state law, or impose substantial direct compliance costs on state and local governments (unless required by statute). Pursuant to the Executive Order on Federalism, E.O. 13132, the Assistant Secretary for Legislative and Intergovernmental Affairs will provide notice of the proposed action and request comments from the governors of the states in which the two DPSs proposed to be listed occur.

Environmental Justice

Executive Order 12898 requires that Federal actions address environmental justice in the decision-making process. In particular, the environmental effects of the actions should not have a disproportionate effect on minority and low-income communities. The proposed listing determination is not expected to have a disproportionately high effect on minority populations or low-income populations.

Coastal Zone Management Act (16 U.S.C. 1451 et seq.)

Section 307(c)(1) of the Federal Coastal Zone Management Act of 1972 requires that all Federal activities that affect any land or water use or natural resource of the coastal zone be consistent with approved state coastal zone management programs to the maximum extent practicable. We have determined that this action is consistent to the maximum extent practicable with the enforceable policies of approved Coastal Zone Management Programs of each of the states within the range of the two DPSs. Letters documenting NMFS' determination, along with the proposed rule, will be sent to the coastal zone management program offices in each affected state. A list of the specific state contacts and a copy of the letters are available upon request.

List of Subjects in 50 CFR Part 224

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: September 24, 2010.

Eric C. Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 224 is proposed to be amended as follows:

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 224 continues to read as follows:

Authority: 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 *et seq.*

2. In § 224.101(a), amend the table by adding entries for Atlantic Sturgeon-Carolina DPS and Atlantic Sturgeon-South Atlantic DPS at the end of the table to read as follows:

§ 224.101 Enumeration of endangered marine and anadromous species.

* * * * *

Species [1]		Where listed	Citation(s) for listing determination(s)	Citation(s) for critical habitat designation(s)
Common name	Scientific name			
*	*	* * * * * *	*	
Atlantic Sturgeon—Carolina DPS.	*Acipenser oxyrinchus oxyrinchus*.	The Carolina DPS includes all Atlantic sturgeon that spawn in the watersheds from the Roanoke River, Virginia, southward along the southern Virginia, North Carolina, and South Carolina coastal areas to the Cooper River. The marine range of Atlantic sturgeon from the Carolina DPS extends from the Bay of Fundy, Canada, to the Saint Johns River, Florida. The Carolina DPS also includes Atlantic sturgeon held in captivity (*e.g.,* aquaria, hatcheries, and scientific institutions) and which are identified as fish belonging to the Carolina DPS based on genetics analyses, previously applied tags, previously applied marks, or documentation to verify that the fish originated from (hatched in) a river within the range of the Carolina DPS, or is the progeny of any fish that originated from a river within the range of the Carolina DPS.	[INSERT FR CITATION & DATE WHEN PUBLISHED AS A FINAL RULE].	NA.
Atlantic Sturgeon—South Atlantic DPS.	*Acipenser oxyrinchus oxyrinchus*.	The South Atlantic DPS includes all Atlantic sturgeon that spawn in the watersheds of the ACE Basin in South Carolina to the St. Johns River, Florida. The marine range of Atlantic sturgeon from the South Atlantic DPS extends from the Bay of Fundy, Canada, to the Saint Johns River, Florida. The South Atlantic DPS also includes Atlantic sturgeon held in captivity (*e.g.,* aquaria, hatcheries, and scientific institutions) and which are identified as fish belonging to the South Atlantic DPS based on genetics analyses, previously applied tags, previously applied marks, or documentation to verify that the fish originated from (hatched in) a river within the range of the South Atlantic DPS, or is the progeny of any fish that originated from a river within the range of the South Atlantic DPS.	[INSERT FR CITATION & DATE WHEN PUBLISHED AS A FINAL RULE].	NA.

[1] Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, *see* 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, *see* 56 FR 58612, November 20, 1991).

* * * * *

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Federal Register

Wednesday,
October 6, 2010

Part III

Department of Labor

Employee Benefits Security Administration

Proposed Exemptions From Certain Prohibited Transaction Restrictions; Notice

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Exemptions From Certain Prohibited Transaction Restrictions

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).

This notice includes the following proposed exemptions: D–11576, Bank of America, NA *et al.;* D–11591, Citigroup Inc. and its affiliates (Citigroup), the Citigroup 401(k) Plan, the Citibuilder 401(k) Plan for Puerto Rico the (Citibuilder Plan) and collectively with the Citigroup 401(k) Plan, the Participant Directed Plans, the Citigroup Pension Plan (and collectively with the Participant Directed Plans, the Plans) (the Applicants); and D–11611, The West Coast Bancorp 401(k) Plan (the Plan); *et al.*

DATES: 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.

ADDRESSES: 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.

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.

Warning: If you submit written comments or hearing requests, do not include any personally-identifiable or confidential business information that you do not want to be publicly-disclosed. All comments and hearing requests are posted on the Internet exactly as they are received, and they can be retrieved by most Internet search engines. The Department will make no deletions, modifications or redactions to the comments or hearing requests received, as they are public records.

SUPPLEMENTARY INFORMATION:

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).

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.

Bank of America, NA et al. Located in Charlotte, North Carolina. Exemption Application Number D–11576

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA or the Act), and section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code), and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[1]

Section I. Covered Transactions

If the proposed exemption is granted, the restrictions of sections 406(a) and 406(b) of the Act and the sanctions resulting from the application of 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply: (a) Effective January 1, 2009: (1) To the operation of the RPT Stable Value Agreements, pursuant to the terms thereof, and to the receipt of a fee by BANA in connection therewith; and (2) to transactions under the RPT Stable Value Agreements (the RPT Wrap-Related Transactions); (b) effective April 23, 2009: (1) To the execution of the RPT Special Purpose Wrap Agreement; (2) to the operation of the RPT Special Purpose Wrap Agreement, pursuant to the terms thereof, and to the receipt of a fee by BANA in connection therewith; and (3) to transactions under the RPT Special Purpose Wrap Agreement (the Special Purpose Wrap-Related Transactions); and (c) effective January 1, 2009: (1) To the operation of the Separately Managed Account Wrap Agreements, pursuant to the terms thereof, and to the receipt of a fee by BANA in connection therewith; and (2) to transactions under the Separately Managed Account Wrap Agreements (the Separately Managed Account Wrap-Related Transactions), provided that the following conditions, as applicable, have been met.

Section II. Conditions Applicable to Transactions Described in Section I(a)

(a) Effective June 1, 2009, B1ackRock Advisors may change the formula for calculating the Crediting Rate with respect to the Global Wrap Account or the Global Buy and Hold Account (either, a Global Account) only after obtaining prior approval from:

(1) Each financial institution that has entered into a wrap agreement covering assets included in the applicable Global Account; and

[1] For purposes of this proposed exemption, references to section 406 of ERISA should be read to refer as well to the corresponding provisions of section 4975 of the Code.

(2) The Independent Fiduciary, after BlackRock Advisors has provided the Independent Fiduciary with any information that the Independent Fiduciary has reasonably requested in determining whether to approve the proposed change in the Crediting Rate formula;

(b) BANA may not reset a Crediting Rate attributable to a Global Account more frequently than on a monthly basis unless:

(1) A crediting rate attributable to a non-BANA wrap agreement covering assets in the same Global Account is reset more frequently than on a monthly basis; and

(2) BANA resets the Crediting Rate at the same time, and in the same manner, as such other non-BANA wrap agreement crediting rate;

(c) Each financial institution entering into a wrap agreement covering assets included in a Global Account obtains information from BlackRock Advisors on a monthly basis regarding the investments included in such Global Account. This information must be sufficiently detailed to enable the financial institution to independently verify that the applicable Crediting Rate was calculated properly;

(d) The fee received by BANA in connection with the BANA RPT Global Wrap Agreement or the BANA RPT Buy and Hold Wrap Agreement will be reasonable relative to market conditions and risks, as determined annually by the Independent Fiduciary. Notwithstanding the above, in no event shall the fee received by BANA under the BANA RPT Global Wrap Agreement or the BANA RPT Buy and Hold Wrap Agreement exceed the maximum percentage fee paid to any other financial institution pursuant to a wrap agreement covering assets in the applicable Global Wrap Account or the Global Buy and Hold Account, as relevant;

(e) The Trustee may trigger immunization with respect to the BANA RPT Global Wrap Agreement only if:

(1) The Trustee triggers immunization with respect to another wrap agreement covering assets in the Global Wrap Account immediately prior to, or at the same time as, the Trustee triggers immunization with respect to the BANA RPT Global Wrap Agreement; or

(2) A financial institution not affiliated with BANA triggers immunization with respect to assets in the Global Wrap Account immediately prior to, or at the same time as, the Trustee triggers immunization with respect to the BANA RPT Global Wrap Agreement; or

(3) The Trustee determines that BANA is no longer financially responsible and the Independent Fiduciary determines that immunization is in the interests of Plans invested in RPT;

(f) Assets held in RPT will be valued at their current fair market value on a daily basis utilizing the following BlackRock firm-wide approved valuation process:

(1) Valuations will be performed without regard to whether the security is held in RPT or another account or commingled vehicle advised by BlackRock;

(2) Valuations will be based on the price that may be obtained in a current arm's-length sale to an unrelated third party;

(3) BlackRock will first obtain prices for securities from independent third-party sources, including index providers, broker-dealers and independent pricing services. BlackRock will maintain a hierarchy that prioritizes pricing sources by asset class or type and will value securities based on the price generated by the highest priority source. The hierarchy may vary by asset class or type, but not for a particular security;

(4) If no third-party sources are available to value a security or the price generated by the third-party falls outside specified statistical norms and after review BlackRock determines that such price is not reliable, BlackRock will value the security using an analytic methodology in accordance with its written valuation policy. If BlackRock values a security using such analytic methodology, the Independent Fiduciary will review that methodology and valuation and will obtain its own valuation if it deems appropriate; and

(5) Values determined in accordance with (1) through (4) above will be provided to each financial institution that has entered into a wrap agreement covering assets in the Global Wrap Account or the Global Buy and Hold Account, as the case may be;

(g) Each financial institution that has entered into a wrap agreement covering assets in the Global Wrap Account and/or the Global Buy and Hold Account, including BANA, may raise an objection regarding a particular security's valuation, regardless of the source of such valuation. Once an objection is raised, wrap providers other than BANA may determine a new valuation for such security and BANA must accept this new valuation, provided that BANA is given reasonably satisfactory documentation supporting the new valuation;

(h) Prior to a Plan sponsor's decision to include RPT as an investment option for its Plan's participants, the Trustee will provide the Plan sponsor with the following:

(1) RPT's Declaration of Trust (as amended and restated as of April 23, 2009, and as may be further amended from time to time);

(2) A purchase agreement to be entered into by the Plan fiduciary and the Trustee;

(3) Upon request, a copy of the Annual Report for RPT and a fact sheet describing RPT's investment objective and strategy and a performance analysis; and

(4) A copy of this proposed exemption or, if granted, a copy of the final exemption;

(i) The Trustee will provide the following ongoing disclosures to Plan fiduciaries regarding a Plan's investment in RPT:

(1) The Annual Report for RPT; and

(2) The Plan's Investment Summary and Accounting;

(j) Plan participants will be provided the following disclosures regarding their investment in RPT:

(1) Prior to and following their initial investment, information describing the investment objectives and performance of RPT; and

(2) A statement, delivered at least quarterly, that sets forth the value of the participant's account contributions, withdrawals, distributions, loans and change in value since the prior statement;

(k) The Independent Fiduciary must receive a copy of any RPT Stable Value Agreement amendment prior to the effective date of such amendment. The Independent Fiduciary must review and approve the amendment prior to its implementation, except that no such review and approval shall be required for an amendment that is purely ministerial in nature;

(l) The dollar amount of Global Wrap Account assets covered by the BANA RPT Global Wrap Agreement shall not exceed 50% of the total assets held in such Account, and the terms associated with the BANA RPT Global Wrap Agreement at the time such Agreement was entered into, amended, modified or renewed shall be no less favorable to RPT than the terms associated with comparable agreements with unrelated parties;

(m) The dollar amount of Global Buy and Hold Account assets covered by the BANA RPT Buy and Hold Wrap Agreement shall not exceed 60% of the total assets held in such Account, and the terms associated with the BANA RPT Buy and Hold Wrap Agreement at

the time such Agreement was entered into, amended, modified or renewed shall be no less favorable to RPT than the terms associated with comparable agreements with unrelated parties; and

(n) Any RPT Wrap-Related Transaction that involves: (1) the exercise by BANA, the Trustee, or BlackRock Advisors of their rights under the RPT Stable Value Agreements; or (2) the performance by BANA, the Trustee, or BlackRock of their obligations under the RPT Stable Value Agreements, shall be subject to prior review and approval by the Independent Fiduciary if such exercise or performance affects the Crediting Rate or would otherwise have an adverse impact on the book value of a participant's or beneficiary's investment in RPT.

Section III. Conditions Applicable to Transactions Described in Section I(b)

(a) Below Investment Grade Securities will be transferred automatically to a RPT account (the Type D1 Account) and covered by the RPT Special Purpose Wrap Agreement. The RPT Special Purpose Wrap Agreement shall cover up to in the aggregate $200 million of the following:

(1) Book value of Downgraded Securities that have not been sold; and/or

(2) Aggregate unamortized realized losses with respect to sold Downgraded Securities;

(b) The Minimum Ratio shall be maintained;

(c) The total book value of the assets included in the Type D1 Account and covered by the RPT Special Purpose Wrap, including the Permitted Securities, will not exceed $700 million without the prior written consent of the Trustee, BlackRock Advisors, BANA and the Independent Fiduciary;

(d) The crediting rate with respect to the Type D1 Account (the Type D1 Account Crediting Rate) shall be 0.00% at times when there are unamortized losses (whether realized or unrealized) attributable to Downgraded Securities in the Type D1 Account, calculated in accordance with the provisions of the RPT Special Purpose Wrap Agreement. In the event there are no unamortized losses (*i.e.,* neither realized nor unrealized) recorded to the Type D1 Account which relate to Downgraded Securities, the Type D1 Account Crediting Rate shall be determined in accordance with a formula that has been reviewed by the Independent Fiduciary;

(e) Effective June 1, 2009, BlackRock Advisors may change the formula for calculating the Type D1 Account Crediting Rate only after obtaining prior approval from BANA and the Independent Fiduciary. BlackRock Advisors shall provide the Independent Fiduciary with any information it may reasonably request in determining whether to approve a proposed change in the Type D1 Account Crediting Rate formula;

(f) The Type D1 Account Crediting Rate will not be reset more frequently than on a monthly basis;

(g) Permitted Securities will have a maximum duration of 3.5 years at the time of purchase;

(h) The fee charged by BANA for the RPT Special Purpose Wrap will be reasonable relative to market conditions and risks, as determined annually by the Independent Fiduciary. Notwithstanding the above, in no event shall the fee received by BANA under the BANA RPT Global Wrap Agreement or the BANA RPT Buy and Hold Wrap Agreement exceed the maximum percentage fee paid to any other financial institution pursuant to a wrap agreement covering assets in the applicable Global Wrap Account or the Global Buy and Hold Account, as relevant, as determined annually by the Independent Fiduciary. Notwithstanding the above, in no event shall such fee exceed 15 basis points per annum of the total book value of assets included in the Type D1 Account;

(i) Assets covered by the RPT Special Purpose Wrap Agreement will be valued in accordance with the methodology specified in section II(f) above, provided, however, that if the Independent Fiduciary obtains a valuation, such valuation will be binding on BANA;

(j) The Trustee has the right to immunize the portfolio of securities included in the Type D1 Account only if BANA elects to terminate the RPT Special Purpose Wrap Agreement, or if BANA defaults under the RPT Special Purpose Wrap Agreement. If an immunization election becomes effective (the RPT Special Purpose Immunization Date), the RPT Special Purpose Wrap Agreement would terminate on the later of: (1) The date that is the number of years after the RPT Special Purpose Immunization Date which does not extend beyond the modified duration (as defined in the RPT Special Purpose Wrap Agreement) of the underlying assets on the RPT Special Purpose Immunization Date; or (2) the first date on which the market value of the underlying assets equals or exceeds the book value under the wrap agreement;

(k) No Below Investment Grade Securities will be added to the RPT Special Purpose Wrap Agreement after April 23, 2011, unless otherwise agreed by BANA, the Trustee, and the Independent Fiduciary. No party to the RPT Special Purpose Wrap Agreement is obligated to amend or extend the RPT Special Purpose Wrap Agreement;

(l) The tasks performed by the Independent Fiduciary will include:

(1) Determining whether the RPT Special Purpose Wrap Agreement and the portfolio arrangement for the Type D1 Account (including the wrap fee payable to BANA, the Minimum Ratio, the prefunding of the RPT Special Purpose Wrap Agreement and the formula for resetting the Type D1 Account Crediting Rate) are prudent and in the best interest of participants and beneficiaries of Plans investing in RPT;

(2) Reviewing valuations generated by BlackRock (in connection with the RPT Special Purpose Wrap Agreement) in any situation where BlackRock is unable to obtain a reliable valuation from independent third party sources. If, after such review, the Independent Fiduciary deems appropriate, the Independent Fiduciary will obtain an independent valuation which will be binding on the parties;

(3) Reviewing and monitoring whether the Type D1 Account Crediting Rate is calculated correctly;

(4) Monitoring the addition and removal of Below Investment Grade Securities and any changes in Permitted Securities in the Type D1 Account, and opining, in a written report, whether such addition, removal or change is appropriate;

(5) If BANA objects to the calculation by the Trustee or its designee of the Type D1 Account Crediting Rate or the information used to calculate the Type D1 Account Crediting Rate, the Independent Fiduciary will make a conclusive and binding determination regarding such calculation or information;

(6) Determining whether to approve any proposed change to the Type D1 Account Crediting Rate formula, including any proposed adjustment to the duration component of the Type D1 Account Crediting Rate formula;

(7) No later than April 30, 2011, working with BANA, BlackRock, and the Trustee to review and determine whether additional Below Investment Grade Securities may be transferred to the Type D1 Account and be covered by the RPT Special Purpose Wrap Agreement;

(8) Making an initial and, thereafter, annual determination regarding whether the fee described in paragraph (h) of this section is reasonable relative to the specific attributes of the RPT Special Purpose Wrap Agreement;

(9) Making an annual determination regarding whether the continued maintenance of the RPT Special Purpose Wrap Agreement is appropriate and in the interest of Plans;

(10) Making a monthly determination regarding whether the appropriate Type D1 Crediting Rate formula is being used; and

(11) Reviewing and approving any amendment to a RPT Special Purpose Wrap Agreement consistent with paragraph (n) of this section;

(m) Any Special Purpose Wrap-Related Transaction that involves: (1) The exercise by BANA, the Trustee, or BlackRock Advisors of their rights under the RPT Special Purpose Wrap Agreement; or (2) the performance by BANA, the Trustee, or BlackRock of their obligations under the RPT Special Purpose Wrap Agreement, shall be subject to prior review and approval by the Independent Fiduciary if such exercise or performance affects the Type D1 Crediting Rate or otherwise would have an adverse impact on the book value of a participant's or beneficiary's investment in RPT; and

(n) The Independent Fiduciary must receive a copy of any RPT Special Purpose Wrap Agreement amendment prior to the effective date of such amendment. The Independent Fiduciary must review and approve the amendment prior to its implementation, except that no such review and approval shall be required for an amendment that is purely ministerial in nature.

Section IV. Conditions Applicable to Transactions Described in Section I(c)

(a) Effective June 1, 2009, BlackRock Advisors may change the formula for calculating the Crediting Rate with respect to each Separately Managed Account Wrap Agreement only after obtaining prior approval from BANA and the Independent Fiduciary. BlackRock Advisors shall provide the Independent Fiduciary with any information it may reasonably request in determining whether to approve a proposed change in the Crediting Rate formula;

(b) Effective June 1, 2009, the Crediting Rate will be reset no more frequently than on a monthly basis;

(c) BANA will not receive a fee under the BANA Wal-Mart Separately Managed Wrap Agreement in excess of the maximum percentage fee received by any other Tier 3 Wrap Provider in the Wal-Mart Separately Managed Account; and BANA will not receive a fee under the BANA Hertz Separately Managed Wrap Agreement in excess of the maximum percentage fee received by any other financial institution that has entered into a wrap agreement covering assets in the Hertz Separately Managed Account;

(d) Assets covered under each Separately Managed Account Wrap Agreement will be valued in accordance with the same methodology specified in section II(f) above; provided, however, that if BANA objects to the valuation of any asset, the Independent Fiduciary will make a binding determination of the value of the asset;

(e) The tasks performed by the Independent Fiduciary will include:

(1) Conducting a monthly review of the Crediting Rate, including, confirming: (A) The book value of the portfolio of assets wrapped by each Separately Managed Account Wrap Agreement; (B) the valuation of securities; (C) the duration of securities; (D) the market yield of securities; and (E) that the Crediting Rate formula was calculated properly;

(2) Reviewing and approving any proposed amendment to a Separately Managed Wrap Agreement consistent with paragraph (i) below;

(3) Reviewing any exercise of contract provisions by any of BANA, BlackRock Advisors or, in the case of the BANA Wal-Mart Separately Managed Wrap Agreement, the Trustee, and analyze its potential impact on investors;

(4) Evaluating any changes to the fees paid to BANA under each Separately Managed Account Wrap Agreement to determine reasonableness relative to market conditions and risks; and

(5) Providing quarterly reports to BlackRock Advisors and to the named fiduciaries of the Wal-Mart Plan and the Hertz Plan. These reports must certify that the Independent Fiduciary has reviewed the factors described above and state whether BlackRock Advisors has complied with all requirements of the contract. The Independent Fiduciary will inform the named fiduciaries of a Plan if it believes that BANA or BlackRock Advisors has taken any actions that are not in the best interests of the participants and beneficiaries in the Wal-Mart Plan or the Hertz Plan, as relevant;

(f) The Separately Managed Account Wrap Agreements shall authorize the Independent Fiduciary to:

(1) Review and approve any proposed changes in the formula for calculating the Crediting Rate, prior to implementation of any such change;

(2) If BlackRock Advisors generates its own valuation, review the valuation, and if the Independent Fiduciary deems appropriate, obtain an independent valuation, which shall be binding on the parties, subject to BANA's right to raise an objection to any valuation;

(3) If BANA objects to the valuation of any asset, make a binding determination of the value of the asset;

(g) The named fiduciaries (or their authorized representatives) for the Wal-Mart Plan have the right to terminate BlackRock Advisors, as investment manager for the Wal-Mart Separately Managed Account, on 90 days' written notice. The named fiduciaries (or their authorized representatives) for the Hertz Plan have the right to terminate B1ackRock Advisors as investment manager for the Hertz Separately Managed Account, on 30 days' written notice;

(h) Any Separately Managed Account Wrap-Related Transaction that involves: (1) The exercise by BANA, the Trustee, or BlackRock Advisors of their rights under a Separately Managed Account Wrap Agreement; or (2) the performance by BANA, the Trustee, or BlackRock of their obligations under a Separately Managed Wrap Agreement: shall be subject to prior review and approval by the Independent Fiduciary if such exercise or performance affects the Crediting Rate or otherwise would have an adverse impact on the book value of a participant's or beneficiary's investment in RPT;

(i) The Independent Fiduciary must receive a copy of any amendment contemplated for a Separately Managed Wrap Agreement. The Independent Fiduciary must review and approve the amendment prior to its implementation, except that no such review and approval shall be required for an amendment that is purely ministerial in nature; and

(j) BlackRock may not terminate a Separately Managed Account Wrap Agreement without the prior approval of the Independent Fiduciary.

Section V. General Conditions

(a) BlackRock Advisors shall maintain in the United States the records necessary to enable the persons described in (b) below to determine whether the conditions of this exemption, if granted, were met, except that:

(1) If the records necessary to enable the persons described in (b) below to determine whether the conditions of the exemption have been met are lost or destroyed, due to circumstances beyond the control of BlackRock Advisors, then no prohibited transaction will be considered to have occurred solely on the basis of the unavailability of those records; and

(2) No party in interest other than BlackRock Advisors shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by sections 4975(a) and

(b) of the Code if the records have not been maintained or are not available for examination as required by paragraph (b) below;

(b) Except as provided in paragraph (c) of this section V and notwithstanding the provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in section V(a) are unconditionally available for examination during normal business hours at their customary location to the following persons or an authorized representative thereof:

(1) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(2) Any fiduciary of a Plan participating in RPT or the Hertz Plan or the Wal-Mart Plan;

(3) Any participant or beneficiary of a Plan participating in RPT or the Hertz Plan or the Wal-Mart Plan; or

(4) The Independent Fiduciary.

(c) None of the persons described above in paragraphs (2), (3), and (4) of paragraph (b) of this section V shall be authorized to examine trade secrets of BlackRock, BANA, the Trustee or any of their Affiliates, or any commercial or financial information which is privileged or confidential. Should BlackRock Advisors refuse to disclose information on the basis that such information is exempt from disclosure, BlackRock Advisors shall, by the close of the thirtieth (30th) day following the request, provide written notice advising that person of the reason for the refusal and that the Department may request such information; and

(d) Promptly following any publication of a final exemption in the **Federal Register**, the Trustee or BlackRock Advisors will provide a copy of the final exemption to the Plan sponsor of each Plan invested in RPT, and to the Plan sponsor of the Hertz Plan, and to the Plan sponsor of the Wal-Mart Plan.

Section VI. Definitions

(a) The term Act means: The Employee Retirement Income Security Act of 1974, as amended;

(b) The term Affiliate means: Any person, directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such person;

(c) The term BANA means: Bank of America, N.A. and its Affiliates;

(d) The term BANA Hertz Separately Managed Wrap Agreement means: The agreement dated as of July 27, 2007 (and amended effective as of December 31, 2008) among BANA, BlackRock Advisors (as investment manager for a portion of the assets of the Hertz Plan), and the Bank of New York Mellon (the successor by operation of law to Mellon Bank N.A., and the trustee of the trust created pursuant to the Hertz Plan), as such agreement may be amended from time to time, pursuant to which BANA provides a book value benefit responsive facility with respect to a portion of the assets held in the Hertz Separately Managed Account;

(e) The term BANA RPT Buy and Hold Wrap Agreement means: The agreement dated as of October 16, 1996, between Barclays Bank PLC and the Trustee (as assigned to BANA as of April 1, 1998, and amended effective as of December 31, 2008), as such agreement may be amended from time to time, pursuant to which BANA provides a book value benefit responsive facility with respect to an undivided portion of the assets held in the Global Buy and Hold Account;

(f) The term BANA RPT Global Wrap Agreement means: The agreement dated as of May 1, 2004 (and amended effective as of December 31, 2008) between BANA and the Trustee, as such agreement may be amended from time to time, pursuant to which BANA provides a book value benefit responsive facility with respect to an undivided portion of the assets held in the Global Wrap Account;

(g) The term BANA Wal-Mart Separately Managed Wrap Agreement means: The agreement dated as of August 19, 2003 (and amended effective as of December 31, 2008) between BANA and the Trustee, as such agreement may be amended from time to time, pursuant to which BANA provides a book value benefit responsive facility with respect to a portion of the assets held in the Wal-Mart Separately Managed Account;

(h) The term Below Investment Grade Security means: Securities that cease to be covered by a benefit responsive contract in RPT (other than by the RPT Special Purpose Wrap Agreement) solely as a result of a downgrade in the credit rating of the security to below Baa3, BBB- or BBB- by Moody's Investors Services, Inc., Standard & Poor's Rating Group, or Fitch Ratings, respectively; provided, however, that a Below Investment Grade Security shall not include any security that is an Impaired Security;

(i) The term BlackRock means: BlackRock, Inc.;

(j) The term BlackRock Advisors means: BlackRock Investment Management, LLC and its Affiliates;

(k) The term Code means: The Internal Revenue Code of 1986, as amended;

(l) The term Crediting Rate means: The crediting rate described in sections II and IV that is used for purposes of determining the accrued interest to be added to the book value of an individual's account within RPT or the Separately Managed Accounts;

(m) The term Downgraded Security means: A Below Grade Investment Security that is held in the Type D1 Account and covered by the RPT Special Purpose Wrap Agreement;

(n) The term Global Buy and Hold Account means: The book account or sub-account maintained within RPT for purposes of identifying certain assets relating to the BANA RPT Buy and Hold Wrap Agreement;

(o) The term Global Wrap Account means: The book account or sub-account maintained within RPT for purposes of identifying certain assets relating to the BANA RPT Global Wrap Agreement;

(p) The term Hertz Plan means: The Hertz Corporation Income Savings Plan;

(q) The term Hertz Separately Managed Account means: The separately managed stable value account advised by BlackRock Advisors on behalf of the Hertz Plan;

(r) The term Impaired Security means: (i) A security with respect to which the issuer or guarantor has failed to make one or more payments of principal or interest (after giving effect to any applicable grace period under the terms of such security or prescribed by any change in law, regulation, ruling or other governmental action); (ii) a security with respect to which the principal or interest has become due and payable before it otherwise would have been due or payable other than: (x) By reason of a call or other prepayment of such security made in accordance with its terms that does not constitute a default under such security, or (y) solely on account of any change in law, regulation, ruling or other governmental action; (iii) a security where the rate of interest thereon has been reset other than: (x) Pursuant to the original terms of such security, or (y) solely on account of any change in law, regulation, ruling or other governmental action; or (iv) a security with respect to which the issuer becomes insolvent or institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditor's rights;

(s) The term Independent Fiduciary means an entity that is: (1) Experienced and knowledgeable in ERISA and the transactions and arrangements described herein; (ii) independent of and unrelated to BANA, Merrill,

BlackRock, and their Affiliates; and (iii) appointed to act on behalf of Plans investing in RPT or the Separately Managed Accounts with respect to the matters described herein. The Independent Fiduciary will not be deemed to be independent of and unrelated to BANA, Merrill, BlackRock, and their Affiliates if: (i) Such fiduciary directly or indirectly controls, is controlled by or is under common control with BANA, Merrill, or BlackRock; (ii) such fiduciary directly or indirectly receives any compensation or other consideration in connection with any transaction described in this exemption, if granted, other than for acting as an Independent Fiduciary in connection with the transactions described herein, provided that the amount or payment of such compensation is not contingent upon, or in any way affected by, the Independent Fiduciary's ultimate decision; and (iii) the annual gross revenue received by the Independent Fiduciary, during any year of its engagement, from BANA, Merrill, BlackRock, and any of their Affiliates, exceeds five percent (5%) of the Independent Fiduciary's annual gross revenue from all sources (for federal income tax purposes) for its prior tax year;

(t) The term Minimum Ratio means: A ratio of 2.5 to 1.0 of market value of Permitted Securities to the total unamortized unrealized and realized losses with respect to Downgraded Securities;

(u) The term Permitted Securities means any security that: (i) Is a U.S. Treasury debenture, a security issued by the Government National Mortgage Association or a security guaranteed by the Federal Deposit Insurance Corporation; and (ii) has a modified duration on the date of purchase by RPT of 3.5 years or less;

(v) The term Plan means: An employee benefit plan within the meaning of and subject to Title I of the Act or an individual retirement account within the meaning of section 4975 of the Code;

(w) The term RPT means: The Merrill Lynch Retirement Preservation Trust maintained by the Trustee;

(x) The term RPT Special Purpose Wrap Agreement means: The agreement dated as of April 23, 2009, as amended, between BANA and the Trustee, pursuant to which BANA provides a book value benefit responsive facility with respect to an undivided portion of the assets held in the Type D1 Account;

(y) The term RPT Stable Value Agreements means: The BANA RPT Global Wrap Agreement and the BANA RPT Buy and Hold Wrap Agreement;

(z) The term Separately Managed Accounts means: The Hertz Separately Managed Account and the Wal-Mart Separately Managed Account;

(aa) The term Separately Managed Account Wrap Agreements means: The BANA Wal-Mart Separately Managed Wrap Agreement and the BANA Hertz Separately Managed Wrap Agreement;

(bb) The term Type D1 Account means: The book account maintained within RPT for purposes of identifying Downgraded Securities, including unamortized losses with respect to Downgraded Securities that have been sold, and Permitted Securities covered by the RPT Special Purpose Wrap Agreement;

(cc) The term Tier 3 Wrap Provider means: A financial institution that has entered into a wrap agreement with respect to assets held in the Wal-Mart Separately Managed Account that will not be accessed for purposes of making benefit payments until after two tiers of buffer assets are accessed;

(dd) The term Trustee means: Bank of America, N.A.;

(ee) The term Wal-Mart Plan means: The Wal-Mart Profit Sharing and 401(k) Plan and the Wal-Mart Puerto Rico Profit Sharing and 401(k) Plan;

(ff) The term Wal-Mart Separately Managed Account means: The separately managed stable value account advised by BlackRock Advisors on behalf of the Wal-Mart Plan;

(gg) The term Merrill means: Merrill Lynch & Co., Inc. and its Affiliates;

(hh) The term RPT Wrap-Related Transaction means: (1) The determination, calculation of and adjustments to the Crediting Rate, and any changes to the Crediting Rate formula; (2) valuations of securities covered by the BANA RPT Stable Value Agreements; (3) payment of wrap fees and any changes to wrap fees; (4) the purchase and sale of any security covered by the RPT Stable Value Agreements; (5) BANA's or the Trustee's exercise of its right to immunize or terminate the RPT Stable Value Agreements; (6) amendments to the RPT Stable Value Agreements; and (7) any other exercise by BANA, the Trustee, or BlackRock Advisors of their rights, or any performance by BANA, the Trustee, or BlackRock of their obligations, under the Stable Value Agreements;

(ii) The term Special Purpose Wrap-Related Transaction means: (1) The transfer of Below Investment Grade Securities to the Type D1 Account; (2) the sale or transfer of Downgraded Securities out of the Type D1 Account; (3) the purchase and sale of certain other securities permitted to be held in the Type D1 Account; (4) transactions relating to maintenance of a minimum ratio of Permitted Securities and Downgraded Securities; (5) the determination, calculation of and adjustments to the Type D1 Account Crediting Rate and any changes to the Type D1 Account Crediting Rate formula; (6) valuations of securities covered by the RPT Special Purpose Wrap Agreement; (7) payment of and any changes to wrap fees; (8) BANA's or the Trustee's exercise of its right to immunize or terminate the RPT Special Purpose Wrap Agreement; (9) the entering into and amendment of the RPT Special Purpose Wrap Agreement; and (10) any exercise by BANA, the Trustee, or BlackRock Advisors of their rights, or any performance by BANA, the Trustee, or BlackRock of their obligations, under the RPT Special Purpose Wrap Agreement;

(jj) The term Separately Managed Account Wrap-Related Transaction means: (1) The determination, calculation of and adjustments to the Crediting Rate, and any changes to the Crediting Rate formula; (2) valuations of securities covered by the Separately Managed Account Wrap Agreements; (3) payment of wrap fees and any changes to wrap fees; (4) the purchase and sale of any security covered by the Separately Managed Account Wrap Agreements; (5) BANA's or the Trustee's exercise of its right to terminate the Separately Managed Wrap Agreements; (6) amendments to the Separately Managed Wrap Agreements; and (7) any other exercise by BANA, the Trustee, or BlackRock Advisors of their rights, or any performance by BANA, the Trustee, or BlackRock of their obligations, under the Separately Managed Wrap Agreements.

Summary of Facts and Representations

1. Applicants

A. Bank of America, NA (BANA). BANA is a wholly-owned indirect subsidiary of Bank of America Corporation (BAC). BANA is engaged in a general consumer banking, commercial banking and trust business, offering a wide range of commercial, corporate, international, financial market, retail and fiduciary banking services.

B. Merrill Lynch & Co., Inc. (Merrill). Merrill is a holding company that, through its affiliates, provides broker-dealer, investment banking, financing, advisory, wealth management, insurance, lending and related products and services. Merrill's subsidiaries included Merrill Lynch Bank & Trust Co., FSB (MLTC). MLTC merged into BANA during the fourth quarter of 2009.

C. BlackRock, Inc. (BlackRock). BlackRock is an investment management firm that, as of December 31, 2008, had approximately $1.307 trillion in assets under management.

D. Merrill/BAC Merger. On September 15, 2008, BAC and Merrill entered into an agreement and plan of merger pursuant to which, effective as of the closing of the transactions contemplated thereby, a new, wholly-owned subsidiary of BAC merged with and into Merrill (the Merrill/BAC Merger). The Merrill/BAC Merger closed on January 1, 2009, at which time Merrill became a wholly-owned subsidiary of BAC and an affiliate of BANA.

E. Merrill/BlackRock Transaction. On September 29, 2006, Merrill contributed Merrill Lynch Investment Managers, LLC and various other assets and subsidiaries that comprised its investment management business to BlackRock. As a result of that transaction (the Merrill/BlackRock Transaction), from September 29, 2006, though December 26, 2008, Merrill held an approximate 49% ownership interest in BlackRock and held 45% of the outstanding voting securities of BlackRock. Pursuant to an exchange agreement between Merrill and BlackRock, dated as of December 26, 2008, Merrill reduced its voting interest in BlackRock to 4.9%. However, Merrill retained an approximate 49.5% equity interest in BlackRock.

F. BlackRock/Barclays Acquisition. On December 1, 2009, BlackRock acquired Barclays Global Investors. As part of this transaction, Merrill Lynch's economic ownership of BlackRock was reduced to 34.2%. Merrill Lynch currently has a 3.4% voting interest in BlackRock.

2. The Application

The application submitted by the Applicants includes the following: An overview of stable value funds; a description of the Retirement Preservation Trust (RPT) stable value fund; a request for retroactive and prospective exemptive relief for the operation of, and certain transactions under, two stable value wrap agreements entered into between MLTC and BANA with respect to certain assets of the RPT; a request for retroactive and prospective exemptive relief for the execution and operation of, and certain transactions under, a "special purpose" wrap agreement entered into between MLTC and BANA with respect to certain assets of RPT; a request for retroactive and prospective exemptive relief for the operation of and transactions under two stable value wrap agreements entered into by BANA with respect to single plan separately managed accounts advised by BlackRock Advisers, a BlackRock affiliate, on behalf of the Hertz Plan and the Wal-Mart Plan; and numerous representations by Fiduciary Counselors Inc., who is currently the independent fiduciary (the Independent Fiduciary) responsible for representing the interests of the Hertz Plan, the Wal-Mart Plan, and employee benefit plans (Plans) investing in RPT for purposes of the transactions described in this proposed exemption, if granted.

Paragraphs 3–9. Applicants' Overview of Stable Value Funds

3. Stable value funds are intended as conservative investment options that provide preservation of principal, liquidity and current income at levels that are typically higher than those provided by money market funds. To achieve this objective, stable value funds invest in traditional and synthetic guaranteed investment contracts (GICs). A traditional GIC is an investment contract that guarantees payments on deposits at a specified rate and is typically purchased through an insurance company. In a synthetic GIC structure, the plan or plan asset fund retains title to an underlying portfolio of fixed income assets and purchases a "wrap agreement" from a bank, insurance company or other financial institution. Synthetic GICs permit diversification away from the credit risk of an insurance company and provide an opportunity to achieve higher returns through an actively managed portfolio.

4. Under the terms of standard wrap agreements, the wrap provider agrees that payments to participants upon retirement, death, disability, employment termination, hardship or transfer to a non-competing investment alternative (generally referred to as "benefit responsive payments") will be made based on "book value," regardless of fluctuations in the market value of the underlying portfolio of assets. Book value generally represents the value of deposits (*i.e.,* the principal amount invested) plus interest (accumulated at a "credited rate") minus withdrawals and minus adjustments for assets that become impaired.[2] This provision of book value accounting at the participant level is the core feature of a stable value fund. However, not all payments to participants are made at book value. For example, withdrawals arising from a plan's decision to transfer to a competing investment alternative, or certain actions initiated by a plan sponsor, may be paid at market value, which could be less than book value depending on the performance of the underlying investment portfolio.

5. A wrap agreement does not guarantee that the book value of the wrapped assets will increase by a specified rate of return. Rather, interest is credited to the underlying portfolio based on a formula that is designed to equal the actual total rate of return on the underlying portfolio over time, while smoothing the gains and losses. To achieve this smoothing, the difference between the market value of the underlying portfolio and the book value of the underlying portfolio is amortized through periodic adjustments to the rate at which interest is credited to the book value of the underlying portfolio. The rate at which interest is credited is determined by means of a formula (the crediting rate formula) which takes into account the yield to maturity and the duration of the underlying portfolio as well as the ratio of the market value of the underlying portfolio to the book value.

6. Stable value funds generally include: (1) a liquidity fund that may or may not be covered by a wrap agreement; and (2) multiple portfolios of assets, each covered by a different wrap agreement. The wrap agreements include rules establishing the priority for obtaining cash for withdrawals from the assets included in the stable value fund. Generally, these rules require that withdrawals be first met from new cash and then from the liquidity fund. Once these sources are exhausted, withdrawals are funded by selling securities in wrapped portfolios. Thus, for example, in the event there are significant participant withdrawals during a bond-market downturn (an environment in which there could be a significant difference between the wrap contract book value and the market value of the wrapped assets) the stable value fund would first access liquid assets in the fund in an attempt to make book value payments. Once those are exhausted, wrapped assets would be sold in a pre-specified order to provide liquidity needed to make book value payments. If all of the assets covered by a particular wrap contract were sold, and if the proceeds were insufficient to meet the book value payment, the wrap provider would pay the difference between the sale proceeds and the book value under the wrap contract before securities in the next lower tier would be sold to fund withdrawals.

7. Wrap agreements can generally be terminated by either party (*i.e.,* the

[2] The Applicants describe an impaired security as including a security with respect to which the issuer or guarantor has failed to make one or more payments of principal or interest.

trustee of the stable value fund or the wrap provider) at market value. However, most wrap agreements have immunization provisions whereby if the wrap agreement is terminated: (1) More conservative investment guidelines (*i.e.,* more conservative than the guidelines in effect before the immunization) will apply to the underlying portfolio; and (2) the wrap provider will continue to provide book value coverage until a date that is generally determined by reference to the underlying portfolio. If wrap contracts were terminable by the wrap provider on short notice at a time when the market value of the wrapped assets was below the wrapped contract book value, and another wrap provider could not be found as a substitute, the unwrapped assets would be immediately revalued down to their fair market value. Immunization is a "middle ground," and provides a means of winding down and terminating a contract that otherwise would be "evergreen." Immunization effectively permits an open-ended contract to be converted to a contract with a deferred termination date. During the immunization period, the wrapped contract continues to be "benefit responsive" and investors continue to receive payments at book value.

8. Fees for wrap agreements are generally based on a percentage of the book value of assets covered by a wrap agreement. The fee is frequently paid from the assets of the Plan or Plan asset fund. The amount of the fee will vary depending upon the risk taken and the market conditions when the wrap agreement is negotiated. Since book value payments generally could occur when investments are moved to another non-competing investment option, when retirees or other inactive participants withdraw money from a plan and when participants take in-service withdrawals, book value payments are neither predictable nor controllable by the wrap provider. Notwithstanding that wrap contracts are structured in a manner that is intended to mitigate the risk of higher than expected or untimely participant withdrawals, the risk remains greater than zero. Fees for wrap agreements would be significantly higher if the wrap provider guaranteed the actual performance of the assets wrapped in circumstances beyond those described above.

9. In the current distressed economic climate, the number of financial institutions that are willing to enter into wrap agreements has declined. To the extent wrap coverage can be obtained, the fees for providing such coverage have significantly increased from the fees generally available during the past ten years.

Paragraphs 10–22. Applicants' Description of RPT

10. RPT is a "stable value" fund with approximately $11.7 billion book value of assets as of December 31, 2008. Payments to participants (or beneficiaries) upon retirement, death, disability, employment termination, hardship or transfer to a non-competing investment alternative are generally based on book value, such that a participant in RPT will receive his invested principal and interest at a crediting rate, as described in further detail below, even if the actual market value of the underlying assets is less.

11. Bank of America, N.A. (hereinafter, either BANA or the Trustee) is the trustee of RPT. BlackRock Advisers, a wholly-owned subsidiary of BlackRock, is an investment adviser to RPT. The assets of RPT are divided into several portfolios, which include an actively managed portfolio with approximately $2.8 billion book value of assets (the Actively Managed Account) and a buy and hold portfolio with approximately $1.6 billion book value of assets (the Global Buy and Hold Account).

12. In connection with the operation of RPT, the Trustee has entered into stable value wrap agreements with banks and other financial institutions to provide benefit responsive facilities with respect to certain assets of RPT. BANA is one of several financial institutions that have entered into stable value wrap agreements with the Trustee under RPT. In this regard, prior to the Merrill/BAC Merger, BANA had entered into two separate wrap agreements with the Trustee under RPT. One agreement, dated May 1, 2004, provides a benefit responsive facility with respect to the Actively Managed Account (the BANA RPT Global Wrap Agreement). The other agreement, dated October 16, 1996 (assigned by Barclays Bank PLC to BANA effective April 1, 1998, and amended effective as of December 31, 2008), provides a benefit responsive facility with respect to the Global Buy and Hold Account (the BANA RPT Buy and Hold Wrap Agreement).

13. The BANA RPT Global Wrap Agreement is one of four wrap agreements covering assets in a global wrap account (the Global Wrap Account). The Global Wrap Account represents approximately 24% of the total book value of the assets of RPT. The assets in the Global Wrap Account are actively managed. Under this wrap agreement, which RPT and BANA entered into prior to the Merrill/BAC Merger, BANA provide benefit responsive coverage for approximately 27% of the book value of the assets credited to the Global Wrap Account. Banks and financial institutions unaffiliated with BANA have entered into wrap agreements with the Trustee providing coverage for approximately 73% of the book value of the assets in the Global Wrap Account. The assets in the Global Wrap Account covered by the BANA RPT Global Wrap Agreement are not segregated from the assets in the Global Wrap Account covered by the other wrap agreements. Each wrap agreement covers a specified percentage of the book value of the assets in the Global Wrap Account as a whole. In this regard, the BANA RPT Global Wrap Agreement provides a benefit responsive wrap with respect to approximately 5.5% of the total book value of the assets of RPT.

14. Under the BANA RPT Buy and Hold Wrap Agreement, prior to December 31, 2008, BANA provided a benefit responsive facility with respect to a segregated "buy and hold" portfolio of assets of RPT, with no other wrap provider providing a benefit responsive facility with respect to this portfolio. Effective as of December 31, 2008, the Applicants amended the BANA RPT Buy and Hold Wrap Agreement in a manner that: (a) Combined the "buy and hold" portfolio covered by the BANA RPT Buy and Hold Wrap Agreement with a portfolio of assets of RPT covered by a "buy and hold" benefit responsive wrap agreement between the Trustee and another unaffiliated wrap provider (Global Buy and Hold Wrap Provider 2) to form the Global Buy and Hold Account; and (b) provides that BANA will provide coverage for 50% of the book value of the assets held in the Global Buy and Hold Account. Global Buy and Hold Wrap Provider 2's wrap agreement with the Trustee was amended similarly to provide that it will provide coverage for 50% of the book value of the assets held in the Global Buy and Hold Account. As is the case with the BANA RPT Global Wrap Agreement, the assets in the Global Buy and Hold Account covered by the BANA RPT Buy and Hold Wrap Agreement are not segregated from the assets in the Global Buy and Hold Account covered by the other wrap agreement. Each wrap agreement covers a specified percentage of the book value of the assets in the Global Buy and Hold Account as a whole. The Global Buy and Hold Account as a whole represents approximately 13.6% of the book value of the assets of RPT, and the BANA RPT Buy and Hold Wrap Agreement

provides a benefit responsive wrap with respect to approximately 6.8% of the total book value of the assets of RPT.[3]

15. The BANA RPT Global Wrap Agreement and the BANA RPT Buy and Hold Wrap Agreement (the RPT Stable Value Agreements) provide for "buffer" assets that would be liquidated to fund withdrawals from RPT before the assets held under the Global Wrap Account or the Global Buy and Hold Account are used to fund withdrawals. Under the RPT Stable Value Agreements, liquidity requirements for withdrawals would be satisfied in the following order:

(1) Netting withdrawals from deposits whenever possible;
(2) Simple interest payments and maturing proceeds;
(3) Type "A" assets which include money market and other short-term investments as well as any short-term benefit responsive floaters;
(4) Type "B" buffer contracts, which will generally be accessed on a *pro rata* basis;
(5) Level "C" contracts on a *pro rata* basis; and
(6) Level "D" contracts.

The RPT Stable Value Agreements cover Level C assets which, subject to a limited temporary exception for certain Plan level withdrawals from RPT, will not be accessed until assets in a higher category have all been accessed.[4] A minimum of 8% of RPT's assets must be held as Type A and Type B combined. As of June 10, 2009, Type A and Type B assets accounted for approximately 13% of the assets of RPT. These "buffer" assets significantly reduce the likelihood that payments will be triggered for any of the wrap providers that wrap assets in the Global Wrap Account or the Global Buy and Hold Account.

16. The BANA RPT Stable Value Agreements effectively function to protect Plans that invest in RPT if there are significant withdrawals during negative market conditions. RPT has been structured with the expectation that RPT liquidity requirements can be satisfied without resort to the assets covered by the wrap contracts. Since RPT was established in 1989, the Trustee has never been required to access the wrap contracts. Eligible investments made by RPT are generally conservative and the buffer assets reduce the likelihood that a payment would need to be made under a wrap contract.[5] Each of the RPT Stable Value Agreements also has strict investment guidelines regarding the investments that can be held under those contracts. Only in the event that there are substantial withdrawals from RPT at a time when the assets of RPT are significantly underperforming would there be any risk that the assets covered by the wrap contracts would need to be liquidated to satisfy withdrawals and a payment from a wrap provider would be required. Moreover, in the current distressed economic environment, participants in employee benefit plans have generally moved assets into conservative investments, such as stable value funds. RPT had a net inflow (*i.e.,* contributions in excess of withdrawals) of approximately $300 million during the fourth quarter of 2008.

17. The crediting rate under a wrap agreement is the rate of interest that is used for purposes of determining the accrued interest to be added to the book value of the assets covered by the agreement. Under either RPT Stable Value Agreement, such crediting rate (the Crediting Rate) was set at the inception of the wrap agreement by agreement between BANA and the Trustee and has been, and will continue to be, reset periodically based on an objective formula. The Crediting Rate formula is designed to amortize the difference between the market value and the book value of assets covered by the wrap agreement over the approximate duration of the covered assets. The Crediting Rate formula used in the BANA RPT Global Wrap Agreement and the BANA RPT Buy and Hold Wrap Agreement, effective as of March 1, 2009, is:

$$\text{Crediting Rate} = [(PMV/PBV)^{1/(F*DUR)} * (1 + AYTM)] - 1$$

Where:
PMV is the market value of the covered assets;
PBV is the book value of the covered assets;
ATYM is the dollar duration weighted annualized yield to maturity of the covered assets;
DUR is the modified duration (Macaulay duration of the asset or assets * 1/1 + dollar duration weighted annualized yield to maturity of the covered assets); and
F is the factor, if any, agreed upon by the Trustee or its designee, BANA and the other wrap providers covering assets in the Global Wrap Account or the Global Buy and Hold Account, and approved by the Independent Fiduciary for purposes of modifying the duration component of the Crediting Rate.[6]

18. In the current economic environment, it has become standard stable value industry practice to vary the duration component of the Crediting Rate formula to more quickly amortize the difference between the book value and the market value of assets covered by a wrap agreement. BlackRock Advisors and the Trustee believe that having flexibility to vary the duration component of the Crediting Rate formula applicable to the BANA RPT Stable Value Agreements is in the best interests of participants and beneficiaries because it will greatly enhance BlackRock Advisors' ability to react to low market to book ratios, the risk that securities will be downgraded, low Crediting Rates and volatile cash flows.[7]

19. The assets in RPT are valued by BlackRock on a daily basis using a BlackRock-approved process that applies to all client securities held by BlackRock. Valuations are performed without regard to whether the security is held in RPT or another account or commingled vehicle advised by BlackRock. When valuing securities in RPT, in all cases, BlackRock looks first to external third-party pricing sources,

[3] The Applicants represent that the conversion of the BANA RPT Buy and Hold Wrap Agreement into a "global" arrangement will not affect the Crediting Rate (referenced above and described in further detail below) applicable to a participant's account in RPT. In this regard, the Applicants state that the conversion involved a purely internal adjustment, based upon an objective mathematical formula, among BANA and the other wrap provider to reflect the different market to book ratios of assets wrapped by BANA and Global Buy and Hold Wrap Provider 2 at the time of conversion into the Global Buy and Hold Account. The Applicants represent that this adjustment is relevant only if the wrap contracts must be accessed to make benefit responsive payments and will have no effect on the participants.

[4] The Applicants represent that, to address liquidity concerns under RPT, the wrap providers covering assets in RPT have agreed to permit the Trustee and BlackRock Advisers to sell a vertical slice of securities held in RPT, other than securities covered by the Special Purpose Wrap Agreement (discussed below), to fund certain Plan-level withdrawals. In this regard, BAC will provide direct capital contributions to fund the difference between the market value and the book value of the assets attributable to the withdrawing Plans in an amount of up to $175 million. BAC's commitment to provide liquidity will be in effect for a maximum period of two years.

[5] The Department has not considered the issue, and is expressing no opinion herein, regarding whether RPT assets have been invested on a conservative basis or in a manner consistent with RPT guidelines.

[6] According to the Applicants, prior to March 2009, a slightly different Crediting Rate (to the one above) was set forth in the RPT Stable Value Agreements and the Separately Managed Account Wrap Agreements (described below), and a simplified version of that formula was used to calculate the Crediting Rate. The Applicants note further that, in at least one instance, the Crediting Rate was increased in the middle of a month. The Applicants do not believe these modifications, which are described in further detail below, adversely affected Plan participants and beneficiaries.

[7] The Department notes that the Trustee's ability to shorten the duration component of the Crediting Rate formula may also benefit BANA by reducing the likelihood that BANA will have to make a payment to RPT during the immunization period (as described below).

including index providers, broker-dealers and independent pricing services. BlackRock has a hierarchy for prioritizing third-party pricing sources, based on availability and reliability of the price obtained. The pricing source may vary by asset class or type, but not for a particular security. Over time, the hierarchy used for a particular asset class may change due to a decrease in accuracy or consistency or a drop in coverage for a particular security. Currently, BlackRock's third-party pricing hierarchy generally works in the following order: (i) Index providers; (ii) broker-dealers (structured products); [8] and (iii) third-party pricing services (currently FT Interactive and Reuters Pricing Services).

20. BlackRock Solutions (BRS), a financial modeling group, would generate its own valuation only when it exhausts the third-party sources for a valuation. This could occur when there are no market quotations available for a security, or if a security were to break a control, which means that it is identified by the computer system because the price provided by a third-party source does not fall within certain statistical norms.[9] Historically, BRS has been able to rely exclusively on third-party sources to price securities of the type held in RPT and, to date, has never generated its own price for such securities. However, as a result of the current market instability, BRS has enhanced and formalized its process for valuing securities when third-party sources are not available. With respect to assets covered by the RPT Stable Value Wrap Agreements, any valuation generated by BRS will be subject to the limitations described below.

21. BANA and the Trustee each have the right to terminate the BANA RPT Global Wrap Agreement through an "immunization" process set forth in the BANA RPT Global Wrap Agreement.[10] If an immunization period occurs, the wrapped assets will be managed in accordance with investment guidelines that are more conservative than the investment guidelines applicable under the wrap contract before the immunization period, with the intent of closing any gap between the market value of the wrapped assets and the wrap contract book value. The BANA RPT Global Wrap Agreement has what is referred to as a "pull to par" provision, so that the agreement will not terminate (absent the application of another termination provision, such as an event of default) until the gap between the market value of the wrapped assets and the wrap contract book value is closed, however long that takes. This "pull to par" provision has become a market standard provision and was included in the BANA RPT Global Wrap agreement prior to December 31, 2008. During the immunization period, if all wrapped assets were liquidated to fund book value payments, and market value had not converged with contract book value, BANA would be obligated to pay the remainder of the book value of the contract.

22. According to the Applicants, immunization of a wrap contract is more protective of Plan participants and beneficiaries than immediate termination, if a substitute wrap provider is not available. In this regard, the Applicants state that if a substitute wrap provider is not available, immediate termination of the BANA RPT Global Wrap Agreement or any other wrap contract covering assets in the Global Wrap Account at a time when the book value exceeded the market value would likely result in RPT "breaking the buck" (*i.e.,* the value of participants' accounts would reflect the market value, rather than the book value, of assets that are no longer covered by the BANA RPT Global Wrap Agreement). If all or a portion of the Global Wrap Account is immunized, the returns would be reduced over time, but participants would still receive the book value of their account. In any event, because immunization could result in participants or Plan sponsors changing investment alternatives and loss of assets under management, BlackRock Advisors would work to find a substitute wrap provider as quickly as reasonably possible.

Paragraphs 23–29. Applicants' Representations and Request for Relief Regarding the Execution and Operation of the RPT Stable Value Wrap Agreements

23. The Applicants seek exemptive relief for: The operation of the RPT Stable Value Wrap Agreements, pursuant to the terms of; and for transactions under the RPT Stable Value Wrap Agreements. The Applicants describe the operation of the RPT Stable Value Agreements as including, among other things, the following transactions (the RPT Wrap-Related Transactions): (1) The determination, calculation of, and adjustments to, the Crediting Rate and any changes to the Crediting Rate formula; (2) valuations of securities covered by the RPT Stable Value Agreements; (3) payment of wrap fees and any changes to wrap fees; (4) the purchase and sale of any security covered by the RPT Stable Value Agreements; (5) BANA's or the Trustee's exercise of its right to immunize or terminate the RPT Stable Value Agreements; and (6) amendments to the RPT Stable Value Agreements.

24. According to the Applicants, the provision of wrap coverage by BANA to RPT could be considered an extension of credit under section 406(a) of ERISA. The Applicants state also that, because BANA and Merrill are under common control by BAC, and Merrill has an approximate 34% equity ownership interest in BlackRock, the maintenance of and transactions under the BANA RPT Stable Value Agreements could give rise to self-dealing concerns under section 406(b) of ERISA. In particular, BlackRock Advisor's role as investment adviser raises a concern that it could make investment decisions that are designed to benefit BANA, to the detriment of Plan participants and beneficiaries.

25. The Applicants request that the exemptive relief sought herein be retroactive to January 1, 2009 (the date of the Merrill/BAC Merger). The Applicants state that retroactive relief is appropriate because terminating the BANA RPT Global Wrap Agreement prior to the Merger could have caused significant disruption to Plans and participants and beneficiaries investing in RPT. In this regard, if a substitute wrap provider was not available to replace BANA, immediate termination of the BANA RPT Global Wrap

[8] The Applicants state that, as a practical matter, in many instances broker-dealers will be the first pricing source for securities, including non-agency mortgage backed securities, in stable value products, because no index provider is available.

[9] The Applicants state that a security breaking a control does not necessarily mean that BRS will independently value the security. When a security breaks a control, BRS first contacts the external third-party pricing source that generated the value, provides that third-party source with additional information regarding the issue and asks the third-party source to review its price. The independent pricing source will verify or change its price based on the information provided. BRS will use the third party's valuation of a particular security, unless a determination has been made that the price is unreliable. If the price is deemed unreliable, it will be valued in accordance with this paragraph 20, subject to Independent Fiduciary oversight, as described below.

[10] The Applicants state that, because the BANA RPT Buy and Hold Wrap Agreement covers a "buy and hold" portfolio, instead of an actively managed portfolio as covered by the BANA RPT Global Wrap Agreement, immunization is not a feature of the BANA RPT Buy and Hold Wrap Agreement. In this regard, the Trustee may elect to terminate the BANA RPT Buy and Hold Wrap Agreement by giving BANA seven business day's notice of such election. Absent a default by the Trustee, if BANA wants to terminate the BANA RPT Buy and Hold Wrap Agreement, BANA would not agree to future additions to, or substitution of assets in, the "buy and hold" portfolio covered by the agreement. In that event, the BANA RPT Buy and Hold Wrap Agreement generally would terminate on the maturity date of the latest maturing asset covered by the agreement.

Agreement or any other wrap agreement covering assets in the Global Wrap Account could have resulted in RPT "breaking the buck" (*i.e.,* the value of the participants' accounts would have reflected the market value (rather than the higher book value) of assets no longer covered by the BANA RPT Global Wrap Agreement).

26. The Applicants propose a number of conditions with respect to covered transactions involving the RPT Stable Value Agreements. In this regard, effective June 1, 2009, BlackRock Advisors may only change the formula for calculating the Crediting Rate after obtaining prior approval of BANA, the other financial institutions that have entered into wrap agreements covering the same assets in the Global Wrap Account or the Global Buy and Hold Account, as the case may be, and the Independent Fiduciary. BlackRock Advisors shall provide the Independent Fiduciary with any information it may reasonably request in determining whether to approve any proposed change in the Crediting Rate formula. Additionally, the Crediting Rate with respect to a RPT Stable Value Wrap Agreement may not be reset more frequently than on a monthly basis, unless: (1) Prior to such resetting, the crediting rate with respect to a non-BANA wrap agreement covering assets in the same Global Account as such RPT Stable Value Wrap Agreement is reset more frequently than on a monthly basis; and (2) the Crediting Rate is reset at the same time, and in the same manner, as such other crediting rate. Each financial institution entering into a wrap agreement covering assets included in a Global Account will obtain information from BlackRock Advisors on a monthly basis regarding the investments that are included in those accounts sufficient to enable the financial institution to independently verify that the Crediting Rate was calculated properly. In addition, the dollar amount of Global Wrap Account assets covered by the BANA RPT Global Wrap Agreement shall not exceed 50% of the total assets held in such Account, and the terms associated with the BANA RPT Global Wrap Agreement at the time such Agreement was entered into, amended, modified or renewed shall be no less favorable to RPT than the terms associated with comparable agreements with unrelated parties. Similarly, the dollar amount of Global Buy and Hold Account assets covered by the BANA RPT Buy and Hold Wrap Agreement shall not exceed 60% of the total assets held in such Account, and the terms associated with the BANA RPT Buy and Hold Wrap Agreement at the time such Agreement was entered into, amended, modified or renewed shall be no less favorable to RPT than the terms associated with comparable agreements with unrelated parties. Further, any RPT Wrap-Related Transaction that involves: (1) The exercise by BANA, the Trustee, or BlackRock Advisors of their rights under the RPT Stable Value Agreements; or (2) the performance by BANA, the Trustee, or BlackRock of their obligations under the RPT Stable Value Agreements, shall be subject to prior review and approval by the Independent Fiduciary if such exercise or performance affects the Crediting Rate or would otherwise have an adverse impact on the book value of a participant's or beneficiary's investment in RPT. Additionally, the Independent Fiduciary must receive a copy of any amendment contemplated for the RPT Stable Value Agreements (other than amendments that are purely ministerial in nature), and must thereafter review and approve the amendment prior to its implementation.

27. The Applicants represent that the fee BANA will receive under the BANA RPT Global Wrap Agreement or the BANA RPT Buy and Hold Wrap Agreement will be reasonable relative to market conditions and risks, as determined and approved annually by the Independent Fiduciary. Notwithstanding this, in no event shall the fee exceed the maximum percentage fee paid to any other financial institution that has entered into a wrap agreement covering the same assets in the Global Wrap Account or the Global Buy and Hold Account, as the case may be. Additionally, the Trustee will not trigger immunization with respect to the BANA RPT Global Wrap Agreement unless: (i) The Trustee triggers immunization with respect to another wrap agreement (*i.e.,* not provided by BANA) covering the same assets in the Global Wrap Account, immediately prior to, or at the same time as, immunization is triggered with respect to the BANA RPT Global Wrap Agreement; (ii) another financial institution that has entered into a wrap agreement with respect to assets in the Global Wrap Account triggers immunization immediately prior to, or at the same time as, immunization is triggered with respect to the BANA RPT Global Wrap Agreement; or (iii) the Trustee determines that BANA is no longer financially responsible and the Independent Fiduciary determines that the immunization is in the interests of investing Plans.

28. The Applicants represent that assets held in RPT will be valued at their current fair market value on a daily basis. Valuations will be based on the price that may be obtained in a current arm's-length sale to a third party. In this regard, BlackRock will first obtain prices for securities from independent third-party sources, including index providers, broker-dealers and independent pricing services. To do this, BlackRock will maintain a hierarchy that prioritizes pricing sources by asset class or type and will value securities based on the price generated by the highest priority source. If no third-party sources are available to value a security (or the price generated by the third-party falls outside specified statistical norms, and, after review, BlackRock determines that such price is not reliable), BlackRock will value the security using an analytic methodology. The Independent Fiduciary will thereafter review that methodology and valuation, and obtain its own valuation if it deems appropriate. Each financial institution that has entered into a wrap agreement covering assets in the Global Wrap Account and the Global Buy and Hold Account, including BANA, has the right to object to the valuation of a particular security, regardless of the source of the valuation. If such an objection is made, wrap providers that are not affiliated with BANA may thereafter determine a new valuation for the security, and BANA will be bound by this new valuation notwithstanding that BANA did not participate in the determination of such valuation, provided that BANA is provided with reasonably satisfactory documentation supporting the valuation.

29. Prior to a Plan sponsor's decision to include RPT as an investment option for participants in the Plans it sponsors, the Trustee will provide the Plan sponsor with the following: The RPT Declaration of Trust (as amended and restated as of April 23, 2009, and as may be further amended from time to time); a purchase agreement to be entered into by the Plan fiduciary and the Trustee; upon request, a copy of the Annual Report for RPT and a fact sheet describing RPT's investment objective and strategy and a performance analysis; and a copy of the proposed exemption or the final exemption, if granted. Additionally, on an ongoing basis, Plan fiduciaries will receive the Annual Report for RPT and the Plan's Investment Summary and Accounting. Plan participants will also receive information describing the investment objectives and performance of RPT; and a statement, delivered at least quarterly, that sets forth the value of the participant's account contributions,

withdrawals, distributions, loans and change in value since the prior statement.

Paragraphs 30–40. Applicants' Representations and Request for Relief Regarding the Execution and Operation of the RPT Special Purpose Wrap Agreement

30. The Applicants represent that, in the current market environment, there is a significantly increased risk that the credit rating of securities of the type included in RPT will be downgraded, including downgrades to below Baa3, BBB− or BBB− by Moody's Investors Services, Inc., Standard & Poor's Rating Group, or Fitch Ratings, respectively (Below Investment Grade Securities). However, several wrap agreements in RPT do not "cover" Below Investment Grade Securities.[11] If a security held by RPT is no longer covered by a wrap agreement, participant accounts (with respect to Plans that invest in RPT) will reflect the lower market value, rather than the book value, with respect to the portion of their account attributable to the unwrapped security. This could cause RPT to effectively "break the buck."

31. To reduce the risk that Below Investment Grade Securities would cause RPT to "break the buck," MLTC and BANA entered into the RPT Special Purpose Wrap Agreement on April 23, 2009. The RPT Special Purpose Wrap Agreement is designed to cover securities which cease to be covered by a RPT wrap solely as a result of a downgrade in the security's credit rating to below "investment grade." Under the RPT Special Purpose Wrap Agreement, BlackRock Advisors will automatically transfer each Below Investment Grade Security to a new portfolio (the Type D1 Account), and that security will be covered by the RPT Special Purpose Wrap Agreement (hereafter, a Below Grade Investment Security held in the Type D1 Account and covered by the RPT Special Purpose Wrap Agreement shall be referred to as a Downgraded Security). As described in paragraph 34 below, the RPT Special Purpose Wrap Agreement is designed to rapidly amortize the difference between the amortized cost of a Downgraded Security and the market value of the Downgraded Security.[12]

32. The proposed exemption, if granted, would permit certain transactions in connection with the operation of the RPT Special Purpose Wrap Agreement. These transactions (the Special Purpose Wrap-Related Transactions) include: (1) The transfer of Below Investment Grade Securities to the Type D1 Account; (2) the sale or transfer of Downgraded Securities out of the Type D1 Account; (3) the purchase and sale of certain other securities permitted to be held in the Type D1 Account (the Permitted Securities, as described below); (4) transactions relating to maintenance of a minimum ratio of Permitted Securities and Downgraded Securities (the Minimum Ratio, as described below); (5) the determination, calculation of and adjustments to the Type D1 Account Crediting Rate (described below) and any changes to the Type D1 Account Crediting Rate formula; (6) valuations of securities covered by the RPT Special Purpose Wrap Agreement; (7) payment of and any changes to wrap fees; (8) BANA's or the Trustee's exercise of its right to immunize or terminate the RPT Special Purpose Wrap Agreement; and (9) the entering into and amendment of the RPT Special Purpose Wrap Agreement.

33. Certain limits apply to the amount of Below Investment Grade Securities that may be transferred to the Type D1 Account. Specifically, the Type D1 Account may consist of up to a maximum of $200 million in: (1) Book value of Downgraded Securities that have not been sold; and/or (2) aggregate unamortized realized losses with respect to Downgraded Securities. BlackRock Advisors expects to sell Downgraded Securities as market conditions permit. Any remaining unamortized losses associated with the sale of the Downgraded Securities will continue to be amortized under the RPT Special Purpose Wrap Agreement.

34. In addition to Downgraded Securities, the Type D1 Account will be funded with Permitted Securities. Permitted Securities are U.S. Treasury debentures, Government National Mortgage Association (GNMA) securities and securities guaranteed by the Federal Deposit Insurance Corporation (FDIC). The Applicants state that these purchases have been made, and the Type D1 Account currently holds approximately $500 million in Permitted Securities. The maximum modified duration of a Permitted Security will be 3.5 years at the time of purchase. The RPT Special Purpose Wrap Agreement requires a minimum ratio of 2.5 to 1.0 of market value of Permitted Securities to the total unamortized unrealized and realized losses with respect to the Downgraded Securities (the Minimum Ratio).[13] This Minimum Ratio is designed to ensure that the Type D1 Account receives sizeable investment gains, which, in turn, would enable a more rapid amortization of the losses included in the RPT Special Purpose Wrap Agreement. The Minimum Ratio will be monitored on a daily basis, and if it drops below 2.5 to 1.0, BlackRock Advisors will correct the ratio within 10 business days either by moving additional Permitted Securities into the Type D1 Account or by selling Downgraded Securities and using the proceeds of those sales to reinvest in Permitted Securities. Notwithstanding the above, if the ratio is not corrected within 10 business days of a breach of the Minimum Ratio, BANA reserves the right to terminate the RPT Special Purpose Wrap Agreement immediately without payment obligation.

35. The total book value of the assets included in the D1 Account and covered by the RPT Special Purpose Wrap will not exceed $700 million without the prior written consent of the Trustee, BANA, and the Independent Fiduciary. Additionally, the Type D1 Account Crediting Rate will be 0.00% as of the next following reset date at any time when the book value under the wrap agreement includes any unamortized losses (realized or unrealized) on Downgraded Securities. The reason for using a 0.00% Crediting Rate is to amortize losses as quickly as possible and to maintain as much capacity as possible to move additional Below Investment Grade Securities into the Type D1 Account to be covered by the RPT Special Purpose Wrap Agreement. If the book value under the RPT Special Purpose Wrap Agreement does not include any unamortized losses on Downgraded Securities, the Type D1 Account Crediting Rate will be

[11] In other words, these wrap agreements either do not permit a cure period (*i.e.,* a period of time during which a downgraded security may be sold), or have a cure period that is of a limited duration.

[12] The Applicants state that securities that are "impaired" will not be transferred to the RPT Special Purpose Wrap Agreement. The Applicants generally describe an "impaired" security as: (a) A security with respect to which the issuer or guarantor has failed to make one or more payments of principal or interest; (b) a security with respect to which the principal or interest has become due and payable before it otherwise would have been due or payable; (c) a security where the rate of interest thereon has been reset; or (d) a security with respect to which the issuer becomes insolvent or institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy. The Applicant states that an "impaired security" would remain in RPT and the Trustee would decide whether to hold or sell such security.

[13] The Applicants state that the RPT Special Purpose Wrap Agreement permits the Trustee to reduce the amount of Permitted Securities (provided the Minimum Ratio is maintained) if the ratio of the market value of Permitted Securities to the total unamortized unrealized and realized losses with respect to Downgraded Securities is greater than 2.5 to 1.0.

determined on a monthly basis using the following formula:

$$\text{Crediting Rate} = [(PMV/PBV)^{1/(F*DUR)} * (1 + AYTM)] - 1$$

Where:

AYTM = dollar duration weighted annualized yield to maturity.

PMV = fair market value of assets in the Type D1 Account (as reduced by accrued but unpaid fees).

PBV = book value of the Type D1 Account.

DUR = modified duration (Macaulay duration of the asset or assets * 1/(1 + the dollar weighted annualized yield to maturity of the asset)).

F = factor, if any, agreed upon by BlackRock Advisors and BANA and approved by the Independent Fiduciary.

36. The Applicants state that the Type D1 Account Crediting Rate formula would likely generate a higher return for Participants on the assets applied to purchase the Permitted Securities than the approximately 40 basis point return currently received if these assets continued to be held in Type A cash-equivalent investments. Effective June 1, 2009, BlackRock Advisors will not change the Type D1 Account Crediting Rate formula unless BANA and the Independent Fiduciary agree to the adjustment before it is made. BlackRock Advisors must first provide the Independent Fiduciary with any information it may reasonably request in determining whether to approve a proposed change in the formula. Additionally, the Type D1 Account Crediting Rate itself will not be reset more frequently than monthly.

37. Downgraded Securities and Permitted Securities will be valued using the same process applicable to assets in the Global Wrap Account and the Global Buy and Hold Account, as described in paragraph 19 above, except that the Independent Fiduciary will review valuations of Downgraded Securities and Permitted Securities where BlackRock is unable to obtain a reliable valuation from third party sources and, if it deems appropriate, the Independent Fiduciary will obtain an independent valuation, which will be binding upon BANA. Further, if BANA objects to a valuation provided by BlackRock, the Independent Fiduciary will review the valuation and, if it deems appropriate, the Independent Fiduciary will thereafter obtain an independent valuation. In that situation, BANA will be bound by the valuation determined by the Independent Fiduciary.

38. The fee paid by RPT to BANA under the RPT Special Purpose Wrap Agreement was initially set at 15 basis points per annum, payable quarterly.[14] The fee must be reviewed annually for reasonableness relative to market conditions and risks, and approved by the Independent Fiduciary in the manner described in paragraph 47 below. Notwithstanding this, in no event shall the fee exceed 15 basis points. The fee will be based on the total book value of assets included in the Type D1 Account, including both the Downgraded Securities and the Permitted Securities.

39. The RPT Special Purpose Wrap Agreement will not have a specified term, but will be an "evergreen" contract. However, unless otherwise agreed by BANA, the Trustee, and the Independent Fiduciary, no Below Investment Grade Securities will be added to the RPT Special Purpose Wrap Agreement after April 23, 2011. The Trustee has the right to immunize the portfolio of securities included in the Type D1 Account only if BANA elects to terminate the RPT Special Purpose Wrap Agreement, or if BANA defaults under the RPT Special Purpose Wrap Agreement. If an immunization election becomes effective (the RPT Special Purpose Immunization Date), the RPT Special Purpose Wrap Agreement would terminate on the later of: (1) The date that is the number of years after the RPT Special Purpose Immunization Date which does not extend beyond the modified duration (as defined in the RPT Special Purpose Wrap Agreement) of the underlying assets on the RPT Special Purpose Immunization Date; or (2) the first date on which the market value of the underlying assets equals or exceeds the book value under the wrap agreement. From the RPT Special Purpose Immunization Date to the termination date, the underlying assets would be managed by BlackRock Advisors in accordance with immunization guidelines set forth in the RPT Special Purpose Wrap Agreement. This Agreement has a "pull to par" provision, as described above, and may be terminated by the Trustee at market value at any time, but the Trustee would only do so if alternative wrap coverage was available. According to the Applicants, the Trustee generally would not take this action unless the market value of the assets in the Type D1 Account exceeded the book value of those assets and another wrap provider agreed to provide a benefit responsive facility with respect to those assets.

40. The Trustee has engaged the Independent Fiduciary to monitor the performance of BlackRock Advisors and the Trustee with respect to the Type D1 Account and the RPT Special Purpose Wrap Agreement. Under the terms of this engagement, and as described in part above, the Independent Fiduciary must, among other things: (1) Determine whether the RPT Special Purpose Wrap Agreement and the Type D1 Account arrangement are prudent and in the best interest of participants and beneficiaries of the Plans that have invested in RPT; (2) make an initial and, thereafter, annual determination regarding whether the fee paid by RPT to BANA under the Special Purpose Wrap Agreement is reasonable relative to the specific attributes of the RPT Special Purpose Wrap Agreement; (3) make an annual determination regarding whether the continued maintenance of the RPT Special Purpose Wrap Agreement is appropriate and in the interest of Plans; and (4) make a monthly determination regarding whether the appropriate Type D1 Account Crediting Rate formula is being used and a monthly determination regarding whether such appropriate formula is being applied in proper manner. Further, the Independent Fiduciary must receive a copy of any amendment contemplated for the RPT Special Purpose Wrap Agreement (other than amendments that are purely ministerial in nature), and must thereafter review and approve the amendment prior to its implementation. Finally, the Independent Fiduciary must review and give prior approval for any RPT Special Purpose Wrap-Related Transaction that involves: (1) The exercise by BANA, the Trustee, or BlackRock Advisors of their rights under the RPT Special Purpose Wrap Agreement; or (2) the performance by BANA, the Trustee, or BlackRock of their obligations under the RPT Special Purpose Wrap Agreement, if such exercise or performance affects the Type D1 Crediting Rate or otherwise would have an adverse impact on the book value of a participant's or beneficiary's investment in RPT.

Paragraphs 41–49. Applicants' Request for Relief Involving the Separately Managed Account Wrap Agreements

41. The Applicants also seek exemptive relief for the provision and operation of certain wrap agreements applicable to two separately managed accounts. In this regard, BlackRock Advisors manages two separately managed accounts, one on behalf of the Hertz Plan (the Hertz Separately

[14] As described in further detail in paragraph 51 below, the Independent Fiduciary has submitted a written report (the Report) to the Department regarding the Special Purpose Wrap Agreement arrangement. In the Report, the Independent Fiduciary opined that a fee level of 15 basis points is reasonable and within the range of fees paid by RPT to other, unrelated wrap providers.

Managed Account) and the other on behalf of the Wal-Mart Plan (the Wal-Mart Separately Managed Account). These two separately managed accounts (the Separately Managed Accounts) operate in a manner that is substantially similar to RPT while being set up for individual employee benefit plans, rather than contained as part of a collective trust. MLTC is the directed trustee for the Wal-Mart Separately Managed Account. MLTC entered into an agreement with BANA, dated August 19, 2003, and amended effective as of December 31, 2008, pursuant to which BANA provides a book value benefit responsive facility with respect to a portion of the assets held in the Wal-Mart Separately Managed Account (BANA Wal-Mart Separately Managed Wrap Agreement). The Bank of New York Mellon, as successor by operation of law to Mellon Bank N.A. (Mellon) is the trustee for the Hertz Separately Managed Account, and Mellon entered into an agreement with BANA and BlackRock Advisors, as investment manager, dated July 27, 2007, and amended effective as of December 31, 2008, pursuant to which BANA provides a book value benefit responsive facility with respect to a portion of the assets held in the Hertz Separately Managed Account (the BANA Hertz Separately Managed Wrap Agreement).

42. The Applicants request that the exemptive relief sought with respect to the BANA Wal-Mart Separately Managed Wrap Agreement and the BANA Hertz Separately Managed Wrap Agreement (collectively, the Separately Managed Account Wrap Agreements) be retroactive to January 1, 2009 (*i.e.,* the date of the Merrill/BAC Merger). The Applicants state that retroactive relief is appropriate since terminating the Separately Managed Account Wrap Agreements prior to the Merrill/BAC Merger would have caused significant disruption to the Plans and participants and beneficiaries invested in the Separately Managed Accounts. In this regard, the Applicants represent that in the current distressed economic environment it is unlikely that a substitute wrap provider could have been found for BANA. If a substitute wrap provider was not available, immediate termination of the Separately Managed Account Wrap Agreements could have resulted in the Separately Managed Accounts "breaking the buck" (*i.e.,* the value of the participants' accounts would have reflected the market value (rather than the higher book value) of assets no longer covered by the Separately Managed Account Wrap Agreements.

43. According to the Applicants, the provision of wrap coverage by BANA to the Separately Managed Accounts could be considered an extension of credit under section 406(a) of ERISA. The Applicants state also that, because BANA and Merrill are under common control by BAC, and Merrill has an approximate 34% equity ownership interest in BlackRock, the operation of the Separately Managed Account Agreements, and certain transactions engaged in under such Agreements, could give rise to self-dealing concerns under section 406(b) of ERISA. In particular, BlackRock Advisor's role as investment adviser raises a concern that it could make investment decisions that are designed to benefit BANA, to the detriment of participants in the Hertz Plan and/or the Wal-Mart Plan.

44. The Applicants describe the provision and maintenance of the Separately Managed Account Wrap Agreements as including the following transactions (the Separately Managed Wrap-Related Transactions): (1) The determination, calculation of and adjustments to the Crediting Rate and any changes to the Crediting Rate formula; (2) valuations of securities covered by the Separately Managed Account Wrap Agreements; (3) payment of wrap fees and any changes to wrap fees; (4) the purchase and sale of any security covered by the Separately Managed Account Wrap Agreements; (5) BANA's or the Trustee's exercise of its right to terminate the Separately Managed Wrap Agreements; and (6) amendments to the Separately Managed Wrap Agreements.

45. The Separately Managed Account Wrap Agreements are "buy and hold" arrangements and do not cover actively-managed portfolios. The BANA Wal-Mart Separately Managed Wrap Agreement provides two levels of "buffers" which would be accessed before any assets covered by BANA would be used to provide benefit responsive payments. More than 64.3% of the assets in the Wal-Mart Separately Managed Account consist of investments held in these buffers, referred to as Tier 1 and Tier 2. The assets covered by the BANA Wal-Mart Separately Managed Wrap Agreement are included in the last tier to be accessed (Tier 3) and, when accessed, are only accessed on a pro-rata basis with the assets covered by the seven other Tier 3 Wrap Providers.[15] The BANA Hertz Separately Managed Wrap Agreement has one buffer which is accessed before any assets covered by the BANA Hertz Separately Managed Wrap Agreement would be accessed to provide benefit responsive payments. Sixty-three and a third percent of the assets in the Hertz Separately Managed Account are held in this buffer. After the initial buffer is depleted for benefit responsive payments, assets are sold using the last-in-first-out principle. Because the assets covered by the BANA Hertz Separately Managed Wrap Agreement are the assets in the Hertz Separately Managed Account that became subject to a benefit responsive facility most recently prior to the date of the Application, these assets will be the first assets sold to satisfy benefit responsive payments after the buffer is depleted.

46. The Applicants propose several conditions with respect to covered transactions involving the Separately Managed Wrap Agreements. In this regard, under each Agreement, the Crediting Rate was set at the inception of the wrap agreement by BANA and the counterparty and has been, and will continue to be, reset periodically based on a formula designed to amortize the difference between the market value and the book value of the assets covered by the wrap agreement over the approximate duration of the covered assets. The Crediting Rate formula used in the BANA Hertz Separately Managed Wrap Agreement, effective March 1, 2009, is: Crediting Rate = $[(PMV/PBV)^{1/(F*DUR)}*(1 + AYTM)] - 1$.

The Crediting Rate formula in the Wal-Mart Separately Managed Wrap Agreement, effective March 1, 2009,[16] is:

$$\text{Net Crediting Rate} = [((PMV/PBV)^{1/(F*DUR)} * (1 + AYTM)) - 1] - WF$$

Where:
PMV = market value of the covered assets.
PBV = book value of the covered assets.
AYTM = dollar duration weighted annualized yield to maturity of the covered assets.
DUR = modified duration {Macaulay duration of the asset or assets * 1/(1+ dollar weighted annualized yield to maturity of the asset or asset)).
F = factor, if any, agreed upon by BlackRock Advisors and BANA and approved by the Independent Fiduciary for purposes of modifying the duration component of the Crediting Rate.
WF = wrap fee rate.

[15] The Applicants describe a Tier 3 Wrap Provider as a financial institution that has entered into a wrap agreement with respect to assets held in the Wal-Mart Separately Managed Account that will not be accessed for purposes of making benefit payments until two tiers of buffer assets are accessed.

[16] See footnote 6.

Effective June 1, 2009, BlackRock Advisors may only change the formula for calculating the Crediting Rate after obtaining prior approval of BANA and the Independent Fiduciary.

47. BANA will not receive a fee under the either the BANA Wal-Mart Separately Managed Wrap Agreement or the BANA Hertz Separately Managed Wrap Agreement in excess of the maximum percentage fee received by any other Tier 3 Wrap Provider in the Wal-Mart Separately Managed Account or the BANA Hertz Separately Managed Wrap Agreement, as the case may be. Additionally, assets covered by the BANA Hertz Separately Managed Wrap Agreement and the BANA Wal-Mart Separately Managed Wrap Agreement will be valued in a similar fashion as assets covered by the BANA RPT Stable Value Agreements, except that, if BANA objects to the valuation of any asset, the Independent Fiduciary will make a binding determination of the value of the asset.

48. Pursuant to the investment management agreements relating to the Separately Managed Accounts, BlackRock Advisors provides the named fiduciaries of the Hertz Plan and the Wal-Mart Plan with information regarding investment performance and the assets held in the Separately Managed Accounts, including type of asset, crediting rate, duration and credit quality. In contrast with the BANA RPT Stable Value Agreements, the Separately Managed Account Wrap Agreements are not global arrangements. Each agreement provides coverage for 100% of the book value of the specified assets. Because the Separately Managed Account Wrap Agreements are not global arrangements, no wrap provider (other than BANA) is involved in these arrangements that, as an independent third party, could protect against potential conflicts of interests between BANA and BlackRock Advisors. For this reason, BlackRock Advisors and a named fiduciary of the Hertz Plan, and BlackRock Advisors and a named fiduciary of the WalMart Plan, have engaged the Independent Fiduciary to perform the following tasks (which are in addition to the duties described above): (1) Conduct a monthly review of the Crediting Rate; (2) analyze the purchase or sale of any security, including any change to the market to book ratio, duration or Crediting Rate; (3) review and approve any proposed amendment to the BANA Hertz Separately Managed Wrap Agreement or the BANA Wal-Mart Separately Managed Wrap Agreement; (4) review any exercise of contract provisions by any of BANA, BlackRock Advisors or, in the case of the BANA Wal-Mart Separately Managed Wrap Agreement, the Trustee, and analyze its potential impact on investors; (5) provide quarterly reports to BlackRock Advisors and to the named fiduciaries of the Wal-Mart Plan and the Hertz Plan stating, among other things, whether BlackRock Advisors has complied with all requirements of its contract. The Independent Fiduciary will also inform the named fiduciaries of a Plan if it believes that BANA or BlackRock Advisors has taken any actions that are not in the best interests of the participants and beneficiaries in the Wal-Mart Plan or the Hertz Plan, as relevant. Consistent with this, the Independent Fiduciary will review and must give prior approval for any Separately Managed Account Wrap-Related Transaction that involves: (1) The exercise by BANA, the Trustee, or BlackRock Advisors of their rights under the Separately Managed Account Wrap Agreements; or (2) the performance by BANA, the Trustee, or BlackRock of their obligations under the Separately Managed Account Wrap Agreements, if such exercise or performance affects the Crediting Rate or otherwise would have an adverse impact on the book value of a participant's or beneficiary's investment in the Separately Managed Accounts.

49. Each of the Separately Managed Account Wrap Agreements effectively may be terminated by terminating the appointment of BlackRock Advisors as investment manager. Under the Hertz Separately Managed Account, the named fiduciaries (or their authorized representatives) of the Hertz Plan may terminate BlackRock Advisors, as the investment manager, on 30 days' notice. Under the Wal-Mart Separately Managed Account, the named fiduciaries (or their authorized representatives) of the Wal-Mart Plan may terminate BlackRock Advisors, as the investment manager, on 90 days' notice. Because each of the Separately Managed Account Wrap Agreements covers a "buy and hold" portfolio, immunization is not a feature of either agreement. BlackRock Advisors may elect to terminate the Separately Managed Account Wrap Agreements by giving BANA seven business days' notice of such election. Absent a default by the counterparty, BANA may terminate the Separately Managed Account Wrap Agreements by failing to agree to future additions to, or substitution of assets in, the "buy and hold" portfolio covered by the agreement and then the agreement generally would terminate on the maturity date of the latest maturing asset covered by the agreement.

Paragraphs 50–51. The Independent Fiduciary

50. The Independent Fiduciary is Fiduciary Counselors Inc., located in Washington, DC. The Independent Fiduciary is experienced and knowledgeable in the transactions and arrangements described herein. The Independent Fiduciary is independent of and unrelated to BANA, Merrill, BlackRock and their Affiliates. In this regard, the Independent Fiduciary represents that, during any year of its engagement, its annual gross revenue from BANA, Merrill, and BlackRock has not, and will not, exceed five percent (5%) of the Independent Fiduciary's annual gross revenue from all sources (for federal income tax purposes) for its prior tax year.

51. In a written report dated April 2, 2009, submitted to the Department (the Report), the Independent Fiduciary made a number of representations regarding the RPT Special Purpose Wrap Agreement. In the Report, the Independent Fiduciary stated that, among other things: the RPT Special Purpose Wrap Agreement is an innovative solution to the "breaking the buck" problem with a laudable objective that clearly is in the best interests of Plan participants; and it is likely that the 15 basis point annual wrap fee associated with the RPT Special Purpose Wrap Agreement will soon be industry average, if not lower than average. Regarding the Type D1 Account Crediting Rate, the Independent Fiduciary stated that such crediting rate arrangement is reasonable given that BANA has a limited capacity to absorb Below Investment Grade Securities, and that additional capacity is not available from anyone else. In the Report, the Independent Fiduciary states further that the investment management flexibility (regarding the sale of Below Investment Grade Securities) allowed by the Special Purpose Wrap Agreement benefits Plan participants because it will enable sales to occur when market conditions warrant, without the imposition of constraints from the wrapper contract. Additionally, the Independent Fiduciary stated in the Report that other provisions in the Special Purpose Wrap Agreement are within the norms for wrap contracts between unrelated parties.

52. In summary, the Applicants represent that the transactions described herein satisfy the statutory criteria set forth in section 408(a) of the Act and section 4975(c)(2) of the Code because, among other things: in the current

distressed economic environment it is unlikely that a substitute wrap provider could be found for BANA; the interests of affected Plans have been, and will be, protected by the Independent Fiduciary; and the fee received by BANA pursuant to the arrangements described herein will be reasonable relative to market conditions and risks, as determined by the Independent Fiduciary.

Notice to Interested Persons

Written notice will be provided to a representative of each Plan invested in RPT, and the named fiduciaries of the Hertz Plan and the Wal-Mart Plan. The notice shall contain a copy of the proposed exemption as published in the **Federal Register** and an explanation of the rights of interested parties to comment regarding the proposed exemption. Such notice will be provided by personal or express delivery, or electronically if correspondence between the relevant parties is typically carried out electronically, within 15 days of the issuance of the proposed exemption. Any written comments 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: Chris Motta of the Department, telephone (202) 693–8544. (This is not a toll-free number.)

Citigroup Inc. and its affiliates (Citigroup), the Citigroup 401(k) Plan, the Citibuilder 401(k) Plan for Puerto Rico (the Citibuilder Plan and collectively with the Citigroup 401(k) Plan, the Participant Directed Plans), the Citigroup Pension Plan (and collectively with the Participant Directed Plans, the Plans) (the Applicants), located in Greenwich, CT. [Application No. D–11591]

Proposed Exemption

The Department of Labor is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974, as amended (the Act) and section 4975(c)(2) of the Internal Revenue Code of 1986 (the U.S. 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:

(a) The restrictions of sections 406(a), 406(b)(1), 406(b)(2), and 407(a) of the Act[17] shall not apply, effective June 22, 2009 (the Record Date), to:

(1) The acquisition of stock rights (the Rights) by certain plans, described below in Section I(a)(1)(A) through (C) of this exemption, in connection with holding shares of common stock of Citigroup Inc. (Citigroup Stock) on the Record Date established pursuant to an offering of such Rights (the Offering) in accordance with the Tax Benefits Preservation Plan (the Rights Plan) by Citigroup Inc. (Citigroup), a party in interest with respect to the following plans, and/or the acquisition of Citigroup Stock and the attached Rights by the plans in the future pursuant to the Offering:

(A) The Citigroup 401(k) Plan (the Citigroup 401(k) Plan);

(B) The Citibuilder 401(k) Plan for Puerto Rico (the Citibuilder Plan and collectively with the Citigroup 401(k) Plan, the Participant Directed Plans); and

(C) The Citigroup Pension Plan (the Citigroup Pension Plan and collectively with the Participant Directed Plans, the Plans);

(2) The holding of the Rights by the Plans until the date the Plans exercise or otherwise dispose of the Rights or the expiration of such Rights in accordance with the terms and conditions of the Rights Plan, whichever is earlier; and

(3) The exercise or other disposition of the Rights by the Plans;

provided that the conditions in Section II of this proposed exemption, as set forth below, are satisfied.[18]

(b) The sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986 (the Code), by reason of section 4975(c)(1)(A) through (E) shall not apply, effective June 22, 2009, to the acquisition of the Rights by the Plans, described above in Section I(a)(1)(A), and Section I(a)(1)(C) of this proposed exemption;[19] provided that the conditions in Section II of this proposed exemption, as set forth below, are satisfied.

Section II: Conditions

The relief provided in this proposed exemption is conditioned upon adherence to the material facts and representations described herein and as set forth in the application file and upon compliance with the conditions, as set forth in this proposed exemption.

(a) The acquisition by each of the Plans of the Rights occurred or will occur in connection with the June 22, 2009 Offering made available by Citigroup on the same terms to all shareholders of the common stock of Citigroup (the Citigroup Stock), including the acquisition of the Rights at no cost to the Plans;

(b) The acquisition of the Rights by the Participant Directed Plans on the Record Date resulted from an independent act of Citigroup as a corporate entity. The acquisition of the Rights by the Plans in the future will occur either at the direction of individual participants (in the case of the Participant Directed Plans), at the direction of an Independent Fiduciary (in the case of the Citigroup Pension Plan), or in connection with in-kind contributions to a Plan by Citigroup of Citigroup Stock and attached Rights (a Stock/Right Contribution), in each case incidental to, and as a direct consequence of, the purchase or other acquisition of Citigroup Stock. All holders of Citigroup Stock, which include the Rights (other than an Acquiring Person, as defined in the Rights Plan), including the Plans, were, and will continue to be, treated in the same manner with respect to the acquisition of the Rights;

(c) All shareholders of Citigroup Stock, including the Plans acquired, or will acquire, the same proportionate number of Rights based on the number of shares of Citigroup Stock held by such shareholders, including the Plans;

(d) Except with respect to a Stock/Right Contribution where the determination to make the contribution will be made by Citigroup as a corporate entity, the acquisition of the Rights by the Participant Directed Plans was made, or will be made, pursuant to provisions of each such plan for individually-directed investment of participant accounts;

(e) All decisions regarding the Rights that will be made by the Participant Directed Plans will be made in accordance with the provisions of such Participant Directed Plans for individually-directed investment of participant accounts by the individual participants whose accounts in each such Participant Directed Plan acquired the Rights in connection with the Offering, and if no instructions are received, the Rights will expire in accordance with the terms and conditions of the Rights Plan;

[17] For purposes of this exemption, references to provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

[18] The Department's determination to propose relief for these transactions should not be viewed as an endorsement of the Rights Plan, nor is it offering any views as to whether such transactions satisfy any other requirements of ERISA, the Code or other relevant statutory provisions. Rather, this proposed exemption is designed to place the Plans and their participants and beneficiaries in the same position as other holders of Citigroup Stock with respect to the acquisition of the Rights and to prevent the possible dilution of the Plans' investment in the Citigroup Stock.

[19] The Applicants represent that, because the fiduciaries for the Citibuilder 401(k) Plan for Puerto Rico have not made an election under section 1022(i)(2) of the Act, whereby such plan would be treated as a trust created and organized in the United States for purposes of tax qualification under section 401(a) of the U.S. Code, jurisdiction under Title II of the Act does not apply. Accordingly, the Applicant is not seeking any relief for the prohibitions, as set forth in Title II of the Act, for the acquisition of the Rights by the Citibuilder Plan.

(f) All decisions regarding the Rights (except in the case of an acquisition as a result of a Stock/Right Contribution, where the determination to make the contribution will be made by Citigroup as a corporate entity) will be made on behalf of the Citigroup Pension Plan by an Independent Fiduciary acting as an investment manager.

(g) To the extent the Citigroup board of directors exercises its rights under the Offering to redeem the Rights at the redemption price set forth in the Offering, all shareholders of Citigroup Stock will be treated the same, including the Plans; and

(h) The acquisition of the Rights as a result of a Stock/Right Contribution by Citigroup to the Plans shall result from a determination by Citigroup as a corporate entity.

(i) Neither the Participant Directed Plan participants nor the Citigroup Pension Plan will pay any fees or commissions in connection with the exercise of the Rights other than the aggregate Purchase Price with respect to the Rights then being exercised and an amount equal to any applicable transfer tax or other governmental charge.

Section III: Definition

The term "Independent Fiduciary" means an investment manager, as described in section 3(38) of the Act, that is:

(a) Independent of, and unrelated to, Citigroup Inc. and its affiliates (Citigroup), and

(b) appointed to act on behalf of the Citigroup Pension Plan for the purposes described in Section II.(f) above.

For purposes of this proposed exemption, a fiduciary will not be deemed to be independent of, and unrelated to, Citigroup if: (i) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with Citigroup; (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 Citigroup 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 Citigroup in the fiduciary's current tax year.

Effective Date: If granted, this proposed exemption will be effective as of June 22, 2009, the date of the announcement of the Offering and will expire on June 10, 2012.

Summary of Facts and Representations

1. The Applicants are Citigroup Inc. and its affiliates (Citigroup), the Citigroup 401(k) Plan, the Citibuilder 401(k) Plan for Puerto Rico (the Citibuilder Plan and collectively with the Citigroup 401(k) Plan, the Participant Directed Plans), the Citigroup Pension Plan (and collectively with the Participant Directed Plans, the Plans). The Applicants requested this relief in an application dated December 2, 2009 and a revised application dated July 23, 2010 (the Application).

Citigroup Inc. is a global diversified financial services holding company whose businesses provide consumers, corporations, governments and institutions with a broad range of financial products and services. Citigroup has approximately 200 million customer accounts and does business in more than 140 countries. Citigroup currently operates, for management reporting purposes, via two primary business segments: Citicorp, generally consisting of its regional consumer banking businesses and institutional clients group; and Citi Holdings, generally consisting of its brokerage and asset management and local consumer lending businesses, and a special asset pool. Citigroup's consumer and corporate banking business is a global franchise encompassing, among other things, branch and electronic banking, consumer lending services, investment services, and credit and debit card services. Citibank, N.A. (Citibank) is a principal subsidiary of Citigroup. As of September 30, 2009, Citigroup and its subsidiaries had total consolidated assets of approximately $1.89 trillion.

2. Citigroup sponsors the Citigroup 401(k) Plan and the Citigroup Pension Plan, while Citibank sponsors the Citibuilder 401(k) Plan for Puerto Rico. These Plans are involved in the transactions for which an exemption has been requested. These Plans are described, as follows:

(a) Citigroup 401(k) Plan: The Citigroup 401(k) Plan is a stock bonus plan, a portion of which is designated as an employee stock ownership plan, and contains within it a cash or deferred arrangement under section 401(k) of the Code and a qualified Roth contribution program under section 402A of the Code. The Citigroup 401(k) Plan is intended to qualify under the provisions of section 401(a) of the Code, and its related trust is intended to be tax-exempt pursuant to section 501(a) of the Code.

The Applicants represent that the Citigroup 401(k) Plan allows participants to direct investments of their own contributions and a portion of the employer contributions into several investment alternatives, including Citigroup Stock. In the event that Citigroup, as a corporate entity, decides to make an in-kind contribution of Citigroup Stock and attached Rights (a Stock/Right Contribution) to the Citigroup 401(k) Plan, the participants receiving a Stock/Right Contribution can sell the Citigroup Stock (including the attached Rights) and invest the proceeds in any other fund offered in the Citigroup 401(k) Plan immediately upon such Citigroup Stock (and attached Rights) being credited to the participants' accounts.[20]

The Citigroup 401(k) Plan is funded through a trust of which State Street Bank and Trust Company is the trustee. Reliance Trust Company is the sub-trustee for the Citigroup Stock fund offered as an investment option in the participant directed plans. The Plans Administration Committee of Citigroup Inc., a committee appointed by Citigroup, is the Plan Administrator of the Citigroup 401(k) Plan. The Applicants state that the 401(k) Plan Investment Committee is responsible for making all investment decisions related to the Citigroup 401(k) Plan, other than those investment decisions made by the participants and the decision to offer Citigroup stock as an investment in the Plan. Citigroup, as plan sponsor, is responsible for making all decisions regarding offering the Citigroup Stock fund as an investment option under the Citigroup 401(k) Plan.

As of June 22, 2009 (the Record Date), the Citigroup 401(k) Plan had approximately 180,935 participants and total assets of $6,990,680,850. The shares of Citigroup Stock held by the Citigroup 401(k) Plan were valued at approximately $393,394,961 as of the Record Date, and comprised approximately six percent (6%) of the total assets in the Citigroup 401(k) Plan. These shares represented approximately seven percent (7%) of the total shares of Citigroup Stock outstanding as of that date.

(b) The Citibuilder 401(k) Plan for Puerto Rico: The Citibuilder Plan is a defined contribution profit sharing plan which includes a qualified cash or deferred arrangement intended to meet

[20] In this regard, Section 408(e) of ERISA provides a statutory exemption for the acquisition or sale by a plan of qualifying employer securities (as defined in section 407(d)(5)) if certain conditions are met. The Department assumes that the Citigroup 401(k) Plan is intended to satisfy the requirements of section 404(c) of ERISA.

the requirements of section 1165(e) of the Puerto Rico Internal Revenue Code of 1994, as amended (the PR Code). The Citibuilder Plan was established for the exclusive benefit of the eligible employees and beneficiaries of Puerto Rican subsidiaries of affiliates of Citibank. The Applicants assert that the Citibuilder Plan is not intended to meet, and has never in practice met, the requirements of section 401(a) of the Code. The Citibuilder Plan is subject to Title I of the Act.

The Applicants represent that the Citibuilder Plan allows participants to direct investments of their own contributions and employer contributions into several investment alternatives, including Citigroup Stock. In the event that Citigroup, as a corporate entity, decides to make a Stock/Right Contribution to the Citibuilder Plan, the participants receiving a Stock/Right Contribution can sell the Citigroup Stock (including the attached Rights) and invest the proceeds in any other fund offered in the Citibuilder Plan immediately upon such Citigroup Stock (and attached Rights) being credited to the participants' accounts. The Applicants assert that the Citibuilder Plan is intended to satisfy the requirements of section 404(c) of ERISA.

The Citibuilder Plan is funded through a trust. The trustee of the Citibuilder Plan is Banco Popular de Puerto Rico. The Plans Administration Committee of Citigroup Inc. is the Plan Administrator of the Citibuilder Plan. The Applicants state that the 401(k) Plan Investment Committee is responsible for making all investment decisions related to the Citibuilder Plan, other than those investment decisions made by the participants and the decision to offer Citigroup Stock as an investment in the Plan. Citigroup, as plan sponsor, is responsible for making all decisions regarding offering the Citigroup Stock fund as an investment option under the Citibuilder Plan.

As of the Record Date, the Citibuilder Plan had approximately 1,739 participants and total assets of $18,318,896. As of the Record Date, the shares of Citigroup Stock held by the Citibuilder Plan were valued at approximately $1,297,870 and comprised approximately seven percent (7%) of the total assets of the Citibuilder Plan. These shares represented approximately less than one percent (0.02%) of the total shares of Citigroup Stock outstanding as of the Record Date.

(c) The Citigroup Pension Plan: The Citigroup Pension Plan is a frozen defined benefit pension plan that generally provided benefits to eligible participants under a cash balance formula. Certain participants who have a protected benefit that was accrued under a plan that was merged into the Citigroup Pension Plan may be eligible to have a portion of their benefit calculated using a final average pay formula (Grandfathered Participants). Effective January 1, 2007, the Citigroup Pension Plan was closed to new participants. Effective January 1, 2008, participants' hypothetical cash balance accounts ceased benefit accruals, although these hypothetical accounts will continue to accrue interest credits. Grandfathered Participants are not subject to the benefit accrual freeze and continue to accrue benefits. The Applicants assert that the Citigroup Pension Plan is intended to qualify under the provisions of section 401(a) of the Code, and its related trust is intended to be tax-exempt pursuant to section 501(a) of the Code.

The Citigroup Pension Plan is funded through a trust of which The Bank of New York Mellon is the trustee. The Plans Administration Committee is the Plan Administrator of the Citigroup Pension Plan. The Applicants state that the Pension Plan Investment Committee has oversight over all investment decisions related to the Citigroup Pension Plan.

As of December 31, 2008, the Citigroup Pension Plan had approximately 260,890 participants and total assets of approximately $11,285,250,916. The Applicants note that the Citigroup Pension Plan did not hold any Citigroup Stock as of the Record Date.

3. The Applicants provide that Citigroup has accumulated a substantial amount of recognized net deferred tax assets, such as net operating loss carryforwards and tax credits (the Tax Benefits), which is included in its tangible common equity. As of December 31, 2009, Citigroup had recognized net deferred tax assets of approximately $46.1 billion. Citigroup expects to utilize the Tax Benefits to offset future taxable income. The Applicants assert that Citigroup's utilization of the Tax Benefits is in the interests of all Citigroup Stockholders, including the Plans, the participants and beneficiaries.

The Applicants note that Citigroup's ability to utilize these deferred tax assets to offset future taxable income may be significantly limited in the event that Citigroup experiences an "ownership change" as defined in section 382 of the Code.[21] Specifically, section 382 provides that a "loss corporation" (*i.e.,* a corporation with net operating loss carryforwards and certain other tax attributes) that experiences an ownership change will generally be subject to an annual limitation after the ownership change on the use of such attributes. The Applicants assert that in Citigroup's case, this means that, should an ownership change occur, Citigroup could experience a limitation on its ability to utilize a portion of its tax deferred assets. Since tax losses and tax credits have finite carryover periods, the limitation could negatively affect Citigroup's ability to use the tax losses and tax credits before they expire. The precise amount of the limitation that would arise from an ownership change under section 382 on Citigroup's ability to utilize its deferred tax assets would depend on the value of Citigroup's stock and prevailing interest rates at the time of the ownership change.

4. The Applicants state that given the possibility of such negative consequences, on June 9, 2009, the board of directors of Citigroup adopted the Tax Benefits Preservation Plan (the Rights Plan) in order to preserve its ability to use the tax benefits. It is represented that the Rights Plan uses mechanics and structures very similar to traditional shareholder rights plans (commonly known as "poison pill" plans) in that it creates disincentives for those who engage in certain activities. Unlike traditional shareholder rights plans which are designed to deter unsolicited takeover bids, section 382-focused rights plans are designed to protect tax assets by deterring actions that could increase the likelihood of a loss of tax assets.[22] As is the case with the Rights Plan, this is generally accomplished by seeking to deter any shareholder from accumulating positions that would qualify such shareholder as a "five percent shareholder" under applicable tax laws.

The Applicants note that, as with the many companies that have adopted section 382-focused rights plans in the past, the Rights Plan has the effect of significantly diluting the value of the shares of the shareholder whose acquisitions of Citigroup Stock caused

[21] The Applicants note that generally, an ownership change occurs if the "five percent shareholders" (as defined in section 382 of the Code) of a loss corporation increase their percentage ownership interest in the loss corporation by more than 50 percentage points during a rolling three year testing period.

[22] The Applicants state that Citigroup's Rights Plan also differs from the traditional shareholder rights plan in that the Rights Plan does not apply to acquisitions of a majority of Citigroup Stock made in connection with an offer to acquire 100% of Citigroup Stock, and lasts for only 36 months. Traditional shareholder rights plans generally last for 10 years.

the Rights Plan to become exercisable (the Acquiring Person) by allowing all other shareholders to purchase, for each Right, preferred stock equivalent to one share of Citigroup Stock but at half the price of a share of Citigroup Stock at the time of the purchase. Specifically, the mechanisms by which the Rights Plan works are as follows:

(a) In connection with the adoption of the Rights Plan, on June 9, 2009, Citigroup's board of directors declared a dividend of one preferred stock purchase right (a Right) for each outstanding share of Citigroup Stock. The dividend was payable to holders of record of Citigroup Stock on the Record Date, as well as shares of Citigroup Stock issued after such date and before the Final Expiration Date (June 10, 2012). Unless and until the Rights become exercisable (as described below), the Rights are not severable from Citigroup Stock, have no independent voting or dividend rights associated with them and can be transferred only in connection with the transfer of the underlying shares of Citigroup Stock.

(b) Each Right will initially represent the right to purchase, for $20.00 (the Purchase Price), one one-millionth of a share of Series R Participating Cumulative Preferred Stock, $1.00 par value per share (the Series R Preferred Stock).

(c) The Rights are not exercisable until the earlier of (i) the close of business on the 10th business day after the date (the Stock Acquisition Date) of the announcement that a person has become an Acquiring Person (as defined in the Rights Plan) and (ii) the close of business on the 10th business day (or such later day as may be designated by Citigroup's board of directors before any person has become an Acquiring Person) after the date of the commencement of a tender or exchange offer by any person which could, if consummated, result in such person becoming an Acquiring Person. The "Distribution Date" is referred to as the date that the Rights become exercisable.

(d) The Applicants state that it is important to note that the Rights may never become exercisable because Citigroup retained the ability to unilaterally (i) amend the Rights Plan in any manner prior to the occurrence of a Distribution Date, including by modifying the definition of "Final Expiration Date" and effectively terminating the Rights Plan immediately or (ii) redeem the Rights for $0.00001 per Right at any time prior to a Distribution Date.

(e) After any person has become an Acquiring Person, each Right (other than Rights treated as beneficially owned under certain U.S. tax rules by the Acquiring Person) can be exercised by the holder to purchase for the Purchase Price a number of shares of Series R Preferred Stock having a market value of twice the Purchase Price. Basically, all holders of these Rights (other than the Acquiring Person) will have the right to acquire one one-millionth of a share of Series R Preferred Stock, which will be the economic equivalent (*e.g.,* the same voting rights, dividend rights, trading price and market value) of one share of Citigroup Stock, for one-half (½;) of the price of a share of Citigroup Stock as of the Distribution Date. Any time after any person has become an Acquiring Person (but before any person becomes the beneficial owner of 50% or more of the Citigroup Stock), the board of directors of Citigroup may elect to implement such dilution remedy against an Acquiring Person by exchanging any Rights (other than the Rights beneficially owned by the Acquiring Person) for one one-millionth of a share of Series R Preferred Stock per Right (instead of having holders exercise Rights and pay the Purchase Price).

(f) In the event that an Acquiring Person causes an ownership change, such Acquiring Person would almost certainly suffer extreme dilution due to the triggering of the Distribution Date (and exercisability of the Rights under the Rights Plan). This creates a significant disincentive for any investor to acquire a sufficient position, or to increase its position in Citigroup Stock, to cause such person to be treated as a "five percent shareholder" for section 382 purposes. In addition, while exercise of the Rights by non-Acquiring Person shareholders is not automatic, any such shareholder who does not decide to exercise the Rights would almost certainly also experience significant dilution.

(g) Citigroup's board of directors may redeem all of the Rights at a price of $0.00001 per Right at any time before a Distribution Date.

(h) Prior to the Distribution Date, the Rights will be inseparable from the corresponding Citigroup Stock and not evidenced by a separate certificate and, as a result, the Rights will not be transferrable separately from the corresponding Citigroup Stock. Instead, the Rights will be evidenced by the certificates for (or current ownership statements issued with respect to uncertificated shares in lieu of certificates for) and will be transferred with Citigroup Stock, and the registered holders of Citigroup Stock will be deemed to be the registered holders of the Rights.

(i) After the Distribution Date, the rights agent will mail separate certificates evidencing the Rights to each record holder of Citigroup Stock as of the close of business on the Distribution Date, and thereafter the Rights will be transferable separately from Citigroup Stock. The Rights will expire on June 10, 2012 (the Final Expiration Date), with no value, unless the Rights are earlier exchanged or redeemed or the Plan is amended by the board of directors of Citigroup.

(j) At any time prior to the Distribution Date, the Rights Plan may be amended in any respect. At any time after the occurrence of a Distribution Date, the Rights Plan may be amended in any respect that does not adversely affect Rights holders (other than any Acquiring Person).

(k) A Rights holder has no rights as a stockholder of Citigroup as a result of holding the Rights, including the right to vote and to receive dividends. The Rights Plan includes antidilution provisions designed to maintain the effectiveness of the Rights.

5. Citigroup issued a press release regarding the adoption of the Rights Plan on June 10, 2009. In addition, shareholders of Citigroup Stock as of the Record Date, including participants in the Participant Directed Plans who were invested in the Citigroup Stock fund, were notified of the adoption of the Rights Plan by letter, dated June 22, 2009 (the Record Date). The notice was sent to active employees by electronic mail (with the relevant link) and to all others by first class mail. Shareholders did not have to pay any amount to acquire the Rights. As of the Record Date, Citigroup had approximately 196,000 registered Citigroup Stock shareholders of record. As of the Record Date, there were 5,671,743,807 shares of Citigroup Stock issued and outstanding.

On March 2, 2010, the Applicants informed the Department that Citigroup filed a February 26, 2010 preliminary proxy statement, Schedule 14A, pursuant to Section 14(a) of the Securities Exchange Act of 1934 (1934 Act), with the Securities Exchange Commission (SEC) providing the contents of the proxy statement that was mailed to Citigroup stockholders, for the Citigroup annual stockholders' meeting held on April 20, 2010. Proposal 6 of the proxy statement asks that the stockholders at the meeting ratify the June 9, 2009 board of directors' adoption of the Rights Plan. The proxy statement noted that because the Rights Plan protects the value of the deferred tax assets for the benefit of all

stockholders, the board of directors recommends that the stockholders vote for ratification of the Rights Plan. On April 26, 2010, the Applicants informed the Department that Form 8–K, filed by Citigroup on April 23, 2010 with the SEC pursuant to Section 13 or 15(d) of the 1934 Act, reported that the proposal to ratify the adoption of the Rights Plan was approved by the stockholders at the annual meeting held on April 20, 2010. On April 23, 2010, Citigroup shareholders ratified and approved the adoption of the Rights Plan.

6. The authorized capital stock of Citigroup consists of 15 billion shares of Citigroup Stock, with a par value $0.01 per share, and 30 million shares of preferred stock, without a par value per share. The Citigroup Stock is traded on the NYSE under the symbol of C. It is represented that the closing price of the Citigroup Stock on June 19, 2009, before the Offering was $3.17 per share. On June 22, 2009, the closing price of the Citigroup Stock was $3.00 per share. It is represented that sufficient shares of the Series R Preferred Stock will be available to satisfy fully all exercise elections made in connection with the Rights.

7. The Applicants note that the acquisition by each of the Plans of the Rights occurred or that will occur, in connection with the holding or acquisition of Citigroup Stock as a result of the Offering made available by Citigroup, on the same terms to all shareholders of the Citigroup Stock, including the acquisition of the Rights at no cost. The Applicants assert that neither the Participant Directed Plan participants nor the Citigroup Pension Plan will pay any fees or commissions in connection with the exercise of the Rights other than the aggregate Purchase Price with respect to the Rights then being exercised and an amount equal to any applicable transfer tax or other governmental charge.

8. Citigroup and its affiliates, as employers any of whose employees are covered by one or more of the Plans, subject to Title I of the Act, and as fiduciaries of one or more of the Plans, are parties in interest with respect to each such plan, pursuant to section 3(14)(A) and section 3(14)(C) of the Act, respectively. In addition, Citigroup and its affiliates, as employers any of whose employees are covered by one or more of the Plans, which are subject to Title II of the Act, and as fiduciaries with respect to one or more of such Plans are disqualified persons with respect to each such Plan, pursuant to section 4975(e)(2)(A) and section 4975(e)(2)(C) of the Code, respectively.

9. It is represented that the Citigroup Stock, the Rights, and the Series R Preferred Stock satisfy the definition of "employer securities," as set forth under section 407(d)(1) of the Act [23] and that the Citigroup Stock and Series R Preferred Stock satisfy the definition of a "qualifying employer security," as set forth in section 407(d)(5) of the Act. However, the Rights do not satisfy the definition of "qualifying employer securities," as defined under section 407(d)(5) [24] of the Act because the Rights, if considered separately from Citigroup Stock as a security under section 3(20) of the Act [25], is not stock, a marketable obligation or an interest in a publicly-traded partnership. Under section 407(a)(1) of the Act, a plan may not acquire or hold any "employer security" which is not a "qualifying employer security." Further, section 406(a)(1)(E) of the Act prohibits the acquisition, on behalf of a plan, of any "employer security" in violation of section 407(a) of the Act. Section 406(a)(2) of the Act prohibits a fiduciary who has authority or discretion to control or manage the assets of a plan to permit the plan to hold any "employer security" that violates section 407(a) of the Act.

The Applicants have requested retroactive relief, effective as of June 22, 2009, the Record Date of the Offering, from the prohibitions, as set forth in Title I of the Act, for the acquisition and holding of the Rights by the Plans. The Applicants have also requested the same retroactive relief from the prohibitions, as set forth in section 4975(c)(1)(A) through (E) of the Code, for the acquisition of the Rights by the Citigroup 401(k) Plan and the Citigroup Pension Plan.

10. The Applicants state that the Rights will only be exercisable in the event Citigroup experiences an ownership change under section 382 of the Code. The Rights will remain outstanding until the Final Expiration Date (or June 10, 2012), unless the Rights are earlier exchanged or redeemed pursuant to the terms and conditions of the Rights Plan or the Rights Plan is amended. The Applicants assert that the Rights issued by Citigroup are transferable only in connection with the transfer of the underlying shares of Citigroup Stock and cannot be separated from the Citigroup Stock unless and until such Rights are exercisable. This means that the Plans cannot simply refuse to accept the Rights. Since the Rights are inseparable from Citigroup Stock, it would be impossible for the Plans to hold Citigroup Stock (a qualifying employer security) and not engage in a prohibited transaction. Absent an exemption, the Plans would have to divest themselves of all Citigroup Stock in order to not hold the Rights and thereby avoid a prohibited transaction.

11. With regard to the Rights acquired by the Participant Directed Plans and potentially to be acquired in the future, it is represented by plan design that the participants of the Participant Directed Plans control the assets in their accounts in such Plans and that no plan fiduciary had the authority to exercise any control over such assets. Therefore, on the Record Date, a Right attached to each Citigroup Stock beneficially owned by a participant's account on that date and, thus, the Rights were allocated to the accounts of the participants in such Plans in proportion to the Citigroup Stock beneficially owned by each such account. In the event that the Participant Directed Plans acquire Citigroup Stock in the future, a Right will attach to each Citigroup Stock beneficially acquired by each participant's account and, thus, the Rights will be allocated to the accounts of the participants in such Plans in proportion to the Citigroup Stock beneficially acquired by each such account. In addition, it is represented that each participant in the Participant Directed Plans will be given the opportunity to exercise the Rights upon the Distribution Date in accordance with the terms and conditions of the Rights Plan. Accordingly, each participant will be able to make an independent decision whether to acquire Citigroup

[23] Section 407(d)(1) of the Act defines the term, "employer security," as "a security issued by an employer of employees covered by the plan, or by an affiliate of such employer."

[24] Section 407(d)(5) of the Act defines the term "qualifying employer security," as an employer security which is stock, a marketable obligation (as defined in subsection (e)), or an interest in a publicly traded partnership * * *"

[25] Section 3(20) of ERISA states that "security" has the same meaning as such term under section 2(1) of the Securities Act of 1933, as amended (the "Securities Act"). Section 2(1) of the Securities Act defines the term "security" as "any note, stock, treasury stock, security future, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing."

Stock (except in the case of a Stock/Right Contribution as discussed below) and the attached Rights in the future and whether to exercise the Rights following the Distribution Date and receive shares of Series R Preferred Stock with a value equal to twice the Purchase Price.

12. With respect to the Citigroup Pension Plan, it is represented that the Citigroup Pension Plan did not hold any Citigroup Stock as of the Record Date. However, under the terms of the Citigroup Pension Plan, the Pension Plan Investment Committee of Citigroup Inc., as the named fiduciary of such Plan, has the authority to appoint a third party manager unaffiliated with Citigroup and its affiliates to serve as a "fiduciary" (within the meaning of section 3(21)(A) of the Act) and an "investment manager" (within the meaning of section 3(38) of the Act) (an Independent Fiduciary) over all or a portion of the assets of the Citigroup Pension Plan. Under investment guidelines applicable to the assets under the supervision and management of certain Independent Fiduciaries, such Independent Fiduciaries may be able to cause the Citigroup Pension Plan to invest in Citigroup Stock in accordance with sections 408(e) and 407 of the Act. In the event that the Citigroup Pension Plan acquires Citigroup Stock before the Final Expiration Date, it is represented that all decisions regarding the acquisition (except in the case of a Stock/Right Contribution as discussed below), holding and exercise or other disposition of Citigroup Stock and, therefore, the Rights by the Citigroup Pension Plan will be exercised by an Independent Fiduciary. In addition, Citigroup Inc. may in the future contemplate making employer contributions to one or more of the Plans in shares of Citigroup Stock and the Rights attached to such shares (a Stock/Rights Contribution). The determination to make such Stock/Right Contribution will be made by Citigroup as a corporate entity.

13. The Applicants represent that all shareholders of Citigroup Stock on or after the Record Date, including the participants in the Participant Directed Plans and any Independent Fiduciary of the Citigroup Pension Plan, have the ability to exercise the Rights acquired with Citigroup Stock after the Distribution Date through the close of business on the Final Expiration Date, unless earlier exchanged or redeemed in accordance with the terms and conditions of the Rights Plan. This deadline for exercising the Rights was implemented by Citigroup as the issuer of the Rights. Neither the shareholders (other than executive officers of Citigroup who are also shareholders of Citigroup Stock), the participants in the Participant Directed Plans nor any Independent Fiduciary had any voice in setting the deadline with respect to the Rights.

14. The Applicants assert that the acquisition, holding, and exercise or other disposition of the Rights by the Plans, pursuant to the Offering, is in the interests of and beneficial to such Plans and to the participants and beneficiaries of such Plans. The Applicants note that the existence of the Rights Plan and issuance of Rights is beneficial to the Plans to the extent they are shareholders of Citigroup Stock because the Rights Plan is explicitly designed to preserve Citigroup's ability to utilize its Tax Benefits (which in total had a reported value of $46.1 billion as of December 31, 2009) and to avoid limitations on the use of any portion of such amount. Citigroup's ability to utilize its Tax Benefits has significant value to Citigroup's shareholders, including the Plans that hold Citigroup Stock.

It is represented that the Plans' ability to acquire, hold and dispose of the Rights is in the interest of participants and beneficiaries because it allows them to hold Citigroup Stock. If the requested exemption were not granted, the Applicants represent that the Plans would not be permitted to acquire, hold or dispose of the Rights. Since the Rights are not severable from Citigroup Stock until they become exercisable, the Plans would not be permitted to acquire, hold or dispose of Citigroup Stock, even though the Citigroup Stock itself is a qualifying employer security and such actions are contemplated by the statutory scheme of ERISA.

The Applicants assert that the Plans' ability to exercise or otherwise dispose of the Rights is beneficial to the Plans because, if the Rights become exercisable, they will allow the Plans to acquire additional equity in Citigroup at a discount on the same terms and conditions as other holders of Citigroup Stock. If the Plans held Citigroup Stock but were not able to exercise the Rights, the value of their shares would be diluted significantly, resulting in harm to the Plans. However, the Applicants state that it is important to note that if the Rights Plan is successful, shareholders will be deterred from becoming Acquiring Persons and the Rights will never become exercisable.

15. It is represented that the acquisition, holding, and exercise or other disposition of the Rights by the Plans will be protective of such Plans and of the participants and beneficiaries of such Plans in that all of the shareholders of Citigroup Stock, including the Plans, will be treated in a similar manner with respect to the Rights. In addition, all decisions regarding the future acquisition (except in the case of an acquisition as a result of a Stock/Right Contribution, where the determination to make the contribution will be made by Citigroup as a corporate entity), holding and exercise or other disposition of the Rights by the Participant Directed Plans will be made in accordance with the provisions of such Plans for individually-directed investment of participant accounts by the individual participants. All decisions regarding the future acquisition (except in the case of an acquisition as a result of a Stock/Right Contribution, where the determination to make the contribution will be made by Citigroup as a corporate entity), holding and exercise or other disposition of the Rights by the Citigroup Pension Plan will be made by an Independent Fiduciary.

16. It is represented that the acquisition, holding, and exercise or other disposition of the Rights by the Plans is feasible and all shareholders of the Citigroup Stock (other than an Acquiring Person), including the Plans, were, and will be, treated in the same manner with respect to any past and future acquisition, holding, and exercise or other disposition of the Rights. With regard to the fact that the past acquisition and holding of the Rights were consummated prior to obtaining an exemption due to the timing of the Offering, it is represented that the fiduciaries were required to participate in the Offering before requesting the proposed exemption and such fiduciaries had no control over the timing of the transactions.

17. In summary, the Applicants represent that the proposed transactions satisfy the statutory requirements for an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) The acquisition by each of the Plans of the Rights occurred or will occur in the future in connection with the holding or acquisition of Citigroup Stock as a result of the Offering made available by Citigroup on the same terms to all shareholders of Citigroup Stock, including the acquisition of the Rights at no cost;

(b) The past acquisition of the Rights by the Participant Directed Plans resulted from an independent act of Citigroup as a corporate entity. The acquisition of the Citigroup Stock with the attached Rights by (i) the Participant Directed Plans in the future will occur at the direction of individual

participants, (ii) the Citigroup Pension Plan at the direction of the Independent Fiduciary, or (iii) as a result of a Stock/Right Contribution where the determination to make the contribution will be made by Citigroup as a corporate entity; in all cases, incidental to, and as a consequence of, the purchase or other acquisition of Citigroup Stock. All holders of the Rights holding Citigroup Stock (other than an Acquiring Person), including the Plans, were, and will continue to be, treated in the same manner with respect to the acquisition of the Rights;

(c) All shareholders of Citigroup Stock, including the Plans acquired, or will acquire, the same proportionate number of Rights based on the number of shares of Citigroup Stock held by such shareholder, including the Plans;

(d) Except with respect to a Stock/Right Contribution, the acquisition of the Rights by the Participant Directed Plans was made, or will be made, pursuant to provisions of each such plan for individually-directed investment of participant accounts;

(e) All decisions regarding the holding and exercise or other disposition of the Rights that will be made by the Participant Directed Plans will be made in accordance with the provisions of such Participant Directed Plans for individually-directed investment of participant accounts by the individual participants whose accounts in each such Participant Directed Plan acquired the Rights in connection with the Offering, and if no instructions are received, the Rights will expire in accordance with the terms and conditions of the Rights Plan; and

(f) The authority for all decisions regarding the acquisition, holding and exercise or other disposition of the Rights by the Citigroup Pension Plan will be exercised by an Independent Fiduciary.

(g) Neither the Participant Directed Plan participants nor the Citigroup Pension Plan will pay any fees or commissions in connection with the exercise of the Rights other than the aggregate Purchase Price with respect to the Rights then being exercised and an amount equal to any applicable transfer tax or other governmental charge.

Notice to Interested Persons

The Applicants represent that within thirty (30) days of the date of publication of the proposed exemption in the **Federal Register**, the Applicants will provide notice of the proposed exemption (consisting of a copy of the proposed exemption as published in the **Federal Register** and the supplemental statement required by Department of Labor Regulation Section 2570.43(a)(2), (collectively, the Notice to Interested Persons)) to (i) all current participants (active and inactive) in the Participant Directed Plans, and (ii) the current Independent Fiduciaries (as defined in the proposed exemption) of the Citigroup Pension Plan. With respect to the Participant Directed Plans, the Applicants will provide all current participants with the Notice to Interested Persons, as well as an explanatory cover letter, by first class mail. The Notice to Interested Persons may be included in the same package that includes the quarterly statements and other participant notices if the timing of the mailing of the Notice to Interested Persons coincides with the timing of the mailing of such other statements and notices. With respect to the Citigroup Pension Plan, the Applicants will provide the Independent Fiduciaries with the Notice to Interested Persons by electronic mail, with a request for a delivery receipt for the electronic mail.

The Department must receive all written comments and requests for a hearing no later than thirty (30) days from the last date of the mailing of the Notice to Interested Persons.

FOR FURTHER INFORMATION CONTACT: Wendy M. McColough of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

The West Coast Bancorp 401(k) Plan (the Plan) Located in Lake Oswego, Oregon [Application No. D–11611]

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).[26] If the exemption is granted, the restrictions of sections 406(a)(1)(A) and (E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a) and the sanctions resulting from the application of section 4975(c)(1)(A) and (E) of the Code, shall not apply, effective January 29, 2010, to: (1) the acquisition of stock rights (the Rights) by the Plan issued by the West Coast Bancorp, Inc. (Bancorp), the Plan sponsor and a party in interest with respect to the Plan under the terms and conditions of a Rights offering (the Offering); and (2) the holding of the Rights by the Plan until their expiration, during the subscription period (the Subscription Period) of the Offering, provided that the following conditions were met:

(a) The receipt of the Rights by the Plan occurred in connection with the Offering and was made available by Bancorp on the same terms to all shareholders (the Shareholders) of the common stock of Bancorp (Common Stock);

(b) The acquisition of the Rights by the Plan resulted from an independent act of Bancorp as a corporate entity, and all holders of the Rights, including the Plan, were treated in the same manner with respect to such acquisition;

(c) All Shareholders of Common Stock, including the Plan, received the same proportionate number of Rights based on the number of shares of Common Stock held by such Shareholders;

(d) All decisions regarding the Rights held by the Plan were made by the individual Plan participants whose accounts in the Plan received the Rights, in accordance with the provisions under the Plan for individually-directed investment of such account; and

(e) The Plan did not pay any fees or commissions in connection with the acquisition and or holding of the Rights.

Effective Date: This proposed exemption, if granted, will be effective as of January 29, 2010, the commencement date of the Offering (the Commencement Date).

Summary of Facts and Representations

The Parties

1. Bancorp, which maintains its principal place of business in Lake Oswego, Oregon, is the bank holding company for West Coast Bank (the Bank), its primary subsidiary. The Bank maintains $2.7 billion in assets and operates in 65 Oregon and Washington state locations. As of the Commencement Date, there were 87,171,915 shares of Common Stock and 121,328 shares of Series B Preferred Stock (Series B Preferred Stock) outstanding. As of March 9, 2010, Bancorp was authorized to issue 250 million additional shares of Common Stock in order to raise capital, as discussed below.

2. Bancorp sponsors the Plan, a Code section 401(k) profit sharing plan, for its subsidiaries. As of the Commencement Date, the Plan had 752 participants and assets totaling $22,717,737.22. Under the Plan, participants may make pre-tax and after-tax 401(k) contributions. Eligible employees may also make rollover contributions into the Plan from other employers' qualified plans or from IRAs. Further, the Plan allows

[26] For purposes of this proposed exemption, references to the provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

participants to self-direct the investment of their individual accounts pursuant to section 404(c) of the Act. West Coast Trust Company, a wholly-owned subsidiary of Bancorp serves as the Plan's directed trustee (the Trustee).

3. The Plan provides participants with several investment options, which include the Federated Government Obligations Money Market Fund (the Money Market Fund) and the West Coast Bancorp Employer Stock Fund (the Stock Fund). The Money Market Fund provides conservative investors with current income and stable principal. Accordingly, the Money Market Fund invests primarily in a portfolio of short-term U.S. Treasury and government agency securities.

The Stock Fund allows participants to invest voluntarily in the Common Stock. As of January 19, 2010, the Plan held 454,923.56 shares of common stock or approximately 0.52% of the then outstanding shares of Common Stock, with a value of $1,187,350 based on the $2.61 closing price on the NASDAQ Global Select Market. The Common Stock trades under ticker symbol "WCBO." As of the Commencement Date, the Common Stock represented approximately 5.23% of Plan assets as of the Commencement Date.

Regulatory Involvement

4. From 2007 to early 2009, the value of the Common Stock decreased by over 90 percent as a result of the stock market crash, the subprime mortgage crisis and the recession. Bancorp represents that the Common Stock's price reflected the trend for comparable bank stocks. Although Bancorp had exposure to home mortgage loans that were eventually written down, Bancorp represents that it was not a recipient of any funds from the U.S. Treasury's Troubled Asset Relief Program.

5. On March 30, 2009, the Federal Deposit Insurance Corporation (FDIC) and the Oregon Division of Finance and Corporate Securities (DFCS) issued a joint Report of Examination (ROE) following a routine examination of the Bank. The ROE, as summarized, stated that the Bank had engaged in unsafe and unsound banking practices by: (a) Operating with management whose policies and practices were detrimental to the Bank; (b) operating with a board of directors which failed to provide adequate supervision over and direction to the active management of the Bank; (c) operating with inadequate capital in relation to the kind and quality of assets held by the Bank; (d) operating with a large volume of poor quality loans; (e) engaging in unsatisfactory lending and collection practices; (f) operating in such a manner as to produce operating losses; (g) operating with inadequate provisions for liquidity; and (h) operating in violation of Part 323 of the FDIC Rules and Regulations, 12 CFR Part 3234, concerning appraisals; and (i) operating in violation of Part 353 of the FDIC Rules and Regulations, 12 CFR Part 353, concerning suspicious activity reporting.

6. On October 15, 2009, the FDIC, the DFCS and the Bank entered into a Stipulation and Consent to the Issuance of an Order to Cease and Desist (the Consent Agreement) (FDIC–09–4536). In the Consent Agreement, the Bank, without admitting or denying alleged charges of unsafe or unsound banking practices and violations of law and/or regulations, agreed to the issuance of an Order to Cease and Desist (the Consent Order). On October 22, 2009, the FDIC and the DFCS issued the Consent Order which essentially required the Bank to take steps outlined in the Consent Agreement. In this regard, The Bank was required to increase its capital levels, reduce underperforming assets, submit plans for a securities issuance to the FDIC, set capital and leverage ratios, prevent fraudulent lending, and eliminate dividends within certain time frames.[27] The Bank represents in its Form 10–K (Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934) filing for its fiscal year ending December 31, 2009 that it is in material compliance with all aspects of the Consent Order. On July 15, 2010, the FDIC and DFCS issued a joint termination of the Consent Order.

New Investment in the Bank

7. On October 23, 2009, Bancorp entered into investment agreements with 52 outside investors as part of a private sale of $155 million of newly-issued preferred stock and warrants issued by Bancorp (the Capital Raise). Sandler O'Neill and Partners, L.P., Bancorp's financial advisor with respect to the Capital Raise, represented Bancorp with the outside investors, none of whom are parties in interest with respect to the Plan.

During the Capital Raise, Bancorp received net proceeds of $139.2 million from the investors in exchange for 1,428,849 shares of mandatorily convertible cumulative participating preferred stock (the Series A Preferred Stock), 121,328 shares of mandatorily convertible cumulative participating preferred stock (the Series B Preferred Stock), and Class C warrants (the Class C Warrants), exercisable for a total of 240,000 shares of Series B Preferred Stock (each at a price of $100 per share together with certain other expired warrants).

As a result of shareholder approvals, on January 20, 2010, shares of Series A Preferred Stock issued by Bancorp in the Capital Raise were automatically converted into an aggregate of 71,442,450 shares of Common Stock on January 27, 2010. Shares of Series B Preferred Stock issued in the Capital Raise became automatically convertible into 12 million shares of Common Stock upon transfer of such preferred stock to third parties in a "widely dispersed" offering.[28] Finally, shares of Series B Preferred Stock issuable upon the exercise of the Class C Warrants became automatically convertible into 12 million shares of Common Stock following exercise of the Class C Warrants and the transfer of the Series B Preferred Stock issued by Bancorp to third parties in a "widely-dispersed" offering.

Bancorp contributed the $139.2 million of proceeds from the Capital Raise to the Bank, thereby improving the Bank's operating flexibility. In addition, the regulatory capital ratios of the Bank improved significantly as a result of the Capital Raise.

The Offering

8. Following the Capital Raise, Bancorp embarked on an effort to raise $10 million in additional capital through the Offering.[29] The Offering commenced on January 29, 2010 and it expired on March 1, 2010 at 5 p.m. PST (the Offering Expiration Date). The shares of Common Stock issued in connection with the Offering were listed on the NASDAQ Global Select Market.

In the Offering, Bancorp distributed, at no charge, the Rights to the Shareholders of record on January 19, 2010 (the Record Date). The Rights entitled the Shareholders to purchase up to 5,000,000 shares of Common Stock for a subscription price (the Subscription Price) of $2.00 per share. Each Shareholder received .31787 Rights for each share of Common Stock they owned on the Record Date. The Rights were allocated in whole numbers

[27] Bancorp also entered a written agreement with the Federal Reserve Bank of San Francisco (the Reserve Bank) and the DFCS on December 15, 2009, agreeing not to take any dividends or other payments representing a reduction in capital from the Bank without the prior consent of the Reserve Bank and the DFCS.

[28] Bancorp's Form 10–K Report states, on page 35, that for the fiscal year ending December 31, 2009, no conversion of Series B Preferred Stock can occur until the condition of a "widely-dispersed" offering of such stock has occurred, due to regulatory reasons.

[29] Bancorp apprised the FDIC and DFCS of the Offering pursuant to the Consent Order.

only and were rounded down to the nearest whole number.

9. The Rights could not be sold, transferred or assigned, and they were not listed for trading on the NASDAQ or any other exchange or over-the-counter market. Bancorp represents that the Rights were nontransferable to allow only legacy Shareholders the opportunity to purchase additional shares of Common Stock to help offset the share dilution such shareholders had incurred when the Preferred Stock was acquired by the outside investors, as discussed above in Representation 7. Further, Bancorp states that the use of transferable Rights would have allowed persons other than legacy Shareholders to acquire Common Stock at the below market price; whereas, the Offering was intended to benefit legacy Shareholders. Any Rights that were not exercised by the Shareholders expired.

As noted above, each Right entitled a Shareholder an opportunity to purchase one share of Common Stock at the Subscription Price of $2.00 per share. The Subscription Price, which was established by the Bancorp's Board of Directors (the Board), was equal to the implied per share value of the Common Stock that was negotiated by the new investors, as discussed above in Representation 7. The Subscription Price was not related to Bancorp's book value, results of operations, cash flows, financial condition or the predicted future market value of the Common Stock after the Offering. In addition, the Board did not make any recommendations to the Shareholders regarding whether they should exercise their Rights but urged the Shareholders to make independent decisions based on their assessment of Bancorp's business and the risk factors associated with a rights offering.

10. The Rights entitled the Shareholders to a basic subscription privilege (the Basic Subscription Privilege) and an over-subscription privilege (the Over-Subscription Privilege). The Basic Subscription Privilege entitled the Shareholders to purchase one share of Common Stock at the Subscription Price. The Over-Subscription Privilege entitled Shareholders to purchase as many additional shares of Common Stock available in the Offering as they wanted at the Subscription Price. Shareholders were required to exercise their Basic Subscription Privilege in full before they could exercise their Over-Subscription Privilege. Additionally, Shareholders were required to exercise their Over-Subscription Privilege at the same time they exercised their Basic Subscription Privilege. However, Bancorp reserved the right to reject in whole or in part any Over-Subscription requests, regardless of the availability of shares of Common Stock.[30] Bancorp represents that no Shareholders who exercised their Basic Subscription Privileges, including Plan Shareholders, had their Over-Subscription requests rejected either in whole or in part.

If the Shareholders collectively exercised their Over-Subscription Privileges in excess of the 5,000,000 shares authorized by Bancorp in the Offering, Bancorp was required to fulfill first all Basic Subscription Privileges. Then, any remaining shares of Common Stock were to be sold pro rata among the Over-Subscription Shareholders based on the number of shares for which the over-subscribing Shareholders had subscribed under their Basic Subscription Privileges.

Request for Exemptive Relief and Rationale

11. Bancorp represents that the Rights satisfy the definition of an "employer security," which under section 407(d)(1) of the Act is defined as "a security issued by an employer of employees covered by the plan, or by an affiliate of such employer," However, Bancorp states that the Rights do not satisfy the definition of a "qualifying employer security," as set forth in section 407(d)(5) of the Act, which defines the term as an employer security which is stock, a marketable obligation, or an interest in a publicly-traded partnership (provided that such partnership is an existing partnership as defined in the Code). Under section 407(a)(1) of the Act, a plan may not acquire or hold any "employer security" which is not a "qualifying employer security." Moreover, section 406(a)(1)(E) of the Act prohibits the acquisition, on behalf of a plan, of any "employer security in violation of section 407(a) of the Act. Finally, section 406(a)(2) of the Act prohibits a fiduciary who has authority or discretion to control or manage the assets of a plan to permit the plan to hold any "employer security" that violates section 407(a) of the Act. Because the Plan's acquisition and holding of the Rights would violate the Act,[31] Bancorp requests an administrative exemption from the Department. If granted, the exemption would be effective on the Commencement Date.

The Rights Disclosures

12. On February 3, 2010, Bancorp posted a "Rights Offering Notice" on its intranet for its employees. On February 4, 2010, Bancorp completed mailing a prospectus for the Offering. Plan Shareholders also received special instructions entitled "Special Instructions for Participants in our 401(k) Plan—What You Need to Know about the Bancorp Stock Rights Offering and Your 401(k) Account" (Special Instructions). As discussed below, the Special Instructions gave Plan Shareholders, as opposed to non-Plan Shareholders, different timeframes and payment methods in which to exercise their Rights.

Exercise of Rights

13. Shareholders were permitted to exercise all, some or none of their Rights. An election to exercise a Right was irrevocable once made. Bancorp did not charge any fees or sales commissions to issue the Rights or to issue shares of Common Stock to those who exercised their Rights. However, if Shareholders exercised their Rights through a broker or other holder of their shares, the Shareholders were responsible for paying any fees that person may have charged. No fees or expenses were paid by the Plan.

14. To exercise their Rights, including their Basic and Over-Subscription Privileges, non-Plan Shareholders were required to complete and submit a Subscription Rights Certificate to Wells Fargo, N.A. which acted as the Subscription Agent for the Offering (the Subscription Agent). The Subscription Agent collected these payments and held them in a segregated bank account until the Offering was completed. Once the Offering had been completed, the Subscription Agent purchased the new shares of Common Stock in accordance with the terms of the Offering. Generally, non-Plan Shareholders had until 5 p.m. PST on the Offering Expiration Date (*i.e.,* March 1, 2010) to

[30] Bancorp had reserved the rejection right, which is customary in a rights offering by a banking institution, to avoid any shareholder from acquiring an ownership interest in Bancorp that would either jeopardize Bancorp's ability to claim certain tax advantages, such as net operating losses, or require Bancorp to first obtain approval from federal or state banking authorities.

[31] Other provisions of the Act that are implicated by the transactions include section 406(a)(1)(A) of the Act and the fiduciary self-dealing and conflict of interest provisions section 406(b)(1) and (b)(2) of the Act. In relevant part, section 406(a)(1)(A) of the Act provides that a fiduciary with respect to a plan shall not cause the plan to engage in a transaction if the fiduciary knows or should know that the transaction is a prohibited sale or exchange of any property between a plan and a party in interest. Section 406(b)(1) of the Act prohibits a fiduciary from dealing with the assets of a plan in his own interest of or for his own account. Section 406(b)(2) of the Act prohibits a fiduciary with respect to a plan from acting in any transaction involving the plan on behalf of a party, or represent a party, whose interests are adverse to the interests of the plan or its participants and beneficiaries.

exercise their Rights, but those who held their shares in a brokerage account had to comply with the earlier deadline set by their particular broker.

15. To exercise their Rights, Plan Shareholders were required to complete and submit a Subscription Rights Certificate and Election Form to the Subscription Agent, which was not a party in interest with respect to the Plan, by 5 p.m. CST (3 p.m. PST) on February 22, 2010 (the Participant Expiration Time), six business days before the Offering Expiration Date.[32] From the Commencement Date to the Participant Expiration Time, the Subscription Agent was required to provide the Trustee with daily reports of the participants who submitted forms and the number of Rights they chose to exercise under both their Basic and Over-Subscription Privileges.

In order to exercise their Rights, Plan participants were not required to remit any payments to the Subscription Agent. Instead, participants were required to have enough money available in their Money Market Fund accounts by the Participant Expiration Time to pay for their Basic and Over-Subscription Privilege shares (their Subscription Prices).[33] Because participants were not likely to have sufficient funds in their Money Market Fund accounts initially, the Special Instructions provided detailed instructions about how participants could transfer additional funds into the Money Market Fund from other Plan investment funds and specified the timeframes in which to do so. Participant directions to move funds in the Money Market Fund from any other investment funds in the Plan except the Stock Fund had to be received by February 17, 2010. Participant instructions to move funds from the Stock Fund into the Money Market Fund had to be received by February 19, 2010 in order to allow additional time to settle trades on the Common Stock.

16. As soon as practicable after the Participant Expiration Time, the Trustee froze the Money Market Fund accounts of the participants exercising Rights[34] and liquidated funds sufficient to cover their Subscription Prices. If a participant did not have enough money, the Trustee (as instructed by Bancorp) exercised that participant's Rights to the maximum extent possible with the funds available. Once the Trustee was finished liquidating funds, it lifted the freeze on the Money Market Fund.

17. To provide the participants with a contemporaneous confirmation of the number of shares they had purchased in the Offering while working within the restrictions placed by the administration system of the Plan's recordkeeper, the Stock Fund was credited with the number of shares for which the participants had subscribed and paid, even though at the time those shares had not yet been purchased.[35] The Special Instructions explicitly stated that the use of the term "shares" only indicated a pending trade and that the actual shares they purchased would not be officially credited to their accounts until after the Offering had closed and the shares had been purchased. For these reasons, the Stock Fund was frozen for those participants. The freeze was in effect from the time the shares were credited as a pending trade until the shares were actually purchased and credited to their accounts. Bancorp informed participants that the freeze would last until five to ten business days after the Offering Expiration Date.[36]

18. Because the Participant Expiration Time was set six business days before the Offering Expiration Date, Bancorp explains that participants would possibly have been at a slight disadvantage relative to non-Plan Shareholders who had a few additional days to observe the trading price of the Common Stock and determine whether they wanted to participate in the Offering.[37] Therefore, the Trustee was instructed to note the public trading price of the Common Stock on Friday, February 26, 2010 (one business day before the Offering Expiration Date). If, on that date, the Common Stock last traded at above $2.00 per share, the Trustee was to exercise the participant's Rights pursuant to the terms of the Offering as described above. If, however, the Common Stock traded at $2.00 per share or lower, the Trustee was to re-deposit all money into the appropriate participant's Money Market Fund account and delete the pending trade from the participant's account in the Stock Fund.

If a Plan Shareholder instructed the Trustee to exercise such participant's Rights, the Trustee was required to remit the participant's money to the designated clearing agency for the Offering, Depository Trust & Clearing Corporation (DTC). DTC would then purchase the Common Stock from Bancorp, and the Trustee would credit such participant's account in the Stock Fund with the corresponding shares. In the event participants over-subscribed to more shares than were available under the Offering, the money liquidated from the participant's Money Market Fund account to buy those shares was re-deposited into the appropriate account.

19. As of the Commencement Date, 339 Plan participants were eligible to exercise a minimum of one Right. However, only 70 or 20.1 percent of Plan Shareholders exercised their Rights. In addition, the Common Stock never closed below $2.00 per share during the entire Subscription Period.[38] With respect to Plan Shareholders, the closing price of the Common Stock on February 26, 2010 was $2.63 per share and was $2.59 per share on the Expiration Closing Date. Accordingly, the Trustee exercised the Rights for all such Plan Shareholders at the same time.

[32] Bancorp represents that the extra business days were required to provide the Trustee, the Subscription Agent for the Offering, the Plan's recordkeeper, the custodian for the Stock Fund and the clearing agency for the Offering sufficient time to process Plan participants' elections to exercise their Rights, tabulate and confirm the results, liquidate the participants' funds, confirm the orders and the availability of the funds and remit payment to purchase the shares.

[33] Participants had to have sufficient funds to pay for their Basic and Over-Subscription Privileges, but they could choose the source of such funds from within their individual accounts in the Plan. By liquidating only the participants' Money Market Fund accounts rather than making a pro rata liquidation from each of the Plan investment funds in which participants were invested, Bancorp explains that the Plan allowed participants to choose which of their Plan investment funds they wanted to liquidate to pay for their shares of Common Stock. Thus, participants were not forced to use money from other investment funds within the Plan which they wished to keep invested at their then current levels.

[34] Bancorp states that the reason behind freezing the participant's Money Market Fund accounts was to prevent the participants from moving money out of such fund after the Participant Expiration Time lapsed but before the Trustee could liquidate it.

[35] According to Bancorp, the original intent was to create a special temporary investment fund in the Plan designated as the "Rights Offering Subscription," in order to show a counterbalancing asset for the money that was liquidated from the participants' Money Market Fund. However, the administrative system of the Plan's recordkeeper was unable to create this special account. Consequently, the only available option was to show the subscription rights as actual shares within the Stock Fund, pending the actual purchase of those shares.

[36] Bancorp represents that the five to ten business days allowed sufficient processing time for the Subscription Agent to determine the number of shares acquired in the over-subscription, for the shares to be issued, and for the crediting of the shares to the participants' accounts.

[37] According to Bancorp, most of the non-Plan Shareholders held their shares in brokerage accounts. This meant that they had to send their subscription elections to their brokers, who would then patch those elections for their customers with the election cutoff date set by their brokers, which was typically several business days before the Offering Expiration Date.

[38] During this period, shares of Common Stock closed as low as $2.47 per share on February 17, 2010 and as high as $2.80 per share on February 3, 2010.

20. Bancorp represents that the acquisition and holding of the Rights by the Plan was administratively feasible, in that the Offering was a one-time transaction, and all shareholders of Common Stock, including the Plan shareholders, were treated in the same manner with respect to the acquisition and holding of the Rights. With regard to the fact that Plan shareholders had less time to decide whether to exercise their Rights, Bancorp represents that the various service providers involved in the Offering, rather than Bancorp, required the additional time. Additionally, Bancorp explains that the Offering included specific protections instructing the Trustee not to exercise the Rights of Plan Shareholders if the Common Stock fell below the Subscription Price. Further, Bancorp states that the proposed exemption would be in the best interests of the Plan and its participants and beneficiaries because Plan Shareholders that exercised their Rights avoided the dilution of their interests in Bancorp and increased the value of their individual accounts.

Summary

21. In summary, Bancorp represents that the transactions satisfied the statutory requirements for an exemption under section 408(a) of the Act because:

(a) The Plan's receipt of the Rights occurred in connection with the Offering and was made available by Bancorp on the same terms to all shareholders of the Common Stock;

(b) The acquisition of the Rights by the Plan resulted from an independent act of Bancorp as a corporate entity, and all Shareholders of the Rights, including the Plan, were treated in the same manner with respect to such acquisition;

(c) All Shareholders of the Common Stock, including the Plan, received the same proportionate number of Rights based on the number of shares of the Common Stock held by such Shareholders;

(d) All decisions regarding the Rights held by the Plan were made by the individual Plan participants whose accounts in the Plan received the Rights, in accordance with the provisions under the Plan for individually-directed investment of such accounts; and

(e) The Plan did not pay any fees or commissions in connection with the acquisition or holding of the Rights.

FOR FURTHER INFORMATION CONTACT: Mr. Anh-Viet Ly of the Department at (202) 693–8648. (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 30th day of September, 2010.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2010–24892 Filed 10–5–10; 8:45 am]

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Federal Register

Wednesday,
October 6, 2010

Part IV

Department of Energy

Southeastern Power Administration
Georgia-Alabama-South Carolina System; Notice

DEPARTMENT OF ENERGY

Southeastern Power Administration

Georgia-Alabama-South Carolina System

AGENCY: Southeastern Power Administration, (Southeastern), Department of Energy.

ACTION: Notice of Interim Approval.

SUMMARY: The Deputy Secretary, Department of Energy, confirmed and approved, on an interim basis new rate schedules SOCO–1–D, SOCO–2–D, SOCO–3–D, SOCO–4–D, ALA–1–M, MISS–1–M, Duke–1–D, Duke–2–D, Duke–3–D, Duke–4–D, Santee–1–D, Santee–2–D, Santee–3–D, Santee–4–D, SCE&G–1–D, SCE&G–2–D, SCE&G–3–D, SCE&G–4–D, Pump–1–A, Pump–2, Replacement–1, and Regulation–1. These rate schedules are applicable to Southeastern power sold to existing preference customers in Mississippi, Florida, Georgia, North Carolina, and South Carolina. The rate schedules are approved on an interim basis through September 30, 2015, and are subject to confirmation and approval by the Federal Energy Regulatory Commission (FERC) on a final basis.

DATES: Approval of rates on an interim basis is effective October 1, 2010.

FOR FURTHER INFORMATION CONTACT: Leon Jourolmon, Assistant Administrator, Finance and Marketing, Southeastern Power Administration, Department of Energy, 1166 Athens Tech Road, Elberton, Georgia 30635–4578, (706) 213–3800.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission, by Order issued April 8, 2008, in Docket No. EF07–3011–000 (123 FERC ¶ 62,022), confirmed and approved Wholesale Power Rate Schedules SOCO–1–C, SOCO–2–C, SOCO–3–C, SOCO–4–C, ALA–1–L, MISS–1–L, Duke–1–C, Duke–2–C, Duke–3–C, Duke–4–C, Santee–1–C, Santee–2–C, Santee–3–C, Santee–4–C, SCE&G–1–C, SCE&G–2–C, SCE&G–3–C, SCE&G–4–C, Pump–1–A, Pump–2, Replacement–1, and Regulation–1 through September 30, 2012. This order replaces these rate schedules on an interim basis, subject to final approval by FERC.

Dated: September 28, 2010.

Daniel B. Poneman,

Deputy Secretary.

DEPARTMENT OF ENERGY

DEPUTY SECRETARY

In the Matter of: Southeastern Power Administration, Georgia-Alabama-South Carolina System Power Rates Rate Order No. SEPA–53.

ORDER CONFIRMING AND APPROVING POWER RATES ON AN INTERIM BASIS

Pursuant to Sections 302(a) of the Department of Energy Organization Act, Public Law 95–91, the functions of the Secretary of the Interior and the Federal Power Commission under Section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, relating to the Southeastern Power Administration (Southeastern), were transferred to and vested in the Secretary of Energy. By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated to Southeastern's Administrator the authority to develop power and transmission rates, to the Deputy Secretary of Energy the authority to confirm, approve, and place in effect such rates on interim basis, and to the Federal Energy Regulatory Commission (FERC) the authority to confirm, approve, and place into effect on a final basis or to disapprove rates developed by the Administrator under the delegation. This rate is issued by the Deputy Secretary pursuant to that delegation order.

Background

Power from the Georgia-Alabama-South Carolina Projects is presently sold under Wholesale Power Rate Schedules SOCO–1–C, SOCO–2–C, SOCO–3–C, SOCO–4–C, ALA–1–L, MISS–1–L, Duke–1–C, Duke–2–C, Duke–3–C, Duke–4–C, Santee–1–C, Santee–2–C, Santee–3–C, Santee–4–C, SCE&G–1–C, SCE&G–2–C, SCE&G–3–C, SCE&G–4–C, Pump–1–A, Pump–2, Replacement–1, and Regulation–1. These rate schedules were approved by the FERC in docket number EF07–3011–000 on April 8, 2008, for a period ending September 30, 2012 (123 FERC ¶ 62,022).

Public Notice and Comment

Notice of proposed rate adjustment was published in the **Federal Register** March 17, 2010, (75 FR 12740). The notice advised interested parties of a proposed rate increase of about fifteen percent (15%). By notice published in the **Federal Register** March 24, 2010, (75 FR 14150) a public information and comment forum was scheduled for April 27, 2010, in Atlanta, Georgia. Written comments were accepted on or before June 15, 2010. Comments were received from six parties at the forum. Written comments were received from 12 sources pursuant to this notice.

There have been numerous comments about the level of rate increases. We are providing the following table and explanation to try to minimize the confusion about several numbers.

[In percent]

	Proposed rate increase at forum	Proposed rate increase now
Percentage Revenue Increase	15	9.6
Percentage Rate Increase Generation Rates	20–25	13–15
Percentage Revenue Increase Including Disputed Costs	31	23
Percentage Rate Increase Generation Rates Including Disputed Costs	40	32–34

Comment 1

With the current proposed rate increase, customers will need to evaluate whether or not to continue to purchase Southeastern power.

Evaluation

Southeastern believes that the customers will need to look at each of their respective positions. Their situations vary and Southeastern is not in a position to evaluate whether or not each customer should continue to purchase Federal power.

Southeastern has made a cursory study reviewing the average cost of Federal power for each customer. The study shows that some customers at present rates are paying costs that are greater than what the power would cost on the market under average water conditions. The average cost of power for these customers under minimum water conditions (drought conditions) is much higher than what they could purchase at market. Southeastern is unaware of arrangements the customers currently have to purchase the remainder of their needs and is unaware

if purchasing power on the market is an option for them.

The increase of Southeastern rates by 13%–15% without the Disputed Costs, or 32%–34% with the Disputed Costs, will have a negative impact on these customers. We do not know if the customers will choose to cancel their contracts.

Southeastern believes that most of the customers' costs are less than market, even with the 13%–15% increase or the 32%–34% rate increase; therefore, Southeastern will be able to market its power in the foreseeable future.

Comment 2

The Interest During Construction costs is inappropriately named and should be called Disputed Costs.

Evaluation

The customers argue that Interest During Construction (IDC) ends when the project is ready to be placed in service. In the Richard B. Russell (Russell) pump units case, that would be in 1993. Additionally, they argue that the interest expense should begin when the pump units are placed in service. This creates a hiatus where the costs are neither IDC nor expensed interest. In the Russell pump units case, that would be from 1993 to 2002. Southeastern has decided to exclude these costs. The amount of these costs is $223,733,000. The interest on that interest from 2003 to 2009 is $115,466,000 for a total of $339,198,000.

Southeastern has decided to call these costs "Disputed Cost," and agrees that calling them "Interest During Construction" is confusing.

Southeastern agrees these costs should be excluded from the proposed rates.

Comment 3

The Disputed Costs should be a cost allocated to litigation costs.

Evaluation

The customers argue that the Corps had a litigation strategy which mishandled the lawsuit.

The litigation did result in a long hiatus during which the Russell pump units were operational, but could not be used. While the Corps was ultimately able to prove that there were no adverse environmental consequences of the Russell pump units, the projects have never operated at peak capability, partially because of the hiatus when they were available for operation but were not allowed to operate. The only costs the customers are asking to not be included are the Disputed Costs referred to above.

While there is no purpose for litigation costs authorized by Congress in the legislation for the Corps' multiple-purpose projects, Southeastern believes the costs should be allocated by the Corps to the Environmental Purpose (see 5 below).

Comment 4

Southeastern has the authority by the Flood Control Act of 1944 to not include the Disputed Costs. It has the authority because of the language "* * * lowest possible rates consistent with sound business principles."

Evaluation

The customers argue that the Flood Control Act of 1944 gives Southeastern the authority to examine all the costs and only include those costs that are the lowest possible, consistent with sound business principles.

Southeastern agrees that the Flood Control Act of 1944 does give us that authority.

Comment 5

The Disputed Costs should be allocated to the Environmental Purpose.

Evaluation

The customers argue that the Disputed Costs should be allocated to the Environmental Purpose. They point out the entire lawsuit that caused the delays was to determine whether or not the Russell pump units would damage the environment.

The Judge's Order of Summary Judgment quotes the Fourth Circuit Court of Appeals: "(p)umped storage poses a major environmental concern because of the risk that while operating in the pumping mode the turbines may 'entrain' or kill a large number of fish or fish eggs." South Carolina Department of Wildlife and Marine Resources vs. Marsh, 886 F.2d at 99. Order, p. 17.

It goes on to say, "In order to prevail on its motions, the Corps must show, and this court must find, that these units can be operated at minimum risk to the fish habitat at the Russell Dam."

In addition, the General Accounting Office (GAO) Report to Congressional Requesters, Federal Electricity Activities, cited by the customers, was very concerned that if the Richard Russell Project was not allowed to operate because of the lawsuit, that the Federal government will lose its entire $518 million investment.

Southeastern believes it would be proper for the Disputed Costs to be allocated to the Environmental Purpose and not allocated to power.

Comment 6

Richard Russell pump units were not authorized by Congress. RA 6120.2 allows that only authorized investments can be included.

Evaluation

The customers argue that Congress never explicitly authorized the installation of the Richard Russell pump units, and that appropriations bills cannot provide such authorization here. The District Court's ruling granting summary judgment seems to agree to some extent with this interpretation, found no explicit Congressional authorization, but held that Congress was adequately informed, and, by ongoing appropriations actions, the Corps was so authorized. Order, pp. 21–27. Also, the Court stated, "The pumped storage units at the Russell Dam are currently in place. Their installation was authorized by the Fourth Circuit Court of Appeals, which left to the district court the decision of when and if the operation of these units should be granted." Order, pp. 16–17.

The customers also point out that RA 6120.2 includes only "investments that are both authorized and for which appropriations have been made."

They argue and provide strong legal authorities that funding bills do not authorize Corps actions. The customers concluded, "These concerns provide suitable grounds and appropriate legal guidance for SEPA to follow in excluding the IDC expense from the rate proposal."

Southeastern agrees that we have the authority to exclude the costs from the rates.

Comment 7

The estimated Corps O&M costs that were used in the proposed rate should be updated for more recent estimates.

Evaluation

The customers pointed out that Corps projections from 2009 were higher than Corps projections from 2010. Southeastern agrees with the request that more recent estimates be used in the rate filing and the proposed rates now include those reduced projections. The reduction in the rate from 21% at the time of the forum to 13% now is partially because of this change.

Comment 8

Revenues for Fiscal Year 2010 have been higher than average and the repayment study should increase the revenues for FY 2010.

Evaluation

Generally, a repayment study is developed with an assumption that average water conditions will prevail through the end of the repayment period. The revenues for Fiscal Year 2010 through May have been 115% of average. The increased revenue of the increase would be approximately $4.8 million. This would increase the estimated revenue for fiscal year 2010 by less than three percent (3%) and have a minor impact on the rate study. It is also difficult to estimate that the revenues would continue to be that high because it is difficult to estimate if this above average rainfall will continue through the end of the fiscal year. Southeastern has not modified the rate proposal for increased revenue in 2010.

Comment 9

The unpaid deficit at the end of 2009 should be deferred.

Evaluation

Southeastern has agreed with this comment in the development of these proposed rates. In the past, Southeastern has deferred the payment of a deficit until the end of cost evaluation period which, in this case, would be FY 2015, or the final year the rates are requested to be approved by the Federal Energy Regulatory Commission. The result of deferring this cost would be to move the pinch point of the repayment. Under the rates proposed at the time of the rate forum, the pinch point is the fiscal year when a sizeable payment is required to be paid. By RA 6120.2, the deficit should be paid prior to that required repayment. RA 6120.2 also allows Southeastern to defer that payment for unusual circumstances. Southeastern has agreed with the customers in the proposed rates. Southeastern feels this deferral is the primary reason the rate increase was reduced from the 21% at the time of the forum to 13% in these proposed rates.

Discussion

System Repayment

An examination of Southeastern's revised system power repayment study, prepared in July 2010, for the Georgia-Alabama-South Carolina System shows that with the proposed rates, all system power costs are paid within the appropriate repayment period required by existing law and DOE Procedure RA 6120.2. The Administrator of Southeastern Power Administration has certified that the rates are consistent with applicable law and that they are the lowest possible rates to customers consistent with sound business principles.

Environmental Impact

Southeastern has reviewed the possible environmental impacts of the rate adjustment under consideration and has concluded that, because the adjusted rates would not significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, the proposed action is not a major Federal action for which preparation of an Environmental Impact Statement is required.

Availability of Information

Information regarding these rates, including studies and other supporting materials and transcripts of the public information and comment forum, is available for public review in the offices of Southeastern Power Administration, 1166 Athens Tech Road, Elberton, Georgia 30635, and in the Power Marketing Liaison Office, James Forrestal Building, 1000 Independence Avenue, S.W., Washington, DC 20585.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis, effective October 1, 2010, attached Wholesale Power Rate Schedules SOCO–1–D, SOCO–2–D, SOCO–3–D, SOCO–4–D, ALA–1–M, MISS–1–M, Duke–1–D, Duke–2–D, Duke–3–D, Duke–4–D, Santee–1–D, Santee–2–D, Santee–3–D, Santee–4–D, SCE&G–1–D, SCE&G–2–D, SCE&G–3–D, SCE&G–4–D, Pump–1–A, Pump–2, Replacement–1, and Regulation–1. The Rate Schedules shall remain in effect on an interim basis through September 30, 2015, unless such period is extended or until the FERC confirms and approves the schedules or substitute Rate Schedules on a final basis.

Dated: September 28, 2010

Daniel B. Poneman

Deputy Secretary

Wholesale Power Rate Schedule SOCO–1–D

Availability:

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Georgia, Alabama, Mississippi, and Florida to whom power may be transmitted and scheduled pursuant to contracts between the Government and Southern Company Services, Incorporated (hereinafter called the Company) and the Customer. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability:

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service:

The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Company's transmission and distribution system.

Monthly Rate:

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge:

$4.19 Per kilowatt of total contract demand per month.

Energy Charge:

10.67 Mills per kilowatt-hour.

Generation Services:

$0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission (FERC) of the Company's rate.

Transmission:

$2.74 Per kilowatt of total contract demand per month estimated as of April 2010 is presented for illustrative purposes.

The initial transmission charge will be the Customer's ratable share of the transmission and distribution charges paid by the Government. The transmission charges are governed by and subject to refund based upon the determination in proceedings before FERC involving the Company's Open Access Transmission Tariff (OATT). The distribution charges may be modified by FERC pursuant to application by the Company under Section 205 of the Federal Power Act or the Government under Section 206 of the Federal Power Act.

Proceedings before FERC involving the OATT or the distribution charges

may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission and distribution charges paid by the Government in behalf of the Customer.

Scheduling, System Control and Dispatch Service:

$0.0806 Per kilowatt of total contract demand per month.

Reactive Supply and Voltage Control from Generation Sources Service:

$0.11 Per kilowatt of total contract demand per month.

Regulation and Frequency Response Service:

$0.0483 Per kilowatt of total contract demand per month.

Transmission, System Control, Reactive, and Regulation Services

The charges for Transmission, System Control, Reactive, and Regulation Services shall be governed by and subject to refund based upon the determination in the proceeding involving Southern Companies' OATT.

Contract Demand:

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government:

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. As of April 2010, applicable energy losses are as follows:

	Percent
Transmission facilities	2.2
Sub-transmission	2.0
Distribution substations	0.9
Distribution lines	2.25

These losses shall be effective until modified by FERC, pursuant to application by Southern Companies under Section 205 of the Federal Power Act or SEPA under Section 206 of the Federal Power Act or otherwise.

Billing Month:

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule SOCO–2–D

Availability:

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Georgia, Alabama, Mississippi, and Florida to whom power may be transmitted pursuant to contracts between the Government and Southern Company Services, Incorporated (hereinafter called the Company) and the Customer. The Customer is responsible for providing a scheduling arrangement with the Government. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability:

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service:

The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Company's transmission and distribution system.

Monthly Rate:

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge:

$4.19 Per kilowatt of total contract demand per month.

Energy Charge:

10.67 Mills per kilowatt-hour.

Generation Services:

$0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission (FERC) of the Company's rate.

Transmission:

$2.74 Per kilowatt of total contract demand per estimated as of April 2010 is presented for illustrative purposes.

The initial transmission charge will be the Customer's ratable share of the transmission and distribution charges paid by the Government. The transmission charges are governed by and subject to refund based upon the determination in proceedings before FERC involving the Company's Open Access Transmission Tariff (OATT). The distribution charges may be modified by FERC pursuant to application by the Company under Section 205 of the Federal Power Act or the Government under Section 206 of the Federal Power Act.

Proceedings before FERC involving the OATT or the distribution charges may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission and distribution charges paid by the Government in behalf of the Customer.

Reactive Supply and Voltage Control from Generation Sources Service:

$0.11 Per kilowatt of total contract demand per month.

Transmission, System Control, Reactive, and Regulation Services

The charges for Transmission, System Control, Reactive, and Regulation Services shall be governed by and subject to refund based upon the determination in the proceeding involving Southern Companies' OATT.

Contract Demand:

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government:

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. As of April 2010, applicable energy losses are as follows:

	Percent
Transmission facilities	2.2
Sub-Transmission	2.0
Distribution substations	0.9
Distribution lines	2.25

These losses shall be effective until modified by FERC, pursuant to application by Southern Companies under Section 205 of the Federal Power Act or SEPA under Section 206 of the Federal Power Act or otherwise.

Billing Month:

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule SOCO–3–D

Availability:

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Georgia, Alabama, Mississippi, and Florida to whom power may be scheduled pursuant to contracts between the Government and Southern Company Services, Incorporated (hereinafter called the Company) and the Customer. The Customer is responsible for providing a transmission arrangement. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability:

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects (hereinafter referred to collectively as the Projects) and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service:

The electric capacity and energy supplied hereunder will be delivered at the Projects.

Monthly Rate:

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge:

$4.19 Per kilowatt of total contract demand per month.

Energy Charge:

10.67 Mills per kilowatt-hour.

Generation Services:

$0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Scheduling, System Control and Dispatch Service:

$0.0806 Per kilowatt of total contract demand per month.

Regulation and Frequency Response Service:

$0.0483 Per kilowatt of total contract demand per month.

Transmission, System Control, Reactive, and Regulation Services

The charges for Transmission, System Control, Reactive, and Regulation Services shall be governed by and subject to refund based upon the determination in the proceeding involving Southern Companies' Open Access Transmission Tariff.

Contract Demand:

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government:

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses).

Billing Month:

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule SOCO–4–D

Availability:

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Georgia, Alabama, Mississippi, and Florida served through the transmission facilities of Southern Company Services, Inc. (hereinafter called the Company) or the Georgia Integrated Transmission System. The Customer is responsible for providing a scheduling arrangement with the Government and for providing a transmission arrangement. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability:

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects (hereinafter referred to collectively as the Projects) and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service:

The electric capacity and energy supplied hereunder will be delivered at the Projects.

Monthly Rate:

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge:

$4.19 Per kilowatt of total contract demand per month.

Energy Charge:

10.67 Mills per kilowatt-hour.

Generation Services:

$0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Transmission, System Control, Reactive, and Regulation Services

The charges for Transmission, System Control, Reactive, and Regulation Services shall be governed by and subject to refund based upon the determination in the proceeding involving Southern Companies' Open Access Transmission Tariff.

Contract Demand:

The contract demand is the amount of capacity in kilowatts stated in the contract that the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government:

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses).

Billing Month:

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule ALA–1–M

Availability:

This rate schedule shall be available to the PowerSouth Energy Cooperative (hereinafter called the Cooperative).

Applicability:

This rate schedule shall be applicable to power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters, and Richard B. Russell Projects and sold under contract between the Cooperative and the Government. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service:

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of 60 Hertz and shall be delivered at the Walter F. George, West Point, and Robert F. Henry Projects.

Monthly Rate:

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge:

$4.19 Per kilowatt of total contract demand per month.

Energy Charge:

10.67 Mills per kilowatt-hour.

Generation Services:

$0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Southern Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Transmission, System Control, Reactive, and Regulation Services

The charges for Transmission, System Control, Reactive, and Regulation Services shall be governed by and subject to refund based upon the determination in the proceeding involving Southern Companies' Open Access Transmission Tariff.

Energy to be Furnished by the Government:

The Government will sell to the Cooperative and the Cooperative will purchase from the Government those quantities of energy specified by contract as available to the Cooperative for scheduling on a weekly basis.

Billing Month:

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule MISS–1–M

Availability:

This rate schedule shall be available to the South Mississippi Electric Power Association (hereinafter called the Customer) to whom power may be wheeled pursuant to contracts between the Government and PowerSouth Energy Cooperative (hereinafter called PowerSouth).

Applicability:

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service:

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of 60 Hertz delivered at the delivery points of the Customer on PowerSouth's transmission and distribution system. The voltage of delivery will be maintained within the limits established by the state regulatory commission.

Monthly Rate:

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge:

$4.19 Per kilowatt of total contract demand per month.

Energy Charge:

10.67 Mills per kilowatt-hour.

Generation Services:

$0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Transmission:

$2.62 Per kilowatt of total contract demand per month as of January 2010 is presented for illustrative purposes.

This rate is subject to annual adjustment on January 1, and will be computed subject to the Appendix A attached to the Government-PowerSouth contract.

Transmission, System Control, Reactive, and Regulation Services

The charges for Transmission, System Control, Reactive, and Regulation Services shall be governed by and subject to refund based upon the determination in the proceeding involving Southern Companies' Open Access Transmission Tariff.

Contract Demand:

The contract demand is the amount of capacity in kilowatts stated in the contract that the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government:

The Government will sell to the Cooperative and the Cooperative will purchase from the Government those quantities of energy specified by contract as available to the Cooperative for scheduling on a weekly basis.

Billing Month:

The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule Duke–1–D

Availability:

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in North Carolina and South Carolina to whom power may be transmitted and scheduled pursuant to contracts between the Government and Duke Energy Company (hereinafter called the Company) and the Customer. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability:

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service:

The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Company's transmission and distribution system.

Monthly Rate:

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge:

$4.19 Per kilowatt of total contract demand per month.

Energy Charge:

10.67 Mills per kilowatt-hour.

Generation Services:

$0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission (FERC) of the Company's rate.

Transmission:

$0.94 Per kilowatt of total contract demand per month is presented for illustrative purposes.

The initial transmission charge will be the Customer's ratable share of the transmission and distribution charges paid by the Government. The transmission charges are governed by and subject to refund based upon the determination in proceedings before FERC involving the Company's Open Access Transmission Tariff (OATT).

Proceedings before FERC involving the OATT may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission and distribution charges paid by the Government in behalf of the Customer.

Contract Demand:

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government:

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses of three per cent (3%) as of April 2010). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. These losses shall be effective until modified by FERC, pursuant to application by the Company under Section 205 of the Federal Power Act or SEPA under Section 206 of the Federal Power Act or otherwise.

Billing Month:

The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule Duke–2–D

Availability:

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in North Carolina and South Carolina to whom power may be transmitted pursuant to contracts between the Government and Duke Energy Company (hereinafter called the Company) and the Customer. The Customer is responsible for providing a scheduling arrangement with the Government. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability:

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service:

The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Company's transmission and distribution system.

Monthly Rate:

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge:

$4.19 Per kilowatt of total contract demand per month.

Energy Charge:

10.67 Mills per kilowatt-hour.

Generation Services:

$0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission (FERC) of the Company's rate.

Transmission:

$0.94 Per kilowatt of total contract demand per month is presented for illustrative purposes.

The initial transmission charge will be the Customer's ratable share of the transmission and distribution charges paid by the Government. The transmission charges are governed by and subject to refund based upon the determination in proceedings before FERC involving the Company's Open Access Transmission Tariff (OATT).

Proceedings before FERC involving the OATT may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission and distribution charges paid by the Government in behalf of the Customer.

Contract Demand:

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government:

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses of three per cent (3%) as of April 2010). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. These losses shall be effective until modified by the Federal Energy Regulatory Commission, pursuant to application by the Company under Section 205 of the Federal Power Act or SEPA under Section 206 of the Federal Power Act or otherwise.

Billing Month:

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule Duke–3–D

Availability:

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in North Carolina and South Carolina to whom power may be scheduled pursuant to contracts between the Government and Duke Energy Company (hereinafter called the Company) and the Customer. The Customer is responsible for providing a transmission arrangement. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability:

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service:

The electric capacity and energy supplied hereunder will be delivered at the Savannah River Projects.

Monthly Rate:

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge:

$4.19 Per kilowatt of total contract demand per month.

Energy Charge:

10.67 Mills per kilowatt-hour.

Generation Services:

$0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Contract Demand:

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government:

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses).

Billing Month:

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule Duke–4–D

Availability:

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in North Carolina and South Carolina served through the transmission facilities of Duke Energy Company (hereinafter called the Company) and the Customer. The Customer is responsible for providing a scheduling arrangement with the Government and for providing a transmission arrangement with the Company. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability:

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service:

The electric capacity and energy supplied hereunder will be delivered at the Savannah River Projects.

Monthly Rate:

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge:

$4.19 Per kilowatt of total contract demand per month.

Energy Charge:

10.67 Mills per kilowatt-hour.

Generation Services:

$0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company' rate.

Contract Demand:

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government:

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses).

Billing Month:

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule Santee–1–D

Availability:

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter call the Customer) in South Carolina to whom power may be wheeled and scheduled pursuant to contracts between the Government and South Carolina Public Service Authority (hereinafter called the Authority). Nothing in this rate schedule shall preclude an eligible customer from electing service under another rate schedule.

Applicability:

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service:

The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Authority's transmission and distribution system.

Monthly Rate:

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge:

$4.19 Per kilowatt of total contract demand per month.

Energy Charge:

10.67 Mills per kilowatt-hour.

Generation Services:

$0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Authority. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission (FERC) of the Authority's rate.

Transmission:

$1.32 Per kilowatt of total contract demand per month as of January 2010 is presented for illustrative purposes.

The initial transmission rate is subject to annual adjustment on July 1 of each

year, and will be computed subject to the formula contained in Appendix A to the Government-Authority Contract.

Proceedings before FERC involving the Authority's Open Access Transmission Tariff may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission and distribution charges paid by the Government in behalf of the Customer.

Contract Demand:

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government:

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Authority (less applicable losses of two per cent (2%) as of April 2010). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Authority's system.

Billing Month:

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Service Interruption:

When energy delivery to the Customer's system for the account of the Government is reduced or interrupted, and such reduction or interruption is not due to conditions on the Customer's system, the demand charge for the month shall be appropriately reduced as to kilowatts of such capacity which have been interrupted or reduced for each day in accordance with the following formula:

$$\left(\begin{array}{c}\text{Number of kilowatts unavailable}\\ \text{for at least 12 hours in}\\ \text{any calendar day}\end{array}\right)\times\left(\frac{\text{Monthly Capacity Charge}}{\text{Number of Days in Billing Month}}\right)$$

Wholesale Power Rate Schedule Santee–2–D

Availability:

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in South Carolina to whom power may be wheeled pursuant to contracts between the Government and South Carolina Public Service Authority (hereinafter called the Authority). The customer is responsible for providing a scheduling arrangement with the Government. Nothing in this rate schedule shall preclude an eligible customer from electing service under another rate schedule.

Applicability:

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service:

The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Authority's transmission and distribution system.

Monthly Rate:

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge:

$4.19 Per kilowatt of total contract demand per month.

Energy Charge:

10.67 Mills per kilowatt-hour.

Generation Services:

$0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Authority. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission (FERC) of the Authority's rate.

Transmission:

$1.32 Per kilowatt of total contract demand per month as of January 2010 is presented for illustrative purposes.

The initial transmission rate is subject to annual adjustment on July 1 of each year, and will be computed subject to the formula contained in Appendix A to the Government-Authority Contract.

Proceedings before FERC involving the Authority's Open Access Transmission Tariff may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission and distribution charges paid by the Government in behalf of the Customer.

Contract Demand:

The contract demand is the amount of capacity in kilowatts stated in the contract that the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government:

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Authority (less applicable losses of two percent (2%) as of April 2010). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Authority's system.

Billing Month:

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Service Interruption:

When energy delivery to the Customer's system for the account of the Government is reduced or interrupted, and such reduction or interruption is not due to conditions on the Customer's system, the demand charge for the month shall be appropriately reduced as to kilowatts of such capacity which have been interrupted or reduced for each day in accordance with the following formula:

$$\left(\begin{array}{c}\text{Number of kilowatts unavailable}\\ \text{for at least 12 hours in}\\ \text{any calendar day}\end{array}\right)\times\left(\frac{\text{Monthly Capacity Charge}}{\text{Number of Days in Billing Month}}\right)$$

Wholesale Power Rate Schedule Santee–3–D

Availability:

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in South Carolina to whom power may be scheduled pursuant to contracts between the Government and South Carolina Public Service Authority (hereinafter called the Authority). The customer is responsible for providing a transmission arrangement. Nothing in this rate schedule shall preclude an eligible customer from electing service under another rate schedule.

Applicability:

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service:

The electric capacity and energy supplied hereunder will be delivered at the Projects.

Monthly Rate:

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge:

$4.19 Per kilowatt of total contract demand per month.

Energy Charge:

10.67 Mills per kilowatt-hour.

Generation Services:

$0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Authority. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Authority's rate.

Contract Demand:

The contract demand is the amount of capacity in kilowatts stated in the contract that the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government:

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Authority (less applicable losses).

Billing Month:

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Service Interruption:

When energy delivery to the Customer's system for the account of the Government is reduced or interrupted, and such reduction or interruption is not due to conditions on the Customer's system, the demand charge for the month shall be appropriately reduced as to kilowatts of such capacity which have been interrupted or reduced for each day in accordance with the following formula:

$$\left(\begin{array}{c}\text{Number of kilowatts unavailable}\\ \text{for at least 12 hours in}\\ \text{any calendar day}\end{array}\right)\times\left(\frac{\text{Monthly Capacity Charge}}{\text{Number of Days in Billing Month}}\right)$$

Wholesale Power Rate Schedule Santee–4–D

Availability:

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter call the Customer) in South Carolina served through the transmission facilities of South Carolina Public Service Authority (hereinafter called the Authority). The customer is responsible for providing a scheduling arrangement with the Government and for providing a transmission arrangement. Nothing in this rate schedule shall preclude an eligible customer from electing service under another rate schedule.

Applicability:

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service:

The electric capacity and energy supplied hereunder will be delivered at the Projects.

Monthly Rate:

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge:

$4.19 Per kilowatt of total contract demand per month.

Energy Charge:

10.67 Mills per kilowatt-hour.

Generation Services:

$0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Authority. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Authority's rate.

Contract Demand:

The contract demand is the amount of capacity in kilowatts stated in the contract that the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government:

The Government will sell to the Customer and the Customer will purchase from the Government energy

each billing month equivalent to a percentage specified by contract of the energy made available to the Authority (less applicable losses).

Billing Month:

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Service Interruption:

When energy delivery to the Customer's system for the account of the Government is reduced or interrupted, and such reduction or interruption is not due to conditions on the Customer's system, the demand charge for the month shall be appropriately reduced as to kilowatts of such capacity which have been interrupted or reduced for each day in accordance with the following formula:

$$\left(\begin{array}{c}\text{Number of kilowatts unavailable}\\ \text{for at least 12 hours in}\\ \text{any calendar day}\end{array}\right)\times\left(\frac{\text{Monthly Capacity Charge}}{\text{Number of Days in Billing Month}}\right)$$

Wholesale Power Rate Schedule SCE&G–1–D

Availability:

This rate schedule shall be available public bodies and cooperatives (any one of which is hereinafter called the Customer) in South Carolina to whom power may be wheeled and scheduled pursuant to contracts between the Government and the South Carolina Electric & Gas Company (hereinafter called the Company). Nothing in this rate schedule shall preclude an eligible customer from electing service under another rate schedule.

Applicability:

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service:

The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Company's transmission and distribution system.

Monthly Rate:

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge:

$4.19 Per kilowatt of total contract demand per month.

Energy Charge:

10.67 Mills per kilowatt-hour.

Generation Services:

$0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission (FERC) of the Company's rate.

Transmission:

$1.02 Per kilowatt of total contract demand per month as of February 2010 is presented for illustrative purposes.

The initial transmission charge will be the Customer's ratable share of the transmission and distribution charges paid by the Government. The transmission charges are governed by and subject to refund based upon the determination in proceedings before FERC involving the Company's Open Access Transmission Tariff (OATT).

Proceedings before FERC involving the OATT may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission and distribution charges paid by the Government in behalf of the Customer.

Contract Demand:

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government:

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system.

Billing Month:

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Conditions of Service:

The Customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment, and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of the Company on its side of the delivery point.

Wholesale Power Rate Schedule SCE&G–2–D

Availability:

This rate schedule shall be available public bodies and cooperatives (any one of which is hereinafter called the Customer) in South Carolina to whom power may be wheeled pursuant to contracts between the Government and the South Carolina Electric & Gas Company (hereinafter called the Company). The customer is responsible for providing a scheduling arrangement with the Government. Nothing in this rate schedule shall preclude an eligible customer from electing service under another rate schedule.

Applicability:

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service:

The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Company's transmission and distribution system.

Monthly Rate:

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge:

$4.19 Per kilowatt of total contract demand per month.

Energy Charge:

10.67 Mills per kilowatt-hour.

Generation Services:

$0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission (FERC) of the Company's rate.

Transmission:

$1.02 Per kilowatt of total contract demand per month as of February 2010 is presented for illustrative purposes.

The initial transmission charge will be the Customer's ratable share of the transmission and distribution charges paid by the Government. The transmission charges are governed by and subject to refund based upon the determination in proceedings before FERC involving the Company's Open Access Transmission Tariff (OATT).

Proceedings before FERC involving the OATT may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission and distribution charges paid by the Government in behalf of the Customer.

Contract Demand:

The contract demand is the amount of capacity in kilowatts stated in the contract that the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government:

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system.

Billing Month:

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Conditions of Service:

The Customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment, and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of the Company on its side of the delivery point.

Wholesale Power Rate Schedule SCE&G–3–D

Availability:

This rate schedule shall be available public bodies and cooperatives (any one of which is hereinafter called the Customer) in South Carolina to whom power may be scheduled pursuant to contracts between the Government and the South Carolina Electric & Gas Company (hereinafter called the Company). The customer is responsible for providing a transmission arrangement. Nothing in this rate schedule shall preclude an eligible customer from electing service under another rate schedule.

Applicability:

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service:

The electric capacity and energy supplied hereunder will be delivered at the Projects.

Monthly Rate:

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge:

$4.19 Per kilowatt of total contract demand per month.

Energy Charge:

10.67 Mills per kilowatt-hour.

Generation Services:

$0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Contract Demand:

The contract demand is the amount of capacity in kilowatts stated in the contract that the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government:

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses).

Billing Month:

The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Conditions of Service:

The Customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment, and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of the Company on its side of the delivery point.

Wholesale Power Rate Schedule SCE&G–4–D

Availability:

This rate schedule shall be available to public bodies and cooperatives (any one of which is hereinafter called the Customer) in South Carolina served through the transmission facilities of South Carolina Electric & Gas Company (hereinafter called the Company). The customer is responsible for providing a scheduling arrangement with the Government and for providing a transmission arrangement. Nothing in this rate schedule shall preclude an eligible customer from electing service under another rate schedule.

Applicability:

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service:

The electric capacity and energy supplied hereunder will be delivered at the Projects.

Monthly Rate:

The monthly rate for capacity, energy, and generation services provided under

this rate schedule for the period specified shall be:

Capacity Charge:

$4.19 Per kilowatt of total contract demand per month.

Energy Charge:

10.67 Mills per kilowatt-hour.

Generation Services:

$0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Contract Demand:

The contract demand is the amount of capacity in kilowatts stated in the contract that the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government:

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses).

Billing Month:

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Conditions of Service:

The Customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment, and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of the Company on its side of the delivery point.

Wholesale Power Rate Schedule Pump–1–A

Availability:

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Georgia, Alabama, Mississippi, Florida, South Carolina, or North Carolina to whom power is provided pursuant to contracts between the Government and the customer.

Applicability:

This rate schedule shall be applicable to the sale at wholesale energy generated from pumping operations at the Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. The energy will be segregated from energy from other pumping operations.

Character of Service:

The energy supplied hereunder will be delivered at the delivery points provided for under appropriate contracts between the Government and the Customer.

Monthly Rate:

The rate for energy sold under this rate schedule for the months specified shall be:

$$EnergyRate = (C_{wav} \div F_{wav}) \div (1 - L_d)$$

[computed to the nearest $.00001 (1/100 mill) per kWh]

(The weighted average cost of energy for pumping divided by the energy conversion factor, quantity divided by one minus losses for delivery.)

Where:

$$C_{wav} = C_{T1} \div E_{T1}$$

(The weighted average cost of energy for pumping for this rate schedule is equal to the cost of energy purchased or supplied for the benefit of the customer for pumping divided by the total energy for pumping.)

$$C_{T1} = C_p + C_s$$

(Cost of energy for pumping for this rate schedule is equal to the cost of energy purchased or supplied for the benefit of the customer plus the cost of energy in storage carried over from the month preceding the specified month.)

$$E_{T1} = E_p x(1 - L_p) + E_s^{t-1}$$

(Energy for pumping for this rate schedule is equal to the energy purchased or supplied for the benefit of the customer, after losses, plus the energy for pumping in storage as of the end of the month preceding the specified month.)

$$C_s = C_{wav}^{t-1} x E_s^{t-1}$$

(Cost of energy in storage is equal to the weighted average cost of energy for pumping for the month preceding the specified month times the energy for pumping in storage at the end of the month preceding the specified month.)

C_p

= Dollars cost of energy purchased or supplied for the benefit of the customer for pumping during the specified month, including all direct costs to deliver energy to the project.

E_p

= Kilowatt-hours of energy purchased or supplied for the benefit of the customer for

L_p

pumping during the specified month.

= Energy loss factor for transmission on energy purchased or supplied for the benefit of the customer for pumping (Expected to be .03 or three percent.)

E_s^{t-1}

= Kilowatt-hours of energy in storage as of the end of the month immediately preceding the specified month.

C_{wav}^{t-1}

= Weighted average cost of energy for pumping for the month immediately preceding the specified month.

$$F_{wav} = E_G \div E_T$$

(Weighted average energy conversion factor is equal to the energy generated from pumping divided by the total energy for pumping)

E_G

= Energy generated from pumping.

L_d

= Weighted average energy loss factor on energy delivered by the facilitator to the customer.

Energy to be Furnished by the Government:

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Facilitator (less any losses required by the Facilitator). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Facilitator's system.

Billing Month:

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule Pump-2

Availability:

This rate schedule shall be available to public bodies and cooperatives who provide their own scheduling arrangement and elect to allow Southeastern to use a portion of their allocation for pumping (any one of whom is hereinafter called the Customer) in Georgia, Alabama, Mississippi, Florida, South Carolina, or

North Carolina to whom power is provided pursuant to contracts between the Government and the customer.

Applicability:

This rate schedule shall be applicable to the sale at wholesale energy generated from pumping operations at the Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This energy will be segregated from energy from other pumping operations.

Character of Service:

The energy supplied hereunder will be delivered at the delivery points provided for under appropriate contracts between the Government and the Customer.

Monthly Rate:

The rate for energy sold under this rate schedule for the months specified shall be:

$$EnergyRate = (C_{wav} \div F_{wav}) \div (1 - L_d)$$

[computed to the nearest $.00001 (1/100 mill) per kWh]

(The weighted average cost of energy for pumping divided by the energy conversion factor, quantity divided by one minus losses for delivery.)

Where:

$$C_{wav} = C_{T2} \div E_{T2}$$

(The weighted average cost of energy for pumping for this rate schedule is equal to the cost of energy purchased or supplied for the benefit of the customer for pumping divided by the total energy for pumping.)

$$C_{T2} = C_p + C_s$$

(Cost of energy for pumping for this rate schedule is equal to the cost of energy purchased or supplied for the benefit of the customer plus the cost of energy in storage carried over from the month preceding the specified month.)

$$E_{T2} = E_p x(1 - L_p) + E_s^{t-1}$$

(Energy for pumping for this rate schedule is equal to the energy purchased or supplied for the benefit of the customer, after losses, plus the energy for pumping in storage as of the end of the month preceding the specified month.)

$$C_s = C_{wav}^{t-1} x E_s^{t-1}$$

(Cost of energy in storage is equal to the weighted average cost of energy for pumping for the month preceding the specified month times the energy for pumping in storage at the end of the month preceding the specified month.)

C_p

= Dollars cost of energy purchased or supplied for the benefit of the customer for pumping during the specified month, including all direct costs to deliver energy to the project.

E_p

= Kilowatt-hours of energy purchased or supplied for the benefit of the customer for pumping during the specified month.

L_p

= Energy loss factor for transmission on energy purchased or supplied for the benefit of the customer for pumping (Expected to be .03 or three percent.)

E_s^{t-1}

= Kilowatt-hours of energy in storage as of the end of the month immediately preceding the specified month.

C_{wav}^{t-1}

= Weighted average cost of energy for pumping for the month immediately preceding the specified month.

$$F_{wav} = E_G \div E_T$$

(Weighted average energy conversion factor is equal to the energy generated from pumping divided by the total energy for pumping)

E_G

= Energy generated from pumping.

L_d

= Weighted average energy loss factor on energy delivered by the facilitator to the customer.

Energy to be Furnished by the Government:

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Facilitator (less any losses required by the Facilitator). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Facilitator's system.

Billing Month:

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule Replacement–1

Availability:

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Georgia, Alabama, Mississippi, Florida, South Carolina, or North Carolina to whom power is provided pursuant to contracts between the Government and the customer.

Applicability:

This rate schedule shall be applicable to the sale at wholesale energy purchased to meet contract minimum energy and sold under appropriate contracts between the Government and the Customer.

Character of Service:

The energy supplied hereunder will be delivered at the delivery points provided for under appropriate contracts between the Government and the Customer.

Monthly Rate:

The rate for energy sold under this rate schedule for the months specified shall be:

$$EnergyRate = C_{wav} \div (1 - L_d)$$

[computed to the nearest $.00001 (1/100 mill) per kWh]

(The weighted average cost of energy for replacement energy divided by one minus losses for delivery.)

Where:

$$C_{wav} = C_p \div (E_p x(1 - L_p))$$

(The weighted average cost of energy for replacement energy is equal to the cost of replacement energy purchased divided by the replacement energy purchased, net losses.)

C_p

= Dollars cost of energy purchased for replacement energy during the specified month, including all direct costs to deliver energy to the project.

E_p

= Kilowatt-hours of energy purchased for replacement energy during the specified month.

L_p

= Energy loss factor for transmission on replacement energy purchased (Expected to be 0 or zero percent.)

L_d

= Weighted average energy loss factor on energy delivered by the facilitator to the customer.

Energy to be Furnished by the Government:

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Facilitator

(less any losses required by the Facilitator). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Facilitator's system.

Billing Month:

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Wholesale Rate Schedule Regulation–1

Availability:

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Georgia, Alabama, Mississippi, Florida, South Carolina, or North Carolina to whom service is provided pursuant to contracts between the government and the customer.

Applicability:

This rate schedule shall be applicable to the sale of regulation services provided from the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters, and Richard B. Russell Projects (hereinafter called the Projects) and sold under appropriate contracts between the Government and the Customer.

Character of Service:

The service supplied hereunder will be delivered at the Projects.

Monthly Rate:

The rate for service supplied under this rate schedule for the period specified shall be: $0.05 per kilowatt of total contract demand per month.

Contract Demand:

The contract demand is the amount of capacity in kilowatts stated in the contract to which the Government is obligated to supply and the Customer is entitled to receive regulation service.

Billing Month:

The billing month for services provided under this schedule shall end at 12:00 midnight on the last day of each calendar month.

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H.R. 1454/P.L. 111–241
Multinational Species Conservation Funds Semipostal Stamp Act of 2010 (Sept. 30, 2010; 124 Stat. 2605)

H.R. 3081/P.L. 111–242
Continuing Appropriations Act, 2011 (Sept. 30, 2010; 124 Stat. 2607)

H.R. 3562/P.L. 111–243
To designate the federally occupied building located at 1220 Echelon Parkway in Jackson, Mississippi, as the "James Chaney, Andrew Goodman, Michael Schwerner, and Roy K. Moore Federal Building". (Sept. 30, 2010; 124 Stat. 2617)

H.R. 3940/P.L. 111–244
To clarify the availability of existing funds for political status education in the Territory of Guam, and for other purposes. (Sept. 30, 2010; 124 Stat. 2618)

H.R. 3978/P.L. 111–245
First Responder Anti-Terrorism Training Resources Act (Sept. 30, 2010; 124 Stat. 2620)

H.R. 4505/P.L. 111–246
To enable State homes to furnish nursing home care to parents any of whose children died while serving in the Armed Forces. (Sept. 30, 2010; 124 Stat. 2622)

H.R. 4667/P.L. 111–247
Veterans' Compensation Cost-of-Living Adjustment Act of 2010 (Sept. 30, 2010; 124 Stat. 2623)

H.R. 5682/P.L. 111–248
To improve the operation of certain facilities and programs of the House of Representatives, and for other purposes. (Sept. 30, 2010; 124 Stat. 2625)

H.R. 6190/P.L. 111–249
Airport and Airway Extension Act of 2010, Part III (Sept. 30, 2010; 124 Stat. 2627)

S. 3814/P.L. 111–250
National Flood Insurance Program Reextension Act of 2010 (Sept. 30, 2010; 124 Stat. 2630)

S. 3839/P.L. 111–251
To provide for an additional temporary extension of programs under the Small Business Act and the Small Business Investment Act of 1958, and for other purposes. (Sept. 30, 2010; 124 Stat. 2631)

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