Federal Register

6–15–09 Monday
Vol. 74 No. 113 June 15, 2009

Pages 28149–28438

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9:00 a.m.–12:30 p.m.

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

RESERVATIONS: (202) 741–6008

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

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OFFICE OF MANAGEMENT AND BUDGET

2 CFR Parts 1 and 182

Guidance for Drug-Free Workplace Requirements (Financial Assistance)

AGENCY: Office of Federal Financial Management, Office of Management and Budget.

ACTION: Final guidance.

SUMMARY: The Office of Management and Budget (OMB) is issuing guidance on drug-free workplace requirements for financial assistance. The guidance conforms with the common rule that 31 Federal agencies published on November 26, 2003 and therefore makes no substantive change to Federal policies and procedures in this area. The agencies issued the common rule after resolving public comments received in response to a Notice of Proposed Rulemaking.

OMB is issuing this guidance as an administrative simplification that will streamline the policy framework for drug-free workplace requirements in two ways. First, the guidance is in a form suitable for Federal agency adoption, which will reduce the volume of Federal regulations on drug-free workplace requirements, make it easier for the affected public to use them, and make it easier and less expensive for the Federal Government to maintain them. Second, the guidance is located in the recently established title 2 of the Code of Federal Regulations (2 CFR). Locating the OMB guidance in 2 CFR will make it easier to find. As a further simplification for the public, the OMB guidance then will be in the same CFR title as the agencies' regulations that implement the guidance.

This notice also makes a minor change to the previously issued 2 CFR part 1, to conform that part with the guidance published today.

DATES: The effective date for this final guidance is July 15, 2009.

FOR FURTHER INFORMATION CONTACT: Marguerite Pridgen, Office of Federal Financial Management, Office of Management and Budget, telephone (202) 395–7844 (direct) or (202) 395–3993 (main office) and e-mail: *mpridgen@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: In a **Federal Register** document published on September 26, 2008 [73 FR 55776], OMB proposed to issue drug-free workplace guidance for grants and cooperative agreements and make a minor conforming change to 2 CFR part 1. The proposal was the first step toward replacing a common rule that Federal agencies issued to implement the Drug-Free Workplace Act of 1988, as it applies to grants (Pub. L. 100–690, title V, subtitle D, enacted November 18, 1988). See the Supplementary Information section of the September 26, 2008, **Federal Register** document for more background information about the agencies' common rule, the proposed OMB guidance, title 2 of the Code of Federal Regulations in which the guidance and agency regulations will be located, and the benefits of replacing a common rule with adoptable guidance.

In response to the September 2008 proposal, OMB received one comment noting a typographical error. We therefore are finalizing the guidance as proposed, with the error corrected.

Next steps. Each Federal agency that is a signatory to the drug-free workplace common rule will issue a brief rule in its chapter of 2 CFR to adopt the OMB guidance on drug-free workplace, as required under sections 182.20 through 182.35 of the guidance. The rule will give regulatory effect to the OMB guidance for the agency's financial assistance awards and recipients. The agency also will remove the full text of the November 2003 common rule from its own CFR title. We expect to complete the process in calendar year 2010.

List of Subjects

2 CFR Part 1

Cooperative agreements, Grant programs, Grants administration.

2 CFR Part 182

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

Danny Werfel,
Deputy Controller.

Authority and Issuance

■ For the reasons set forth above, the Office of Management and Budget amends 2 CFR, subtitle A, as follows:

PART 1—[AMENDED]

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

Authority: 31 U.S.C. 503; 31 U.S.C. 1111; 41 U.S.C. 405; Reorganization Plan No. 2 o 1970; E.O. 11541, 35 FR 10737, 3 CFR, 1966–1970, p. 939.

■ 2. Section 1.215 is revised to read as follows:

§ 1.215 Relationship to previous issuances.

Although some of the guidance was organized differently within OMB circulars or other documents, much of the guidance in this subtitle existed prior to the establishment of title 2 of the CFR. Specifically:

Guidance in * * *	On * * *	Previously was in * * *
(a) Chapter I, part 180	Nonprocurement debarment and suspension	OMB guidance that conforms with the government-wide common rule (see 60 FR 33036, June 26, 1995).
(b) Chapter I, part 182	Drug-free workplace requirements	OMB guidance (54 FR 4946, January 31, 1989) and a government-wide common rule (as amended at 68 FR 66534, November 26, 2003).
(c) Chapter II, part 215	Administrative requirements for grants and agreements.	OMB Circular A–110.

Guidance in * * *	On * * *	Previously was in * * *
(d) Chapter II, part 220	Cost principles for educational institutions	OMB Circular A–21.
(e) Chapter II, part 225	Cost principles for State, local, and Indian tribal governments.	OMB Circular A–87.
(f) Chapter II, part 230	Cost principles for non-profit organizations	OMB Circular A–122.
(g) [Reserved].		

CHAPTER I—[AMENDED]

■ 3. Part 182 is added to Chapter I, to read as follows:

PART 182—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Sec.

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182.10 How is this part organized?
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182.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
182.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

182.300 What must I do to comply with this part if I am an individual recipient?

Subpart D—Responsibilities of Agency Awarding Officials

182.400 What are my responsibilities as an agency awarding official?

Subpart E—Violations of This Part and Consequences

182.500 How are violations of this part determined for recipients other than individuals?
182.505 How are violations of this part determined for recipients who are individuals?
182.510 What actions will the Federal Government take against a recipient determined to have violated this part?
182.515 Are there any exceptions to those actions?

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182.640 Employee.
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182.650 Grant.
182.655 Individual.
182.660 Recipient.
182.665 State.
182.670 Suspension.

Authority: 41 U.S.C. 701, *et seq.*

§ 182.5 What does this part do?

This part provides Office of Management and Budget (OMB) guidance for Federal agencies on the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701–707, as amended) that applies to grants. It also applies the provisions of the Act to cooperative agreements and other financial assistance awards, as a matter of Federal Government policy.

§ 182.10 How is this part organized?

This part is organized in two segments.

(a) Sections 182.5 through 182.40 contain general policy direction for Federal agencies' use of the uniform policies and procedures in subparts A through F of this part.

(b) Subparts A through F of this part contain uniform governmentwide policies and procedures for Federal agency use to specify the—

(1) Types of awards that are covered by drug-free workplace requirements;

(2) Drug-free workplace requirements with which a recipient must comply;

(3) Actions required of an agency awarding official; and

(4) Consequences of a violation of drug-free workplace requirements.

§ 182.15 To whom does the guidance apply?

This part provides OMB guidance only to Federal agencies. Publication of this guidance in the Code of Federal Regulations does not change its nature—it is guidance and not regulation. Federal agencies' implementation of the guidance governs the rights and responsibilities of other persons affected by the drug-free workplace requirements.

§ 182.20 What must a Federal agency do to implement the guidance?

To comply with the requirement in Section 41 U.S.C. 705 for Governmentwide regulations, each Federal agency that awards grants or cooperative agreements or makes other financial assistance awards that are subject to the drug-free workplace requirements in subparts A through F of the guidance must issue a regulation consistent with those subparts.

§ 182.25 What must a Federal agency address in its implementation of the guidance?

Each Federal agency's implementing regulation:

(a) Must establish drug-free workplace policies and procedures for that agency's awards that are consistent with the guidance in this part. When adopted by a Federal agency, the provisions of the guidance have regulatory effect for that agency's awards.

(b) Must address some matters for which the guidance in this part gives the agency discretion. Specifically, the regulation must—

(1) State whether the agency:

(i) Has a central point to which a recipient may send the notification of a conviction that is required under § 182.225(a) or § 182.300(b); or

(ii) Requires the recipient to send the notification to the awarding official for each agency award, or to his or her official designee.

(2) Either:

(i) State that the agency head is the official authorized to determine under § 182.500 or § 182.505 that a recipient has violated the drug-free workplace requirements; or

(ii) Provide the title of the official designated to make that determination.

(c) May also, at the agency's option, identify any specific types of financial

assistance awards, in addition to grants and cooperative agreements, to which the Federal agency makes this guidance applicable.

§ 182.30 Where does a Federal agency implement the guidance?

Each Federal agency that awards grants or cooperative agreements or makes other financial assistance awards that are subject to the drug-free workplace guidance in this part must issue a regulation implementing the guidance within its chapter in subtitle B of this title of the Code of Federal Regulations.

§ 182.35 By when must a Federal agency implement the guidance?

Federal agencies must submit proposed regulations to the OMB for review within nine months of the issuance of this part and issue final regulations within eighteen months of the guidance.

§ 182.40 How is the guidance maintained?

The OMB publishes proposed changes to the guidance in the **Federal Register** for public comment, considers comments with the help of appropriate interagency working groups, and then issues any changes to the guidance in final form.

Subpart A—Purpose and Coverage

§ 182.100 How is this part written?

(a) This part uses a ''plain language'' format to make it easier for the general public and business community to use and understand. The section headings and text, often in the form of questions and answers, must be read together.

(b) Pronouns used within this part, such as ''I'' and ''you,'' change from subpart to subpart depending on the audience being addressed.

§ 182.105 Do terms in this part have special meanings?

This part uses terms that have special meanings. Those terms are defined in subpart F of this part.

§ 182.110 What do subparts A through F of this part do?

Subparts A through F of this part specify standard policies and procedures to carry out the Drug-Free Workplace Act of 1988 for financial assistance awards.

§ 182.115 Does this part apply to me?

(a) Portions of this part apply to you if you are either—

(1) A recipient of a Federal assistance award (see definitions of award and recipient in §§ 182.605 and 182.660, respectively); or

(2) A Federal agency awarding official.

(b) The following table shows the subparts that apply to you:

If you are * * *	See subparts * * *
(1) a recipient who is not an individual	A, B and E.
(2) a recipient who is an individual	A, C and E.
(3) a Federal agency awarding official	A, D and E.

§ 182.120 Are any of my Federal assistance awards exempt from this part?

This part does not apply to any award to which the agency head, or his or her designee, determines that the application of this part would be inconsistent with the international obligations of the United States or the laws or regulations of a foreign government.

§ 182.125 Does this part affect the Federal contracts that I receive?

This part will affect future contract awards indirectly if you are debarred or suspended for a violation of the requirements of this part, as described in § 182.510(c). However, this part does not apply directly to procurement contracts. The portion of the Drug-Free Workplace Act of 1988 that applies to Federal procurement contracts is carried out through the Federal Acquisition Regulation in chapter 1 of Title 48 of the Code of Federal Regulations (the drug-free workplace coverage currently is in 48 CFR part 23, subpart 23.5).

Subpart B—Requirements for Recipients Other Than Individuals

§ 182.200 What must I do to comply with this part?

There are two general requirements if you are a recipient other than an individual.

(a) First, you must make a good faith effort, on a continuing basis, to maintain a drug-free workplace. You must agree to do so as a condition for receiving any award covered by this part. The specific measures that you must take in this regard are described in more detail in subsequent sections of this subpart. Briefly, those measures are to—

(1) Publish a drug-free workplace statement and establish a drug-free awareness program for your employees (see §§ 182.205 through 182.220); and

(2) Take actions concerning employees who are convicted of violating drug statutes in the workplace (see § 182.225).

(b) Second, you must identify all known workplaces under your Federal awards (see § 182.230).

§ 182.205 What must I include in my drug-free workplace statement?

You must publish a statement that—

(a) Tells your employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in your workplace;

(b) Specifies the actions that you will take against employees for violating that prohibition; and

(c) Lets each employee know that, as a condition of employment under any award, he or she:

(1) Will abide by the terms of the statement; and

(2) Must notify you in writing if he or she is convicted for a violation of a criminal drug statute occurring in the workplace and must do so no more than five calendar days after the conviction.

§ 182.210 To whom must I distribute my drug-free workplace statement?

You must require that a copy of the statement described in § 182.205 be given to each employee who will be engaged in the performance of any Federal award.

§ 182.215 What must I include in my drug-free awareness program?

You must establish an ongoing drug-free awareness program to inform employees about—

(a) The dangers of drug abuse in the workplace;

(b) Your policy of maintaining a drug-free workplace;

(c) Any available drug counseling, rehabilitation, and employee assistance programs; and

(d) The penalties that you may impose upon them for drug abuse violations occurring in the workplace.

§ 182.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?

If you are a new recipient that does not already have a policy statement as described in § 182.205 and an ongoing

awareness program as described in § 182.215, you must publish the statement and establish the program by the time given in the following table:

If * * *	Then you * * *
(a) the performance period of the award is less than 30 days	must have the policy statement and program in place as soon as possible, but before the date on which performance is expected to be completed.
(b) the performance period of the award is 30 days or more	must have the policy statement and program in place within 30 days after award.
(c) you believe there are extraordinary circumstances that will require more than 30 days for you to publish the policy statement and establish the awareness program.	may ask the agency awarding official to give you more time to do so. The amount of additional time, if any, to be given is at the discretion of the awarding official.

§ 182.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?

There are two actions you must take if an employee is convicted of a drug violation in the workplace:

(a) First, you must notify Federal agencies if an employee who is engaged in the performance of an award informs you about a conviction, as required by § 182.205(c)(2), or you otherwise learn of the conviction. Your notification to the Federal agencies must—

(1) Be in writing;

(2) Include the employee's position title;

(3) Include the identification number(s) of each affected award;

(4) Be sent within ten calendar days after you learn of the conviction; and

(5) Be sent to every Federal agency on whose award the convicted employee was working. It must be sent to every awarding official or his or her official designee, unless the Federal agency has specified a central point for the receipt of the notices.

(b) Second, within 30 calendar days of learning about an employee's conviction, you must either–

(1) Take appropriate personnel action against the employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended; or

(2) Require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for these purposes by a Federal, State or local health, law enforcement, or other appropriate agency.

§ 182.230 How and when must I identify workplaces?

(a) You must identify all known workplaces under each agency award. A failure to do so is a violation of your drug-free workplace requirements. You may identify the workplaces—

(1) To the agency official that is making the award, either at the time of application or upon award; or

(2) In documents that you keep on file in your offices during the performance of the award, in which case you must make the information available for inspection upon request by agency officials or their designated representatives.

(b) Your workplace identification for an award must include the actual address of buildings (or parts of buildings) or other sites where work under the award takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

(c) If you identified workplaces to the agency awarding official at the time of application or award, as described in paragraph (a)(1) of this section, and any workplace that you identified changes during the performance of the award, you must inform the agency awarding official.

Subpart C—Requirements for Recipients Who Are Individuals

§ 182.300 What must I do to comply with this part if I am an individual recipient?

As a condition of receiving a Federal agency award, if you are an individual recipient, you must agree that—

(a) You will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity related to the award; and

(b) If you are convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity, you will report the conviction:

(1) In writing.

(2) Within 10 calendar days of the conviction.

(3) To the Federal agency awarding official or other designee for each award that you currently have, unless the agency designates a central point for the receipt of the notices, either in the award document or its regulation implementing the guidance in this part. When notice is made to a central point, it must include the identification number(s) of each affected award.

Subpart D—Responsibilities of Agency Awarding Officials

§ 182.400 What are my responsibilities as an agency awarding official?

As a Federal agency awarding official, you must obtain each recipient's agreement, as a condition of the award, to comply with the requirements in—

(a) Subpart B of this part, if the recipient is not an individual; or

(b) Subpart C of this part, if the recipient is an individual.

Subpart E—Violations of This Part and Consequences

§ 182.500 How are violations of this part determined for recipients other than individuals?

A recipient other than an individual is in violation of the requirements of this part if the agency head or his or her designee determines, in writing, that—

(a) The recipient has violated the requirements of Subpart B of this part; or

(b) The number of convictions of the recipient's employees for violating criminal drug statutes in the workplace is large enough to indicate that the recipient has failed to make a good faith effort to provide a drug-free workplace.

§ 182.505 How are violations of this part determined for recipients who are individuals?

An individual recipient is in violation of the requirements of this part if the agency head or his or her designee determines, in writing, that—

(a) The recipient has violated the requirements of Subpart C of this part; or

(b) The recipient is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity.

§ 182.510 What actions will the Federal Government take against a recipient determined to have violated this part?

If a recipient is determined to have violated this part, as described in § 182.500 or § 182.505, the agency may take one or more of the following actions—

(a) Suspension of payments under the award;

(b) Suspension or termination of the award; and

(c) Suspension or debarment of the recipient under the agency's regulation implementing the OMB guidance on nonprocurement debarment and suspension (2 CFR part 180), for a period not to exceed five years.

§ 182.515 Are there any exceptions to those actions?

The agency head may waive with respect to a particular award, in writing, a suspension of payments under an award, suspension or termination of an award, or suspension or debarment of a recipient if the agency head determines that such a waiver would be in the public interest. This exception authority cannot be delegated to any other official.

Subpart F—Definitions

§ 182.605 Award.

Award means an award of financial assistance by a Federal agency directly to a recipient.

(a) The term award includes:

(1) A Federal grant or cooperative agreement, in the form of money or property in lieu of money.

(2) A block grant or a grant in an entitlement program, whether or not the grant is exempted from coverage under the Governmentwide rule that implements OMB Circular A–102 (for availability of OMB circulars, see 5 CFR 1310.3) and specifies uniform administrative requirements.

(b) The term award does not include:

(1) Technical assistance that provides services instead of money.

(2) Loans.

(3) Loan guarantees.

(4) Interest subsidies.

(5) Insurance.

(6) Direct appropriations.

(7) Veterans' benefits to individuals (i.e., any benefit to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States).

§ 182.610 Controlled substance.

Controlled substance means a controlled substance in schedules I through V of the Controlled Substances Act (21 U.S.C. 812), and as further defined by regulation at 21 CFR 1308.11 through 1308.15.

§ 182.615 Conviction.

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

§ 182.620 Cooperative agreement.

Cooperative agreement means an award of financial assistance that, consistent with 31 U.S.C. 6305, is used to enter into the same kind of relationship as a grant (see definition of grant in § 182.650), except that substantial involvement is expected between the Federal agency and the recipient when carrying out the activity contemplated by the award. The term does not include cooperative research and development agreements as defined in 15 U.S.C. 3710a.

§ 182.625 Criminal drug statute.

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance.

§ 182.630 Debarment.

Debarment means an action taken by a Federal agency to prohibit a recipient from participating in Federal Government procurement contracts and covered nonprocurement transactions. A recipient so prohibited is debarred, in accordance with the Federal Acquisition Regulation for procurement contracts (48 CFR part 9, subpart 9.4) and agency regulations implementing the OMB guidance on nonprocurement debarment and suspension (2 CFR part 180, which implements Executive Orders 12549 and 12689).

§ 182.635 Drug-free workplace.

Drug-free workplace means a site for the performance of work done in connection with a specific award at which employees of the recipient are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

§ 182.640 Employee.

(a) Employee means the employee of a recipient directly engaged in the performance of work under the award, including—

(1) All direct charge employees;

(2) All indirect charge employees, unless their impact or involvement in the performance of work under the award is insignificant to the performance of the award; and

(3) Temporary personnel and consultants who are directly engaged in the performance of work under the award and who are on the recipient's payroll.

(b) This definition does not include workers not on the payroll of the recipient (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the payroll; or employees of subrecipients or subcontractors in covered workplaces).

§ 182.645 Federal agency or agency.

Federal agency or agency means any United States executive department, military department, government corporation, government controlled corporation, any other establishment in the executive branch (including the Executive Office of the President), or any independent regulatory agency.

§ 182.650 Grant.

Grant means an award of financial assistance that, consistent with 31 U.S.C. 6304, is used to enter into a relationship—

(a) The principal purpose of which is to transfer a thing of value to the recipient to carry out a public purpose of support or stimulation authorized by a law of the United States, rather than to acquire property or services for the Federal Government's direct benefit or use; and

(b) In which substantial involvement is not expected between the Federal agency and the recipient when carrying out the activity contemplated by the award.

§ 182.655 Individual.

Individual means a natural person.

§ 182.660 Recipient.

Recipient means any individual, corporation, partnership, association, unit of government (except a Federal agency) or legal entity, however organized, that receives an award directly from a Federal agency.

§ 182.665 State.

State means any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

§ 182.670 Suspension.

Suspension means an action taken by a Federal agency that immediately prohibits a recipient from participating in Federal Government procurement contracts and covered nonprocurement transactions for a temporary period, pending completion of an investigation and any judicial or administrative proceedings that may ensue. A recipient so prohibited is suspended, in

accordance with the Federal Acquisition Regulation for procurement contracts (48 CFR part 9, subpart 9.4) and agency regulations implementing the OMB guidance on nonprocurement debarment and suspension (2 CFR part 180, which implements Executive Orders 12549 and 12689). Suspension of a recipient is a distinct and separate action from suspension of an award or suspension of payments under an award.

[FR Doc. E9–14019 Filed 6–12–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 220

[FNS–2005–0008]

RIN 0584–AD50

School Breakfast Program: Severe Need Assistance

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: The Department is adopting as a final rule, without change, an interim rule that amended the regulations for the School Breakfast Program. The interim rule addresses and implements amendments made by Section 201 of the Child Nutrition and WIC Reauthorization Act of 2004 and amends the School Breakfast Program (SBP) regulations to eliminate the requirement that a school's costs exceed the rate of reimbursement as a criterion for receiving the higher severe need funding available in the SBP. The rule also allows State agencies to provide severe need reimbursements to certain new schools that are beginning participation in the school feeding programs and therefore have no historical second preceding year participation information, as was previously required. The rule is intended to simplify eligibility for severe need reimbursements by removing previous restrictions on receipt of those payments. This rule does not impose new administrative requirements on State or local governmental entities.

DATES: Effective on June 15, 2009, the Department is adopting as a final rule the interim rule published at 70 FR 66247 on November 2, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Melissa Rothstein, Child Nutrition Division, Food and Nutrition Service at (703) 305–2590.

SUPPLEMENTARY INFORMATION:

Background

On November 2, 2005, the Department published an interim rule on the School Breakfast Program. Section 501(b) of Public Law 108–265 states that FNS may promulgate interim regulations to implement amendments made by Section 201 of the Child Nutrition and WIC Reauthorization Act of 2004. FNS published an interim rule to expedite implementation of the rule's provisions, while allowing public input. Comments were invited on the rule and the comment period ended on May 1, 2006. FNS received four public comments, all in support of the rule: two from State agencies, one from a school district, and one from a school. Commenters commended FNS for helping severe need schools participate in the SBP by:

- Eliminating the paperwork burden associated with documenting costs, and
- Allowing the Secretary to determine severe need funding for new schools that do not have historical participation information.

Commenters did not recommend any changes to the provisions of the interim rule. Therefore, the Department is adopting the interim rule as a final rule without change. Although there are no changes to the rule, the most recent School Breakfast Program information collection package (OMB Information Collection Request 0584–0012), shows that the overall burden hours have increased due to school food authority and school participation. This action also affirms information contained in the interim rule concerning Executive Order 12866, the Regulatory Flexibility Act, Executive Order 12988, and the Paperwork Reduction Act. Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

List of Subjects in 7 CFR Part 220

Grant programs—education, Grant programs—health, Infants and children, Nutrition, Reporting and recordkeeping requirements, School breakfast and lunch programs.

PART 220—SCHOOL BREAKFAST PROGRAM: SEVERE NEED ASSISTANCE

Accordingly, the Department is adopting as a final rule, without change, the interim rule that amended 7 CFR Part 220 and was published at 70 FR 66247 on November 2, 2005.

Dated: June 3, 2009.

Julia Paradis,

Administrator, Food and Nutrition Service.

[FR Doc. E9–14021 Filed 6–12–09; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AC23

Common Crop Insurance Regulations, Basic Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Common Crop Insurance Regulations, Basic Provisions to revise enterprise unit provisions to protect the program from potential abuse as a result of the increased premium subsidies for enterprise and whole farm units provided by the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill).

DATES: This rule is effective June 15, 2009. Written comments and opinions on this rule will be accepted until the close of business August 14, 2009 and will be considered when the rule is to be made final.

ADDRESSES: Interested persons are invited to submit comments, titled ''Enterprise Unit Interim Rule'', by any of the following methods:

- *By Mail to:* Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility—Mail Stop 0812, Room 421, P.O. Box 419205, Kansas City, MO 64141–6205.
- *By Express Mail to:* Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, 9240 Troost Avenue, Kansas City, MO 64131–3055.
- *E-Mail: DirectorPDD@rma.usda.gov.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

A copy of each response will be available for public inspection and copying from 7 a.m. to 4:30 p.m., CST, Monday through Friday, except holidays, at 6501 Beacon Drive, Stop 0812, Room 421, Kansas City, MO 64133–4676.

FOR FURTHER INFORMATION CONTACT: Erin Albright, Risk Management Specialist,

Product Management, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, P.O. Box 419205, Kansas City, MO 64141–6205, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be non-significant for the purposes of Executive Order 12866 and, therefore, it has not been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563–0053 through March 31, 2012.

E-Government Act Compliance

FCIC is committed to complying with the E-Government Act of 2002, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and Tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine the amount of an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1,000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act (Act) authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure that small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. *See* the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or to require the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, or safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

On May 22, 2008, the 2008 Farm Bill was enacted. Section 12011 of the 2008 Farm Bill amended section 508(e) of the Federal Crop Insurance Act (7 U.S.C. 1508(e)) to allow producers who elect whole-farm or enterprise units to receive, to the maximum extent practicable, the same dollar amount of premium subsidy that would have otherwise been paid if they had elected a basic or optional unit for the crop.

The increased subsidy amount provides a much larger incentive than in the past to qualify for an enterprise unit. The increased incentive may lead to unintended consequences when producers change planting intentions solely for the purpose of qualifying for the larger subsidy. To qualify for an enterprise unit, current provisions require a producer to plant some acreage in two or more sections, FSA farm serial numbers, or other means of land measurement. There is no requirement stating a minimum number of acres that must be planted in more than one section, FSA farm serial number, *etc.,* to qualify for an enterprise unit. This leaves the program vulnerable to producers who will plant only a small amount of acreage in an additional section, FSA farm serial number, *etc.* solely for the purpose of qualifying for an enterprise unit and the increased subsidy. FCIC has received questions and anecdotal information and has seen blogs on agricultural forums indicating that some insured producers are contemplating taking these actions.

The new subsidy amounts are intended only for producers who are willing to combine optional or basic units, not for those who manipulate unit structures solely to benefit from the higher subsidy. For this reason, FCIC is revising the definition of ''enterprise unit'' in the Basic Provisions to specify at least two of the sections, section equivalents, FSA farm serial numbers, or units established by written agreement must each have planted acreage that constitutes at least the lesser of 20 acres or 20 percent of the insured crop acreage in the enterprise unit. The lesser of 20 acres or 20 percent is consistent with other provisions in the policy that require a minimum amount of acreage to qualify for certain other coverage (for example, a replanting payment may be made when the number of acres replanted is at least the lesser of 20 acres or 20 percent of the insured planted acreage in a unit). This change is necessary to protect

program integrity by ensuring that producers are unable to manipulate their unit structure by making slight changes in their farming operation to gain additional benefits from the increased subsidy.

The amendments in this rule are applicable for the 2010 and succeeding crop years for all crops with a 2010 crop year contract change date on or after the effective date of this rule and for the 2011 and succeeding crop years for all crops with a 2010 crop year contract change date prior to the effective date of this rule.

Good cause is shown to make this rule effective upon publication in the **Federal Register**. Good cause to make the rule effective upon publication in the **Federal Register** exists when the 30 day delay in the effective date is impracticable, unnecessary, or contrary to the public interest.

With respect to the provisions of this rule, it would adversely affect program integrity to delay its implementation. If FCIC is required to delay the implementation of this rule 30 days after the date it is published, the provisions of this rule could not be implemented until the next crop year for those crops having a contract change date prior to the effective date of this publication. Because a delay in the effective date of this rule is contrary to the public interest, good cause exists to make these policy changes effective upon publication in the **Federal Register**.

List of Subjects in 7 CFR Part 457

Crop insurance, Reporting and recordkeeping requirements.

Interim Rule

■ Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 457 as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

■ 1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(o).

■ 2. In § 457.8, paragraph (b) is amended by revising the definition of ''Enterprise unit.''

The revised text reads as follows:

§ 457.8 The application and policy.

* * * * *

(b) * * *

1. Definitions.

* * * * *

Enterprise unit. All insurable acreage of the insured crop in the county in which you have a share on the date coverage begins for the crop year.

(1) To qualify, an enterprise unit must contain all of the insurable acreage of the same insured crop in:

(i) One or more basic units that are located in two or more separate sections, section equivalents, FSA farm serial numbers, or units established by written agreement; or

(ii) Two or more optional units established by separate sections, section equivalents, FSA farm serial numbers, or as established by written agreement; and

(2) At least two of the sections, section equivalents, FSA farm serial numbers, or units established by written agreement making up the basic or optional units in paragraph (1) of this definition must each have planted acreage that constitutes at least the lesser of 20 acres or 20 percent of the insured crop acreage in the enterprise unit.

* * * * *

Signed in Washington, DC, on June 5, 2009.

William J. Murphy,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. E9–13937 Filed 6–12–09; 8:45 am]

BILLING CODE 3410–08–P

FARM CREDIT SYSTEM INSURANCE CORPORATION

12 CFR Part 1410

RIN 3055–AA10

Premiums

AGENCY: Farm Credit System Insurance Corporation.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit System Insurance Corporation (FCSIC) issued a direct final rule with opportunity for comment on April 15, 2009 (74 FR 17371) amending its premium regulations under 12 CFR part 1410 to reflect the amendments of the Farm Credit Act of 1971 that were made by the enactment of the Food, Conservation, and Energy Act of 2008. The purpose of the amended rule is to clarify the premium regulations and eliminate provisions of the premium regulations that are obsolete or inconsistent with the Farm Credit Act of 1971, as amended. The opportunity for comment expired on May 15, 2009. The FCSIC received no comments and therefore, the direct final rule becomes effective without change. In accordance with 12 U.S.C. 2252, the effective date of the rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is June 9, 2009.

DATES: *Effective Date:* The regulation amending 12 CFR part 1410 published on April 15, 2009 (74 FR 17371) is effective June 9, 2009.

FOR FURTHER INFORMATION CONTACT: James M. Morris, General Counsel, Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, VA 22102, 703–883–4380, TTY 703–883–4390, Fax 703–790–9088.

Roland E. Smith,

Secretary to the Board, Farm Credit System Insurance Corporation.

[FR Doc. E9–13954 Filed 6–12–09; 8:45 am]

BILLING CODE 6710–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30670 Amdt. No. 3324]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective June 15, 2009. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director

of the Federal Register as of June 15, 2009.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability—All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit *http://www.nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Harry J. Hodges, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or revoking SIAPs, Takeoff Minimums and/or ODPs. The complete regulators description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, in addition to their complex nature and the need for a special format make publication in the **Federal Register** expensive and impractical. Furthermore, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their depiction on charts printed by publishers of aeronautical materials. The advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA forms is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs and the effective dates of the associated Takeoff Minimums and ODPs. This amendment also identifies the airport and its location, the procedure, and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as contained in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPS and Takeoff Minimums and ODPS, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPS contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPS and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedures before adopting these SIAPS, Takeoff Minimums and ODPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on May 29, 2009.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, title 14, Code of Federal Regulations, part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and/or Takeoff Minimums and/or Obstacle Departure Procedures effective at 0902 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 02 JUL 2009

Brooksville, FL, Hernando County, RNAV (GPS) RWY 3, Amdt 1

Brooksville, FL, Hernando County, RNAV (GPS) RWY 9, amdt 1

Brooksville, FL, Hernando County, RNAV (GPS) RWY 21, Amdt 1

Brooksville, FL, Hernando County, RNAV (GPS) RWY 27, Amdt 1

Brooksville, FL, Hernando County, Takeoff Minimums and Obstacle DP, Orig

Fort Lauderdale, FL, Fort Lauderdale/Hollywood Intl, RNAV (GPS) RWY 13, Amdt 1

Fort Lauderdale, FL, Fort Lauderdale/Hollywood Intl, RNAV (GPS) RWY 27L, Orig

Fort Stewart (Hinesville), GA, Wright AAF (Fort Stewart)/Midcoast Rgnl, NDB RWY 33R, Orig Fort Stewart (Hinesville), GA, Wright AAF (Fort Stewart)/Midcoast Rgnl, RADAR 1, Original, (CANCELLED) Fort Stewart (Hinesville), GA, Wright AAF (Fort Stewart)/Midcoast Rgnl, RNAV (GPS) RWY 6L, Orig Fort Stewart (Hinesville), GA,

Wright AAF (Fort Stewart)/Midcoast Rgnl, RNAV (GPS) RWY 33R, Orig Fort Stewart (Hinesville), GA, Wright AAF (Fort Stewart)/Midcoast Rgnl, Takeoff Minimums and Obstacle DP, Orig
Savannah, GA, Savannah/Hilton Head Intl, ILS OR LOC RWY 1, Amdt 8
Savannah, GA, Savannah/Hilton Head Intl, ILS OR LOC RWY 10, Amdt 27A
Savannah, GA, Savannah/Hilton Head Intl, RNAV (GPS) RWY 1, Amdt 2
Savannah, GA, Savannah/Hilton Head Intl, RNAV (GPS) RWY 10, Amdt 2
Savannah, GA, Savannah/Hilton Head Intl, RNAV (GPS) RWY 19, Amdt 2
Savannah, GA, Savannah/Hilton Head Intl, RNAV (GPS) Z RWY 28, Amdt 2
Savannah, GA, Savannah/Hilton Head Intl, Takeoff Minimums and Obstacle DP, Amdt 6
Savannah, GA, Savannah/Hilton Head Intl, VOR/DME–A, Orig-A
Savannah, GA, Savannah/Hilton Head Intl, VOR/DME OR TACAN RWY 1, Orig-B
Savannah, GA, Savannah/Hilton Head Intl, VOR/DME OR TACAN RWY 19, Orig-A
Richmond, IN, Richmond Muni, RNAV (GPS) RWY 33, Orig
Houma, LA, Houma-Terrebonne, COPTER VOR/DME RWY 12, Amdt 4
Houma, LA, Houma-Terrebonne, GPS RWY 12, Amdt 1A, CANCELLED
Houma, LA, Houma-Terrebonne, GPS RWY 18, Orig-A, CANCELLED
Houma, LA, Houma-Terrebonne, GPS RWY 36, Orig-A, CANCELLED
Houma, LA, Houma-Terrebonne, ILS OR LOC RWY 18, Amdt 4
Houma, LA, Houma-Terrebonne, RNAV (GPS) RWY 12, Orig
Houma, LA, Houma-Terrebonne, RNAV (GPS) RWY 18, Orig
Houma, LA, Houma-Terrebonne, RNAV (GPS) RWY 30, Orig
Houma, LA, Houma-Terrebonne, RNAV (GPS) RWY 36, Orig
Houma, LA, Houma-Terrebonne, Takeoff Minimums and Obstacle DP, Amdt 5
Houma, LA, Houma-Terrebonne, VOR/DME RWY 30, Amdt 12
Grand Rapids, MI, Gerald R. Ford Intl, ILS OR LOC RWY 8R, Amdt 6
Grand Rapids, MI, Gerald R. Ford Intl, ILS OR LOC RWY 26L, Amdt 21
Grand Rapids, MI, Gerald R. Ford Intl, ILS OR LOC RWY 35, Amdt 1
Grand Rapids, MI, Gerald R. Ford Intl, RNAV (GPS) RWY 8L, Amdt 1
Grand Rapids, MI, Gerald R. Ford Intl, RNAV (GPS) RWY 8R, Amdt 1
Grand Rapids, MI, Gerald R. Ford Intl, RNAV (GPS) RWY 17, Amdt 1
Grand Rapids, MI, Gerald R. Ford Intl, RNAV (GPS) RWY 26L, Amdt 1
Grand Rapids, MI, Gerald R. Ford Intl, RNAV (GPS) RWY 26R, Amdt 1
Grand Rapids, MI, Gerald R. Ford Intl, RNAV (GPS) RWY 35, Amdt 1
Grand Rapids, MI, Gerald R. Ford Intl, Takeoff Minimums and Obstacle DP, Amdt 2
Grand Rapids, MI, Gerald R. Ford Intl, VOR RWY 35, Amdt 1
Maryville, MO, Northwest Missouri Rgnl, RNAV (GPS) RWY 14, Orig
Maryville, MO, Northwest Missouri Rgnl, Takeoff Minimums and Obstacle DP, Amdt 3
Maryville, MO, Northwest Missouri Rgnl, VOR/DME OR GPS RWY 36, Amdt 4, CANCELLED
Blair, NE, Blair Muni, RNAV (GPS) RWY 13, Orig
Blair, NE, Blair Muni, RNAV (GPS) RWY 31, Orig
Blair, NE, Blair Muni, Takeoff Minimums and Obstacle DP, Orig
Reno, NV, Reno/Tahoe Intl, RNAV (RNP) Z RWY 16R, Orig-B
Cleveland, OH, Cuyahoga County, ILS OR LOC RWY 24, Amdt 14
Cleveland, OH, Cuyahoga County, LOC/DME BC RWY 6, Amdt 11
Cleveland, OH, Cuyahoga County, NDB OR GPS RWY 24, Amdt 8C, CANCELLED
Cleveland, OH, Cuyahoga County, RNAV (GPS) RWY 6, Orig
Cleveland, OH, Cuyahoga County, RNAV (GPS) RWY 24, Orig
Port Clinton, OH, Carl R Keller Field, GPS RWY 27, Amdt 1A, CANCELLED
Port Clinton, OH, Carl R Keller Field, NDB RWY 27, Amdt 13
Port Clinton, OH, Carl R Keller Field, RNAV (GPS) RWY 9, Orig
Port Clinton, OH, Carl R Keller Field, RNAV (GPS) RWY 27, Orig
Port Clinton, OH, Carl R Keller Field, Takeoff Minimums and Obstacle DP, Amdt 6
Port Clinton, OH, Carl R Keller Field, VOR/DME–A, Amdt 9
Erie, PA, Erie Intl/Tom Ridge Field, ILS OR LOC RWY 6, Amdt 16
Erie, PA, Erie Intl/Tom Ridge Field, ILS OR LOC/DME RWY 24, Amdt 8
Erie, PA, Erie Intl/Tom Ridge Field, NDB RWY 6, Amdt 1
Erie, PA, Erie Intl/Tom Ridge Field, NDB RWY 24, Amdt 18
Erie, PA, Erie Intl/Tom Ridge Field, RNAV (GPS) RWY 6, Orig
Erie, PA, Erie Intl/Tom Ridge Field, RNAV (GPS) RWY 24, Orig
Erie, PA, Erie Intl/Tom Ridge Field, Takeoff Minimums and Obstacle DP, Amdt 5
Erie, PA, Erie Intl/Tom Ridge Field, VOR RWY 6, Amdt 16
Erie, PA, Erie Intl/Tom Ridge Field, VOR/DME RWY 24, Amdt 12
Wilkes-Barre/Scranton, PA, Wilkes-Barre/Scranton Intl, ILS OR LOC/DME RWY 22, Amdt 6
Wilkes-Barre/Scranton, PA, Wilkes-Barre/Scranton Intl, RNAV (GPS) RWY 4, Orig
Wilkes-Barre/Scranton, PA, Wilkes-Barre/Scranton Intl, RNAV (GPS RWY 22, Orig
North Kingstown, RI, Quonset State, ILS OR LOC RWY 16, Amdt 10
Greenville, SC, Greenville Downtown, RNAV (GPS) RWY 1, Orig
Greenville, SC, Greenville Downtown, RNAV (GPS) RWY 10, Orig
Newberry, SC, Newberry County, GPS RWY 22, Orig, CANCELLED
Newberry, SC, Newberry County, RNAV (GPS) RWY 4, Orig
Newberry, SC, Newberry County, RNAV (GPS) RWY 22, Orig
Memphis, TN, Memphis Intl, ILS OR LOC RWY 18R, Amdt 14
Memphis, TN, Memphis Intl, RNAV (GPS) Z RWY 18C, Amdt 2
Memphis, TN, Memphis Intl, RNAV (GPS) Z RWY 18L, Amdt 2
Memphis, TN, Memphis Intl, RNAV (GPS) Z RWY 18R, Amdt 2
Memphis, TN, Memphis Intl, RNAV (RNP) X RWY 18L, Orig
Memphis, TN, Memphis Intl, RNAV (RNP) X RWY 18R, Orig
Memphis, TN, Memphis Intl, RNAV (RNP) Y RWY 18C, Orig
Memphis, TN, Memphis Intl, RNAV (RNP) Y RWY 18L, Orig
Memphis, TN, Memphis Intl, RNAV (RNP) Y RWY 18R, Orig
Mountain City, TN, Johnson County, RNAV (GPS) RWY 6, Orig
Mountain City, TN, Johnson County, RNAV (GPS) RWY 24, Orig
Savannah, TN, Savannah-Hardin County, GPS RWY 1, Orig, CANCELLED
Savannah, TN, Savannah-Hardin County, GPS RWY 19, Orig, CANCELLED
Savannah, TN, Savannah-Hardin County, RNAV (GPS) RWY 1, Orig
Savannah, TN, Savannah-Hardin County, RNAV (GPS) RWY 19, Orig
Oak Harbor, WA, A.J. Eisenberg, RNAV (GPS) RWY 7, Amdt 2C

[FR Doc. E9–13872 Filed 6–12–09; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

14 CFR Part 97

[Docket No. 30671; Amdt. No. 3325]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective June 15, 2009. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the

regulations is approved by the Director of the Federal Register as of June 15, 2009.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability—All SIAPs are available online free of charge. Visit *http://nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Harry J. Hodges, Flight Procedure Standards Branch (AFS–420) Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of Title 14 of the Code of Federal Regulations.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAP and the corresponding effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore— (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on May 29, 2009.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	Subject
05/14/09	CA	AVALON	CATALINA	9/9066	VOR/DME OR GPS–B, AMDT 2A.
05/14/09	CA	AVALON	CATALINA	9/9067	VOR OR GPS–A, AMDT 4A.
05/15/09	CA	OAKDALE	OAKDALE	9/0226	VOR–A, ORIG.
05/15/09	CA	OAKDALE	OAKDALE	9/0227	RNAV (GPS) RWY 28, ORIG.
05/15/09	CA	OAKDALE	OAKDALE	9/0228	RNAV (GPS) RWY 10, ORIG.

FDC date	State	City	Airport	FDC No.	Subject
05/26/09	AZ	PHOENIX	PHOENIX SKY HARBOR INTL	9/0233	ILS OR LOC RWY 25L, AMDT 1C.
05/26/09	CA	PALO ALTO	PALO ALTO ARPT OF SANTA CLARA CO.	9/0236	VOR/DME RWY 31, ORIG–A.

[FR Doc. E9–13874 Filed 6–12–09; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 634

[FHWA Docket No. FHWA–2008–0157]

RIN 2125–AF28

Worker Visibility

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA adopts as final an Interim Final Rule that amends its regulations to address safety concerns raised by the firefighting community regarding high-visibility safety apparel. The purpose of adopting the Interim Final Rule as final is to reflect the exemption of firefighters from the requirement to use high-visibility safety apparel, as defined in this rule, when they are exposed to hazardous conditions where the use of such apparel may increase the risk of injury to firefighter personnel.

DATES: *Effective Date:* June 15, 2009. The interim rule became effective November 24, 2008.

FOR FURTHER INFORMATION CONTACT: For technical information: Mr. Hari Kalla, Office of Transportation Operations, (202) 366–5915. For legal information: Mr. Raymond Cuprill, Office of Chief Counsel, (202) 366–0791, Federal Highway Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

This document, the Interim Final Rule, and all comments received may be viewed online through *http://www.regulations.gov.* Electronic submission and retrieval help and guidelines are available on the Web site. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register's home page at: *http://www.archives.gov* and the Government Printing Office's Web page at: *http://www.access.gpo.gov/nara.*

Background

The FHWA published an Interim Final Rule on 23 CFR Part 634 on November 21, 2008, at 73 FR 70593. Interested persons were invited to submit comments to FHWA Docket No. FHWA–2008–0157. The Interim Final Rule revised existing regulations to address safety concerns raised by the firefighting community in order to provide an exemption for firefighters actively engaged in emergency operations where they are directly exposed to flame, fire, heat and/or hazardous materials. This rule has been in effect since November 24, 2008.

Summary of Comments

The FHWA received three comments to the docket from private individuals. The first commenter expressed his opinion that a statement contained in the background information of the Interim Rule created confusion and the false impression that a firefighter does not need to comply with the regulation if he is wearing an NFPA 1971 standard compliant garment. He recommended that this language be clarified to ensure the rule is interpreted correctly by all firefighters. The FHWA disagrees with this comment. The background information was included to justify the issuance of the Interim Final Rule due to safety concerns expressed by the firefighting community. However, the language in the Interim Final Rule is accurate and does not require modification.

The second commenter supported the concept of the Interim Final Rule, but also expressed concern about the confusion that has resulted from the existence of several standards for high visibility garments and how they are being referenced in this rulemaking as well as a separate rulemaking in Docket No. FHWA–2007–28977. This rulemaking proposes to revise the 2003 edition of the Manual on Uniform Traffic Control Devices. This comment does not require any response to this docket, but rather it will be considered in the analysis of comments to Docket No. FHWA–2007–28977.

The third commenter expressed the opinion that the Interim Final Rule should not have provided any exemptions for firefighters under any circumstances. In his opinion, the requirements contained in 23 CFR 634 should, in the interest of safety, apply to all firefighters all the time. Prior to the issuance of this Interim Final Rule, the FHWA was made aware of several competing safety issues that could develop under certain conditions with the high visibility garments that are currently available, such as having the background material either catch fire or melt when exposed directly to fire. The FHWA, therefore, did issue the exemption for firefighters and other emergency workers when they are working under the conditions specifically listed in the Interim Final Rule. This exemption should provide a balance of increasing the visibility of the workers under most conditions, but not create a condition that could endanger them with other hazards.

Conclusion

For the reasons stated above, the FHWA adopts as final the Interim Final Rule published on November 21, 2008, at 73 FR 70593.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this final rule is not a significant regulatory action within the meaning of Executive Order 12866 and is not significant within the meaning of U.S. Department of Transportation regulatory policies and procedures. The economic impact of this rulemaking will be minimal. The final rule would not adversely affect, in a material way, any sector of the economy. In addition, the final rule would not interfere with any action taken or planned by another agency and would not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Consequently, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612) the FHWA has evaluated the effects of this action on small entities and has determined that the action would not have a significant economic impact on a substantial number of small

entities. This action does not affect any funding distributed under any of the programs administered by the FHWA. For these reasons, the FHWA certifies that this action would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This final rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48). This rule would not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $128.1 million or more in any one year (2 U.S.C. 1532).

Executive Order 13132 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and the FHWA has determined that this action would not have sufficient federalism implications to warrant the preparation of a federalism assessment. The FHWA has also determined that this action would not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 13211 (Energy Effects)

We have analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use, dated May 18, 2001. We have determined that it is not a significant energy action under that order since it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501), Federal agencies must obtain approval from the Office of Management and Budget for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this rule does not contain collection of information requirements for the purposes of the PRA.

Executive Order 12988 (Civil Justice Reform)

This action 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.

Executive Order 13045 (Protection of Children)

The FHWA has analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The FHWA certifies that this action would not cause any environmental risk to health or safety that might disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

The FHWA has analyzed this rule under Executive Order 12630, Governmental Actions and Interface with Constitutionally Protected Property Rights. The FHWA does not anticipate that this action would affect a taking of private property or otherwise have taking implications under Executive Order 12630.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 634

Design standards, Highways and roads, incorporation by reference, Traffic regulations, Workers.

■ In consideration of the foregoing, and under the authority of 23 U.S.C. 101(a), 109(d), 114(a), 315, and 402(a); Sec. 1402 of Pub. L. 109–59; 23 CFR 1.32; and 49 CFR 1.48(b), the Interim Final Rule amending 23 CFR Part 634 that was published on November 21, 2008 at 73 FR 70593, is adopted as a final rule without change.

Issued on: May 14, 2009.

Jeffrey F. Paniati,

Acting Deputy Federal Highway Administrator.

[FR Doc. E9–13988 Filed 6–12–09; 8:45 am]

BILLING CODE 4910–22–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Allocation of Assets in Single-Employer Plans; Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: Pension Benefit Guaranty Corporation's regulations on Allocation of Assets in Single-Employer Plans and Benefits Payable in Terminated Single-Employer Plans prescribe interest assumptions for valuing and paying certain benefits under terminating single-employer plans. This final rule amends the asset allocation regulation to adopt interest assumptions for plans with valuation dates in the third quarter of 2009 and amends the benefit payments regulation to adopt interest assumptions for plans with valuation dates in July 2009. Interest assumptions are also published on PBGC's Web site (*http://www.pbgc.gov*).

DATES: Effective July 1, 2009.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

These interest assumptions are found in two PBGC regulations: the regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) and the regulation on Benefits Payable in Terminated Single-Employer Plans (29 CFR part 4022). Assumptions under the

asset allocation regulation are updated quarterly; assumptions under the benefit payments regulation are updated monthly. This final rule updates the assumptions under the asset allocation regulation for the third quarter (July through September) of 2009 and updates the assumptions under the benefit payments regulation for July 2009.

The interest assumptions prescribed under the asset allocation regulation (found in Appendix B to Part 4044) are used for the valuation of benefits for allocation purposes under ERISA section 4044. Two sets of interest assumptions are prescribed under the benefit payments regulation: (1) A set for PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by PBGC (found in Appendix B to Part 4022), and (2) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using PBGC's historical methodology (found in Appendix C to Part 4022).

This amendment (1) adds to Appendix B to Part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during the third quarter (July through September) of 2009, (2) adds to Appendix B to Part 4022 the interest assumptions for PBGC to use for its own lump-sum payments in plans with valuation dates during July 2009, and (3) adds to Appendix C to Part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using PBGC's historical methodology for valuation dates during July 2009.

The interest assumptions that PBGC will use for valuing benefits for allocation purposes (set forth in Appendix B to part 4044) will be 5.31 percent for the first 20 years following the valuation date and 5.04 percent thereafter. By comparison with the interest assumptions in effect for the second quarter of 2009, these interest assumptions represent a decrease of 0.19 percent for the first 20 years following the valuation date and an increase of 0.02 percent for all years thereafter.

The interest assumptions that PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 3.75 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions represent no change from those in effect for June 2009. For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect current market conditions as accurately as possible.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during July 2009, PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. *See* 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

■ In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 189, as set forth below, is added to the table.

Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*	*	*
189	7–1–09	8–1–09	3.75	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 189, as set forth below, is added to the table.

Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*	*	*
189	7–1–09	8–1–09	3.75	4.00	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE–EMPLOYER PLANS

■ 4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 5. In appendix B to part 4044, a new entry for July–September 2009, as set forth below, is added to the table.

Appendix B to Part 4044—Interest Rates Used To Value Benefits

* * * * *

For valuation dates occurring in the months—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
*	*		*		*	*
July–September 2009	0.0531	1–20	0.0504	>20	N/A	N/A

Issued in Washington, DC, on this 9th day of June 2009.

Vincent K. Snowbarger,

Acting Director, Pension Benefit Guaranty Corporation.

[FR Doc. E9–14003 Filed 6–12–09; 8:45 am]

BILLING CODE 7709–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0462]

RIN 1625–AA00

Safety Zone; Marinette Marine Vessel Launch, Marinette, WI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Menominee River near Marinette, Wisconsin. This zone is intended to restrict vessels from a portion of the Menominee River during a vessel launching. This temporary safety zone is necessary to protect the surrounding public and vessels from the hazards associated with the vessel launching.

DATES: This rule is effective from 10:45 a.m. until 12:15 p.m. on June 26, 2009.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2009–0462 and are available Online by going to *http://www.regulations.gov,* selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2009–0462 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. They are also available for inspection or copying at two locations: 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, and the U.S. Coast Guard Sector Lake Michigan, 2420 S. Lincoln Memorial Drive, Milwaukee, WI 53110, between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, contact Petty Officer Kraft, U.S. Coast Guard Sector Lake Michigan; telephone 414–747–7154, e-mail *Adam.D.Kraft@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when an agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a

notice of proposed rulemaking (NPRM) with respect to this rule because it is in the best interest of the public to ensure, to the extent practicable, the safety of vessels and spectators from the hazards associated with the launch of the Marinette.

For those same reasons, 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**.

Background and Purpose

This temporary safety zone is necessary to ensure, to the extent practicable, the safety of the public and vessels from the hazards associated with the vessel launching. The Captain of the Port Sector Lake Michigan has determined that the launching of the vessel does pose significant risks to public safety and property. The likely combination of small recreational boaters and the large wake created by the vessel launch could easily result in serious injuries or fatalities.

Discussion of Rule

The temporary safety zone will encompass all water of the Menominee River surrounding the Marinette Marine Corporation piers and bounded by a line with a point of origin at 45°05′57″ N, 087°36′0.3″ W; then northeast to 45°06′00″ N, 087°36′48.3″ W; then northwest to 45°06′04.4″ N, 087°37′09.2″ W; then west to 45°06′04.5″ N, 087°37′14″ W; then southwest to 45°06′02.8″ N, 087°37′15″ W; then southeast following the shoreline back to the point of origin (NAD 83).

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the on-scene representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Sector Lake Michigan or his on-scene representative. The Captain of the Port or his on-scene representative may be contacted via VHF Channel 16.

Regulatory Analyses

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

Regulatory Planning and Review

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

This determination is based on the minimal time that vessels will be restricted from the zone and the zone is an area where the Coast Guard expects insignificant adverse impact to mariners from the zones' activation.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule will 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 might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the Menominee River, Marinette WI between 10:45 a.m. and 12:15 p.m. on June 26, 2009.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will only be enforced while unsafe conditions exist. In the event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of The Port Sector Lake Michigan to transit through the safety zone. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so they may better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

The Coast Guard recognizes the treaty rights of Native American Tribes. Moreover, the Coast Guard is committed to working with Tribal Governments to implement local policies and to mitigate

tribal concerns. We have determined that these regulations and fishing rights protection need not be incompatible. We have also determined that 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. Nevertheless, Indian Tribes that have questions concerning the provisions of this Rule or options for compliance are encouraged to contact the point of contact listed under **FOR FURTHER INFORMATION CONTACT**.

Energy Effects

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

Technical Standards

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

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

Environment

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

The final environmental analysis check list and 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. A add temporary § 165.T09–0462 to read as follows:

§ 165.T09–0462 Safety Zone; Marinette Marine Vessel Launch, Marinette, Wisconsin.

(a) *Location.* All water of the Menominee River surrounding the Marinette Marine Corporation piers and bounded by a line with a point of origin at 45°05′57″ N, 087°36′50.3″ W; then northeast to 45°06′00″ N, 087°36′48.3″ W; then northwest to 45°06′04.4″ N, 087°37′09.2″ W; then west to 45°06′04.5″ N, 087°37′14″ W; then southwest to 45°06′02.8″ N, 087°37′15″ W; then southeast following the shoreline back to the point of origin. (NAD 83).

(b) *Enforcement period.* This regulation will be enforced from 10:45 a.m. until 12:15 p.m. on June 26, 2009. The Captain of the Port Sector Lake Michigan or the on-scene Patrol Commander may terminate this operation at anytime.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Sector Lake Michigan or his on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Sector Lake Michigan or his on-scene representative. Any person in a safety zone who has notice of a lawful order or direction shall obey the order or direction of the Captain of the Port or his on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Sector Lake Michigan or his on-scene representative to obtain permission to do so. The Captain of the Port or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Sector Lake Michigan or his on-scene representative.

Dated: June 1, 2009.

B.C. Jones,

Captain, U.S. Coast Guard, Captain of the Port Sector Lake Michigan.

[FR Doc. E9–13888 Filed 6–12–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0465]

RIN 1625–AA00

Safety Zone; Chicago Harbor, Navy Pier Southeast, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Navy Pier Southeast Safety Zone in Chicago Harbor during July 1, 2009 through July 29, 2009. This action is necessary to protect vessels and people from the hazards associated with fireworks displays. This safety zone will restrict vessel traffic from a portion of the Captain of the Port Lake Michigan Zone.

DATES: The regulations in 33 CFR 165.931 will be enforced from July 1, 2009 through July 29, 2009.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or e-mail BM2 Kraft, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI; telephone (414) 747–7154, e-mail *Adam.D.Kraft@uscg.mil.*

SUPPLEMENTARY INFORMATION:

The Coast Guard will enforce the special local regulation for the Safety Zone; Chicago Harbor, Navy Pier Southeast, Chicago, IL, 33 CFR 165.931 for the following events:

(1) *Navy Pier Wednesday Fireworks* on July 1, 2009 from 9:15 p.m. through 9:45 p.m.; on July 8, 2009 from 9:15 p.m. through 9:45 p.m.; on July 15, 2009 from 9:15 p.m. through 9:45 p.m.; on July 22, 2009 from 9:15 p.m. through 9:45 p.m.; on July 29, 2009 from 9:15 p.m. through 9:45 p.m.;

(2) *Navy Pier Saturday Fireworks* on July 04, 2009 from 8:45 p.m. through 9:30 p.m.; on July 11, 2009 from 10 p.m. through 10:40 p.m.; on July 18, 2009 from 10 p.m. through 10:40 p.m.

All vessels must obtain permission from the Captain of the Port or his on-scene representative to enter, move within or exit the safety zone. Vessels and persons granted permission to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port or a designated representative. While within a safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

This notice is issued under authority of 33 CFR 165.931 (72 FR 32520, June 13, 2007) and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of these enforcement periods via Broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port will issue a Broadcast Notice to Mariners notifying the public when enforcement of the safety zone established by this section is suspended. The Captain of the Port may be contacted via U.S. Coast Guard Sector Lake Michigan on channel 16, VHF–FM.

Dated: June 2, 2009.

Bruce C. Jones,

Captain, U.S. Coast Guard, Captain of the Port Lake Michigan.

[FR Doc. E9–13890 Filed 6–12–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2008–0020]

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton Jr., Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Assistant Administrator of the Mitigation Directorate has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

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

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

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

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

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

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

State	City/town/county	Source of flooding	Location	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified
City of Radford, Virginia FEMA Docket No.: B–1012				
Virginia	City of Radford	Plum Creek	Approximately 300 feet downstream of US Highway 11.	+1739
			Approximately at the upstream corporate limits for the City of Radford.	+1782

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Radford
Maps are available for inspection at the City of Radford Engineering Department, 619 2nd Street, Radford, VA 24141.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Archuleta County, Colorado, and Incorporated Areas FEMA Docket No.: B–1016			
Stollsteimer Creek	150 feet east of CR 700 Extension	+6783	Unincorporated Areas of Archuleta County.
	South of Hawthorne Drive and Highway 160	+7023	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

Unincorporated Areas of Archuleta County
Maps are available for inspection at 449 San Juan Street, Pagosa Springs, CO 81147.

Orange County, Florida, and Incorporated Areas FEMA Docket No.: B–1000			
Apache Lake	Bound by Arrowhead Boulevard to the north, Arrena Road to the west, Orange/Osceola county boundary to the south, and Strahan Boulevard to the east.	+111	Unincorporated Areas of Orange County.
Bear Bay	Bound by Hartzog Road to the north, Avalon Road to the west, Hartzog Road to the south and east.	+104	Unincorporated Areas of Orange County.
Border Lake	Entire shoreline	+77	City of Apopka.
Cypress Creek	Approximately 1,580 feet downstream of Winter Garden Vineland Road.	+98	Unincorporated Areas of Orange County.
	Approximately 2.6 miles upstream of Winter Garden Vineland Road.	+102	
Doe Lake	Entire shoreline	+108	Unincorporated Areas of Orange County.
Druid Lake	Bound by Chelsea Street to the north, North Bumby Avenue to the west, Seabee Street to the south, and Port Hueneme Avenue to the east.	+104	City of Orlando.
Flooding Effects from Hancock Lake (Lake County).	Bound by Old YMCA Road to the north, Orange/Lake county boundary to the west, Lake Star Road to the south, and Avalon Road to the east.	+110	Unincorporated Areas of Orange County.
	Bound by Lake Ihrig to the north, Orange/Lake county boundary to the west, Lake Star Road to the south, and Avalon Road to the east.	+115	
	Bound by Flemings Road to the north, Orange/Lake county boundary to the west, County Road to the south, and Avalon Road to the east.	+115	
Flooding Effects from Sawgrass Bay (Lake County).	Bound by Unnamed Lake E to the north, Orange/Lake county boundary to the west, Lake Ihrig to the south, and Unnamed Lake I to the east.	+106	Unincorporated Areas of Orange County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground	Communities affected
		Modified	
Grass Lake	Bound by County Road to the north, Orange/Lake county boundary to the west, Bali Boulevard to the south, and Avalon Road to the east.	+113	Unincorporated Areas of Orange County.
Hickorynut Lake	Bound by Old YMCA Road to the north, Orange/Lake county boundary to the west, Lake Star Road to the south, and Avalon Road to the east.	+104	Unincorporated Areas of Orange County.
Huckleberry Lake	Bound by Phil Ritson Way to the north, Avalon Road to the west, Seidel Road to the south, and Lake Hancock Road to the east.	+97	Unincorporated Areas of Orange County.
John Young Parkway Drainage Canal.	Approximately 1,000 feet downstream of Mercy Drive	+89	Unincorporated Areas of Orange County, City of Orlando.
	Just downstream of North Texas Avenue	+94	
Lake 74	Bound by Canterclub Trail to the north, Haverlake Circle to the west, Orangehurst Street to the south, and Orange/Seminole county boundary to the east.	+114	Unincorporated Areas of Orange County.
Lake Angel	Bound by 23rd Street to the north, S. Westmoreland Drive to the west, 26th Street to the south, and Interstate 4 to the east.	+104	Unincorporated Areas of Orange County, City of Orlando.
Lake Austin	Entire shoreline	+113	Unincorporated Areas of Orange County.
Lake Bessie	Entire shoreline	+101	Town of Windermere, Unincorporated Areas of Orange County.
Lake Blanche	Entire shoreline	+101	Unincorporated Areas of Orange County.
Lake Britt	Bound by Hartzog Road to the north, Avalon Road to the west, and Hartzog Road to the south and east.	+105	Unincorporated Areas of Orange County.
Lake Burden	Bound by Chase Road to the north, Winter Garden Vineland Road to the west and south, and Lake Tibet to the east.	+108	Unincorporated Areas of Orange County.
Lake Butler	Bound by Lake Butler Boulevard to the north, West Lake Butler Road to the west, Chase Road to the south, and Main Street to the east.	+101	Unincorporated Areas of Orange County, Town of Windermere.
Lake Cay Dee	Bound by Corrine Drive to the north, Falcon Drive to the west, Chelsea Street to the south, and Oriole Avenue to the east.	+110	City of Orlando.
Lake Chapin	Bound by Arrowhead Boulevard to the north, Avalon Road to the west, Interstate 192 to the south, and Arrena Road to the south.	+111	Unincorporated Areas of Orange County.
Lake Florence	Bound by Lake Florence to the north and west, Good Homes Road to the south and east.	+81	Unincorporated Areas of Orange County, City of Ocoee.
Lake Fran	Entire shoreline	+95	City of Orlando.
Lake Gifford	Entire shoreline	+113	Unincorporated Areas of Orange County.
Lake Hancock	Bound by McKinney Road to the north, Avalon Road to the west, Porter Road to the south, and Ficquette Road to the east.	+99	Unincorporated Areas of Orange County.
Lake Hartley	Entire shoreline	+99	Unincorporated Areas of Orange County.
Lake Heney	Entire shoreline	+106	Unincorporated Areas of Orange County.
Lake Ihrig	Entire shoreline	+106	Unincorporated Areas of Orange County.
Lake Johio	Bound by New Victor Road to the north, Tuscany Mill Way to the west, Azalea Ranch Lane to the south, and Johio Shores Road to the east.	+120	Unincorporated Areas of Orange County, City of Ocoee.
Lake June	Bound by 18th Street to the north, Highway 441 to the west, West Kaley Avenue to the south, and South Westmoreland Drive to the east.	+105	Unincorporated Areas of Orange County.
Lake Lotta	Bound by Floribunda Drive to the north, South Clarke Road to the west, State Highway 408 West to the south, and Good Homes Road to the east.	+91	Unincorporated Areas of Orange County, City of Ocoee.
Lake Lucy	Entire shoreline	+81	Unincorporated Areas of Orange County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground	Communities affected
		Modified	
Lake Mabel	Bound by Winter Garden Vineland Road to the north, Reams Road to the west, Vista Boulevard to the south, and Winer Garden Vineland to the east.	+95	Unincorporated Areas of Orange County.
Lake Moxie	Entire shoreline	+143	City of Ocoee.
Lake Needham	Bound by Schofield Road to the north, Orange/Lake county boundary to the west, Old YMCA Road to the south, and Avalon Road to the east.	+106	Unincorporated Areas of Orange County.
Lake Notasulga	Bound by State Highway 50 to the north, Feguson Drive to the west, Old Winter Garden Road to the south, and State Highway 423 to the east.	+99	Unincorporated Areas of Orange County, City of Orlando.
Lake Oliver	Entire shoreline	+113	Unincorporated Areas of Orange County.
Lake Olympia	Entire shoreline	+102	Unincorporated Areas of Orange County.
Lake Pit	Bound by Flemings Road to the north, to Orange/Lake county boundary the west, County Road to the south, and Avalon Road to the east.	+113	Unincorporated Areas of Orange County.
Lake Prima Vista	Bound by Starke Lake to the north, Lakewood Avenue to the west, East Orlando Avenue to the south, and East Lakeshore Drive to the east.	+102	Unincorporated Areas of Orange County, City of Ocoee.
Lake Reams	Entire shoreline	+99	Unincorporated Areas of Orange County.
Lake Rexford	Bound by Hartzog Road to the north, Avalon Road to the west, Arrowhead Boulevard to the south and to the east.	+112	Unincorporated Areas of Orange County.
Lake Rhea	Bound by Roberson Road to the north, Windermere Road to the west, Willow Gardens Road to the south, and Maguire Road to the east.	+118	Unincorporated Areas of Orange County.
Lake Sawgrass	Bound by Porter Road to the north, Phil Ritson Way to the west, Lake Hancock Road to the south and to the east.	+99	Unincorporated Areas of Orange County.
Lake Sawyer	Bound by Winter Garden Vineland Road to the north, Ficquette Hancock Road to the west, Overstreet Road to the south, and Winter Garden Vineland Road to the east.	+106	Unincorporated Areas of Orange County.
Lake Scott	Bound by Hartzog Road to the north, Avalon Road to the west, Arrowhead Boulevard to the south, and Vista Del Lago Boulevard to the east.	+112	Unincorporated Areas of Orange County.
Lake Sentinel	Bound by Lake Starr Road to the north and to the west, Flemings Road to the south, and Avalon Road to the east.	+110	Unincorporated Areas of Orange County.
Lake Sharp	Entire shoreline	+99	Unincorporated Areas of Orange County.
Lake Speer	Bound by Tilden Road to the north, Tiny Road to the west, Ficquette Road to the south, and Winter Garden Vineland Road to the east.	+101	Unincorporated Areas of Orange County.
Lake Stanley	Bound by Lowman Avenue to the north, Cedar Bluff Lane to the west, State Highway 438 to the south, and North Apopka Vineland Road to the east.	+84	Unincorporated Areas of Orange County, City of Ocoee.
Lake Star	Bound by Lake Starr Road to the north and to the west, Flemings Road to the south, and Avalon Road to the east.	+111	Unincorporated Areas of Orange County, City of Ocoee.
Lake Theresa	Bound by Pelican Road to the north, Executive Center Drive to the west, Maguire Boulevard to the south, and Bennet Road to the east.	+113	City of Orlando.
Lake William Davis	Bound by West Lake Butler Road to the north, Winter Garden Vineland Road to the west and to the south, and West Lake Butler Road to the east.	+101	Unincorporated Areas of Orange County.
Little Fish Lake	Entire shoreline	+101	Unincorporated Areas of Orange County.
Little Lake Sawyer	Bound by Winter Garden Vineland Road to the north, Ficquette Hancock Road to the west, Overstreet Road to the south, and Winter Garden Vineland Road to the east.	+106	Unincorporated Areas of Orange County.
Little Osage Lake	Bound by Osage Lake to the north, Strahan Boulevard to the west, Orange/Osceola county boundary to the south, and Vista Del Lago Boulevard to the east.	+111	Unincorporated Areas of Orange County.
Mudd Lake	Entire shoreline	+113	Unincorporated Areas of Orange County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground	Communities affected
		Modified	
Orange County Pond Outfall Canal.	Lake Gillooly	+83	Unincorporated Areas of Orange County, City of Orlando.
	Approximately 2,640 feet upstream of East Landstreet Road.	+94	
Osage Lake	Bound by Arrowhead Boulevard to the north and west, Orange/Osceola county boundary to the south, and Vista Del Lago Boulevard to the east.	+111	Unincorporated Areas of Orange County.
Peach Lake	Entire shoreline	+151	City of Ocoee.
Pond 740	Bound by State Highway 50 to the north, Mercy Drive to the west, Old Winter Garden Road to the south, and Ferguson Drive to the east.	+99	City of Orlando.
Ponding Area 395–1	Bound by Orange/Lake county boundary to the north, Rainey Road to the west, Swain Road to the south, and Mt. Plymouth Road to the east.	+62	Unincorporated Areas of Orange County.
Ponding Area No. 30	Bound by Lynx Lane to the north, State Highway 423 to the west, State Highway 438 to the south, and North Texas Avenue to the east.	+98	City of Orlando.
Ponding Area No. 31	Bound by State Highway 438 to the north, State Highway 423 to the west, John Young Parkway Drainage Canal to the south, and Brinkley Way to the east.	+97	City of Orlando.
Ponding Area No. 32	Bound by State Highway 438 to the north, State Highway 423 to the west, John Young Parkway Drainage Canal to the south, and North Texas Avenue to the east.	+96	City of Orlando.
Ponding Area No. 33	Bound by W. Judge Drive to the north, Kensington Drive to the west, State Highway 50 to the south, and State Highway 423 to the east.	+98	City of Orlando.
Ponding Area No. 34	Bound by West D. Judge Drive to the north, Kensington Drive to the west, State Highway 50 to the south, and State Highway 423 to the east.	+96	City of Orlando.
Ponding Area No. 35	Bound by West D. Judge Drive to the north, Mercy Drive to the west, State Highway 50 to the south, and Ferguson Drive to the east.	+96	City of Orlando, Unincorporated Areas of Orange County.
Ponding Area No. 36	Bound by West D. Judge Drive to the north, Mercy Drive to the west, El Rey Road to the south, and Ferguson Drive to the east.	+96	City of Orlando.
Ponding Area No. 37	Bound by Boston Common Street to the north, Mercy Drive to the west, El Rey Road to the south, and Ferguson Drive to the east.	+96	City of Orlando, Unincorporated Areas of Orange County.
Ponding Area No. 38	Bound by Racoon Lake to the north, Ranger Smiths Circle to the west, Orange/Osceola county boundary to the south, and Orange Lake Circle to the east.	+105	Unincorporated Areas of Orange County.
Ponding Area No. 39	Bound by Orange Lake Circle to the north, Ponding Area No. 38 to the west, Orange/Osceola county boundary to the south, and Orange Lake Boulevard to the east.	+105	Unincorporated Areas of Orange County.
Ponding Area No. 40	Bound by Aviendo Del Lago Drive to the north, Vista Del Lago to the west, Daeza Drive to the south, and Racoon Lake to the east.	+110	Unincorporated Areas of Orange County.
Ponding Area No. 41	Bound by Lake Kem Way to the north, Racoon Lake to the west, and Orange Lake Boulevard to the south and to the east.	+105	Unincorporated Areas of Orange County.
Ponding Area No. 42	Bound by Hartzog Road to the north, Lake Kem Way to the west and to the south, and Cypress Circle to the east.	+105	Unincorporated Areas of Orange County.
Ponding Area No. 43	Bound by to Hartzog Road to the north, Avalon Road to the west, and Hartzog Road to the south and to the east.	+110	Unincorporated Areas of Orange County.
Ponding Area No. 44	Bound by to Hartzog Road to the north, Avalon Road to the west, and Hartzog Road to the south and to the east.	+107	Unincorporated Areas of Orange County.
Ponding Area No. 45	Bound by to Hartzog Road to the north, Avalon Road to the west, and Hartzog Road to the south and to the east.	+106	Unincorporated Areas of Orange County.
Ponding Area No. 49	Bound by County Road to the north, Orange/Lake county boundary to the west, Bali Boulevard to the south, and Avalon Road to the east.	+116	Unincorporated Areas of Orange County.
Ponding Area No. 50	Bound by Bali Avenue to the north, Orange/Lake county boundary to the west, Orange/Osceola county boundary to the south, and Bali Avenue to the east.	+112	Unincorporated Areas of Orange County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground	Communities affected
		Modified	
Ponding Area No. 51	Bound by Hartzog Road to the north, Avalon Road to the west, Arrowhead Boulevard to the south, and Vista Del Lago Boulevard to the east.	+113	Unincorporated Areas of Orange County.
Ponding Area No. 52	Bound by Hartzog Road to the north, Avalon Road to the west, Arrowhead Boulevard to the south, and Vista Del Lago Boulevard to the east.	+112	Unincorporated Areas of Orange County.
Ponding Area No. 53	Bound by Hartzog Road to the north, Avalon Road to the west, Arrowhead Boulevard to the south, and Vista Del Lago Boulevard to the east.	+112	Unincorporated Areas of Orange County.
Ponding Area No. 54	Bound by Vista Del Lago Boulevard to the north, Avalon Road to the west, Cordoba Street to the south, and Vista Del Lago Boulevard to the east.	+113	Unincorporated Areas of Orange County.
Ponding Area No. 55	Bound by Vista Del Lago Boulevard to the north, Avalon Road to the west, Cordoba Street to the south, and Vista Del Lago Boulevard to the east.	+112	Unincorporated Areas of Orange County.
Ponding Area No. 56	Bound by Cordoba Street to the north, Arrowhead Boulevard to the west, Osage Lake to the south, and Vista Del Lago Boulevard to the east.	+111	Unincorporated Areas of Orange County.
Ponding Area No. 57	Bound by Flemings Road to the north, Orange/Lake county boundary to the west, County Road to the south, and Avalon Road to the east.	+115	Unincorporated Areas of Orange County.
Ponding Area No. 58	Bound by Old YMCA Road to the north and to the west, Hickorynut Lake to the south, and Avalon Road to the east.	+104	Unincorporated Areas of Orange County.
Ponding Area No. 60	Bound by Seidel Road to the north, Avalon Road to the west, Hartzog Road to the south, and Reedy Lake to the east.	+106	Unincorporated Areas of Orange County.
Ponding Area No. 61	Bound by Malcom Road to the north, Avalon Road to the west, McKinney Road to the south, and Mann Road to the east.	+100	Unincorporated Areas of Orange County.
Ponding Area No. 62	Bound by Tilden Road to the north, Tiny Road to the west, Lake Speer to the south, and Winter Garden Vineland Road to the east.	+102	Unincorporated Areas of Orange County.
Ponding Area No. 63	Bound by McKinney Road to the north, Avalon Road to the west, Porter Road to the south, and Ficquette Hancock Road to the east.	+102	Unincorporated Areas of Orange County.
Ponding Area No. 64	Bound by Lake Star Road to the north Flemings Road to the west and to the south, and Avalon Road to the east.	+116	Unincorporated Areas of Orange County.
Ponding Area No. 65	Bound by Hartzog Road to the north, Avalon Road to the west, and Hartzog Road to the south and to the east.	+107	Unincorporated Areas of Orange County.
Ponding Area No. 66	Bound by Whittenhorse Creek to the north, Hartzog Road to the west, Boggy Creek 2 to the south, and Perimeter Canal to the east.	+103	Unincorporated Areas of Orange County.
Ponding Area No. 67	Bound by Porter Road to the north, Avalon Road to the west, Seidel Road to the south and to the east.	+99	Unincorporated Areas of Orange County.
Ponding Area No. 68	Bound by West Lake Butler Road to the north, Winter Garden Vineland Road to the west and to the south, and West Lake Butler Road to the east.	+106	Unincorporated Areas of Orange County.
Ponding Area No. 69	Bound by Overstreet Road to the north, Reams Road to the west and to the south, and Winter Garden Vineland Road to the east.	+108	Unincorporated Areas of Orange County.
Ponding Area No. 70	Bound by Lake Butler to the north, Winter Garden Vineland Road to the west, Sandy Shores Drive to the south and to the east.	+101	Unincorporated Areas of Orange County.
Ponding Area No. 71	Bound by Park Ridge Gotha Road to the north, Maguire Road to the west, Wonder Lane to the south, and Down Hollow Road to the east.	+106	Unincorporated Areas of Orange County.
Ponding Area No. 72	Bound by Wonder Lane to the north, Maguire Road to the west, Down Yonder Lane to the south, and Lake Down to the east.	+103	Unincorporated Areas of Orange County.
Ponding Area No. 73	Bound by Chase Road to the north and to the west, Isleworth Country Club Drive to the south, and railroad to the east.	+102	Unincorporated Areas of Orange County.
Ponding Area No. 75	Bound by Brookline Drive to the north, railroad to the west and to the south, and Brookline Drive to the east.	+111	Unincorporated Areas of Orange County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground	Communities affected
		Modified	
Ponding Area No. 76	Bound by Bat Hill Boulevard to the north and to the west, Shawn Park Place to the south, and Donegal Drive to the east.	+103	Unincorporated Areas of Orange County.
Ponding Area No. 77	Bound by Lost Cove Road to the north, Shawn Park Place to the west, South Bay Drive to the south, and Lost Cove Road to the east.	+103	Unincorporated Areas of Orange County.
Ponding Area No. 78	Bound by State Highway 50 to the north, State Route 408 Off Ramp to the west and to the south, and Citrus Oaks Avenue to the east.	+92	Unincorporated Areas of Orange County, City of Ocoee.
Ponding Area No. 79	Bound by Clarcona Ocoee Road to the north, Licaria Drive to the west, Nicole Boulevard to the south, and Lauren Beth Avenue to the east.	+89	Unincorporated Areas of Orange County, City of Ocoee.
Ponding Area No. 80	Bound by Lumberjack Lane to the north, Log Wagon Road to the west, Hackney Prairie Road to the south, and Timber Ridge Trail to the east.	+96	City of Ocoee.
Ponding Area No. 81	Bound by Natchez Trace Boulevard to the north and to the west, Montevello Court to the south, and Sackett Circle to the east.	+115	Unincorporated Areas of Orange County.
Ponding Area No. 82	Bound by White Road to the north, Rosemist Court to the west, and South Clarke Road to the south and to the east.	+97	Unincorporated Areas of Orange County.
Racoon Lake	Bound by Hartzog Road to the north, Boo Boo Road to the west, Orange/Osceola county boundary to the south, and Orange Lake Boulevard to the east.	+105	Unincorporated Areas of Orange County.
Reedy Lake	Bound by Overstreet Road to the north, Lake Reams Boulevard to the west, Reams Road to the south and to the east.	+96	Unincorporated Areas of Orange County.
Rock Lake	Bound by Rock Lake Drive to the north, North Tampa Avenue to the west, West Washington Street to the south, and Highway 441 to the east.	+100	City of Orlando.
Shingle Creek	Orange/Osceola county boundary	+75	Unincorporated Areas of Orange County.
	Just downstream of Raleigh Street	+97	
South Lake	Bound by Connie Drive to the north, World Drive to the west, Vista Boulevard to the south, and Winter Garden Vineland Road to the east.	+95	Unincorporated Areas of Orange County.
Southport Ditch	Just downstream of Tradeport Drive South	+87	City of Orlando.
	Approximately 1,000 feet upstream of Andros Place	+89	
Spring Lake No. 3	Bound by railroad to the north, Ridgefield Avenue to the west, Century Oak Drive to the south, and North Clarke Road to the east.	+117	Unincorporated Areas of Orange County, City of Ocoee.
Starke Lake	Bound by State Highway 438 to the north, North Lakeshore Drive to the west, East Lakeshore Drive to the south, and 1st Street to the east.	+102	Unincorporated Areas of Orange County, City of Ocoee.
Stream A No. 1	Approximately 400 feet downstream of North Bluford Avenue.	+102	City of Ocoee.
	Just downstream of North Kissimmee Avenue	+113	
Stream B	Just downstream of Ocoee Apopka Road	+89	Unincorporated Areas of Orange County.
	Approximately 800 feet downstream of Ocoee Apopka Road.	+111	
Stream B (Swamp)	Bound by Fullers Cross Road to the north, Ocoee Apopka Road to the west, State Highway 438 to the south, and North Lakewood Avenue to the east.	+119	Unincorporated Areas of Orange County, City of Ocoee.
Stream C	Just upstream of State Road 429	+89	Unincorporated Areas of Orange County, City of Ocoee.
	Just upstream of Palm Drive	+116	
Texas Basin Ponding Area	Bound by State Highway 50 to the north, State Highway 423 to the west, Old Winter Garden Road to the south, and North Tampa Avenue to the east.	+100	Unincorporated Areas of Orange County, City of Orlando.
Tradeport Ditch	Just upstream of Wiley Drive	+82	City of Orlando.
	Just upstream of Oak Bluff Drive	+93	
Tub Lake	Bound by Seidel Road to the north and to the west, Reedy Lake to the south, and Perimeter Canal to the east.	+96	Unincorporated Areas of Orange County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground	Communities affected
		Modified	
Unnamed Flooding Area (Lake 72).	Bound by Orchard Drive to the north, Majestic Oak Drive to the west and to the south, and Orange/Seminole county boundary to the east.	+64	Unincorporated Areas of Orange County.
Unnamed Lake 14	Bound by Old YMCA Road to the north, Hickorynut Lake to the west and to the south, and Avalon Road to the east.	+103	Unincorporated Areas of Orange County.
Unnamed Lake 15	Bound by Phil Ritson Way to the north, Avalon Road to the west, Seidel Road to the south and to the east.	+103	Unincorporated Areas of Orange County.
Unnamed Lake 17	Bound by Roberson Road to the north, Windermere Road to the west and to the south, and Kane Park Way to the east.	+106	Unincorporated Areas of Orange County.
Unnamed Lake D	Entire shoreline	+105	Unincorporated Areas of Orange County.
Unnamed Lake E	Entire shoreline	+105	Unincorporated Areas of Orange County.
Unnamed Lake F	Entire shoreline	+104	Unincorporated Areas of Orange County.
Unnamed Lake G	Entire shoreline	+104	Unincorporated Areas of Orange County.
Unnamed Lake H	Entire shoreline	+104	Unincorporated Areas of Orange County.
Unnamed Lake I	Entire shoreline	+104	Unincorporated Areas of Orange County.
Unnamed Lake J	Entire shoreline	+107	Unincorporated Areas of Orange County.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Apopka
Maps are available for inspection at the Apopka City Engineer's Office, 120 East Main Street, Apopka, FL 32704–1229.

City of Ocoee
Maps are available for inspection at the Building and Zoning Department, 150 North Lakeshore Drive, Ocoee, FL 34761.

City of Orlando
Maps are available for inspection at the City of Orlando Permitting Services Division, 400 South Orange Avenue, Orlando, FL 32801.

Town of Windermere
Maps are available for inspection at the Windermere Town Hall, 614 Main Street, Windermere, FL 34786.

Unincorporated Areas of Orange County
Maps are available for inspection at the Orange County Stormwater Management Department, 4200 South John Young Parkway, Orlando, FL 32839.

Ben Hill County, Georgia, and Incorporated Areas
FEMA Docket No.: B–1009

Turkey Creek	Just upstream of Industrial Drive	+315	Unincorporated Areas of Ben Hill County.
	Approximately 270 feet downstream of Cemetery Road	+319	
	At Cemetery Road	+319	
	Approximately 1,520 feet downstream of Monitor Drive	+327	
	Approximately 760 feet upstream of Sultana Drive	+341	
	Approximately 1,150 feet upstream of Rochelle Road	+344	
Turkey Creek Tributary No. 1	Approximately 950 feet downstream of W. Roanoke Drive	+328	Unincorporated Areas of Ben Hill County.
	Approximately 480 feet downstream of W. Roanoke Drive	+329	
Willacoochee River	Approximately 1,880 feet downstream of Irwinville Highway	+324	Unincorporated Areas of Ben Hill County.
	Approximately 1,780 feet downstream of Irwinville Highway	+324	
	Approximately 1,280 feet downstream of Irwinville Highway	+325	
	Approximately 480 feet downstream of Irwinville Highway	+326	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground	Communities affected
		Modified	

ADDRESSES

Unincorporated Areas of Ben Hill County

Maps are available for inspection at the County Commissioner's Office, 402–A East Pine Street, Fitzgerald, GA 31750.

Berrien County, Georgia, and Incorporated Areas
FEMA Docket No.: B–1016

Cat Creek/Tributary 2	Approximately 320 feet downstream of State Highway 37 ...	+175	Unincorporated Areas of Berrien County.
	Approximately 1,270 feet upstream of North Street	+183	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

Unincorporated Areas of Berrien County

Maps are available for inspection at the County Courthouse, Town Square, Nashville, GA 31639.

Colquitt County, Georgia, and Incorporated Areas
FEMA Docket No.: B–1016

Ochlockonee River	Approximately 3,380 feet downstream of Camilla Highway	+256	Township of Riverside.
	Approximately 238 feet upstream of Camilla Highway	+258	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

Township of Riverside

Maps are available for inspection at City Hall, 301 Riverside Drive, Moultrie, GA 31768.

Crisp County, Georgia, and Incorporated Areas
FEMA Docket No.: B–1017

Gum Creek	9,000 feet downstream of West Eleventh Street	+277	Unincorporated Areas of Crisp County.
	850 feet downstream of West Eleventh Street	+284	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

Unincorporated Areas of Crisp County

Maps are available for inspection at 210 7th Street, Cordele, GA 31015.

Decatur County, Georgia, and Incorporated Areas
FEMA Docket No.: B–1014

Flint River	Approximately 2.4 miles downstream of U.S. Route 27	+90	Unincorporated Areas of Decatur County, City of Bainbridge.
	Approximately 2.9 miles upstream of Calhoun Street	+98	
Flint River/Lake Seminole	At the confluence with Butlers Creek	+81	Unincorporated Areas of Decatur County.
	At Georgia/Florida state line	+81	
Big Slough Tributary	Approximately 1,450 feet downstream of Thomasville Road	+105	Unincorporated Areas of Decatur County, City of Bainbridge.
	Approximately 440 feet downstream of Lake Douglas Road	+107	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Bainbridge

Maps are available for inspection at City Hall, 107 Broad Street, Bainbridge, GA 39817.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground	Communities affected
		Modified	
Unincorporated Areas of Decatur County			
Maps are available for inspection at the Decatur County Planning Department, 309 Airport Road, Bainbridge, GA 39817.			
Dougherty County, Georgia, and Incorporated Areas FEMA Docket No.: B–1017			
Dry Creek	Approximately 150 feet upstream of Liberty Expressway	+184	Unincorporated Areas of Dougherty County.
	At Liberty Expressway	+184	
Dry Creek Tributary 1	Approximately 1,875 feet downstream of Moultrie Road	+238	Unincorporated Areas of Dougherty County.
	Approximately 1,275 feet upstream of Moultrie Road	+249	
Dry Creek Tributary 4	Approximately 2,400 feet downstream of US Highway 19	+174	Unincorporated Areas of Dougherty County.
	Approximately 4,136 feet downstream of US Highway 19	+174	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

Unincorporated Areas of Dougherty County

Maps are available for inspection at 222 Pine Avenue, Albany, GA 31702.

Floyd County, Georgia, and Incorporated Areas FEMA Docket No.: B–7475			
Booze Creek	Approximately 350 feet upstream of the confluence with Silver Creek.	+638	Unincorporated Areas of Floyd County.
	Approximately 840 feet upstream of the confluence with Silver Creek.	+638	
Big Dry Creek	Just upstream of Martha Berry Road	+597	Unincorporated Areas of Floyd County, City of Rome.
	At the confluence of Tributary 1 to Big Dry Creek	+597	
Big Dry Creek Tributary 1	At the confluence with Big Dry Creek	+597	Unincorporated Areas of Floyd County, City of Rome.
	Approximately 2,500 feet upstream of CCC Road	+604	
Big Dry Creek Tributary 2	At confluence with Tributary 1 to Big Dry Creek	+597	Unincorporated Areas of Floyd County, City of Rome.
	Approximately 200 feet upstream of Lindsey Road NW	+603	
Silver Creek	At the confluence with Etowah River	+596	City of Rome.
	Approximately 2,000 feet upstream of the confluence with Etowah River.	+596	
South Fork Horseleg	At the confluence with Horseleg Creek	+608	Unincorporated Areas of Floyd County, City of Rome.
	Approximately 100 feet upstream of the confluence with Horseleg Creek.	+608	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

[1] The existing elevation data included on the effective FIRM is printed in the elevation datum of the National Geodetic Vertical Datum of 1929 (NGVD29). In order to convert this printed elevation data from the NGVD29 datum to the NAVD88 datum, please add 0.12 feet.

ADDRESSES

Unincorporated Areas of Floyd County

Maps are available for inspection at the Rome-Floyd County Building Inspection Department, 607 Broad Street, Rome, GA 30161.

City of Rome

Maps are available for inspection at the Rome-Floyd County Building Inspection Department, 607 Broad Street, Rome, GA 30161.

Lamar County, Georgia, and Incorporated Areas FEMA Docket No.: B–1017			
Tobesofkee Creek	Approximately 204 feet downstream of Barnesville Corporate Limits.	+764	Unincorporated Areas of Lamar County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground	Communities affected
		Modified	
	Approximately 1 foot downstream of Barnesville Corporate Limits.	+765	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

Unincorporated Areas of Lamar County

Maps are available for inspection at 326 Thomaston Street, Lamar, GA 30204.

Mitchell County, Georgia, and Incorporated Areas
FEMA Docket No.: B–1017

Big Slough	Upstream just within Camilla city limits	+161	Unincorporated Areas of Mitchell County.
	Directly downstream of US Hwy 19	+163	
	Directly upstream of US Hwy 19	+165	
	Upstream of Sylvester Road	+169	
Big Slough Tributary 10	Downstream of Moultrie Road	+169	Unincorporated Areas of Mitchell County.
	Upstream of S MacArthur Drive	+175	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

Unincorporated Areas of Mitchell County

Maps are available for inspection at P.O. Box 187, Camilla, GA 31730.

Seminole County, Georgia, and Incorporated Areas
FEMA Docket No.: B–1014

Chattahoochee River	At Lake Seminole	+81	Unincorporated Areas of Seminole County.
	Approximately 1.6 miles upstream of State Highway 91	+97	
Lake Seminole/Spring Creek	Flooding area bound by Cypress Pond Road to the north, Georgia/Florida state line to the west and south, and the Seminole/Decatur county boundary to the east.	+81	Unincorporated Areas of Seminole County.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

Unincorporated Areas of Seminole County

Maps are available for inspection at the County Courthouse, 200 South Knox Avenue, Donalsonville, GA 39845.

Thomas County, Georgia, and Incorporated Areas
FEMA Docket No.: B–1017

Gatling Branch Tributary 11	Approximately 40 feet upstream of Pine Tree Boulevard	+262	Unincorporated Areas of Thomas County, City of Thomasville.
	Approximately 128 feet downstream of Pine Tree Boulevard.	+262	
Wards Creek	Approximately 1,900 feet downstream of Habersham Road	+220	City of Thomasville, Unincorporated Areas of Thomas County.
	Approximately 469 feet upstream of Habersham Road	+232	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Thomasville

Maps are available for inspection at 111 Victoria Place, Thomasville, GA 31799.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground	Communities affected
		Modified	
Unincorporated Areas of Thomas County			
Maps are available for inspection at P.O. Box 920, Thomasville, GA 31799.			
Upson County, Georgia, and Incorporated Areas FEMA Docket No.: B–1017			
Bell Creek	Approximately 1,990 feet upstream of Raines Street	+584	Unincorporated Areas of Upson County.
	Approximately 1,800 feet downstream of Raines Street	+605	
Potato Creek	Approximately 50 feet downstream of Crest Highway	+616	Unincorporated Areas of Upson County.
	Approximately 5,400 feet upstream of Crest Highway	+637	
Potato Creek Tributary	At Jeff Davis Road	+712	Unincorporated Areas of Upson County.
	Approximately 100 feet upstream of Jeff Davis Road	+714	
Town Branch	Approximately 5,461 feet downstream of Davis Lake Road	+584	Unincorporated Areas of Upson County.
	Approximately 4,600 feet upstream of Davis Lake Road	+652	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

Unincorporated Areas of Upson County

Maps are available for inspection at P.O. Box 889, Thomaston, GA 30286.

Worth County, Georgia, and Incorporated Areas FEMA Docket No.: B–1017			
Town Creek Tributary 2	Approximately 270 feet upstream of Young Street	+358	Unincorporated Areas of Worth County.
	Approximately 10 feet upstream of West Franklin Street	+364	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

Unincorporated Areas of Worth County

Maps are available for inspection at 201 North Main Street, Sylvester, GA 31791.

Unincorporated Areas of Maui County, Hawaii Docket No.: FEMA–B–1002			
Kaluaihakoko Stream	Approximately 25 feet upstream of confluence with Pacific Ocean.	∧3	Unincorporated Areas of Maui County.
	Approximately 500 feet upstream of Piilani Highway	∧138	
Kamaole Gulch	Approximately 90 feet upstream of confluence with Pacific Ocean.	∧6	Unincorporated Areas of Maui County.
	Approximately 325 feet upstream of Piilani Highway	∧120	
Waikapu Stream	Approximately 255 feet downstream of Kuihelani Highway	∧191	Unincorporated Areas of Maui County.
	Approximately 1.6 miles upstream of Honoapiilani Highway	∧781	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Local Tidal Datum.

ADDRESSES

Unincorporated Areas of Maui County

Maps are available for inspection at the Maui County Planning Department, 250 South High Street, 2nd Floor, Wailuku, HI 96793.

Hendricks County, Indiana, and Incorporated Areas FEMA Docket No.: B–7752			
Abner Creek	At the confluence with White Lick Creek	+751	Unincorporated Areas of Hendricks County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground	Communities affected
		Modified	
	Approximately 800 feet downstream of South County Road 525 East.	+751	
Clarks Creek	At the confluence with White Lick Creek	+693	Unincorporated Areas of Hendricks County.
	Approximately 1,450 feet upstream of South Center Street	+694	
Cosner Branch	At the confluence with West Fork White Lick Creek	+748	Unincorporated Areas of Hendricks County.
	Approximately 600 feet upstream of the confluence with West Fork White Lick Creek.	+750	
Hughes Branch	Approximately 680 feet upstream of the confluence with Little West Fork White Lick Creek.	+866	Unincorporated Areas of Hendricks County.
	Approximately 4,570 feet upstream of County road 651 North.	+936	
Keeney Ditch	At the confluence with Little West Fork White Lick Creek	+931	Unincorporated Areas of Hendricks County.
	Approximately 4,580 feet upstream of North County Road 275 East.	+943	
Little West Fork White Lick Creek.	At the confluence with White Lick Creek	+848	Unincorporated Areas of Hendricks County, Town of Brownsburg, Town of Pittsboro.
	Approximately 3,385 feet upstream of East County Road 1000 North.	+941	
Ross Ditch	Approximately 740 feet downstream of North County Road 200 West.	+929	Unincorporated Areas of Hendricks County, Town of Lizton.
	Approximately 3,985 feet upstream of North County Road 150 East.	+949	
Thompson Creek	Approximately 140 feet upstream of the confluence with West Fork White Lick Creek.	+863	Unincorporated Areas of Hendricks County.
	Approximately 550 feet upstream of the confluence with West Fork White Lick Creek.	+864	
West Fork White Lick Creek	At the confluence with White Lick Creek	+677	Unincorporated Areas of Hendricks County.
	Approximately 2,100 feet upstream of the confluence with White Lick Creek.	+680	
West Fork White Lick Creek Tributary No. 1.	Approximately 300 feet upstream of the confluence with West Fork White Lick Creek.	+706	Unincorporated Areas of Hendricks County.
	Approximately 2,750 feet upstream of the confluence with West Fork White Lick Creek.	+713	
White Lick Creek	At the Morgan County boundary/East Hendricks County Road.	+677	Unincorporated Areas of Hendricks County, Town of Avon, Town of Brownsburg, Town of Plainfield.
	Approximately 7,400 feet upstream of East County Road 1000 North.	+915	
White Lick Creek Tributary No. 3.	At the confluence with White Lick Creek	+774	Unincorporated Areas of Hendricks County, Town of Avon.
	Approximately 250 feet upstream of the confluence with White Lick Creek.	+774	
White Lick Creek Tributary No. 4.	At the confluence with White Lick Creek	+783	Unincorporated Areas of Hendricks County.
	Approximately 150 feet downstream of County Road 91 North.	+789	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

Town of Avon
Maps are available for inspection at 6570 East U.S. Highway 36, Avon, IN 46123.

Town of Brownsburg
Maps are available for inspection at 80 East Vermont, Brownsburg, IN 46112.

Town of Lizton
Maps are available for inspection at 106 North Lebanon Street, Lizton, IN 46149.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground	Communities affected
		Modified	

Town of Pittsboro
Maps are available for inspection at 80 North Meridian Street, Pittsboro, IN 46167.

Town of Plainfield
Maps are available for inspection at 355 South Washington Street, Danville, IN 46122.

Unincorporated Areas of Hendricks County
Maps are available for inspection at 355 South Washington Street, Danville, IN 46122.

Tippecanoe County, Indiana, and Incorporated Areas
FEMA Docket No.: B–7762

Cole Ditch	At its confluence with Burnett Creek	+627	Unincorporated Areas of Tippecanoe County.
	Approximately 4,000 feet upstream of County Road 150	+669	
Cole Ditch Unnamed Tributary 1.	At its confluence with Cole Ditch	+647	Unincorporated Areas of Tippecanoe County, City of West Lafayette.
	Approximately 1,250 feet upstream of Kalberger Road	+694	
Cole Ditch Unnamed Tributary 2.	At its confluence with Cole Ditch	+628	Unincorporated Areas of Tippecanoe County.
	Approximately 1,340 feet upstream of County Road 500	+655	
Cuppy Ditch	At its confluence with Cole Ditch	+649	Unincorporated Areas of Tippecanoe County.
	Approximately 50 feet upstream of Morehouse Road	+655	
East Branch Wea Creek	At its confluence with Wea Creek	+684	Unincorporated Areas of Tippecanoe County.
	Approximately 50 feet upstream of County Road 500	+756	
Indian Creek	Approximately 2,900 feet downstream of County Road 400	+631	Unincorporated Areas of Tippecanoe County.
	Approximately 1,775 feet upstream of U.S. Highway 52	+654	
Tippecanoe River	At its confluence with the Wabash River	+538	Unincorporated Areas of Tippecanoe County.
	At the County Boundary	+544	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of West Lafayette
Maps are available for inspection at the Area Plan Commission of Tippecanoe County, 20 North 3rd Street, Lafayette, IN 47901.

Unincorporated Areas of Tippecanoe County
Maps are available for inspection at the Area Plan Commission of Tippecanoe County, 20 North 3rd Street, Lafayette, IN 47901.

Allen County, Kansas, and Incorporated Areas
FEMA Docket No.: B–1002

Coon Creek	Approximately 0.60 mile downstream of Highway 54	+954	City of Iola, Unincorporated Areas of Allen County.
	Approximately 115 feet upstream of North Kentucky Street	+988	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Iola
Maps are available for inspection at 2 West Jackson Avenue, Iola, KS 66749.

Unincorporated Areas of Allen County
Maps are available for inspection at 1 North Washington Avenue, Iola, KS 66749.

Genesee County, Michigan, and Incorporated Areas
FEMA Docket No.: B–7774

Armstrong Creek	Downstream side of Francis Road	+682	Township of Flushing, Township of Montrose.
	Approximately 2100 feet upstream of Stanley Road	+708	
Copneconic Lake	Entire shoreline of Copneconic Lake	+846	Township of Fenton.
Fenwin Pond	Entire shoreline of Fenwin Pond	+837	Township of Mundy.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground	Communities affected
		Modified	
Lum Drain	Downstream side of Moorish Road	+778	Township of Gaines.
	Upstream side of Elms Road	+783	
Pierson Branch of Thread Creek.	Approximately 680 feet downstream of S Center Road	+766	City of Burton.
	Approximately 1500 feet downstream of E Maple Avenue	+822	
Shinanguag Lake	Entire shoreline of Shinanguag Lake	+890	Township of Atlas.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Burton
Maps are available for inspection at 4303 South Center Road, Burton, MI 48519.

Township of Atlas
Maps are available for inspection at 7386 Gale Road, Goodrich, MI 48439.

Township of Fenton
Maps are available for inspection at 12060 Mantawauka Drive, Fenton, MI 48430.

Township of Flushing
Maps are available for inspection at 6524 North Seymour Road, Flushing, MI 48433.

Township of Gaines
Maps are available for inspection at 9255 Grand Blanc Road, Gaines, MI 48436.

Township of Montrose
Maps are available for inspection at 139 South Saginaw Street, Montrose, MI 48457.

Township of Mundy
Maps are available for inspection at 3478 Mundy Avenue, Swartz Creek, MI 48473.

Brown County, Minnesota, and Incorporated Areas
FEMA Docket No.: B–7751

Minnesota River	Approximately 5,530 feet downstream of Dakota, Minnesota, and Eastern Railroad.	+807	City of New Ulm, Unincorporated Areas of Brown County.
	Approximately 1,673 feet upstream of county boundary	+825	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of New Ulm
Maps are available for inspection at 100 North Broadway, New Ulm, MN 56073.

Unincorporated Areas of Brown County
Maps are available for inspection at 14 South State Street, New Ulm, MN 56073.

Goodhue County, Minnesota, and Incorporated Areas
FEMA Docket No.: B–7755

Belle Creek	At the confluence with the Cannon River	+709	Unincorporated Areas of Goodhue County.
	Approximately 8,050 feet upstream of 390th Street	+1149	
Cannon River	Approximately 4,570 feet upstream of Railroad Bridge	+686	Unincorporated Areas of Goodhue County, City of Cannon Falls, City of Red Wing.
	Approximatley 8,120 feet upstream of State Highway 56	+873	
Gilbert Creek	Approximately 115 feet upstream of Railroad Bridge	+689	Unincorporated Areas of Goodhue County.
	Approximately 980 feet upstream of County 5 Boulevard	+695	
Hay Creek	Approximately 400 feet upstream of Old West Main Street	+689	Unincorporated Areas of Goodhue County, City of Red Wing.
	Approximately 3,630 feet upstream of 350th Street	+1063	
Little Cannon River	At the confluence with the Cannon River	+790	Unincorporated Areas of Goodhue County, City of Cannon Falls.
	Approximately 7,045 feet upstream of 20th Avenue	+1094	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground	Communities affected
		Modified	
Mississippi River	Located at the Goodhue/Wabasha County Line	+681	Unincorporated Areas of Goodhue County, City of Lake City, City of Red Wing.
	Located at the Goodhue/Dakota County Line	+688	
North Fork Zumbro River	Approximately 7,370 feet downstream of Main Street	+1008	Unincorporated Areas of Goodhue County, City of Wanamingo.
	Approximately 3,830 feet upstream of Main Street	+1022	
Pine Island Creek	Approximately 8,550 feet downstream of 230th Avenue	+996	Unincorporated Areas of Goodhue County.
	Approximately 1,790 feet upstream of County 43 Boulevard	+1132	
Wells Creek	At the confluence with the Mississippi River	+682	Unincorporated Areas of Goodhue County.
	Approximately 6,000 feet upstream of County 45 Boulevard	+855	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Cannon Falls
Maps are available for inspection at the City Offices Building, 918 River Road, Cannon Falls, MN 55009.

City of Lake City
Maps are available for inspection at City Hall, 205 West Center Street, Lake City, MN 55041.

City of Red Wing
Maps are available for inspection at the Community Development Building, 419 Bush Street, Red Wing, MN 55066.

City of Wanamingo
Maps are available for inspection at City Hall, 401 Main Street, Wanamingo, MN 55983.

Unincorporated Areas of Goodhue County
Maps are available for inspection at the Land Use Management Office, Room 102, 509 West 5th Street, Red Wing, MN 55066.

Renville County, Minnesota, and Incorporated Areas
FEMA Docket No.: B–7773

Minnesota River	Approximately 4,850 feet downstream of the Nicollet County Boundary.	+819	City of Franklin, City of Morton, Unincorporated Areas of Renville County.
	Approximately 4,600 feet upstream of the Chippewa County Boundary.	+883	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Franklin
Maps are available for inspection at City Hall, 320 Second Avenue East, Franklin, MN 55333.

City of Morton
Maps are available for inspection at City Hall, 221 West 2nd Street, Morton, MN 56270.

Unincorporated Areas of Renville County
Maps are available for inspection at the Renville County Office Building, 105 South 5th Street, Room 311, Olivia, MN 56277.

Hillsborough County, New Hampshire, and Incorporated Areas
FEMA Docket No.: B–1017

Baboosic Brook	At confluence with Souhegan River	+118	Town of Bedford, Town of Merrimack.
	Approximately 1,150 feet downstream of Stowell Road	+221	
Chase Brook	Just upstream of State Route 3A	+136	Town of Litchfield.
	Approximately 100 feet upstream of Pilgrim Road	+174	
Contoocook River	Approximately 1.52 miles upstream of Boston and Maine Railroad.	+594	Town of Hillsborough, Town of Peterborough.
	Approximately 1.37 miles upstream of Drury Road	+854	
Gumpas Road Brook	Just upstream of Marsh Road	+137	Town of Pelham.
	Just upstream of Debbie Drive	+167	
Naticook Brook	At U.S. Route 3	+117	Town of Merrimack.
	Approximately 70 feet downstream of Naticook Lake Outlet	+204	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground	Communities affected
		Modified	
Nesenkeag Brook	Approximately 100 feet downstream of State Route 3A	+120	Town of Litchfield.
	Approximately 1 mile upstream of Albuquerque Boulevard	+182	
Nubanusit Brook	At confluence with Contoocook River	+722	Town of Peterborough.
	Approximately 30 feet upstream of Wilder Street	+863	
Otter Brook	Approximately 450 feet downstream of State Route 136	+703	Town of Peterborough, Town of Greenfield.
	Approximately 2,300 feet upstream of the confluence of Otter Lake Brook.	+801	
Pennichuck Brook	Just upstream of Harris Pond Dam	+142	City of Nashua.
	Just downstream of Pennichuck Pond Outlet	+189	
Salmon Brook	At confluence with Merrimack River	+112	City of Nashua.
	Approximately 2,800 feet upstream of Ridge Road Bridge	+156	
Second Brook	Approximately 400 feet upstream of Radcliffe Road	+112	Town of Hudson.
	Approximately 40 feet upstream of Wason Road	+177	
Pointer Club Brook	Approximately 480 feet downstream of U.S. Highway 3	+146	Town of Merrimack.
	Just downstream of F.E. Everett Turnpike	+155	
Stony Brook	Just downstream of Small Dam	+820	Town of Lyndeborough.
	Approximately 2,600 feet downstream of School House Road.	+825	
Tributary B No. 1	At confluence with Chase Brook	+170	Town of Litchfield.
	Just upstream of State Route 102	+193	
Tributary B No. 2	Approximately 400 feet upstream of Forest Road	+820	Town of Greenfield.
	Approximately 2,600 feet upstream of Forest Road	+835	
Naticook Lake	For the entire Lake	+208	Town of Merrimack.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

Town of Bedford
Maps are available for inspection at the Bedford Town Planning Department, 24 North Amherst Road, Bedford, NH 03110.

Town of Greenfield
Maps are available for inspection at the Greenfield Town Hall, 7 Sawmill Road, Greenfield, NH 03047.

Town of Hillsborough
Maps are available for inspection at the Hillsborough Town Planning Department, 29 School Street, Hillsborough, NH 03244.

Town of Hudson
Maps are available for inspection at the Hudson Town Planning Department, 12 School Street, Hudson, NH 03051.

Town of Litchfield
Maps are available for inspection at the Litchfield Town Hall, 2 Liberty Way, Suite 1, Litchfield, NH 03052.

Town of Lyndeborough
Maps are available for inspection at the Lyndeborough Town Hall, 9 Citizens Hall Road, Lyndeborough, NH 03082.

Town of Merrimack
Maps are available for inspection at the Merrimack Town Hall, 6 Baboosic Lake Road, Merrimack, NH 03054.

City of Nashua
Maps are available for inspection at the City of Nashua Planning Department, 229 Main Street, Nashua, NH 03060.

Town of Pelham
Maps are available for inspection at the Town of Pelham Planning Department, 6 Village Green, Pelham, NH 03076.

Town of Peterborough
Maps are available for inspection at the Town of Peterborough Planning Department, One Grove Street, Peterborough, NH 03458.

Hunterdon County, New Jersey, and Incorporated Areas
FEMA Docket No.: B–1003

Back Brook	Upstream of Van Lieu's Rd	+119	Township of East Amwell.
	Upstream of Route 179	+195	
First Neshanic River	Downstream of U.S. Route 202	+148	Township of Raritan.
	Upstream of Railroad	+160	
Holland Brook	Downstream of Hillcrest/Centerville Rd	+101	Township of Readington.
	Upstream of Holland Brook Rd	+148	
Neshanic River	Downstream of Rainbow Hill Rd	+104	Township of East Amwell.
	Downstream of Old York Rd	+125	
Neshanic River	Upstream of Everitt Rd	+128	Township of Raritan.
	Downstream of Kuhl Rd	+137	
Second Neshanic River	Upstream of U.S. Route 202	+143	Township of Raritan.
	Upstream of Joanna Farm Rd	+172	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground	Communities affected
		Modified	
South Branch Raritan River ..	Downstream of Old York Rd	+97	Township of Raritan.
	Downstream of Railroad	+107	
South Branch Raritan River ..	Upstream of Higginsville Rd	+92	Township of Readington.
	Downstream of Rockafellows Mills Rd	+104	
Third Neshanic River	Downstream of U.S. Route 202	+140	Township of Raritan.
	Upstream of Everitt Rd	+152	
Walnut Brook	Upstream of Railroad	+160	Township of Raritan.
	Upstream of Mine Rd	+191	
Walnut Brook	Upstream of Corporate Limits	+170	Borough of Flemington.
	Upstream State Route 12	+180	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

Borough of Flemington
Maps are available for inspection at the Borough Hall, 38 Park Avenue, Flemington, NJ 08822.

Township of East Amwell
Maps are available for inspection at the Municipal Building, 1070 Route 202/31, Ringoes, NJ 08551–1051.

Township of Raritan
Maps are available for inspection at the Municipal Building, 1 Municipal Drive, Flemington, NJ 08822.

Township of Readington
Maps are available for inspection at the Municipal Building, 509 Route 523, Whitehouse Station, NJ 08889.

Monmouth County, New Jersey, and Incorporated Areas
Docket No.: FEMA–B–7783

Big Brook	At Boundary Road	+79	Township of Colts Neck.
	Approximately 34 feet upstream of Boundary Road	+79	
Burkes Creek	Approximately 957 feet upstream of Rutgers Road	+100	Township of Howell.
	Approximately 904 feet upstream of Rutgers Road	+100	
Deal Lake	Entire shoreline	+10	Borough of Interlaken.
Deal Tributary 1	At Wickapecko Drive	+11	Borough of Interlaken.
	Approximately 342 feet downstream of Wickapecko Drive ..	+11	
Doctors Creek	Approximately 915 feet upstream of South Main Street	+72	Township of Upper Freehold.
	Approximately 2,565 feet upstream of South Main Street	+72	
	At Breza Road	+60	
	Approximately 57 feet upstream of Breza Road	+60	
Hollow Brook	Approximately 133 feet upstream of Ridge Avenue	+13	City of Asbury Park.
	Approximately 176 feet upstream of Ridge Avenue	+13	
Little Silver Creek Tributary 2B.	Approximately 95 feet downstream of Harding Road	+14	Borough of Little Silver.
	Approximately 40 feet upstream of Harding Road	+24	
Manalapan Brook	At County boundary	+76	Township of Manalapan, Township of Millstone.
	Approximately 510 feet upstream of Moonlight Court	+181	
Manalapan Brook Tributary A	At confluence with Manalapan Brook	+87	Township of Manalapan.
	Approximately 1,000 feet upstream of confluence with Manalapan Brook.	+89	
Manalapan Brook Tributary B	At confluence with Manalapan Brook	+123	Township of Manalapan.
	Approximately 220 feet upstream of confluence with Manalapan Brook.	+123	
Musquash Brook	Approximately 3,350 feet downstream of Brighton Avenue ..	+9	Borough of Neptune City.
	Approximately 40 feet downstream of Brighton Avenue	+23	
North Branch Wreck Pond	At Railroad	+8	Borough of Spring Lake Heights.
	Approximately 1,147 feet upstream of State Highway 71	+8	
Poly Pond Brook	Approximately 944 feet downstream of State Highway 71	+17	Borough of Spring Lake Heights.
	Approximately 1,563 feet upstream of State Highway 71	+17	
Raritan Bay	Approximately 1,035 feet east of Rose Lane	+11	Township of Hazlet, Borough of Keansburg, Borough of Union Beach, Township of Middletown.
	Approximately 570 feet northwest of the intersection of State Highway 36 and Laurel Avenue.	+11	
	Approximately 480 feet east of William Street	+11	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground	Communities affected
		Modified	
	Approximately 1,570 feet south of the intersection of State Highway 36 and Thompson Avenue.	+11	
Shark River	Approximately 235 feet downstream of Steiner Avenue	+9	Borough of Neptune City.
	Approximately 1,450 feet downstream of County Highway 17.	+9	
Still House Brook	At confluence with Manalapan Brook	+93	Township of Manalapan.
	Approximately 600 feet upstream of confluence with Manalapan Brook.	+93	
Swimming River	At Swimming River Road	+22	Township of Colts Neck.
Thornes Creek	At Raritan and Sandy Hook Bay Beach Erosion and Hurricane Project Closure Gate.	+11	Township of Hazlet, Borough of Union Beach.
	At State Highway 36	+11	
Waackaack Creek	At Raritan and Sandy Hook Bay Beach Erosion and Hurricane Project Closure Gate.	+11	Township of Hazlet, Borough of Keansburg, Borough of Union Beach, Township of Holmdel.
	Approximately 800 feet downstream of Middle Road	+11	
Watson Creek	Approximately 1,150 feet downstream of Blansing Avenue Extension.	+20	Borough of Manasquan.
	Approximately 960 feet downstream of Blansing Avenue Extension.	+20	
Whale Pond Brook	At Hope Road	+73	Borough of Tinton Falls.
	Approximately 54 feet upstream of Hope Road	+73	
Yellow Brook 2	Approximately 600 feet downstream of Hunt Road	+98	Township of Colts Neck.
	Approximately 124 feet downstream of Hunt Road	+98	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

Borough of Interlaken
Maps are available for inspection at the Interlaken Borough Hall, 100 Grasmere Avenue, Interlaken, NJ 07712.

Borough of Keansburg
Maps are available for inspection at the Keansburg Borough Municipal Building, 29 Church Street, Keansburg, NJ 07734.

Borough of Little Silver
Maps are available for inspection at the Little Silver Borough Hall, 480 Prospect Avenue, Little Silver, NJ 07739.

Borough of Manasquan
Maps are available for inspection at the Manasquan Borough Municipal Building, 201 East Main Street, Manasquan, NJ 08736.

Borough of Neptune City
Maps are available for inspection at the Borough of Neptune City Municipal Building, 106 West Sylvania Avenue, Neptune City, NJ 07753.

Borough of Spring Lake Heights
Maps are available for inspection at the Spring Lake Heights Borough Hall, 555 Brighton Avenue, Spring Lake Heights, NJ 07762.

Borough of Tinton Falls
Maps are available for inspection at the Tinton Falls Borough Municipal Building, 556 Tinton Avenue, Tinton Falls, NJ 07724.

Borough of Union Beach
Maps are available for inspection at the Union Beach Borough Municipal Building, 650 Poole Avenue, Union Beach, NJ 07735.

City of Asbury Park
Maps are available for inspection at the City of Asbury Park Municipal Building, 1 Municipal Plaza, Asbury Park, NJ 07712.

Township of Colts Neck
Maps are available for inspection at the Colts Neck Town Hall, 124 Cedar Drive, Colts Neck, NJ 07722.

Township of Hazlet
Maps are available for inspection at the Hazlet Township Municipal Building, 1766 Union Avenue, Hazlet, NJ 07730.

Township of Holmdel
Maps are available for inspection at the Holmdel Township Hall, 4 Crawfords Corner Road, Holmdel, NJ 07733.

Township of Howell
Maps are available for inspection at the Howell Township Municipal Building, 251 Preventorium Road, Howell, NJ 07731.

Township of Manalapan
Maps are available for inspection at the Manalapan Township Municipal Building, 120 Route 522 and Taylors Mill Road, Manalapan, NJ 07726.

Township of Middletown
Maps are available for inspection at the Middletown Township Municipal Building, 1 Kings Highway, Middletown, NJ 07748.

Township of Millstone
Maps are available for inspection at the Millstone Township Municipal Building, 470 Stagecoach Road, Millstone, NJ 08510.

Township of Upper Freehold

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Maps are available for inspection at the Upper Freehold Township Municipal Building, 314 Route 539, Cream Ridge, NJ 08514.			
Suffolk County, New York, and Incorporated Areas Docket No.: FEMA–B–1012			
Atlantic Ocean	Approximately 700 feet west of the Oak Beach Road dead end.	+8	Town of Babylon, Shinnecock Indian Reservation, Town of Brookhaven, Town of East Hampton, Town of Islip, Town of Southampton, Village of Amityville, Village of Babylon, Village of Bellport, Village of East Hampton, Village of Lindenhurst, Village of Ocean Beach, Village of Quogue, Village of Sagaponack, Village of Saltaire, Village of Southampton, Village of West Hampton Dunes, Village of Westhampton Beach.
	Approximately 160 feet south of Beach Lane extended	+23	
Barley Field Cove	Approximately 1,000 feet east of the intersection of East End Drive and Brooks Point Road.	+8	Town of Southold.
	Shoreline approximately 1,425 feet east of the intersection of East End Drive and Brooks Point Road.	+16	
Bellport Bay	At the intersection of Thorn Hedge Road and Bayberry Road.	+5	Village of Bellport, Town of Brookhaven, Village of Patchogue.
	Shoreline at southwestern end of South Howells Point Road.	+8	
Block Island Sound	Approximately 850 feet northwest of the intersection of Montauk County Park Road and East Lake Drive.	+5	Town of East Hampton, Town of Southold.
	Fishers Island—Shoreline approximately 900 feet east of the intersection of Montauk Highway and Old Montauk Highway.	+21	
Block Island Sound	Approximately 1,700 feet southwest of the intersection of Soundview Drive and Captain Kidd's Path.	#2	Town of East Hampton.
Bostwick Bay	Gardiners Island—Approximately 1.4 miles northwest of the intersection of Gardiner Island Road and 4wd Road.	+7	Town of East Hampton.
	Gardiners Island—Approximately 1.2 miles northwest of the intersection of Gardiner Island Road and 4wd Road.	+12	
Centerport Harbor	Approximately 500 feet south of the intersection of Prospect Road and Mill Dam Road.	+9	Town of Huntington, Village of Huntington Bay, Village of North Haven.
	Shoreline approximately 1,500 feet northeast of the intersection of Monroe Drive and Garfield Street.	+14	
Cocomount Cove	Approximately 500 feet northwest of the intersection of East End Drive and Brooks Point Road.	+8	Town of Southold.
	Shoreline approximately 735 feet northwest of the intersection of East End Drive and Brooks Point Road.	+13	
Coecles Inlet	Burns Road, approximately 1,200 feet east of the intersection with North Cartwright Avenue.	+7	Town of Shelter Island, Village of Dering Harbor.
	Shoreline at eastern end of Burns Road	+10	
Cold Spring Harbor	Approximately 150 feet north of the intersection of Shore Road and Spring Street.	+9	Town of Huntington.
	Approximately 1,325 feet west of the intersection of Dogwood Lane and Fort Hill Drive.	+33	
Conscience Bay	Approximately 175 feet southwest of the intersection of Bobs Lane and Chickadee Way.	+8	Town of Brookhaven, Village of Old Field, Village of Poquott, Village of Port Jefferson.
	Shoreline approximately 1,340 feet west of the intersection of Gaul Road North and Gun Path.	+14	
Cutchogue Harbor	Shoreline approximately 50 feet west of the intersection of Skunk Lane and Sterling Road.	+6	Town of Southold.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground	Communities affected
		Modified	
	Shoreline approximately 1,260 feet south of the intersection of Haywaters Road and West Cove Road.	+16	
	At the intersection of Orchard Street and 1st Street	#1	
	Approximately 65 feet northwest of the southeastern terminus of Old Harbor Road.	#2	
Dering Harbor	Approximately 700 feet east of the intersection of North Ferry Road and W Neck Road.	+5	Town of Shelter Island, Village of Dering Harbor, Village of Greenport.
	Shoreline approximately 540 feet north of the intersection of North Ferry Road and Winthrop Road.	+17	
Duck Island Harbor	Approximately 200 feet east of the end of South Harbor Road.	+11	Town of Huntington, Village of Asharoken, Village of Huntington Bay, Village of Northport.
	Approximately 1,200 feet southeast of the intersection of Ponnell Road and South Harbor Road.	+16	
Fishers Island Sound	Approximately 1,400 feet north of the intersection of East End Drive and Clay Point Road.	+7	Town of Southold.
	Approximately 1,600 feet northwest of the intersection of Fox Avenue and Crescent Avenue.	+46	
Flanders Bay	At the intersection of Meeting House Creek Road and Harbor Road.	+6	Town of Riverhead, Town of Southampton.
	Shoreline approximately 1,850 feet east of the intersection of Indian Point Road and Circle Drive.	+13	
Flanders Bay	At the intersection of Indian Point Road and Circle Drive	#2	Town of Riverhead.
	Approximately 75 feet east of the intersection of Harbor Road and Meeting House Creek Road.	#2	
Fort Pond Bay	Approximately 425 feet west of the intersection of South Erie Avenue and South Embassy Street.	+5	Town of East Hampton.
	Shoreline approximately 1,500 feet west of the end of Wills Point Road.	+19	
	Shoreline approximately 600 feet north of the end of Wills Point Road.	#2	
	Shoreline approximately 1,600 feet north of the end of Wills Point Road.	#2	
	Shoreline approximately 850 feet south of the end of Wills Point Road.	#2	
Gardiners Bay	Approximately 420 feet southwest of the intersection of Kings Point Road and Hog Creek Lane.	+5	Town of East Hampton, Town of Shelter Island, Town of Southold, Village of Dering Harbor.
	Along the shoreline, approximately 1,500 feet west of Plum Gut Harbor.	+19	
Great Peconic Bay	At the intersection of West Street and 2nd Street	+6	Town of Riverhead, Town of Southampton, Town of Southold.
	Approximately 750 feet east 1st Street and Bray Avenue	+11	
	West Street approximately 300 feet southeast of the intersection with 2nd Street.	#1	
	Oak Street approximately 175 feet southeast of the intersection with Bayside Avenue.	#2	
Great South Bay	Intersection of Gibson Street and Huma Avenue	+4	Town of Babylon, Town of Islip, Village of Amityville, Village of Babylon, Village of Brightwaters, Village of Lindenhurst.
	At southern end of Norman Avenue	+10	
Greenport Harbor	At the intersection of Sterling Avenue and Sterling Street	+6	Town of Southold, Town of Shelter Island, Village of Greenport.
	Shoreline approximately 170 feet east-southeast of the intersection of Sterling Avenue and Sterling Street.	+10	
Hay Harbor	Approximately 300 feet north of the intersection of Equestrian Avenue and Winthrop Drive.	+11	Town of Southold.
	Approximately 0.5 mile north of the intersection of Equestrian Avenue and Winthrop Drive.	+16	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground	Communities affected
		Modified	
Huntington Bay	Approximately 50 feet south of the intersection of Surf Lane and Lighthouse Road.	+9	Town of Huntington, Village of Asharoken, Village of Huntington Bay, Village of Lloyd Harbor.
	Shoreline approximately 1,000 feet east of the end of Crescent Beach Drive.	+21	
Huntington Harbor	Approximately 400 feet south of the intersection of Bouton Road and Pine Point Road.	+9	Town of Huntington, Village of Huntington Bay, Village of Lloyd Harbor.
	Shoreline approximately 760 feet southeast of the intersection of Bouton Road and Pine Point Road.	+12	
Lake Montauk	Farragut Road, approximately 1,400 feet northeast of the intersection with West Lake Drive.	+5	Town of East Hampton.
	Approximately 350 feet west of the intersection of Prospect Hill Lane and East Lake Drive.	+11	
Little Peconic Bay	Approximately 350 feet south of the intersection of Arrowhead Lane and Campfire Lane.	+6	Town of Southold.
	Approximately 1,700 feet northeast of the intersection of Arrowhead Lane and Campfire Lane.	+16	
	Approximately 400 feet northeast of the intersection of Nassau Point Road and Broadwaters Road.	#1	
	Approximately 400 feet southeast of the intersection of Nassau Point Road and Broadwaters Road.	#2	
Lloyd Harbor	Approximately 700 feet west of the intersection of Lloyd Harbor Road and Fiddlers Green Drive.	+9	Village of Lloyd Harbor.
	Shoreline approximately 825 feet east-northeast of the intersection of Lloyd Harbor Road and Fiddlers Green Drive.	+14	
Long Island Sound	Approximately 1,300 feet north of the intersection of Main Road and Cove Beach Road.	+6	Village of Lloyd Harbor, Town of Brookhaven, Town of Huntington, Town of Riverhead, Town of Shelter Island, Town of Smithtown, Town of Southold, Village of Asharoken, Village of Belle Terre, Village of Dering Harbor, Village of Greenport, Village of Head of The Harbor, Village of Huntington Bay, Village of Nissequogue, Village of Northport, Village of Old Field, Village of Poquott, Village of Port Jefferson, Village of Shoreham.
	Approximately 500 feet west of East Point on Plum Island	+46	
Long Island Sound	At the intersection of Carole Road and Old Cove Road	#2	Town of Southold.
Majors Harbor	Along the shoreline, approximately 2,200 feet southeast from the end of Mashomack Preserve Road.	+5	Town of Shelter Island, Town of Southampton, Village of North Haven.
	Shoreline at Majors Point	+8	
Moriches Bay	At the intersection of South County Road and Raynor Drive	+7	Town of Brookhaven, Poospatuck Indian Reservation, Town of Southampton, Village of West Hampton Dunes, Village of Westhampton Beach.
	Shoreline, approximately 400 feet north of the intersection of Dune Road and Dune Lane.	+12	
Napeague Bay	Approximately 150 feet south of the intersection of Little Alberts Road and Alberts Landing.	+5	Town of East Hampton.
	Shoreline approximately 0.6 mile west of the intersection of Bayview Avenue and Lazy Point Road.	+14	
	Approximately 1,400 feet southeast of the intersection of Waters Edge and Barnes Hole Road.	#1	
Nicoll Bay	At the intersection of Cross Road and West Shore Road	+5	Town of Islip.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground	Communities affected
		Modified	
	Approximately 700 feet south of the intersection of Shore Drive and Edgewood Avenue.	+7	
Northeast Branch Nissequogue River.	Approximately 425 feet upstream of Branch Drive	+46	Town of Smithtown.
	Approximately 525 feet upstream of Branch Drive	+46	
Northport Bay	Approximately 45 feet west of the intersection of Eatons Neck Road and Steers Avenue.	+9	Town of Huntington, Village of Asharoken, Village of Huntington Bay, Village of Northport.
	Shoreline approximately 1,100 feet northeast of the intersection of East Neck Road and Crest Road.	+21	
Northport Harbor	At the intersection of Scudder Avenue and Bayview Avenue.	+9	Town of Huntington, Village of Northport.
	Approximately 1,400 feet northwest of the intersection of Bluff Point Road and Duffy Road.	+16	
Northwest Harbor	Approximately 500 feet north of the intersection of Alewife Brook Road and Terrys Trail.	+5	Town of East Hampton.
	Shoreline approximately 1,900 feet north of the western terminus of Alewife Brook Road.	+19	
Noyack Bay	At the intersection of Bay Avenue and Noyack Avenue	+6	Town of Southampton, Village of North Haven, Village of Sag Harbor.
	Shoreline approximately 560 feet west of the intersection of Bay View Court and North Haven Way.	+23	
Orient Harbor	At the intersection of Bay Avenue and Rabbit Lane	+6	Town of Southold, Town of Shelter Island, Village of Dering Harbor.
	Shoreline at the southeastern end of Bay Avenue	+9	
	Approximately 875 feet northeast of the intersection of East Gillette Drive and Cleaves Point Road.	#1	
Oyster Bay	Approximately 150 feet north of the intersection of Shore Road and Spring Street.	+9	Town of Huntington, Village of Huntington Bay, Village of Lloyd Harbor.
	Approximately 750 feet southwest of Turtle Lane and Mallard Drive.	+39	
Patchogue Bay	At the intersection of Harrison Street and South Ocean Avenue.	+5	Village of Patchogue, Town of Brookhaven, Town of Islip.
	Shoreline at southern end of Durkee Lane	+8	
Pipes Cove	Approximately 190 feet north of the intersection of Bayshore Road and August Road.	+6	Town of Southold, Town of Shelter Island, Village of Greenport.
	Shoreline approximately 220 feet east of the intersection of Bayshore Road and August Road.	+13	
Port Jefferson Harbor	Approximately 750 feet northwest of the intersection of Barnum Avenue and Maple Place.	+8	Town of Brookhaven, Village of Belle Terre, Village of Old Field, Village of Poquott, Village of Port Jefferson.
	Shoreline approximately 350 feet northeast of the intersection of Washington Street and Chestnut Avenue.	+24	
Reeves Bay	Approximately 100 feet south of the intersection of Flanders Road and Wood Road Trail.	+7	Town of Southampton, Town of Riverhead.
	Approximately 300 feet west of the intersection of Long Neck Boulevard and Fantasy Drive.	+10	
Sag Harbor Bay	Approximately 300 feet south of the intersection of Woodland Drive and Division Avenue.	+6	Village of Sag Harbor, Town of East Hampton, Village of North Haven.
	Shoreline approximately 190 feet north of the intersection of Meredith Avenue and Terry Drive.	+13	
Shelter Island Sound	Approximately 700 feet southwest of the intersection of Nostrand Parkway and Bootleggers Alley.	+5	Town of Shelter Island, Town of Southold, Village of North Haven.
	Approximately 550 feet west of the intersection of North Haven Way and On the Bluff.	+23	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground	Communities affected
		Modified	
Shelter Island Sound	Approximately 140 feet northwest of the intersection of Peconic Avenue and Brander Parkway.	#1	Town of Shelter Island, Town of Southold, Village of Dering Harbor, Village of North Haven.
	Approximately 800 feet west-southwest of the intersection of Nostrand Parkway and Bootleggers Alley.	#2	
Shinnecock Bay	Approximately 100 feet east of the intersection of Bonita Road and Whiting Road.	+8	Town of Southampton, Village of Quogue.
	Shoreline approximately 900 feet northeast of the intersection of Dune Road and Triton Lane.	+14	
Smith Cove	Approximately 370 feet north of the intersection of Thompson Road and Irene Lane.	+5	Town of Shelter Island, Village of North Haven.
	Approximately 700 feet southeast of the intersection of Thompson Road and Irene Lane.	+21	
Smithtown Bay	At the intersection of Riviera Drive and Magnolia Drive	+9	Town of Smithtown, Village of Nissequogue.
	Approximately 1,200 feet north of the intersection of Old Dock Road and Upper Dock Road.	+17	
Southold Bay	Approximately 850 feet east of the intersection of Route 25 and Town Harbor Lane.	+6	Town of Southold, Town of Shelter Island.
	Approximately 275 feet north of the intersection of Basin Road and Paradise Point Road.	+21	
Tobaccolot Bay	Approximately 1.1 miles east of the intersection of Gardiner Island Road and 4WD Road.	+6	Town of East Hampton.
	Approximately 1.4 miles east of the intersection of Gardiner Island Road and 4WD Road.	+11	
West Harbor	Approximately 0.6 mile east of the intersection of East End Drive and Peninsula Road.	+7	Town of Southold.
	Shoreline, approximately 1,200 feet east of the intersection of Montauk Avenue and Hedge Street.	+19	
West Neck Harbor	Approximately 1,000 feet west of the intersection of Lake Drive and South Midway Road.	+5	Town of Shelter Island, Village of North Haven.
	Shoreline approximately 1,500 feet south of the intersection of Sea Gate Drive and South Midway Road.	+8	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

Poospatuck Indian Reservation
Maps are available for inspection at the Poospatuck Indian Reservation Administrative Offices, 138 Eleanor Avenue, Mastic, NY 11950.

Shinnecock Indian Reservation
Maps are available for inspection at the Shinnecock Indian National Tribal Office, 100 Church Street, Southampton, NY 11969.

Town of Babylon
Maps are available for inspection at the Babylon Town Hall, 200 East Sunrise Highway, Lindenhurst, NY 11757.

Town of Brookhaven
Maps are available for inspection at the Brookhaven Town Hall, 1 Independence Hill, Farmingville, NY 11738.

Town of East Hampton
Maps are available for inspection at the East Hampton Town Hall, 159 Pantigo Road, East Hampton, NY 11937.

Town of Huntington
Maps are available for inspection at the Huntington Town Hall, 100 Main Street, Huntington, NY 11743.

Town of Islip
Maps are available for inspection at the Islip Town Hall, 655 Main Street, Islip, NY 11751.

Town of Riverhead
Maps are available for inspection at the Riverhead Town Hall, 201 Howell Avenue, Riverhead, NY 11901.

Town of Shelter Island
Maps are available for inspection at the Shelter Island Town Hall, 38 North Ferry Road, Shelter Island, NY 11964.

Town of Smithtown
Maps are available for inspection at the Smithtown Town Hall, 99 West Main Street, Smithtown, NY 11787.

Town of Southampton
Maps are available for inspection at the Southampton Town Hall, 116 Hampton Road, Southampton, NY 11968.

Town of Southold
Maps are available for inspection at the Southold Town Hall, 53095 Route 25, Southold, NY 11971.

Village of Amityville
Maps are available for inspection at the Amityville Village Hall, 21 Greene Avenue, Amityville, NY 11701.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground	Communities affected
		Modified	

Village of Asharoken
Maps are available for inspection at the Asharoken Village Hall, 1 Asharoken Avenue, Northport, NY 11768.

Village of Babylon
Maps are available for inspection at the Babylon Village Hall, 153 West Main Street, Babylon, NY 11702.

Village of Belle Terre
Maps are available for inspection at the Belle Terre Village Hall, 1 Cliff Road, Belle Terre, NY 11777.

Village of Bellport
Maps are available for inspection at the Bellport Village Hall, 29 Bellport Lane, Bellport, NY 11713.

Village of Brightwaters
Maps are available for inspection at the Brightwaters Village Hall, 40 Seneca Drive, Brightwaters, NY 11718.

Village of Dering Harbor
Maps are available for inspection at the Dering Harbor Village Hall, 23 Locust Point Road, Shelter Island Heights, NY 11965.

Village of East Hampton:
Maps are available for inspection at the East Hampton Village Hall, 86 Main Street, East Hampton, NY 11937.

Village of Greenport
Maps are available for inspection at the Greenport Village Hall, 236 3rd Street, Greenport, NY 11944.

Village of Head of The Harbor
Maps are available for inspection at the Head of the Harbor Village Hall, 500 North Country Road, St. James, NY 11780.

Village of Huntington Bay
Maps are available for inspection at the Huntington Bay Village Hall, 244 Vineyard Road, Huntington Bay, NY 11743.

Village of Lindenhurst
Maps are available for inspection at the Lindenhurst Village Hall, 430 South Wellwood Avenue, Lindenhurst, NY 11757.

Village of Lloyd Harbor
Maps are available for inspection at the Lloyd Harbor Village Hall, 32 Middle Hollow Road, Huntington, NY 11743.

Village of Nissequogue
Maps are available for inspection at the Nissequogue Village Hall, 631 Moriches Road, St. James, NY 11780.

Village of North Haven
Maps are available for inspection at the North Haven Village Hall, 335 Ferry Road, Sag Harbor, NY 11963.

Village of Northport
Maps are available for inspection at the Northport Village Hall, 224 Main Street, Northport, NY 11768.

Village of Ocean Beach
Maps are available for inspection at the Ocean Beach Village, 315 Cottage Walk, Ocean Beach, NY 11770.

Village of Old Field
Maps are available for inspection at the Old Field Village Hall, 207 Old Field Road, Setauket, NY 11733.

Village of Patchogue
Maps are available for inspection at the Patchogue Village Hall, 14 Baker Street, Patchogue, NY 11772.

Village of Poquott
Maps are available for inspection at the Poquott Village Hall, 45 Birchwood Avenue, East Setauket, NY 11733.

Village of Port Jefferson
Maps are available for inspection at the Port Jefferson Village Hall, 121 West Broadway, Port Jefferson, NY 11777.

Village of Quogue
Maps are available for inspection at the Quogue Village Hall, 7 Village Lane, Quogue, NY 11959.

Village of Sag Harbor
Maps are available for inspection at the Sag Harbor Village Hall, 22 Main Street, Sag Harbor, NY 11963.

Village of Sagaponack
Maps are available for inspection at the Sagaponack Village Hall, 20 Sagg Main Street, Sagaponack, NY 11962.

Village of Saltaire
Maps are available for inspection at the Saltaire Village Hall, 103 Broadway, Saltaire, NY 11706.

Village of Shoreham
Maps are available for inspection at the Shoreham Village Hall, 80 Woodville Road, Shoreham, NY 11786.

Village of Southampton
Maps are available for inspection at the Southampton Village Hall, 23 Main Street, Southampton, NY 11968.

Village of Westhampton Dunes
Maps are available for inspection at the Westhampton Dunes Village Hall, 4 Arthur Street, Westhampton Beach, NY 11977.

Village of Westhampton Beach
Maps are available for inspection at the Westhampton Beach Village Hall, 165 Mill Road, Westhampton Beach, NY 11978.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground	Communities affected
		Modified	
Ulster County, New York, and Incorporated Areas FEMA Docket No.: B–7748			
Rondout Creek	Approximately 500 feet downstream of the Conrail Bridge Structure.	+9	City of Kingston, Town of Esopus, Town of Rosendale, Town of Ulster.
	Approximately 200 feet upstream of Lawrenceville Road (State Route 213).	+91	
Saw Kill	At confluence with Esopus Creek	+151	Town of Kingston, Town of Ulster.
	Approximately 0.7 miles upstream of Powder Mill Road	+255	
Twaalfskill Brook	At confluence with Rondout Creek	+10	City of Kingston.
	Approximately 55 feet upstream of Brook Street	+54	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Kingston
Maps are available for inspection at City Hall, 420 Broadway, Kingston, NY 12401.

Town of Esopus
Maps are available for inspection at the Esopus Town Hall, 172 Broadway, Port Ewen, NY 12466.

Town of Kingston
Maps are available for inspection at the Kingston Town Hall, 906 Sawkill Road, Kingston, NY 12401.

Town of Rosendale
Maps are available for inspection at the Rosendale Town Hall, 424 Main Street, Rosendale, NY 12742.

Town of Ulster
Maps are available for inspection at the Ulster Town Hall, 1 Town Hall Drive, Lake Katrine, NY 12449.

Kay County, Oklahoma, and Incorporated Areas FEMA Docket No.: B–7755			
Tributary B (Arkansas River)	At the confluence with Tributary C	+941	City of Ponca City, Unincorporated Areas of Kay County.
	Approximately just downstream of the intersection of Hartford Avenue.	+1037	
Tributary C (Arkansas River)	Upstream of Lake Road at the Confluence with Tributary B	+941	City of Ponca City, Unincorporated Areas of Kay County.
	Approximately 100 feet upstream of the intersection of Donner Avenue.	+1038	
Tributary D (Arkansas River)	At intersection with Lake Road	+943	City of Ponca City, Unincorporated Areas of Kay County.
	Approximately 887 feet upstream from intersection with Kingston Road.	+1039	
Tributary E (Arkansas River)	Upstream of Virginia Avenue at the intersection of East Overbrook Avenue.	+970	City of Ponca City, Unincorporated Areas of Kay County.
	Approximately 300 feet upstream of the intersection with Donahoe Drive.	+994	
Tributary G (Arkansas River)	Approximately 100 feet downstream of Seventh Street at the intersection with Poplar Avenue.	+961	City of Ponca City, Unincorporated Areas of Kay County.
	Approximately 100 feet upstream of Second Street	+990	
Tributary G Left Tributary 1 (Arkansas River).	At the confluence with Tributary G (Arkansas River)	+962	City of Ponca City, Unincorporated Areas of Kay County.
	Approximately 100 feet upstream of Virginia Avenue	+966	
Tributary I (Arkansas River)	At the intersection with Seventh Street	+945	City of Ponca City, Unincorporated Areas of Kay County.
	Approximately 290 feet upstream from intersection with S. 6th Street.	+953	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground	Communities affected
		Modified	
Tributary L (Bois d'Arc Creek)	At the intersection with North Flormable Street	+958	City of Ponca City, Unincorporated Areas of Kay County.
	Approximately 100 feet upstream of Olympia Street	+978	
Tributary M (Bois d'Arc Creek).	At the intersection with Highland Avenue	+967	City of Ponca City, Unincorporated Areas of Kay County.
	At intersection with Bradley Avenue	+1036	
Tributary N (Bois d'Arc Creek).	Approximately 168 feet upstream from intersection with Oriole Street.	+1034	City of Ponca City, Unincorporated Areas of Kay County.
	Approximately 2,558 feet upstream from intersection with Oriole Street.	+1042	
Tributary O (Bois d'Arc Creek).	At the intersection with Liberty Avenue	+986	City of Ponca City, Unincorporated Areas of Kay County.
	Approximately 1,038 feet upstream from intersection with Ast Street.	+1008	
Tributary O Tributary (Bois d'Arc Creek).	Approximately 767 feet upstream from intersection with Liberty Avenue.	+990	City of Ponca City, Unincorporated Areas of Kay County.
	Approximately 2,463 feet upstream from intersection with Liberty Avenue.	+1003	
Tributary W (Arkansas River)	Approximately 222 feet upstream from intersection with LA Cann Drive.	+933	City of Ponca City, Unincorporated Areas of Kay County.
	Approximately 3,099 feet upstream from intersection with LA Cann Drive.	+985	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Blackwell
Maps are available for inspection at 221 West Blackwell Avenue, Blackwell, OK 74631.

City of Kaw City
Maps are available for inspection at 115 South Maple Avenue, Newkirk, OK 74647.

City of Newkirk
Maps are available for inspection at 107 Main Street, Newkirk, OK 74647.

City of Ponca City
Maps are available for inspection at 516 East Grand Avenue, Ponca City, OK 74607.

City of Tonkawa
Maps are available for inspection at 113 South 7th Street, Tonkawa, OK 74653.

Town of Braman
Maps are available for inspection at 302 Broadway, Braman, OK 74632.

Unincorporated Areas of Kay County
Maps are available for inspection at 115 South Maple Avenue, Newkirk, OK 74647.

York County, Pennsylvania, and Incorporated Areas
FEMA Docket No.: B–1017

Bald Eagle Creek	Approximately 170 feet downstream of Bald Eagle Road	+363	Township of Fawn.
	20 feet downstream of Bald Eagle Road	+363	
Barsinger Creek & Barsinger Creek Tributary 1.	Approximately 550 feet upstream on Arbor Road	+521	Township of North Hopewell.
	Approximately at Stine Hill Road	+660	
Bennett Run	At Front Street Bridge over Bennett Run	+423	Township of Fairview.
	Approximately 230 feet downstream of Front Street	+423	
Centerville Creek	Approximately at confluence of South Branch Codorus Creek and Centerville Creek.	+534	Township of Shrewsbury.
	Approximately 300 feet west of intersection of Fissels Church Road and Ridge Road.	+623	
	Approximately 1,500 feet downstream of the confluence of Centerville Creek & Centerville Creek Tributary.	+671	
	Approximately 1,700 feet upstream of the confluence of Centerville Creek & Centerville Creek Tributary.	+712	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground	Communities affected
		Modified	
Codorus Creek	Approximately 2,000 feet upstream of Furnace Road	+275	Township of East Manchester.
	Approximately 7,500 feet upstream of Furnace Road	+275	
Codorus Creek	Approximately 2,000 feet upstream of Park Road	+519	Township of North Codorus.
	Approximately 500 feet upstream of Park Road at cross section DC.	+528	
Conewago Creek	Approximately 1,800 feet upstream of confluence of Conewago and Little Conewago Creek.	+290	Township of Conewago.
	Approximately 350 feet downstream of Bull Road	+344	
Dogwood Run	Approximately 2,400 feet upstream of Greenhouse Road	+677	Township of Franklin.
	Approximately 3,300 feet upstream of Greenhouse Road	+692	
Dogwood Run	Approximately 60 feet downstream of the confluence of Dogwood Run and Tributary A.	+526	Borough of Dillsburg.
	Approximately 1,400 feet upstream of Old Mill Road	+531	
Dogwood Run	Approximately 60 feet downstream of the confluence of Dogwood Run and Tributary A.	+526	Township of Carroll.
	Approximately 2,000 feet upstream of Camp Ground Road	+604	
East Branch Codorus Creek	Approximately 450 feet downstream of Log Road	+494	Township of Springfield.
	Approximately 600 feet downstream of Hess Farm Road	+518	
Hartman Run	Approximately 200 feet Southeast of intersection of Lightner Avenue and Walnut Street.	+389	Borough of Manchester.
	Approximately 1,500 feet downstream of Forge Hill Road	+418	
Kreutz Creek	Approximately 200 feet South of the end of Owl Valley Road.	+424	Township of Windsor, Township of Lower Windsor.
	Approximately 325 feet South of the end of Owl Valley Road.	+424	
Little Conewago Creek	Approximately 800 feet upstream of confluence of Conewago and Little Conewago Creek.	+289	Township of Conewago.
	Approximately 700 feet downstream of Harrisburg Baltimore Expressway.	+323	
Little Conewago Creek	Approximately at Bull Road and Hilton Avenue	+374	Township of Dover.
	Approximately at Carlisle Road	+381	
Muddy Creek	Approximately at the confluence of Scott Creek & Muddy Creek.	+220	Township of Lower Chanceford.
	Approximately at Bridgeton Road	+313	
Pine Run	Approximately at confluence of Pine Run and Pine Run Tributary 2.	+551	Township of Windsor.
	Approximately 900 feet downstream from the confluence of Pine Run and Pine Run Tributary 1.	+587	
South Branch Codorus Creek	Approximately 2,000 feet upstream of intersection of Pennsylvania Railroad and Days Mill Road.	+391	Township of North Codorus.
	Approximately at confluence of South Branch Codorus Creek & East Branch Codorus Creek.	+416	
South Branch Codorus Creek	Approximately at confluence of South Branch Creek & South Branch Creek Tributary B.	+478	Township of Springfield.
	Approximately at confluence of South Branch Codorus Creek & Centerville Creek.	+529	
South Branch Codorus Creek	Approximately 3,200 feet downstream from Dam	+519	Township of Heidelberg.
	Approximately 1,300 feet downstream from Dam	+519	
Stony Run No. 1	Approximately 850 feet downstream of intersection of Andersontown Road and Brenneman Drive.	+375	Township of Fairview.
	Approximately at the intersection of Saw Mill Road and South Wharf Road.	+419	
Stony Run No. 3	Approximately 80 feet downstream of Beaver Lane	+344	Township of Warrington.
	Approximately 1,450 feet upstream of Beaver Lane	+344	
Susquehanna River	Approximately 3,000 feet East of Cooper Road	+112	Township of Peach Bottom.
	Approximately 800 feet upstream of Lay Road Access Road.	+113	
Tributary 1 (North Branch Bermudian Creek).	Approximately 450 feet upstream of Cabin Hollow Road	+542	Township of Carroll.
	Approximately 1,300 feet downstream of Stony Run Road	+571	
Tyler Run	Approximately 2,000 feet upstream of Tri-Hill Drive	+478	Township of Spring Garden.
	Approximately 2,450 feet upstream of Tri-Hill Drive	+486	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected

ADDRESSES

Borough of Dillsburg
Maps are available for inspection at the Municipal Building, 151 South Baltimore Street, Dillsburg, PA 17019.

Borough of Manchester
Maps are available for inspection at the Municipal Building, 225 South Main Street, Manchester, PA 17345.

Township of Carroll
Maps are available for inspection at the Municipal Building, 555 Chestnut Grove Road, Dillsburg, PA 17019.

Township of Conewago
Maps are available for inspection at the Municipal Building, 490 Copenhaffer Road, York, PA 17404.

Township of Dover
Maps are available for inspection at the Municipal Building, 2480 Wet Canal Road, Dover, PA 17315.

Township of East Manchester
Maps are available for inspection at the Municipal Building, 5080 North Sherman Street Extended, Mount Wolf, PA 17347.

Township of Fairview
Maps are available for inspection at the Municipal Building, 599 Lewisberry Road, New Cumberland, PA 17070.

Township of Fawn
Maps are available for inspection at the Municipal Building, 245 Alum Rock Road, New Park, PA 17352.

Township of Franklin
Maps are available for inspection at the Municipal Building, 150 Century Lane, Dillsburg, PA 17019.

Township of Heidelberg
Maps are available for inspection at the Municipal Building, 6424 York Road, Spring Grove, PA 17331.

Township of Lower Chanceford
Maps are available for inspection at the Municipal Building, 4120 Delta Road, Airville, PA 17302.

Township of Lower Windsor
Maps are available for inspection at the Township Office, 111 Walnut Valley Court, Wrightsville, PA 17368.

Township of North Codorus
Maps are available for inspection at the Municipal Building, 1986 Stoverstown Road, Spring Grove, PA 17362.

Township of North Hopewell
Maps are available for inspection at the Municipal Building, 13081 High Point Road, Felton, PA 17322.

Township of Peach Bottom
Maps are available for inspection at the Municipal Building, 545 Broad Street Extended, Delta, PA 17314.

Township of Shrewsbury
Maps are available for inspection at the Municipal Building, 12341 Susquehanna Trail South, Glen Rock, PA 17327.

Township of Spring Garden
Maps are available for inspection at the Administration Building, 558 Ogontz Street, York, PA 17403.

Township of Springfield
Maps are available for inspection at the Municipal Building, 9211 Susqehanna Trail South, Seven Valleys, PA 17327.

Township of Warrington
Maps are available for inspection at the Municipal Building, 3345 Rosstown Road, Wellsville, PA 17365.

Township of Windsor
Maps are available for inspection at the Municipal Building, 1480 Windsor Road, Red Lion, PA 17356.

Cocke County, Tennessee, and Incorporated Areas
FEMA Docket No.: B–1013

Clear Creek	Approximately 2.2 miles upstream of the confluence of French Broad River.	+1030	Unincorporated Areas of Cocke County.
	Approximately 927 feet upstream of the confluence of French Broad River.	+1030	
French Broad River/Douglas Lake.	Approximately 4.7 miles downstream of US Highway 25 E	+1002	Unincorporated Areas of Cocke County.
	Approximately 1.5 miles upstream of the confluence of Pigeon River.	+1014	
Haney Branch	At the confluence of French Broad River	+1010	Unincorporated Areas of Cocke County.
	Approximately 1,290 feet upstream of Wynn Way	+1010	
McCowan Creek	At the confluence of French Broad River	+1002	Unincorporated Areas of Cocke County.
	Approximately 1.1 miles upstream of the confluence of French Broad River.	+1002	
Nolichucky River	Approximately 1.2 miles upstream of Hale Road	+1022	Unincorporated Areas of Cocke County.
	Approximately 1.1 miles upstream of Glendale Road	+1044	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

Unincorporated Areas of Cocke County

Maps are available for inspection at the Cocke County Courthouse, 111 Court Avenue, Room 112, Newport, TN 37821.

Crockett County, Tennessee, and Incorporated Areas
FEMA Docket No.: B–1003

South Fork of Forked Deer River.	At the Crockett/Madison/Haywood county boundary	+319	Unincorporated Areas of Crockett County.
	Approximately 1,365 feet upstream of the confluence with Connley Creek (At the Crockett/Madison county boundary).	+324	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

Unincorporated Areas of Crockett County

Maps are available for inspection at the Courthouse, 1 South Bell Street, Alamo, TN 38001.

Dickson County, Tennessee, and Incorporated Areas
FEMA Docket No.: B–1003

East Piney River	At the confluence of Piney River	+584	Unincorporated Areas of Dickson County, City of Dickson.
	Approximately 3,400 feet upstream of the confluence of Willow Branch.	+696	
Fivemile Creek	Approximately 2,700 feet downstream of County Highway 1847.	+548	Unincorporated Areas of Dickson County, Town of White Bluff.
	Approximately 3,370 feet upstream of County Highway 1847.	+584	
Piney River	At the confluence with East Piney River	+584	Unincorporated Areas of Dickson County.
	Approximately 200 feet upstream of County Road 1858	+629	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Dickson

Maps are available for inspection at the Office of the Director of Planning and Zoning, 200 Center Avenue, Dickson, TN 37055.

Town of White Bluff

Maps are available for inspection at 1016 Taylor Town Road, White Bluff, TN 37187.

Unincorporated Areas of Dickson County

Maps are available for inspection at the Office of the Director of Planning and Zoning, 2 Court Square, Charlotte, TN 37036.

Humphreys County, Tennessee, and Incorporated Areas
FEMA Docket No.: B–1003

Kentucky Lake (Tennessee River).	At the Humphreys/Perry/Benton county boundary	+375	Humphreys County, City of New Johnsonville.
	At the Humphreys/Houston/Benton county boundary	+375	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of New Johnsonville

Maps are available for inspection at City Hall, 323 Long Street, New Johnsonville, TN 37134.

Humphreys County

Maps are available for inspection at the Chamber of Commerce, 124 East Main Street, Waverly, TN 37185.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground	Communities affected
		Modified	
Claiborne County, Tennessee, and Incorporated Areas FEMA Docket No.: B–1012			
Clinch River/Norris Lake	Approximately 2.3 miles downstream of the confluence of Big Barren Creek.	+1055	Unincorporated Areas of Claiborne County.
	Approximately 3.3 miles upstream of US Highway 25	+1055	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

Unincorporated Areas of Claiborne County

Maps are available for inspection at County Courthouse, 1740 Main Street, Tazewell, TN 37879.

Tarrant County, Texas, and Incorporated Areas FEMA Docket No.: B–7737			
Big Bear Creek	Approximately 1270 ft downstream of the intersection at Highway 183.	+527	City of Fort Worth, City of Euless, City of Grand Prairie, City of Grapevine, City of Keller, City of South Lake, Town of Colleyville, Unincorporated Areas of Tarrant County.
	Approximately 93 ft downstream of the intersection with Bear Creek Pkwy..	+758	
Hogpen Branch	Approximately 83 feet upstream from intersection with Country Club Road.	+582	City of Mansfield.
	Approximately 100 feet downstream from intersection with Highway 157.	+621	
Johnson Creek	Intersection with Avenue K	+467	City of Grand Prairie.
	Approximately 200 feet upstream of intersection with Highway 360.	+511	
Nichols Branch	Intersection with Newt Patterson Road	+599	City of Mansfield.
	Approximately 560 feet downstream of intersection with Columbria Drive.	+620	
Plantation East Creek	Upstream of Llano Avenue approximately 290 feet	+651	City of Benbrook.
	Approximately 288 feet upstream of Circle S Road	+685	
Plantation West Creek, Stream MSC–1A.	Intersection with Twilight Drive W.	+671	City of Benbrook, City of Fort Worth.
	Approximately 705 feet from intersection with Dawn Drive ..	+692	
Pond Branch	Approximately 95 feet downstream of intersection with Depot Street.	+587	City of Mansfield.
	Approximately 37 feet downstream of East Kimball Street ..	+600	
Stream JC–1	Approximately 300 feet downstream of West Tarrant Road intersection.	+502	City of Grand Prairie.
	Intersection with Duncan Perry Road	+503	
Timber Creek	Approximately 700 feet upstream of confluence with Clear Fork of the Trinity River.	+618	City of Benbrook.
	Approximately 700 feet downstream of the intersection with McKinley Street.	+692	
Walnut Creek 3	Approximately 4,850 feet downstream from intersection with Highway 360.	+546	City of Mansfield.
	Approximately 80 feet downstream from the intersection of 287.	+588	
Watson Branch	Confluence with Walnut Creek 3	+580	City of Mansfield.
	Intersection with Highway 157	+641	
Willow Bend	The intersection with Willow Bend Creek at Meadowside Drive.	+640	City of Benbrook.
	Approximately 70 feet downstream of intersection with Williams Road.	+707	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Benbrook

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected

Maps are available for inspection at 911 Winscott Road, Benbrook, TX 76126.

City of Euless

Maps are available for inspection at 201 North Ector Drive, Euless, TX 76039.

City of Fort Worth

Maps are available for inspection at 1000 Throckmorton Street, Fort Worth, TX 76102.

City of Grand Prairie

Maps are available for inspection at 317 College Street, Grand Prairie, TX 75053.

City of Grapevine

Maps are available for inspection at 413 South Main Street, Grapevine, TX 76051.

City of Keller

Maps are available for inspection at 158 South Main Street, Keller, TX 76248.

City of Mansfield

Maps are available for inspection at 1305 East Broad Street, Mansfield, TX 76063.

City of South Lake

Maps are available for inspection at 667 North Carroll Avenue, Southlake, TX 76092.

Town of Colleyville

Maps are available for inspection at 401 Oak Valley Road, Colleyville, TX 76034.

Unincorporated Areas of Tarrant County

Maps are available for inspection at 100 East Weatherford Street, Fort Worth, TX 76196.

Salt Lake County, Utah, and Incorporated Areas

FEMA Docket No.: B–7759

Midas Creek	Approximately 400 feet upstream of the confluence with the Jordan River.	+4325	City of Riverton, City of South Jordan, Unincorporated Areas of Salt Lake County.
	Just upstream of 11800 South Street	+4566	
Willow Creek (West)	Just upstream of 11400 South Street	+4362	City of Draper.
	Just downstream of 300 East Street	+4442	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Draper

Maps are available for inspection at 1020 East Pioneer Road, Draper, UT 84020.

City of Riverton

Maps are available for inspection at 12830 South Redwood Road, Riverton, UT 84065.

City of South Jordan

Maps are available for inspection at 1600 West Towne Center Drive, South Jordan, UT 84095.

Unincorporated Areas of Salt Lake County

Maps are available for inspection at 2001 South State Street, Suite N2100, Salt Lake City, UT 84190.

Montgomery County, Virginia, and Incorporated Areas

FEMA Docket No.: B–1012

Plum Creek	Approximately 900 ft upstream of US Highway 11	+1755	Unincorporated Areas of Montgomery County.
	Approximately at the intersection of Gate Road and Plum Creek Road.	+1918	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

Unincorporated Areas of Montgomery County

Maps are available for inspection at the Department of Planning and GIS Services, 755 Roanoke Street, Christiansburg, VA 24073.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: June 1, 2009.

Deborah S. Ingram,

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

[FR Doc. E9–14042 Filed 6–12–09; 8:45 am]

BILLING CODE 9110–12–P

Proposed Rules

Federal Register
Vol. 74, No. 113
Monday, June 15, 2009

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

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0085]

RIN 1625–AA11

Regulated Navigation Area; East Rockaway Inlet to Atlantic Beach Bridge, Nassau County, Long Island, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a regulated navigation area extending from the entrance of East Rockaway Inlet to the Atlantic Beach Bridge, Nassau County, New York. This regulated navigation area will affect commercial vessels carrying petroleum products in excess of 250 barrels by requiring them to plan all transits of the regulated navigation area so that they maintain a minimum of two feet under keel clearance at all times. Additionally, they may not transit the regulated navigation area if a small craft advisory, or more severe weather warning, has been issued, unless authorized by the Captain of the Port Long Island Sound. This action is necessary because significant shoaling in this area has reduced the depths of the navigable channel and has increased the risk of vessels grounding in the channel and the potential for a significant oil spill.

DATES: Comments and related material must be received by the Coast Guard on or before August 14, 2009.

ADDRESSES: You may submit comments identified by docket number USCG–2008–0085 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand Delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Lieutenant Commander Kristen Schroeder, Prevention Department, CG Sector Long Island Sound at 203–468–4459 or *kristen.m.schroder@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2008–0085), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online via *http://www.regulations.gov* or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, select the Advanced Docket Search option on the right side of the screen, insert ''USCG–2008–0085'' in the Docket ID box, press Enter, and then click on the balloon shape in the Actions column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the proposed rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, select the Advanced Docket Search option on the right side of the screen, insert USCG–2008–0085 in the Docket ID box, press Enter, and then click on the item in the Docket ID column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please

explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

East Rockaway Inlet is on the South Shore of Long Island, in Nassau County. Water depths in the federal navigation channel change constantly and have been reduced in some areas to as low as five feet at times. This channel was last dredged by the Army Corps of Engineers during the winter of 2008–2009 and is on a 2 year cycle for dredge work. The channel buoys require regular relocation to mark best water as the channel shoals in between dredge cycles. East Rockaway Inlet is frequented by small coastal tankers and tugs towing oil barges supplying two facilities: Sprague Energy Oceanside, located in Oceanside, Long Island, New York, a supplier of home heating oil for Long Island, and Keyspan E.F. Barrett, an electrical power generation facility, located in Island Park, Long Island, New York. For vessels carrying 250 or more barrels of petroleum, approximately 60 transits of the area occur each year. The shoaling in this area has reduced depths to a point where there is an increased risk of vessels grounding and the potential for a significant oil spill. Similar shoaling led to the grounding in late 2003 of a small coastal tanker carrying home heating oil.

This proposed rule will provide for the safety of vessel traffic and protection of the maritime environment in and around East Rockaway Inlet, Long Island, New York.

Discussion of Proposed Rule

This proposed rule establishes a regulated navigation area (RNA) on the navigable waters of the East Rockaway Inlet in an area bounded by lines drawn from position 40°34′56″ N, 073°45′19″ W, [approximate position of Silver Point breakwater buoy (LLNR 31500)] running north to a point of land on the northwest side of the inlet at position 40°35′28″ N, 073°46′12″ W, thence easterly along the shore to the east side of the Atlantic Beach Bridge, State Route 878, over East Rockaway Inlet, thence across said bridge to the south side of East Rockaway Inlet, thence westerly along the shore and across the water to the point of origin. The rule described herein restricts the transit of vessels carrying petroleum products in excess of 250 barrels such that they must plan all transits of the RNA to maintain at least two feet under keel clearance at all times. Additionally, such vessels are prohibited from transiting the RNA during periods when a small craft advisory, or more severe weather warning, has been issued, unless authorized by the Captain of the Port Long Island Sound. In addition, operators of vessels carrying petroleum products in excess of 250 barrels as cargo that require a nighttime transit through East Rockaway Inlet may do so only after receiving approval from the Captain of the Port Long Island Sound. The operator's voyage plan must contain parameters for transit of the RNA that are acceptable to the Captain of the Port Long Island Sound. Parameters addressed shall include: Forecasted weather conditions for the duration of the transit, restrictions due to state of tide, the loaded draft of the vessel, and minimum under keel clearance.

Any violation of the RNA described herein, is punishable by, among others, civil and criminal penalties, in rem liability against the offending vessel, and license sanctions.

The Captain of the Port Long Island Sound will notify the maritime community of the requirements of this RNA publication in the **Federal Register**, broadcast notifications and notifications in the local notice to mariners.

Regulatory Analyses

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

Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary.

The regulated navigation area limits only vessels carrying petroleum products as cargo and allows vessels with sufficient under keel clearance to transit during good weather and daylight hours without having to gain prior approval from the Captain of the Port Long Island Sound. Otherwise, a vessel may request and receive approval from the Captain of the Port Long Island Sound, to transit at other times. Recreational and other maritime traffic is not otherwise restricted or prohibited from transiting this area.

Small Entities

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

This rule may affect the following entities, some of which may be small entities: The owners or operators of vessels carrying petroleum products intending to transit or anchor in those portions of the East Rockaway Inlet covered by the regulated navigation area; and Sprague Energy Oceanside, located in Oceanside, Long Island, New York, a supplier of home heating oil, and Keyspan E.S. Barrett, an electrical power generation facility, located in Island Park, Long Island, New York, which receive the vessels affected by this regulated navigation area. For the reasons outlined in the Regulatory Evaluation section above, this rule will not have a significant impact on a substantial number of small entities.

Therefore, 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.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Commander Kristen Schroeder, Prevention Department, CG Sector Long Island Sound at (203) 468–4459. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of 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 proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. Therefore, this rule is categorically excluded, under section 2.B.2. Figure 2–1, paragraph 34(g), of the instruction and neither an environmental assessment nor an environmental impact statement is required. This rule involves the establishing, disestablishing, or changing regulated navigation areas and security or safety zones. A preliminary ''Environmental Analysis Checklist'' supporting this determination is available in the docket where indicated under the ''Public Participation and Request for Comments'' section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 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 § 165.156 to read as follows:

§ 165.156 Regulated Navigation Area, East Rockaway Inlet to Atlantic Beach Bridge, Nassau County, Long Island, New York.

(a) *Location.* The following area is a Regulated Navigation Area: All waters of East Rockaway Inlet in an area bounded by lines drawn from position 40°34′56″ N, 073°45′19″ W, [approximate position of Silver Point breakwater buoy (LLNR 31500)] running north to a point of land on the northwest side of the inlet at position 40°35′28″ N, 073°46′12″ W, thence easterly along the shore to the east side of the Atlantic Beach Bridge, State Route 878, over East Rockaway Inlet, thence across the bridge to the south side of East Rockaway Inlet, thence westerly along the shore and across the water to the beginning.

(b) *Regulations.* (1) The general regulations contained in 33 CFR § 165.10, § 165.11, and § 165.13 apply.

(2) In accordance with the general regulations, the following regulations apply to vessels carrying petroleum products in excess of 250 barrels:

(i) The vessel must have plans in place to maintain a minimum of two feet under keel clearance at all times.

(ii) A vessel requiring a nighttime transit through East Rockaway Inlet may only do so only after receiving approval from the Captain of the Port Long Island Sound.

(iii) Vessels are prohibited from transiting East Rockaway Inlet if a small

craft advisory or greater has been issued for the area unless specific approval is received from the Captain of the Port Long Island Sound.

(iv) In an emergency, any vessel may deviate from the regulations in this section to the extent necessary to avoid endangering the safety of persons, property, or the environment. If deviation from the regulations is necessary, the master or their designee shall inform the Coast Guard as soon as it is practicable to do so.

(c) *Waivers.* (1) The Captain of the Port Long Island Sound may, upon request, waive any regulation in this section. (2) A request for a waiver must include the need for the waiver and describe the proposed vessel operations through the Regulated Navigation Area.

Dated: May 27, 2009.

Dale G. Gabel,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. E9–13889 Filed 6–12–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2008–0020; Internal Agency Docket No. FEMA–B–1057]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before September 14, 2009.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community are available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–1057, to William R. Blanton Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151, or (e-mail) *bill.blanton@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: William R. Blanton Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151, or (e-mail) *bill.blanton@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

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

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

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

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

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Madison County, Alabama, and Incorporated Areas				
Aldridge Creek	Approximately 0.4 miles upstream of Green Cove Road.	+577	+576	City of Huntsville, Unincorporated Areas of Madison County.
	Approximately 75 feet downstream of Drake Avenue	+679	+682	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Huntsville
Maps are available for inspection at 308 Fountain Circle Southwest, Huntsville, AL 35804.

Unincorporated Areas of Madison County
Maps are available for inspection at 100 North Side Circle, Huntsville, AL 35801.

Franklin County, Kansas, and Incorporated Areas				
Nugent Creek	Just upstream of Marshall Road	None	+904	City of Ottawa, Unincorporated Areas of Franklin County.
	Just downstream of Interstate Highway 35	None	+940	
Pottawatomie Creek	At confluence of Unnamed Tributary between Walnut Street and Cherry Street in eastern portion of the city.	None	+874	City of Lane.
	Just upstream of the intersection of Lane Road and South Kansas Avenue.	None	+875	
Rock Creek	Just upstream of East 15th Street	None	+902	City of Ottawa, Unincorporated Areas of Franklin County.
	Just downstream of Interstate Highway 35	None	+913	
Walnut Creek	Just upstream of Interstate Highway 35	None	+1012	City of Wellsville, Unincorporated Areas of Franklin County.
	Just upstream of Utah Road	None	+1040	
Walnut Creek Tributary	At confluence with Walnut Creek	None	+1030	Unincorporated Areas of Franklin County.
	Approximately 800 feet downstream from Hedge Road.	None	+1038	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Lane
Maps are available for inspection at 520 3rd Street, P.O. Box 116, Lane, KS 66042.

City of Ottawa
Maps are available for inspection at 101 S Hickory, 2nd Floor, Ottawa, KS 66067.

City of Wellsville
Maps are available for inspection at 411 Main Street, Wellsville, KS 66092.

Unincorporated Areas of Franklin County
Maps are available for inspection at 315 South Main Street, Suite 202, Ottawa, KS 66067.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Lincoln County, Missouri, and Incorporated Areas				
Cuivre River	At confluence with Mississippi River at East Sycamore Road, east of City of Old Monroe.	+445	+444	Unincorporated Areas of Lincoln County, City of Old Monroe.
McLean Creek	At confluence with Mississippi River, just east of City of Winfield.	+446	+445	Unincorporated Areas of Lincoln County, City of Winfield.
Mississippi River	At southern county boundary, east of City of Old Monroe.	+445	+444	Unincorporated Areas of Lincoln County, City of Elsberry, City of Foley, City of Old Monroe, City of Winfield.
	At northern county boundary at Dameron Road	+451	+450	
Sandy Creek	At confluence with Mississippi River, east of City of Foley.	+447	+446	Unincorporated Areas of Lincoln County, City of Foley.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Elsberry
Maps are available for inspection at 201 Broadway Street, Elsberry, MO 63343.

City of Foley
Maps are available for inspection at 617 Elm Street, Foley, MO 63347.

City of Old Monroe
Maps are available for inspection at 151 Main Street, P.O. Box 212, Old Monroe, MO 63369.

City of Winfield
Maps are available for inspection at 51 Old Troy Highway, P.O. Box 59, Winfield, MO 63389.

Unincorporated Areas of Lincoln County
Maps are available for inspection at 201 Main Street, Troy, MO 63379.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: May 27, 2009.

Deborah S. Ingram,

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

[FR Doc. E9–14039 Filed 6–12–09; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 578

[Docket No. NHTSA–2009–0066; Notice 1]

RIN 2127–AK40

Civil Penalties

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to increase the maximum civil penalty amounts for violations of motor vehicle safety requirements involving school buses, bumper standards, consumer information requirements, odometer tampering and disclosure requirements, and vehicle theft protection requirements. This action would be taken pursuant to the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, which requires us to review and, as warranted, adjust penalties based on inflation at least every four years.

DATES: Comments on the proposal are due July 15, 2009.

ADDRESSES: You may submit comments electronically [identified by DOT Docket ID Number NHTSA–2009–0066] by visiting the following Web site:

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

Alternatively, you can file comments using the following methods:

- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200

New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

• *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

• *Fax:* (202) 493–2251.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://www.dms.dot.gov* or *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Jessica Lang, Office of Chief Counsel, NHTSA, telephone (202) 366–5902, facsimile (202) 366–3820, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

In order to preserve the remedial impact of civil penalties and to foster compliance with the law, the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990 (28 U.S.C. 2461, Notes, Pub. L. 101–410), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134) (referred to collectively as the ''Adjustment Act'' or, in context, the ''Act''), requires us and other Federal agencies to adjust civil penalties for inflation. Under the Adjustment Act, following an initial adjustment that was capped by the Act, these agencies must make further adjustments, as warranted, to the amounts of penalties in statutes they administer at least once every four years.

NHTSA's initial adjustment of civil penalties under the Adjustment Act was published on February 4, 1997. 62 FR 5167. At that time, we codified the penalties under statutes administered by NHTSA, as adjusted, in 49 CFR Part 578, Civil Penalties. On July 14, 1999, we further adjusted certain penalties. 64 FR 37876. In 2000, the Transportation Recall Enhancement, Accountability and Documentation (''TREAD'') Act increased the maximum penalties under the National Traffic and Motor Vehicle Safety Act as amended (sometimes referred to as the ''Motor Vehicle Safety Act''). We codified those amendments in Part 578 on November 14, 2000. 65 FR 68108. On August 7, 2001, we also adjusted certain penalty amounts pertaining to odometer tampering and disclosure requirements and vehicle theft prevention. 66 FR 41149. On September 28, 2004, we adjusted the maximum penalty amounts for a related series of violations involving the agency's provisions governing vehicle safety, bumper standards, and consumer information. 69 FR 57864. On September 8, 2005, the agency adjusted its penalty amounts for violations of its vehicle theft protection standards and those involving a related series of odometer-related violations. 70 FR 53308. On May 16, 2006, the agency adjusted its penalty amounts for violations of the Motor Vehicle Safety Act, as amended, and codified amendments made to the Motor Vehicle Safety Act by the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users (SAFETEA–LU), 119 Stat. 1144, 1942–43 (Aug. 10, 2005). 71 FR 28279. Most recently, on February 25, 2008, the agency made adjustments to odometer-related violations and violations of certain administrative provisions of the Energy Policy and Conservation Act. 73 FR 9955.

The Energy Independence and Security Act of 2007 (EISA), Public Law 10–140, 121 Stat. 1492, 1506–07 (Dec. 19, 2007) (codified at 49 U.S.C. 32304A) established a separate penalty provision for a new consumer tire information provision. As a matter of organization, we intend to include this penalty provision in 49 CFR 578.6(d). In order to avoid confusion with the consumer information penalty regarding crashworthiness and damage susceptibility currently in this section, we would bifurcate to 49 CFR 578.6(d) into two parts. The first would address crashworthiness and damage susceptibility; the second would codify consumer tire information under EISA.

We have reviewed the civil penalty amounts in 49 CFR Part 578 and, in this notice, propose to adjust certain penalties under the Adjustment Act. The civil penalties that we propose to adjust are available for violations of the (1) Motor Vehicle Safety Act involving school buses (single violations and a related series of violations), (2) bumper requirements (a related series of violations), (3) consumer information requirements regarding crashworthiness and damage susceptibility (a related series of violations), (4) odometer requirements including tampering and disclosure (a related series of violations), and (5) the vehicle theft protection requirements (daily violations and a series of related violations).

Method of Calculation—Proposed Adjustments

Under the Adjustment Act, we first calculate the inflation adjustment for each applicable civil penalty by arithmetically increasing the maximum civil penalty amount per violation by a cost-of-living adjustment. Section 5(b) of the Adjustment Act defines the ''cost-of-living'' adjustment as:

The percentage (if any) for each civil monetary penalty by which—

(1) The Consumer Price Index for the month of June of the calendar year preceding the adjustment exceeds

(2) The Consumer Price Index for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law.

Because the proposed adjustment is intended to be effective before December 31, 2009, the ''Consumer Price Index [CPI] for the month of June of the calendar year preceding the adjustment'' is the CPI for June 2008. This figure, based on the Adjustment Act's requirement of using the CPI ''for all-urban consumers published by the Department of Labor,'' is 655.5.[1]

Two of the penalty amounts that NHTSA proposes to adjust involve a related series of violations of bumper standards and of consumer information requirements regarding crashworthiness and damage susceptibility. These amounts were both last adjusted in 2004 (CPI = 568.2). Accordingly, the factor that we use to calculate the proposed increases is 1.15 (655.5/568.2) for these penalties.

The other penalty amounts that NHTSA proposes to adjust are for single violations and a related series of violations pertaining to school bus

[1] Individuals interested in deriving the CPI figures used by the agency may visit the Department of Labor's Consumer Price Index Home Page at *http://www.bls.gov/cpi/home.htm.* Scroll down to ''Most Requested Statistics'' and select the ''All Urban Consumers (Current Series)'' option, select the ''U.S. ALL ITEMS 1967=100—CUUR0000AA0'' box, and click on the ''Retrieve Data'' button.

safety, a related series of violations involving odometer tampering and disclosure, as well as single violations and a related series of violations involving vehicle theft protection. These amounts were last adjusted in 2005 (CPI = 582.6). Accordingly, the factor that we use to calculate the proposed increases is 1.13 (655.5/582.6).

Next, using these inflation factors, increases above the current maximum penalty levels are calculated and are then subject to a specific rounding formula set forth in section 5(a) of the Adjustment Act. 28 U.S.C. 2461, Notes. Under that formula:

Any increase shall be rounded to the nearest:

(1) Multiple of $10 in the case of penalties less than or equal to $100;

(2) Multiple of $100 in the case of penalties greater than $100 but less than or equal to $1,000;

(3) Multiple of $1,000 in the case of penalties greater than $1,000 but less than or equal to $10,000;

(4) Multiple of $5,000 in the case of penalties greater than $10,000 but less than or equal to $100,000;

(5) Multiple of $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000; and

(6) Multiple of $25,000 in the case of penalties greater than $200,000.

Proposed Amendments to Maximum Penalties

Change to Maximum Penalty (Single Violations and a Related Series of Violations) Under the School Bus Safety Provisions, 49 U.S.C. Chapter 301, (49 CFR 578.6(a)(2))

The maximum civil penalty for a single violation under the school bus safety provisions is $10,000, as specified in 49 CFR 578.6(a)(2)(ii). The underlying statutory provision is 49 U.S.C. 30165(a)(2), as amended in 2005. Applying the appropriate inflation factor (1.13) raises the $10,000 to $11,300, an increase of $1,300. Under the rounding formula, any increase in a penalty's amount shall be rounded to the nearest $1,000 in the case of penalties greater than $1,000 but less than or equal to $10,000. Accordingly, we propose that § 578.6(a)(2)(ii) be amended to increase the maximum civil penalty for a single violation from $10,000 to $11,000.

The maximum civil penalty for a related series of violations under the school bus safety provisions is $15,000,000, as specified in 49 CFR 578.6(a)(2)(ii). The underlying statutory provision is 49 U.S.C. 30165(a)(2), as amended in 2005. Applying the appropriate inflation factor (1.13) raises the $15,000,000 to $16,950,000, an increase of $1,950,000. Under the rounding formula, any increase in a penalty's amount shall be rounded to the nearest multiple of $25,000 in the case of penalties greater than $200,000. Accordingly, we propose that § 578.6(a)(2)(ii) be amended to increase the maximum civil penalty from $15,000,000 to $16,950,000 for a series of related violations.

Change to Maximum Penalty (Related Series of Violations) Under the Bumper Standards Provision, 49 U.S.C. Chapter 325 (49 CFR 578.6(c))

The maximum civil penalty for a related series of violations of the bumper standards provision or a regulation prescribed thereunder is $1,025,000 as specified in 49 CFR 578.6(c)(2). The underlying statutory civil penalty provision is contained in 49 U.S.C. 32506. Applying the appropriate inflation factor (1.15) raises the $1,025,000 figure to $1,178,750, an increase of $153,750. Under the rounding formula, any increase in a penalty's amount shall be rounded to the nearest multiple of $25,000 in the case of penalties greater than $200,000. In this case, the increase would be $150,000. Accordingly, we propose that § 578.6(c) be amended to increase the maximum civil penalty from $1,025,000 to $1,175,000 for a related series of violations.

Change to Maximum Penalty (Related Series of Violations) Under the Consumer Information Regarding Crashworthiness and Damage Susceptibility Requirements, 49 U.S.C. Chapter 323 (49 CFR 578.6(d))

The maximum civil penalty for a related series of violations of the consumer information regarding crashworthiness and damage susceptibility requirements is $500,000, as specified in 49 CFR 578.6(d). The underlying statutory civil penalty provision is 49 U.S.C. 32308(b). Applying the appropriate inflation factor (1.15) raises the $500,000 figure to $575,000, an increase of $75,000. Under the rounding formula, any increase in a penalty's amount shall be rounded to the nearest multiple of $25,000 in the case of penalties greater than $200,000. In this case, the increase would be $75,000. Accordingly, we propose that § 578.6(d) be amended to increase the maximum civil penalty from $500,000 to $575,000 for a series of related violations.

Change to Maximum Penalty (Related Series of Violations) Under the Odometer Tampering and Disclosure Requirements, 49 U.S.C. Chapter 327 (49 CFR 578.6(f))

The maximum civil penalty for a related series of violations of the odometer requirements is $130,000, as specified in 49 CFR 578.6(f)(1). The underlying statutory penalty provision is 49 U.S.C. 32709. Applying the appropriate inflation factor (1.13) raises the $130,000 to $146,900, an increase of $16,900. Under the rounding formula, any increase in a penalty's amount shall be rounded to the nearest multiple of $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000. Accordingly, we propose that § 578.6(f)(1) be amended to increase the maximum civil penalty from $130,000 to $150,000 for a series of related violations.

Change to Maximum Penalty (Daily Violation and a Related Series of Violations) Under the Vehicle Theft Protection Provisions, 49 U.S.C. Chapter 331 (49 CFR 578.6(g)(1), (2))

The maximum civil penalty for a daily violation of vehicle theft protection provisions is $130,000, as specified in 49 CFR 578.6(g)(2). The underlying statutory penalty provision is 49 U.S.C. 33114(a)(5). Applying the appropriate inflation factor (1.13) raises the $130,000 figure to $146,900, an increase of $16,900. Under the rounding formula, any increase in a penalty's amount shall be rounded to the nearest multiple of $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000. Accordingly, we propose that § 578.6(g)(2) be amended to increase the maximum civil penalty from $130,000 to $150,00 for a daily violation.

The maximum civil penalty for a related series of violations of the vehicle theft protection provisions is $325,000, as specified in 49 CFR 578.6(g)(1). The underlying statutory penalty provisions are 49 U.S.C. 33114(a)(1)–(4). Applying the appropriate inflation factor (1.13) raises the $325,000 to $367,250, an increase of $42,250. Under the rounding formula, any increase in a penalty's amount shall be rounded to the nearest multiple of $25,000 in the case of penalties greater than $200,000. Accordingly, we propose that § 578.5(g)(1) be amended to increase the maximum penalty from $325,000 to $375,000 for a series of related violations.

Effective Date of Final Rule

The amendments would be effective 30 days after publication of the final rule in the **Federal Register**. The adjusted penalties would apply to violations occurring on and after the effective date.

Request for Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the beginning of this document under **ADDRESSES**. You may also submit your comments electronically to the docket following the steps outlined under **ADDRESSES**.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit the following to the Chief Counsel (NCC–110) at the address given at the beginning of this document under the heading **FOR FURTHER INFORMATION CONTACT**: (1) A complete copy of the submission; (2) a redacted copy of the submission with the confidential information removed; and (3) either a second complete copy or those portions of the submission containing the material for which confidential treatment is claimed and any additional information that you deem important to the Chief Counsel's consideration of your confidentiality claim. A request for confidential treatment that complies with 49 CFR part 512 must accompany the complete submission provided to the Chief Counsel. For further information, submitters who plan to request confidential treatment for any portion of their submissions are advised to review 49 CFR part 512, particularly those sections relating to document submission requirements. Failure to adhere to the requirements of Part 512 may result in the release of confidential information to the public docket. In addition, you should submit two copies from which you have deleted the claimed confidential business information, to Docket Management at the address given at the beginning of this document under **ADDRESSES**.

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated at the beginning of this notice under **DATES**. In accordance with our policies, to the extent possible, we will also consider comments that Docket Management receives after the specified comment closing date. If Docket Management receives a comment too late for us to consider in developing the proposed rule, we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address and times given near the beginning of this document under **ADDRESSES**.

You may also see the comments on the Internet. To read the comments on the Internet, go to *http://www.regulations.gov* and follow the on-line instructions provided.

You may download the comments. The comments are imaged documents, in either TIFF or PDF format. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

We have considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under Executive Order 12866, ''Regulatory Planning and Review.'' This action is limited to the proposed adoption of adjustments of civil penalties under statutes that the agency enforces, and has been determined to be not ''significant'' under the Department of Transportation's regulatory policies and procedures.

Regulatory Flexibility Act

We have also considered the impacts of this notice under the Regulatory Flexibility Act. I certify that a final rule based on this proposal will not have a significant economic impact on a substantial number of small entities. The following provides the factual basis for this certification under 5 U.S.C. 605(b).

The Small Business Administration (SBA) regulations define a small business in part as a business entity ''which operates primarily within the United States.'' 13 CFR 121.105(a). SBA's size standards were previously organized according to Standard Industrial Classification (SIC) Codes. SIC Code 336211 ''Motor Vehicle Body Manufacturing'' applied a small business size standard of 1,000 employees or fewer. SBA now uses size standards based on the North American Industry Classification System (NAICS), Subsector 336—Transportation Equipment Manufacturing, which provides a small business size standard of 1,000 employees or fewer for automobile manufacturing businesses. Other motor vehicle-related industries have lower size requirements that range between 500 and 750 employees.

Many small businesses are subject to the penalty provisions of Title 49 U.S.C. Chapters 301 (motor vehicles—school bus safety), 325 (bumper standards), 323 (consumer information requirements), 327 (odometer requirements) and 331 (vehicle theft protection requirements); therefore, small businesses may be affected by the proposed adjustments in this NPRM. By the proposed amendments, entities that are potentially affected vary by statute and may include manufacturers of motor vehicles and motor vehicle equipment, sellers of vehicles and equipment, repair shops and others.

The proposed adjustment to penalty amounts in 49 U.S.C. 30165(a)(2) and relating to school bus safety potentially impacts numerous entities including school bus manufacturers, school bus equipment manufacturers, school bus and equipment sellers, and schools and school systems. We do not have data on how many other entities within the ambit of 49 U.S.C. 30165(a)(2) are small businesses, but the number is considerable.

The proposed adjustment to penalty amounts in Chapter 325 relating to bumper standards and to penalty

amounts in Chapter 323 involving crashworthiness, damage susceptibility and country of origin labeling potentially impacts manufacturers of passenger motor vehicles and, in some instances, equipment manufacturers as variously included and defined in the statutes and regulations. We estimate that of the 26 light vehicle manufacturers reporting under the early warning program (EWR), 49 CFR part 579, six are small businesses. We recognize that there are other, relatively low production light vehicle manufacturers that are not subject to comprehensive EWR reporting. In addition, these statutes cover other entities, but we do not have information on the number of small businesses.

The proposed adjustment to penalty amounts in Chapter 327 relating to odometer requirements potentially impacts a number of small businesses including repair businesses, used car dealers, businesses that are lessors of vehicles, auction houses, and entities making devices that could change an odometer's mileage. Although we do not have information on how many of these entities are small businesses, we believe a large percentage are small businesses.

The proposed adjustment to penalty amounts in Chapter 331 relating to theft prevention potentially impacts manufacturers of regulated passenger motor vehicle parts in passenger motor vehicles, some multi-purpose vehicles, and some light trucks in high theft lines. It also impacts other entities including salvaging, repair and chop shops. As previously stated, of the twenty six manufacturers of passenger vehicles, six are small businesses. Although we do not have data on the numbers of salvaging, repair or chop shops, we believe many are small businesses.

Finally, we note that the new tire fuel efficiency information program under 49 U.S.C. 32304A may affect a number of entities. That program has not yet been adopted and therefore this notice does not identify regulated entities. In any event, we note that there are 28 tire manufacturers, none of which is a small business. There are estimated to be over 50,000 tire dealers and retailers; though we do not have information on how many of these dealers and retailers are small businesses, we believe a large percentage is small businesses.

As noted throughout this preamble, this proposed rule on civil penalties would only increase the maximum penalty amounts that the agency could obtain for certain violations of provisions related to school bus safety, bumper standards, certain consumer information, odometer tampering and disclosure, and vehicle theft prevention. This proposed rule does not set the amount of penalties for any particular violation or series of violations. Under the statutes for motor vehicle safety/school buses, consumer information, and vehicle theft prevention, the penalty provisions require the agency to take into account the size of a business when determining the appropriate penalty in an individual case. See 49 U.S.C. 30165(c) (school bus safety); 49 U.S.C. 32308(b)(3) (consumer information); 49 U.S.C. 33115(a)(3) (vehicle theft prevention). The statute for odometers does not directly address small business size as a consideration, but does require consideration of ''any effect on the ability to continue doing business''. 49 U.S.C. 32709(a)(3)(B). The agency would consider the size of the business in such a calculation. While the bumper standards penalty provision does not specifically require the agency to consider the size of the business, the agency would consider business size under its civil penalty policy when determining the appropriate civil penalty amount. See 62 FR 37115 (July 10, 1997) (NHTSA's civil penalty policy under the Small Business Regulatory Enforcement Fairness Act (SBREFA)).

The penalty adjustments that are being proposed would not affect our civil penalty policy under SBREFA. As a matter of policy, we intend to continue to consider the appropriateness of the penalty amount to the size of the business charged.

Since this proposed regulation would not establish penalty amounts, this proposal will not have a significant economic impact on small businesses.

Small organizations and governmental jurisdictions would not be significantly affected as the price of motor vehicles and equipment ought not to change as the result of this proposed rule. As explained above, this action is limited to the proposed adoption of a statutory directive, and has been determined to be not ''significant'' under the Department of Transportation's regulatory policies and procedures.

Executive Order 13132 (Federalism)

Executive Order 13132 requires NHTSA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, the agency may not issue a regulation with Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of Section 6 of the Executive Order do not apply.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995, Public Law 104–4, requires agencies to prepare a written assessment of the cost, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. Because this proposed rule will not have a $100 million effect, no Unfunded Mandates assessment will be prepared.

Executive Order 12778 (Civil Justice Reform)

This proposed rule does not have a retroactive or preemptive effect. Judicial review of a rule based on this proposal may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, we state that there are no requirements for information collection associated with this rulemaking action.

List of Subjects in 49 CFR Part 578

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires, Penalties.

In consideration of the foregoing, we propose to amend 49 CFR part 578 as set forth below.

PART 578—CIVIL AND CRIMINAL PENALTIES

1. The authority citation for 49 CFR part 578 is amended to read as follows:

Authority: Pub. L. No. 101–410, Pub. L. No. 104–134, 49 U.S.C. 30165, 30170, 30505, 32308, 32309, 32507, 32709, 32710, 32912, and 33115 as amended; delegation of authority at 49 CFR 1.50.

2. Section 578.6, paragraphs (a)(2)(ii), (c)(2), (d), (f)(1), and (g), are revised to read as follows:

§ 578.6 Civil penalties for violations of specified provisions of Title 49 of the United States Code.

(a) * * *

(2) * * *

(ii) Violates section 30112(a)(2) of Title 49 United States Code, shall be subject to a civil penalty of not more than $11,000 for each violation. A separate violation occurs for each motor vehicle or item of motor vehicle equipment and for each failure or refusal to allow or perform an act required by this section. The maximum penalty under this paragraph for a related series of violations is $16,950,000.

* * * * *

(c) * * *

(2) The maximum civil penalty under this paragraph (c) for a related series of violations is $1,175,000.

(d) *Consumer Information*—(1) *Crashworthiness and Damage Susceptibility.* A person that violates 49 U.S.C. 32308(a), regarding crashworthiness and damage susceptibility, is liable to the United States Government for a civil penalty of not more than $1,100 for each violation. Each failure to provide information or comply with a regulation in violation of 49 U.S.C. 32308(a) is a separate violation. The maximum penalty under this paragraph for a related series of violations is $575,000

(2) *Consumer Tire Information.* A person that violates 49 U.S.C. 32308(c), regarding consumer tire information established under 49 U.S.C. 32304A, is liable to the United States Government for a civil penalty of not more than $50,000 for each violation.

* * * * *

(f) * * *

(1) A person that violates 49 U.S.C. Chapter 327 or a regulation prescribed or order issued thereunder is liable to the United States Government for a civil penalty of not more than $2,200 for each violation. The maximum civil penalty under this paragraph for a related series of violations is $150,000.

* * * * *

(g) *Vehicle theft protection.* (1) A person that violates 49 U.S.C. 33114(a)(1)–(4) is liable to the United States Government for a civil penalty of not more than $1,100 for each violation. The failure of more than one part of a single motor vehicle to conform to an applicable standard under 49 U.S.C. 33102 and 33103 is only a single violation. The maximum penalty under this paragraph for a related series of violations is $375,000.

(2) A person that violates 49 U.S.C. 33114(a)(5) is liable to the United States Government for a civil penalty of not more than $150,000 a day for each violation.

* * * * *

Issued on: June 9, 2009.

Stephen P. Wood,

Acting Chief Counsel.

[FR Doc. E9–13933 Filed 6–12–09; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 581

[Docket Number NHTSA–2009–0047]

Bumper Standard; Petition for Rulemaking

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for comments.

SUMMARY: On July 1, 2008, the Insurance Institute for Highway Safety (IIHS) petitioned the agency to amend the existing bumper standard, to require compliance by light trucks, vans, and sport utility vehicles (SUVs), which NHTSA often refers to collectively as LTVs. The agency had already begun re-evaluating the bumper standard in anticipation of the vote on a Global Technical Regulation on pedestrian safety. NHTSA requests comments and information to assist the agency in determining whether to grant or deny the IIHS petition.

DATES: You should submit your comments early enough to ensure that Docket Management receives them not later than August 14, 2009.

ADDRESSES: Comments must refer to the docket notice number cited at the beginning of this notice and be submitted to Docket Management, Room W12–140, ground level, 1200 New Jersey Ave., SE., Washington, DC 20590 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Hand Delivery/Courier:* 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. Telephone: 1–800–647–5527.
- *Fax:* (202) 493–2251.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://docketsinfo.dot.gov/.*

Docket: For access to the docket to read background documents or comments received, go to the street address listed above. The internet access to the docket will be at *http://www.regulations.gov.* Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Hisham Mohamed, Consumer Standards Division, National Highway Traffic Safety Administration, 1200 New Jersey Ave., SE., West Building, Room W43–437, NVS–131, Washington, DC 20590. Mr. Mohamed's telephone number is 202–366–0307; E-mail: *hisham.mohamed@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

The agency's bumper standard, set forth at 49 CFR part 581, establishes requirements for the impact resistance of vehicles in low speed front and rear collisions. The purpose of the standard is to reduce physical damage to the front and rear ends of a passenger motor vehicle from low speed collisions. The standard applies to passenger motor vehicles other than multipurpose passenger vehicles and low speed vehicles.

The history of the Part 581 bumper standard has been long and complex. In its initial efforts in the field of bumper regulation, NHTSA issued Federal

Motor Vehicle Safety Standard (FMVSS) No. 215, Exterior Protection, under the National Traffic and Motor Vehicle Safety Act (the Safety Act), now codified as 49 U.S.C. Chapter 301. FMVSS No. 215 was initially implemented on September 1, 1972.

On October 20, 1972, Congress enacted the Motor Vehicle Information and Cost Savings Act (the Cost Savings Act). Title I of that Act, now codified as 49 U.S.C. Chapter 325, provided for promulgation of bumper standards to reduce the economic loss resulting from damage to passenger motor vehicles involved in motor vehicle accidents. The statute specifies that when prescribing a bumper standard, the agency must design the standard to obtain the maximum feasible reduction of costs to the public, considering the costs and benefits of carrying out the standard; the effect of the standard on insurance costs and legal fees and costs; savings in consumer time and inconvenience; and health and safety, including emission standards. 49 U.S.C. 32502(d).

Pursuant to both the authority of the Cost Savings Act and the Safety Act, NHTSA established the Part 581 Bumper Standard in 1976. 41 RF 9346 (March 4, 1976). As adopted, this standard combined the safety features of FMVSS 215 with new damage resistance criteria intended to promote consumer cost savings. There have been a number of amendments to the bumper standard since that time.

NHTSA's bumper standard does not apply to vehicles classified as trucks (because they are not passenger motor vehicles) or multipurpose passenger vehicles (because they are a type of passenger motor vehicles excluded by the agency when it established the bumper standard) the category which includes vehicles commonly referred to as SUVs. The Cost Savings Act specifically excludes trucks from any bumper standards and allows the agency to exempt multipurpose passenger vehicles from bumper standards. Both of these vehicle types could be regulated under the authority of the Safety Act. Since trucks are excluded from bumper standards under the Cost Saving Act, any bumper standard for these vehicles would need to be issued solely on the criteria included in the Safety Act.

In the past NHTSA has denied petitions to extend the bumper standard to trucks and multipurpose passenger vehicles. In August 1984, the agency denied two petitions for rulemaking, asking the agency to establish safety requirements for bumpers on vehicles other than passenger cars (49 FR 34049, Aug. 28, 1984). The first petitioner requested the agency to establish a bumper height requirement for all vehicles. The second petitioner requested the agency to require rear bumpers on pick-up trucks.

NHTSA responded by stating that while it was conceivable that a bumper height requirement for vehicles other than passenger cars could result in some slight, non-quantifiable safety benefits relating to unrepaired damage, the agency was unaware of any data indicating any significant safety problem with bumpers (or lack of rear bumper) on pick-up trucks, vans or utility vehicles, relating to mismatch problems, crash energy management, or side impact intrusion. Neither petitioner provided any such data.

In its response, NHTSA also stated that in considering possible rulemaking, the agency must consider both safety issues and whether a proposed requirement would be reasonable, practicable and appropriate for the particular type of motor vehicle or item of motor vehicle equipment for which it is prescribed. This is specifically required by the Safety Act.

The agency concluded that establishing a bumper height requirement for vehicles other than passenger cars or requiring rear bumpers on pick-up trucks could significantly reduce the utility of the vehicle types in question. At that time, the agency did not have data showing that there was a safety problem that would justify rulemaking.

In February 1991, the agency again denied a petition for rulemaking regarding bumper heights for small trucks and SUVs (56 FR 7826, Feb. 26, 1991). The petitioner was concerned that these vehicles could override the hood of passenger cars in crashes. In responding to the petition, the agency noted that the bumper standard did not apply to trucks or multipurpose passenger vehicles. NHTSA stated that it believed it would be inappropriate to require bumpers of these vehicles to be at the same height as those of passenger cars. The agency stated that these types of vehicles require greater ground clearance than passenger cars, to enable them to clear obstacles and hazards characteristic of commercial and occasional off-road operation. The agency stated that, for the same reason, requiring underride guards on trucks and multipurpose passenger vehicles would be inappropriate. The requirement recommended by the petitioner would have significantly reduced the utility of the vehicle types in question. Therefore, the agency believed that such a requirement would not be reasonable, practicable or appropriate for these vehicle types.

NHTSA also noted that while the agency recognized that many of these other vehicles were manufactured with bumpers mounted somewhat higher than passenger car bumpers, it did not have evidence of any significant safety problems resulting from those differences. Additionally, the agency analyzed data from the 1989 Fatal Accident Reporting System (FARS) file [1], a census of all fatal motor vehicle crashes on U.S. roads. The analysis indicated that there were no incidences of underride or override reported as a specific cause of the car occupant fatality, and the agency stated it was unaware of any data indicating a safety problem to be addressed by a rulemaking addressing bumper heights of pickup trucks, vans or sport utility vehicles. However, a review of the 2007 FARS data on ''Deaths among Occupants of Passenger Cars with Underride or Override Reported'' shows that the data includes 206 occupants who died in cars with underride or override reported, including 34 in crashes that involved at least one light truck or van. Thirteen of these fatalities occurred in two-vehicle crashes. All 13 involved a pickup truck, and 10 involved front damage to the car. The agency notes that although this data reflects that some fatalities have involved occupants who died in cars with underride or override reported, the data does not reflect the travel or crash speed for these crashes. We note that the crash or travel speed for these crashes could be above the speed requirements of the bumper standard.

The IIHS Petition

In July 2008 the Insurance Institute for Highway Safety (IIHS) petitioned NHTSA to extend the bumper standard to light trucks, vans, and SUVs (collectively, LTVs). The IIHS stated that it is legal to sell new LTVs in the United States without any bumpers, and this produces several undesirable consequences. The IIHS stated that many LTVs provide virtually no protection for vital safety-related parts such as headlights and taillights, which often sustain damage in low-speed collisions. The IIHS stated that LTVs owners have to pay for expensive repairs to fenders, grilles, and other parts that sustain unnecessary damage in low-speed collisions. Further, IIHS stated that vehicle manufacturers which choose to equip their LTVs with bumpers do not have to make them

[1] The acronym ''FARS'' now stands for the ''Fatality Analysis Reporting System.''

compatible in height with passenger vehicle bumpers. IIHS stated that LTV bumpers can be much higher than car bumpers, which results in excessive damage to the passenger vehicles with which they collide at low speeds.

The IIHS also stated that crash test results and data from insurance claims demonstrate the safety and property damage consequences of allowing inadequate bumpers, or none at all, on LTVs. The petitioner stated that by applying passenger vehicle bumper requirements to LTVs, NHTSA would make bumpers more compatible across the range of passenger vehicles. The petitioner also stated that this would enhance occupant safety and, at the same time, reduce costly damage to property in low-speed collisions, a subject which NHTSA and the automotive industry are addressing in the broader issue of vehicle compatibility. (*Docket:* NHTSA–2003–14623).

We note that NHTSA had already begun re-evaluating the bumper standard in anticipation of a vote on the Global Technical Regulation (GTR) on pedestrian safety, (see notice at 73 FR 55201 for further discussion of the GTR). The agency is also aware that there has been a significant change in vehicle registration in the U.S. that has resulted from an increased market shift to light trucks since the most recent revision of the bumper standard in 1982. The IIHS petition on its own does not provide sufficient support for the requested action, but our evaluation leads us to think that it may be an appropriate time to reconsider past agency decisions on extending the bumper standard to other vehicles.

NHTSA requests comments to assist the agency in deciding whether to grant or deny the IIHS petition. To inform the agency's decision, the following are key issues that the agency would like commenters to address. In particular, the agency requests that commenters include documents, studies, test protocols, data, or references which support their comments.

Cost/Benefits

(1) The petitioner reported that crash tests demonstrate that there are bumper height mismatches between SUVs and passenger cars based on four tested MY 2008 SUVs and five tested MY 2004 SUVs. The petitioner reported that crash tests with greater bumper mismatches tend to produce damage with higher repair costs. Are these results representative of the current SUV fleet? Are the results likely to reflect the future mix of SUVs? Are there any comparable data available for other LTVs?

(2) Are there any estimates of the costs and benefits of extending the bumper standard to LTVs? Can these costs and benefits be estimated separately for SUVs, minivans, and pickups? Can these costs and benefits be estimated separately for unibody and body on frame SUVs, and for different SUVs by size? Can these costs and benefits be estimated separately for the front and rear bumpers? Also, what would be the specific safety benefits of extending the bumper standard to these vehicles (separate from other types of benefits)?

(3) Should NHTSA consider a more-extensive upgrade to the bumper standard for all light vehicles? Does the current standard adequately protect passenger cars, given the current and projected mix of crash partners? What are the estimated repair costs for vehicles with matching and mismatching bumpers at various crash speeds (for example, 2.5 and 5 mph)? Can the benefits and costs be estimated separately for the front and rear bumpers?

(4) Over the past decades, the passenger vehicle fleet has shifted from a fleet containing primarily cars to a fleet with a much higher percentage of light trucks. FHWA data show that growth in total miles driven by ''Two-axle, four-tire trucks,'' a category that includes most or all light trucks used as passenger vehicles, averaged 5.1% annually from 1985 through 2005.[2]

While the future mix of the fleet is uncertain, the agency seeks comment and data on the current usage patterns for light trucks. Since past agency decisions have focused on the utility of these vehicles, are there any data that provide the current usage patterns of light trucks? Are there vehicle features that distinguish light trucks which are primarily work vehicles from those that are used primarily as passenger vehicles?

(5) For an LTV, what is the probability of being involved in low speed crashes over the vehicle's lifetime? And what is the difference in repair and inconvenience costs for matching and mismatching vehicle bumpers? Also what is the frequency of vehicle crashes at various low speed impacts (for example, 2.5, 5, 7.5 and 10 mph)? Please provide data.

Vehicle Compatibility

Bumper mismatch represents one aspect of the broader issue of vehicle compatibility being addressed by NHTSA and the automotive industry. NHTSA is addressing self-protection in the near-term through improved side impact protection. On September 11, 2007 (72 FR 51908), the agency published a final rule upgrading the requirements of FMVSS No. 214, ''Side impact protection,'' to assure head and improved chest protection in side crashes. It will lead to the installation of new technologies such as side curtain air bags, which are capable of improving head and thorax protection to occupants of vehicles that crash into poles and trees and vehicles that are laterally struck by a higher-riding vehicle.

To improve partner protection for occupants in struck vehicles, NHTSA has conducted research enabling the effect of matching height of the frontal structures and stiffness. NHTSA is also pursuing refinement of its data collection to enhance the better understanding of the fleet geometry during crashes.

In addition to NHTSA's initiatives, the automobile industry has developed and committed to a set of voluntary design guidelines and performance criteria for enhancing vehicle-to-vehicle compatibility. One of the requirement options is for the light truck's primary frontal energy absorbing structure to geometrically overlap at least 50 percent of the zone established by NHTSA in its bumper standard (49 CFR part 581) for passenger cars. An alternative to this option is for a secondary structure to have a lower edge no higher than the bottom of the Part 581 bumper zone. By September 1, 2009, 100 percent of participating manufacturers' new light truck production intended for sale in the United States must comply with one of these approaches.

(6) IIHS reported that Ford has reduced the bumper height mismatch for one of its popular SUVs without compromising vehicle function on loading ramps and off-road. What data are available to support this statement? How have the design changes on this vehicle changed its approach and departure angles? What were the trade-offs, if any, in reducing the bumper-height mismatch for this vehicle? Would there be problems in redesigning other LTVs to comply with the bumper standard and what would these problems be? What will be the cost of redesigning LTVs to comply with the bumper standard?

(7) What data are available to indicate any significant safety problem with bumpers (or lack of rear bumper) on pick-up trucks, vans or utility vehicles, relating to mismatch problems, crash energy management, or side impact intrusion?

[2] Docket No. NHTSA–2008–0089.

(8) How much overlap in bumper height is needed between the front of one vehicle and the rear of another vehicle to eliminate or reduce bumper mismatch?

(9) Is there a way to define vehicle characteristics that require a higher bumper, such that some LTVs could be exempt from a bumper height standard, while others would be required to supply bumpers of certain heights?

(10) Please provide data to support incidences of underride or override reported as a specific cause of vehicle occupant injury or fatality. What is the availability of data indicating a safety problem that could have been addressed by a rulemaking addressing bumper heights of pickup trucks, vans or sport utility vehicles? Please provide specific details.

(11) To what extent does the U.S. fleet of LTVs meet the bumper standard requirements? What are the bumper costs, weights and heights (i.e. measurements of the bumper structural element from the ground) of the different types of LTVs in the U.S. fleet?

Pedestrian Safety

(12) Ongoing work on the pedestrian safety GTR has shown that changes in the vehicle geometry can have a profound effect on pedestrian leg injuries when struck by the front bumper. Any decision to change the bumper standard should therefore consider, if not provide, an in-depth analysis of pedestrian injuries and fatalities related to the bumper standard. Are there any analyses on the effect of vehicle frontal geometry changes on pedestrian safety that could happen as a result if LTVs were required to comply with the existing bumper standard? Please provide information on these analyses.

(13) What impact would a change to the bumper standard have on the potential for manufacturers to also meet the pedestrian safety GTR requirements? Please provide information on that data.

New Technologies

(14) Vehicle height could be adjusted for on or off-road usage, for example, by using air suspension. Recent development in materials and designs has helped introduce height adjustable suspension on some SUVs. What is the available data on the feasibility, costs and benefits of using vehicle height adjustment technologies to comply with a requirement for these vehicles to meet the current bumper standard? Are there any data on the extent to which SUVs operated on the public roads have their height adjusted to on-road position? Please provide information on these data.

Statutory Criteria

(15) As noted earlier, since trucks are excluded from bumper standards under the Cost Savings Act, any bumper standards for these vehicles would need to meet the criteria in the Safety Act. The current bumper standard was developed under the criteria of the Cost Savings Act. Could a straight forward extension of the bumper standard to trucks be justified under the criteria of the Safety Act alone? If so, how? If not, why not?

Public Participation

A. How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your primary comments must not be more than 15 pages long. (49 CFR 553.21). However, you may attach additional documents to your primary comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

Comments may also be submitted to the docket electronically on the Federal eRulemaking Portal at *http://www.regulations.gov*. Follow the online instructions for submitting comments.

B. How can I be sure my comments were received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

C. How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, send three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Include a cover letter supplying the information specified in our confidential business information regulation (49 CFR part 512).

In addition, send two copies from which you have deleted the claimed confidential business information to Docket Management at the address given above under **ADDRESSES**, or submit them electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.*

D. Will the agency consider late comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date.

E. How can I read the comments submitted by other people?

You may read the comments received by the Docket Management at the address given under **ADDRESSES**. The hours of the Docket are indicated above in the same location. To read the comments on the Internet, go to *http://www.regulations.gov*. Follow the online instructions for accessing the docket.

Please note that even after the comment closing date, we will continue to file relevant information on the docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the docket for new material.

Authority: 49 U.S.C. 32502; 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

Issued on: June 4, 2009.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E9–13531 Filed 6–12–09; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 74, No. 113
Monday, June 15, 2009

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2009–0013]

Notice of Request for a New Information Collection (Be Food Safe Campaign Pilot Surveys)

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and the Office of Management and Budget (OMB) regulations, the Food Safety and Inspection Service (FSIS) is announcing its intention to request a new information collection concerning surveys of consumers to assess the effectiveness of the *Be Food Safe* campaign mass media advertising pilot.

DATES: Comments on this notice must be received on or before August 14, 2009.

ADDRESSES: FSIS invites interested persons to submit comments on this notice. Comments may be submitted by either of the following methods:

- *Federal eRulemaking Portal:* This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov*. Follow the online instructions at that site for submitting comments.
- *Mail, including floppy disks or CD–ROMs, and hand- or courier-delivered items:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue, SW., Room 2534, South Agriculture Building, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2009–0013. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov*.

Docket: For access to comments received, go to the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday.

For Additional Information: Contact John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 1400 Independence Avenue, SW., Room 3532 South Building, Washington, DC 20250, (202) 720–0345.

SUPPLEMENTARY INFORMATION:

Title: Be Food Safe Campaign Pilot Surveys.

Type of Request: New information collection.

Abstract: FSIS has been delegated the authority to exercise the functions of the Secretary as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031, *et seq.*). FSIS protects the public by verifying that meat, poultry, and egg products are safe, wholesome, unadulterated, and correctly labeled and packaged.

FSIS is requesting a new information collection addressing the paperwork burden related to the collection of information for the *Be Food Safe* campaign pilot surveys.

FSIS has initiated the *Be Food Safe* campaign to educate consumers about the importance of safe food handling and how to reduce the risks associated with foodborne illness. As a part of the *Be Food Safe* campaign, the Agency plans to purchase advertising through Oklahoma City, Oklahoma, mass media outlets to promote safe food handling messages to consumers. The pilot surveys will measure consumer awareness and response. The Oklahoma City, Oklahoma, pilot surveys will test the effectiveness of the use of mass media advertising to promote the four *Be Food Safe* campaign safe food handling messages: clean, separate, cook, and chill. The pilot advertising and surveys will be targeted at women, aged 25 to 49, who are caregivers for children under the age of 10 or for older adults. FSIS identified these women as the target audience because they are the individuals who are most likely to be preparing food for themselves and others, and who have an incentive to listen to food safety messages and adapt or change their behaviors in response to these messages.

Before launching the mass media advertising pilot, 400 randomly selected women in the target audience will complete a 10 minute pre-test telephone survey. The pre-test survey will assess attitudes, beliefs, and behavior pertaining to food handling and food safety, media habits, and demographic and personal information (annual household income, education level, and ethnic origin). Approximately three to four weeks after the pre-test survey and immediately following the airing of the food safety messages, the post-test survey will be conducted with a second unique sample of 400 women. The post-test survey will assess awareness of and reactions to the advertising and its food safety messages, as well as gauge respondents' association of the advertising with USDA. The post-test survey will also inventory respondents' attitudes, intentions, and behaviors related to food safety (*i.e.*, clean, separate, cook, and chill).

The data collected in these surveys will allow FSIS to determine what knowledge members of the target audience had about food safety before the advertising, whether they were aware of the campaign, and, if they were, whether they changed any food preparation behaviors as a result of the advertising. The information collected will be used to refine the campaign's messages, materials, and approaches in order to improve its overall effectiveness. Addressing any issues identified during the evaluation of the advertising in Oklahoma City, Oklahoma, will help ensure that the use of mass media advertising nation-wide for the *Be Food Safe* campaign is successful in promoting proper food safety behavior among the general population.

FSIS has made the following estimates based upon an information collection assessment:

Estimate of Burden: FSIS estimates that it will take participants an average of 10 minutes per response and non-participants 2 minutes per response.

Respondents: Consumers.

Estimated Total No. of Respondents: 800 participants and 434 non-participants. (The Agency estimates that

approximately 434 consumers contacted by telephone will decline to participate in the surveys).

Estimated No. of Annual Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 144.8 hours.

Copies of this information collection assessment can be obtained from John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 1400 Independence, SW., Room 3532, South Bldg., Washington, DC 20250, (202)720–0345.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of FSIS's functions, including whether the information will have practical utility; (b) the accuracy of FSIS's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (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, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent to both FSIS, at the addresses provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253.

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.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov/regulations/2009_Notices_Index/index.asp*.

FSIS also will make copies of this **Federal Register** publication available through the *FSIS Constituent Update,* which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Update* is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The *Update* also is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader, more diverse audience.

In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/.*

Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Done at Washington, DC, on June 9, 2009.

Alfred V. Almanza,

Administrator.

[FR Doc. E9–13936 Filed 6–12–09; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Proposed Amendment of Rogue River, Umpqua and Winema National Forest (NF) Land and Resource Management Plans for the Pacific Connector Gas Pipeline

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement for Land and Resource Management Plan amendments.

SUMMARY: The USDA Forest Service is proposing to amend the Land and Resource Management Plans (LRMP) of the Rogue River (administered as the Rogue River-Siskiyou NF), Umpqua, and Winema (administered as the Fremont-Winema NF) National Forests to make provision for the proposed Pacific Connector Gas Pipeline (PCGP). The Federal Energy Regulatory Commission (FERC) is the lead agency for the environmental analysis of the construction and operation of the proposed natural gas pipeline (FERC Docket No. CP07–441–000). The FERC has prepared an environmental impact statement (EIS) that discusses the environmental impacts that could result from the construction and operation of the PCGP. FERC issued the FEIS for the PCGP on May 1, 2009.

The U.S. Department of Agriculture, Forest Service is a Cooperating Agency with the FERC in environmental analysis and preparation of the EIS for the PCGP. Certain features of the PCGP Project could not be made consistent with the LRMPs of the Rogue River, Umpqua and Winema National Forests because of the nature of pipeline construction. Therefore, in order to comply with the requirements of the National Forest Management Act (NFMA) the Forest Service must amend these LRMPs to make provision for the PCGP.

DATES: Comments concerning the scope of the analysis must be received by 30 days from the date this notice is published in the **Federal Register**. The draft environmental impact statement for amendment of forest plans is expected to be published in August, 2009 and the final environmental impact statement is expected in December, 2009.

ADDRESSES: Send written comments to: Pam Sichting, Umpqua National Forest, 2900 NW. Stewart Parkway, Roseburg, OR 97471. Comments may also be sent via e-mail to: *comments-pacificnorthwest-umpqua@fs.fed.us,* or via facsimile to 541–957–3495. Comments may be hand-delivered to the above address Monday through Friday, from 8 a.m. till 4:30 p.m., excluding legal holidays.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered; however, anonymous comments will not provide the respondent with standing to appeal the subsequent decision.

FOR FURTHER INFORMATION CONTACT: Pam Sichting at 541–957–3342 or by e-mail at *psichting@fs.fed.us*. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

Information concerning the construction and operation of the PCGP is contained in the FERC Jordon Cove-Pacific Connector Gas Pipeline Project Final Environmental Impact Statement. Also information about the Project is available from the FERC Office of External Affairs at 1–866–208 FERC (3372) or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search,'' and enter the docket number (CP07–441–000) excluding the last three digits in the Docket. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The

eLibrary link on the FERC Internet Web site also provides access to the texts of final documents issued by the Commission, such as Orders, notices, and rule makings.

Finally, PCGP has established a Web site for this project at *http://www.pacificconnectorgp.com/*. The Web site includes a project overview, timeline, safety and environmental information, and answers to frequently asked questions. You can also request additional information by e-mailing PCGP at *pacificconnector@williams.com* or by phone at 866–227–9249.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

Jordon Cove—Pacific Connector LP (Company) has proposed to construct a 36 inch natural gas pipeline from a liquified natural gas terminal at Coos Bay, Oregon, to an interstate gas transmission pipeline at Malin, Oregon. The PCGP will provide natural gas to southern Oregon, the Willamette Valley, California and Nevada. The Company submitted its application for the Pacific Connector Gas Pipeline (PCGP) project to the FERC on September 4, 2007. The applications were noticed in the **Federal Register** on September 13, 2007. The FERC authorizes the construction and operation of natural gas pipelines upon its determination that the pipeline fulfills a public need. The PCGP is proposed to cross the Rogue River, Umpqua and Winema National Forests on its route between Coos Bay and Malin, Oregon. Transmission of natural gas is a legitimate use of public land consistent with the Natural Gas Act, the Energy Policy Act of 2005 and the Forest Service's National Strategic Plan, 2007–2012.

A Notice of Intent (NOI) was issued by the FERC for construction and operation of the PCGP on June 23, 2006. Subsequently, a Draft Environmental Impact Statement (DEIS) was made available to the public on August 29, 2008. The public comment period on the DEIS closed on December 4, 2008. The FERC, as lead Federal agency, issued the Jordan Cove-Pacific Connector Gas Pipeline Final Environmental Impact Statement (FEIS) on May 1, 2009. For portions of the proposed PCGP that cross National Forest System lands, the Forest Service was a cooperating agency with the FERC in preparing the EIS for the Project. The FERC will use this FEIS to determine whether to issue a Certificate of Public Convenience and Necessity (Certificate). The Certificate authorizes construction and operation of the PCGP.

The Bureau of Land Management (BLM) issues and administers natural gas pipeline Right of Way Grants across all Federal lands, including the Forest Service, under the Mineral Leasing Act. The PCGP must have a Right of Way Grant to occupy any Federal lands in addition to the FERC's Certificate. To issue a Right of Way Grant across NFS lands, the BLM must obtain the consent of the Forest Service.

The National Forest Management Act (NFMA) requires all projects or activities on a given National Forest to be consistent with that Forest's LRMP. Certain features of this project could not be made consistent with the LRMPs of the Rogue River, Umpqua and Winema National Forests because of the nature of pipeline construction. Therefore, the Forest Service must amend these LRMPs in order to comply with the requirements of NFMA prior to consenting to the BLM's issuance of a Right of Way Grant. This Notice of Intent is for preparation of an EIS by the Forest Service that will consider and disclose the significance of these proposed amendments pursuant to 36 CFR 219.10(f)(1982 Version). The issue of whether a plan amendment is significant is guided by several factors, including the timing and duration of the proposed change, the location and size of the project, and how the proposed change may alter multiple-use goals and objectives for long-term land and resource management. In this analysis of significance, the Forest Service will rely on the FERC EIS for consideration of environmental consequences of construction and operation of the PCGP. These amendments of Forest Plans will only be implemented if the FERC authorizes the PCGP.

Proposed Action

This Proposed Action is to amend the LRMPs of the Rogue River, Umpqua and Winema National Forests to make provision for the PCGP.

Rogue River NF LRMP—The Forest Service proposes to amend the Rogue River NF LRMP as follows:

- By establishing a Forest Plan objective that states: While considering other multiple use values, the Forest shall facilitate and make provision for energy transmission via the Pacific Connector Gas Pipeline consistent with the Energy Policy Act of 2005, the Mineral Leasing Act, the Natural Gas Act, the Multiple Use Sustained Yield Act and the National Forest Management Act.
- By changing the designation of approximately 600 acres from the matrix land allocation to the LSR 227 land allocation. Standards and Guidelines for Developments in Late Successional Reserves (LSRs) require that new developments that may adversely affect LSRs be minimized or mitigated (*see* Standards and Guidelines for Management of Habitat for Late-Successional and Old-Growth Related Species Within the Range of the Northern Spotted Owl, Page C–17). This change in land allocation is proposed to mitigate the potential adverse impact of the PCGP on LSR 227 on the Rogue River National Forest. This amendment would change future management direction for the lands transferred from matrix to LSR. Additional mitigations for impacts to LSRs are included in the FERC FEIS in Appendix L for the PCGP.
- By changing the Visual Quality Objective (VQO) in the vicinity where the 75 foot wide PCGP Right of Way crosses the Big Elk Road from Foreground Retention to Foreground Partial Retention and allowing ten to fifteen years for amended visual quality objectives to be attained. Existing Standards and Guidelines for VQO in foreground retention where the PCGP crosses the Big Elk Road require VQO's be met within 1 year of completion of the project and that management activities not be visually evident (Rogue River NF LRMP, Page 4–72, Management Area 6). This amendment applies only to the Right of Way of the PCGP in the vicinity of the Big Elk Road and does not change future management direction for any other project. Additional mitigations for impacts to scenic resources are included in the PCGP FEIS Appendix L.
- By changing the Visual Quality Objective in the vicinity where the 75 foot wide PCGP Right of Way crosses the Pacific Crest Trail (PCT) from Foreground Partial Retention to modification and allowing ten to fifteen years for amended visual quality objectives to be attained. Existing Standards and Guidelines for Visual Quality Objectives in Foreground Partial Retention (Rogue River NF LRMP, Page 4–86, Management Area 7) where the PCGP crosses the Pacific Crest Trail, requires visual mitigations to meet the stated visual quality objective within 2 years of the completion of the project and that management activities be visually subordinate to the landscape. This amendment applies only to the Right of Way of the PCGP in the vicinity of the Pacific Crest Trail and does not change future management direction. Additional mitigations for visual impacts are included in the PCGP FEIS Appendix L.
- By waiving restrictions on detrimental soil conditions from displacement and compaction within the Right of Way of the PCGP in all management areas. Standards and

Guidelines for detrimental soil impacts in all affected management areas require that no more than 10% of the activity area be detrimentally compacted, puddled or displaced upon completion of a project. Additional mitigations for detrimental soil conditions are in the PCGP FEIS in Appendix L.

• By allowing the PCGP to cross the Restricted Riparian land allocation. This potentially affects two perennial streams and approximately 0.7 of an acre of the Restricted Riparian land allocation. Standards and Guidelines for the Restricted Riparian land allocation (Rogue River NF LRMP, page 4–308, Management Area 26) states that transmission corridors should be located outside of this management area. This amendment applies only to the project area of the PCGP and does not change future management direction. Mitigations for potential adverse impacts to the Restricted Riparian land allocation are included in the PCGP FEIS in Appendix L.

Umpqua NF LRMP—The Forest Service proposes to amend the Umpqua NF LRMP as follows:

• By changing the designation of approximately 585 acres from the matrix land allocation to the LSR 223 land allocation. Standards and Guidelines for Developments in Late Successional Reserves (LSRs) require that new developments that may adversely affect LSRs be minimized or mitigated (*see* Standards and Guidelines for Management of Habitat for Late-Successional and Old-Growth Related Species Within the Range of the Northern Spotted Owl, Page C–17). This change in land allocation is proposed to mitigate the potential adverse impact of the PCGP on LSR 223 on the Umpqua NF. This amendment would change future management direction for the lands transferred from matrix to LSR. Additional mitigations for impacts to LSRs are included in the PCGP FEIS in Appendix L.

• By amending Standards and Guidelines for Fisheries (Umpqua NF LRMP, page IV–33, Forest-Wide) to allow the removal of effective shading vegetation where perennial streams are crossed by the PCGP. This potentially affects approximately 5 perennial streams by removing an estimated 3 acres of effective shade. This amendment applies only to the 75 foot right of way where the PCGP crosses perennial streams and does not change future management direction at any other location. Mitigations for impacts on fisheries are included in the FERC FEIS for the PCGP in Appendix L.

• By waiving restrictions on detrimental soil conditions from displacement and compaction within the Right of Way of the PCGP. Standards and Guidelines for Soils (Umpqua NF LRMP, page IV–67) requires that not more than 20% of the project area should have detrimental compaction, displacement or puddling after completion of the project. This amendment applies only to the project area of the PCGP and does not change future management direction. Mitigations for soils with detrimental conditions are included in the PCGP FEIS in Appendix L.

• By amending prescriptions C2–I, C2–II, C2–III, C2–IV, C2–V, and C2–VI (Umpqua NF LRMP IV–169–182) to allow the PCGP to cross Riparian Areas and run parallel to streams. This potentially affects approximately 0.8 of an acre of Riparian Reserve. This amendment applies only to the project area of the PCGP and does not change future management direction. Mitigations for potential adverse impacts from Project stream crossings are included in the FEIS for the PCGP in Appendix L.

Winema National Forest—The Forest Service proposes to amend the Winema NF LRMP as follows:

• By amending Standards and Guidelines for Management Area 3 (Winema NF LRMP, page 4–103–4, Lands) to allow the 95 foot wide PCGP corridor in MA–3 from the Forest Boundary to the Clover Creek Road corridor. This corridor is approximately 1 mile long and affects and potentially affects approximately 11 acres. This amendment applies only to the project area of the PCGP and does not change future management direction. Mitigations for potential adverse impacts to scenic values are included in the FEIS for the PCGP in Appendix L.

• By allowing more time to achieve Visual Quality Objectives (VQO) in the vicinity where the 75 foot wide PCGP corridor crosses the Dead Indian Memorial Highway. Standards and Guidelines for Scenic Management, Foreground Retention (Winema NF LRMP, page 4–103, MA 3A, Foreground Retention) require visual quality objectives for a given location be achieved within 1 year of completion of the project. The Forest Service proposes to allow a longer time frame to meet the specified VQO at this location. This amendment applies only to the project area of the PCGP and does not change future management direction. Mitigations for visual impacts are included in the FEIS for the PCGP in Appendix L.

• By allowing more time to meet Visual Quality Objectives (VQO) for Scenic Management, Foreground Partial Retention where the PCGP is in the vicinity of the Clover Creek Road from approximate pipeline milepost 170 to 175. This potentially affects approximately 50 acres where it will take additional time to meet the Partial Retention standard. Standards and Guidelines for Foreground Partial Retention (Winema NF LRMP, page 4–107, MA 3B) requires that visual quality objectives be met within 1 year of completion of a project. The Forest Service proposes to allow a longer time frame to meet the amended VQO at this location. This amendment applies only to the project area of the PCGP in the vicinity of the Clover Creek Road and does not change future management direction. Mitigations for potential adverse impacts to scenic values are included in the FEIS for the PCGP in Appendix L.

• By waiving restrictions on detrimental soil conditions from displacement and compaction within the Right of Way of the PCGP in all management areas. Standards and Guidelines for detrimental soil impacts (Winema NF LRMP, page 4–73, 12–5) in all affected management areas require that no more than 20% of the activity area be detrimentally compacted, puddled or displaced upon completion of a project. Additional mitigations for detrimental soil conditions are in the PCGP FEIS in Appendix L.

• By waiving restrictions on detrimental soil conditions from displacement and compaction within the 75 foot wide Right of Way of the PCGP within Management Area 8 Riparian Area. This potentially affects approximately 0.5 miles of Management Area 8 Riparian Area totaling an estimated 9.6 acres. Standards and Guidelines for Soil and Water, Management Area 8 (Winema NF LRMP, page 4–137, 2) require that not more than 10% of the total riparian zone in an activity area be in a detrimental soil condition upon the completion of a project. This amendment applies only to the project area of the PCGP and does not change future management direction. Mitigations for potential adverse soil impacts are included in the PCGP FEIS in Appendix L.

Lead Agency

The Forest Service is the Lead Agency for amendments of Forest Plans.

Responsible Official

The Responsible Officials for amendments of the Rogue River, Umpqua and Winema LRMPs are respectively Forest Supervisors, Scott D. Conroy, Clifford J. Dils and Karen Shimamoto.

Nature of Decision To Be Made

The nature of the decision to be made is whether the respective LRMPs would be amended if the FERC authorizes the PCGP.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. With this NOI, the Forest Service is requesting public comments on the proposed amendments of the Rogue River, Umpqua and Winema NF LRMPs.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions. The submission of timely and specific comments can affect a reviewer's ability to participate in subsequent administrative appeal or judicial review.

Dated: June 8, 2009.

Clifford J. Dils,

Forest Supervisor.

[FR Doc. E9–14045 Filed 6–12–09; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2009–0005]

Notice of Availability of an Evaluation of the Highly Pathogenic Avian Influenza Subtype H5N1 Status of Hungary

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an evaluation of the animal health status of two counties (Bács-Kiskun and Csongrád) in Hungary relative to the H5N1 subtype of highly pathogenic avian influenza (HPAI). The evaluation presents our assessment of the HPAI H5N1 detection, control, and eradication measures in place in those two counties in Hungary during outbreaks of HPAI H5N1 in 2006 and 2007. If, after the close of the comment period, APHIS can identify no additional risk factors that would indicate that domestic poultry in these two counties continue to be affected with HPAI H5N1, we would conclude that the importation of live birds, poultry carcasses, parts of carcasses, and eggs (other than hatching eggs) of poultry, game birds, or other birds from Bács-Kiskun and Csongrád Counties in Hungary presents a low risk of introducing HPAI H5N1 into the United States.

DATES: We will consider all comments that we receive on or before July 15, 2009.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetial&d=APHIS-2009-0005* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS–2009–0005, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2009–0005.

Reading Room: You may read any comments that we receive on the evaluation in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room house are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Javier Vargas, Case Manager, Regionalization Evaluation Services Staff, National Center for Import and Export, VS, APHIS, 4700 River Road, Unit 38, Riverdale, MD 20737–1231; (301) 734–0756.

SUPPLEMENTARY INFORMATION:

Background

Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) has the authority to prohibit or restrict the importation into the United States of animals, animal products, and other articles in order to prevent the introduction of diseases and pests into the U.S. livestock and poultry populations.

Highly pathogenic avian influenza (HPAI) is a highly infectious disease of poultry. The H5N1 subtype of HPAI is an extremely infectious and fatal form of the disease. HPAI can strike poultry quickly without any warning signs of infection and, once established, can spread rapidly from flock to flock. HPAI viruses can also be spread by manure, equipment, vehicles, egg flats, crates, and people whose clothing or shoes have come in contact with the virus. HPAI viruses can remain viable at moderate temperatures for long periods in the environment and can survive indefinitely in frozen material. The H5N1 subtype of HPAI has been of particular concern because it has crossed the species barrier and caused disease in humans.

From June 9 to July 12, 2006, Hungary's Department for Food Chain Safety and Animal Health (DFCSAH) reported to the World Organization for Animal Health (OIE) seven outbreaks of HPAI H5N1 in domestic waterfowl in Bács-Kiskun County.

On January 21 and January 26, 2007, the DFCSAH detected two outbreaks of HPAI H5N1 in commercial flocks of geese in Csongrád County.

To prevent the introduction of HPAI H5N1 into the United States, APHIS designated Hungary's counties of Bács-Kiskun and Csongrád as regions where HPAI was considered to exist and prohibited the importation of birds, poultry, and poultry products from these regions into the United States.

In a document titled ''APHIS' Evaluation of the Status of High Pathogenicity Avian Influenza H5N1 Virus in Hungary'' (November 2008), we present the results of our evaluation of the status of HPAI H5N1 in domestic poultry in Hungary in light of the actions taken by Hungarian authorities since the outbreaks, and document our analysis of the risk associated with allowing the importation of birds, poultry, and poultry products from Bács-Kiskun and Csongrád Counties, Hungary, into the United States in the aftermath of the outbreaks.

We based our evaluation of the HPAI H5N1 status of the two counties in Hungary on the following critical factors:

- Hungary had been free of outbreaks of the H5N1 subtype in its domestic poultry for at least 3 months as a result of effective control measures taken by a competent veterinary infrastructure;
- HPAI H5N1 was a notifiable disease in Bács-Kiskun and Csongrád Counties at the time of the outbreaks;
- Hungary had an ongoing disease awareness program in place at the time of the outbreaks;

- Hungary investigated notified or suspected occurrences of the disease;
- Hungary had an effective surveillance program in place that supported the detection and investigation of outbreaks;
- Diagnostic and laboratory capabilities within Bács-Kiskun and Csongrád Counties were both adequate and effective;
- Hungary undertook appropriate eradication and control measures and movement restrictions in response to the outbreaks to prevent further spread of disease; and
- Procedures used for repopulation of affected premises in Bács-Kiskun and Csongrád Counties included monitoring to demonstrate that HPAI H5N1 had been eradicated from the premises.

Based on these factors, which are consistent with the OIE's recommendations for reinstatement of trade with a country that has experienced an HPAI H5N1 outbreak,[1] our evaluation concludes that DFCSAH was able to effectively control and eradicate HPAI H5N1 in the domestic poultry population and that the Hungarian authorities have adequate control measures in place to rapidly identify, control, and eradicate the disease should it be reintroduced into Hungary in either wild birds or domestic poultry.

We are making the evaluation available for public comment. We will consider all comments that we receive on or before the date listed under the heading **DATES** at the beginning of this notice.

If, after the close of the comment period, APHIS can identify no additional risk factors that would indicate that domestic poultry in Bács-Kiskun and Csongrád Counties in Hungary continue to be affected with HPAI H5N1, we would conclude that the importation of live birds, poultry carcasses, parts of carcasses, and eggs (other than hatching eggs) of poultry, game birds, or other birds from Hungary presents a low risk of introducing HPAI H5N1 into the United States.

The evaluation may be viewed on the Regulations.gov Web site or in our reading room (see **ADDRESSES** above for a link to Regulations.gov and information on the location and hours of the reading room). You may request paper copies of the evaluation by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the title of the evaluation when requesting copies.

Authority: 7 U.S.C. 450, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR. 2.22, 2.80, and 371.4.

Done in Washington, DC, this 9th day of June 2009.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–14004 Filed 6–12–09; 8:45 am]

BILLING CODE 3410–34–P

[1] OIE (2008). Risk Analysis. In *Terrestrial Animal Health Code,* 17th edition. Paris, World Organization for Animal Health: Chapter 2.2 on Import Risk Analysis; Chapter 10.4 on Avian Influenza. To view the document on the Internet, go to *http://www.oie.int/emg/normes/mcode/A-summry.htm?e1d11.*

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Minnesota Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning and briefing meeting of the Minnesota Advisory Committee to the Commission will convene at 9 a.m. and adjourn at 12 p.m. on June 25, 2009, at Johnson & Condon, P.A., 7401 Metro Boulevard, Edina, Minnesota 55439. The purpose of the meeting is to conduct a SAC orientation, hold a briefing on fair housing in Minnesota, and plan future activities.

Members of the public are entitled to submit written comments. The address is 55 W. Monroe St., Suite 410, Chicago, IL 60603. Persons wishing to e-mail their comments, or to present their comments verbally at the meeting, or who desire additional information should contact Carolyn Allen, Administrative Assistant at (312) 353–8311 or by e-mail: *callen@usccr.gov.*

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Midwestern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov*, or to contact the Midwestern Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the rules and regulations of the Commission and FACA.

Dated in Washington, DC, June 9, 2009.

Christopher Byrnes,

Chief, Regional Programs Coordination Unit.

Agenda and Notice of Public Meeting of the Kansas Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the Kansas Advisory Committee to the Commission will convene by conference call at 2 p.m. and adjourn at approximately 3 p.m. on Thursday, June 25, 2009. The purpose of this meeting is to discuss the SAC transcript concerning ''Kansas's Caucus Process and Related Voting Rights Issues'' and ''Enforcement of Employment Civil Rights Laws''

This meeting is available to the public through the following toll-free call-in number: (866) 364–7584, conference call access code number 11616548. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and contact name Farella E. Robinson.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Corrine Sanders of the Central Regional Office and TTY/TDD telephone number, by 4 p.m. on June 19, 2009.

Members of the public are entitled to submit written comments. The address is U.S. Commission on Civil Rights, 400 State Avenue, Suite 908, Kansas City, Kansas 66101. Comments may be e-mailed to *frobinson@usccr.gov.* Records generated by this meeting may be inspected and reproduced at the Central Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov*, or to contact the Central Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the rules and regulations of the Commission and FACA.

Dated in Washington, DC, June 9, 2009.

Christopher Byrnes,
Chief, Regional Programs Coordination Unit.

[FR Doc. E9–13931 Filed 6–12–09; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XP70

Fisheries in the Western Pacific; Amended Marine Conservation Plan for Pacific Insular Areas; Western Pacific Sustainable Fisheries Fund

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

ACTION: Notice of agency decision.

SUMMARY: NMFS announces approval of an amended marine conservation plan (MCP) for Pacific Insular Areas other than American Samoa, Guam, and the Northern Mariana Islands.

DATES: This agency decision is effective April 11, 2008, through April 10, 2011.

ADDRESSES: Copies of the MCP are available from the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808–522–8220, fax 808–522–8226.

FOR FURTHER INFORMATION CONTACT: Jarad Makaiau, Sustainable Fisheries, NMFS Pacific Islands Regional Office, 808–944–2108.

SUPPLEMENTARY INFORMATION: Under Section 204(e) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Secretary of State, with the concurrence of the Secretary of Commerce (Secretary) and in consultation with the Council, may negotiate and enter into a Pacific Insular Area fishery agreement (PIAFA) to allow foreign fishing within the U.S. Exclusive Economic Zone (EEZ) adjacent to any Pacific Insular Area other than American Samoa, Guam or the Northern Mariana Islands, which, by definition, does not include the State of Hawaii. Before entering into a PIAFA, the Council must develop a three-year Marine Conservation Plan (MCP) providing details on uses for any funds collected by the Secretary under the PIAFA.

The Magnuson-Stevens Act authorizes that any payments received under a PIAFA, in support of conservation and management objectives in an MCP, shall be deposited into the Western Pacific Sustainable Fisheries Fund (Fund) for use by the Council. Amounts received by the Secretary attributable to fines and penalties imposed under the Magnuson-Stevens Act for violations by foreign vessels occurring within the EEZ off any Pacific Insular Area (other than American Samoa, Guam or the Northern Mariana Islands) shall also be deposited into the Fund for use by the Council.

An MCP must be consistent with the Council's fishery management plans, must identify conservation and management objectives (including criteria for determining when such objectives have been met), and must prioritize planned marine conservation projects. Although no foreign fishing is contemplated at this time, the Council developed an MCP for the Pacific Insular Areas, here defined as the U.S. EEZ around Johnston and Palmyra Atoll, Kingman Reef and Jarvis, Howland, Baker, and Wake Islands. These areas are sometimes known as the Pacific remote island areas.

In August 2007, the Council approved an MCP for the Pacific Insular Area and recommended its submission to the Secretary for approval. NMFS, as designee of the Secretary, received the MCP on November 6, 2007. That MCP, dated August 27, 2007, satisfied the requirements of Magnuson-Stevens Act Section 204(e), and was approved for the three-year period April 11, 2008, through April 10, 2011 (73 FR 21111; April 18, 2008).

At its 144th meeting in March 2009, the Council approved amendments to the MCP. On April 3, 2009, the Council submitted to NMFS the amended MCP, dated March 2009, for approval. The amended MCP revises the previously-approved August 2007 MCP by streamlining the descriptions of the projects associated with the MCP's conservation and management objectives, and also includes evaluative criteria for each program or project.

The amended MCP contains seven conservation and management objectives, listed below. These objectives are based upon the Council's guiding principles and five year Program Plan, and are consistent with the Council's fishery management plans:

1. Support quality research and obtain the most complete scientific information available to assess and manage fisheries;
2. Promote an ecosystem approach in fisheries management, including reducing waste in fisheries and minimizing impacts on marine habitat and impacts on protected species;
3. Conduct education and outreach to foster good stewardship principles and broad and direct public participation in the Council's decision making process;
4. Recognize the importance of island cultures and traditional fishing practices in managing fishery resources and foster opportunities for participation;
5. Promote responsible domestic fisheries development to provided long term economic growth and stability and local food production;
6. Promote regional cooperation to manage domestic and international fisheries; and
7. Encourage development of technologies and methods to achieve the most effective level of monitoring, control and surveillance and to ensure safety at sea.

The amended MCP identifies major task areas that include data collection and monitoring, fishery management, social economic research and assessment, policy development, protected species conservation, public outreach, media activities and products, meeting and event participation, workshops, plans and training, infrastructure development, etc. Projects are ranked in order of priority and would aid in fulfilling the Council's conservation and management objectives. The MCP also outlines a process by which the Council's Executive Committee could revisit the project ranking to adapt to changing management needs.

This notice announces that NMFS has determined that the amended MCP for the Western Pacific Sustainable Fisheries Fund satisfies the requirements of the Magnuson-Stevens Act and approves the amended MCP for the three-year period April 11, 2008, through April 10, 2011.

Dated: June 9, 2009.

Kristen C. Koch,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E9–14032 Filed 6–12–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XP74

Incidental Taking of Marine Mammals; Taking of Marine Mammals Incidental to the Explosive Removal of Offshore Structures in the Gulf of Mexico

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

ACTION: Notice; issuance of a letter of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) and implementing regulations, notification is hereby given that NMFS has issued a one-year Letter of Authorization (LOA) to take marine mammals incidental to the explosive removal of offshore oil and gas structures (EROS) in the Gulf of Mexico.

DATES: This authorization is effective from June 17, 2009 through June 16, 2010.

ADDRESSES: The application and LOA are available for review by writing to P. Michael Payne, Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3235 or by telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**), or online at: http://www.nmfs.noaa.gov/pr/permits/incidental.htm. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Howard Goldstein or Ken Hollingshead, Office of Protected Resources, NMFS, 301–713–2289.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the NMFS to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region, if certain findings are made by NMFS and regulations are issued. Under the MMPA, the term ''taking'' means to harass, hunt, capture, or kill or to attempt to harass, hunt capture, or kill marine mammals.

Authorization for incidental taking, in the form of annual LOAs, may be granted by NMFS for periods up to five years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals, and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat (i.e., mitigation), and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating rounds, and areas of similar significance. The regulations also must include requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking incidental to EROS were published on June 19, 2008 (73 FR 34889), and remain in effect through July 19, 2013. For detailed information on this action, please refer to that **Federal Register** notice. The species that applicants may take in small numbers during EROS activities are bottlenose dolphins (*Tursiops truncatus*), Atlantic spotted dolphins (*Stenella frontalis*), pantropical spotted dolphins (*Stenella attenuata*), Clymene dolphins (*Stenella clymene*), striped dolphins (*Stenella coeruleoalba*), spinner dolphins (*Stenella longirostris*), rough-toothed dolphins (*Steno bredanensis*), Risso's dolphins *(Grampus griseus*), melon-headed whales (*Peponocephala electra*), short-finned pilot whales (*Globicephala macrorhynchus*), and sperm whales (*Physeter macrocephalus*).

Pursuant to these regulations, NMFS has issued an LOA to SPN Resources, LLC. Issuance of the LOAs is based on a finding made in the preamble to the final rule that the total taking by these activities (with monitoring, mitigation, and reporting measures) will result in no more than a negligible impact on the affected species or stock(s) of marine mammals and will not have an unmitigable adverse impact on subsistence uses. NMFS also finds that the applicant will meet the requirements contained in the implementing regulations and LOA, including monitoring, mitigation, and reporting requirements.

Dated: June 9, 2009.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–14024 Filed 6–12–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–944]

Certain Oil Country Tubular Goods from the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 15, 2009.

FOR FURTHER INFORMATION CONTACT: Joseph Shuler or Nancy Decker, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1293 and (202) 482–0196, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 5, 2009, the Department of Commerce (the ''Department'') initiated an investigation of certain oil country tubular goods from the People's Republic of China (''PRC''). *See Certain Oil Country Tubular Goods from the People's Republic of China: Initiation of Countervailing Duty Investigation*, 74 FR 20678 (May 5, 2009). Currently, the preliminary determination is due no later than July 2, 2009.

Postponement of Due Date for Preliminary Determination

Under section 703(c)(1)(B) of the Tariff Act of 1930, as amended (the ''Act''), the Department may extend the period for reaching a preliminary determination in a countervailing duty investigation until no later than the 130th day after the date on which the administering authority initiates an investigation, if the administration determines that the parties are cooperating and the case is extraordinarily complicated. The Department finds that the instant case is extraordinarily complicated by reason of the number and complexity of the alleged countervailable subsidy practices, the need to determine the extent to which particular countervailable subsidies are used by individual manufacturers, producers, and exporters, and the number of firms whose activities must be investigated. Accordingly, we are fully extending the due date for the preliminary determination to no later than 130 days after the day on which the investigation was initiated (*i.e.*, September 5, 2009). However, September 5, 2009, falls on a Saturday and it is the Department's long–standing practice to issue a determination the next business day when the statutory deadline falls on a weekend, federal holiday, or any other day when the Department is closed. *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). Accordingly, the deadline for completion of the preliminary determination is now no later than September 8, 2009.

This notice is issued and published pursuant to section 703(c)(2) of the Act and 19 CFR 351.205(e).

Dated: June 8, 2009.

Carole Showers,

Acting Deputy Assistant Secretary For Policy and Negotiations.

[FR Doc. E9–14037 Filed 6–12–09; 8:45 am]

BILLING CODE 3510–DS–S

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to the Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Comments Must Be Received on or Before:* 7/13/2009.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259. *For Further Information or To Submit Comments Contact:* Lou Bartalot, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product or service will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

NSN: 7530–00–NIB–0878—Folder, File;
NSN: 7530–00–NIB–0879—Folder, File;
NSN: 7530–00–NIB–0889—Folder, File;
NPA: Association for Vision Rehabilitation and Employment, Inc., Binghamton, NY;
Contracting Activity: Federal Acquisition Service, GSA/FSS OFC SUP CTR—Paper Products, New York, NY.
Coverage: A-list for the total government requirement as aggregated by the General Services Administration.
NSN: 7530–00–NIB–0840—Label, Pressure Sensitive Adhesive;
NSN: 7530–00–NIB–0894—Label, Pressure Sensitive Adhesive;
NSN: 7530–00–NIB–0897—Label, Pressure Sensitive Adhesive.
Coverage: B-list for the Broad government requirement as aggregated by General Services Administration.
NSN: 7530–00–NIB–0841—Label, Pressure Sensitive Adhesive;
NSN: 7530–00–NIB–0898—Label, Pressure Sensitive Adhesive;
NSN: 7530–00–NIB–0896—Label, Pressure Sensitive Adhesive;
NSN: 7530–00–NIB–0892—Label, Pressure Sensitive Adhesive;
NSN: 7530–00–NIB–0893—Label, Pressure Sensitive Adhesive;
NSN: 7530–00–NIB–0895—Label, Pressure Sensitive Adhesive;
NSN: 7530–00–NIB–0899—Label, Pressure Sensitive Adhesive;
NSN: 7530–00–NIB–0900—Label, Pressure Sensitive Adhesive.
NPA: North Central Sight Services, Inc., Williamsport, PA.
Contracting Activity: Federal Acquisition Service, GSA/FSS OFC SUP CTR—Paper Products, New York, NY.
Coverage: A-list for the total government requirement as aggregated by the General Services Administration.
NSN: 7510–00–NIB–0862—Tape, Pressure Sensitive .75X1000 6 rolls per pack;
NSN: 7510–00–NIB–0863—Tape, Pressure Sensitive .75X1000 6 rolls per pack;
NSN: 7510–00–NIB–0864—Tape, Pressure Sensitive .75X1000 10 rolls per pack.
NPA: Alphapointe Association for the Blind, Kansas City, MO.
Contracting Activity: Federal Acquisition Service, GSA/FSS OFC SUP CTR—Paper Products, New York, NY.
Coverage: A-list for the total government requirement as aggregated by the General Services Administration.
NSN: 7520–00–NIB–2016—Highlighter, Biodegradable.
NPA: West Texas Lighthouse for the Blind, San Angelo, TX.
Contracting Activity: Federal Acquisition Service, GSA/FSS OFC SUP CTR—Paper Products, New York, NY.
Coverage: A–list for the total government requirement as aggregated by the General Services Administration.
NSN: 3990–00–NSH–0075—Pallet, Demo, 24″ × 48″.
NPA: Bona Vista Programs, Inc., Kokomo, IN.
Contracting Activity: Dept Of The Army, SR W39Z STK REC ACCT–CRANE AAP.
Coverage: C–List for the total requirement of Dept Of The Army, Crane IN.
NSN: 7220–00–NSH–0007—Mat, Floor;
NSN: 7220–00–NSH–0010—Mat, Floor;
NSN: 7220–00–NSH–0009—Mat, Floor.
NPA: Northeastern Michigan Rehabilitation and Opportunity Center (NEMROC), Alpena, MI.
Contracting Activity: Federal Acquisition Service, GSA/FAS Southwest Supply Center (QSDAC), Fort Worth, TX.
Coverage: B-list for the broad government requirement as aggregated by General Services Administration.
NSN: MR 520—3 Pack Holiday Soy Candle.
NPA: Industries for the Blind, Inc., West Allis, WI.
Contracting Activity: Military Resale-Defense Commissary Agency.
Coverage: C–List for the total requirement of Defense Commissary Agency.
NSN: MR 300—Camelbak Thermos Shippers;
NSN: MR 832—Tomato Saver Shippers.
NPA: Winston-Salem Industries for the Blind, Winston-Salem, NC.
Contracting Activity: Military Resale-Defense Commissary Agency.
Coverage: C–List for the total requirement of Defense Commissary Agency.

Services

Service Type/Location

Custodial Services: U.S. Capitol Building, Capitol Visitor Center, 2nd and D Street, SW., Washington DC.
NPA: Fedcap Rehabilitation Services, Inc., New York, NY.
Contracting Activity: Architect of the Capitol, Washington, DC.

Service Type/Location:

Grounds Maintenance Service:
Schofield Barracks, Schofield, HI;
Helemano Military Reservation, Wahiawa, HI;
Tripler Army Medical Center, Tripler AMC, HI;
Wheeler Army Air Field, Schofield, HI;
Fort Shafter, HI.
NPA: Lanakila Rehabilitation Center, Honolulu, HI.
Contracting Activity: Dept of the Army, Ft Shafter, HI.

Service Type/Location

Facility Management:
Schofield Barracks, Schofield, HI;
Helemano Military Reservation, Wahiawa, HI;
Tripler Army Medical Center, Tripler AMC, HI;
Wheeler Army Air Field, Schofield, HI;
Fort Shafter, HI.

NPA: Goodwill Contract Services of Hawaii, Inc., Honolulu, HI.

Contracting Activity: Dept of the Army, Ft Shafter, HI.

Lou Bartalot,

Director, Compliance.

[FR Doc. E9–13885 Filed 6–12–09; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability for Donation of the Patrol Combatant ex-CANON (PG 90), Destroyer ex-FORREST SHERMAN (DD 931), and Aircraft Carrier ex-RANGER (CV 61)

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy (DoN) hereby gives notice of the availability for donation, under the authority of 10 U.S.C. 7306, of the patrol combatant ex-CANON (PG 90), destroyer ex-FORREST SHERMAN (DD 931), both located at Inactive Ships On-site Maintenance Office, Philadelphia, PA, and aircraft carrier ex-RANGER (CV 61), located at Inactive Ships On-site Maintenance Office, Bremerton, WA. Availability for donation of these vessels was previously announced in **Federal Register** notices dated August 13, 2002, for ex-CANON (PG 90), September 11, 2001, and June 18, 2004, for ex-FORREST SHERMAN (DD 931), and March 22, 2004, for ex-RANGER (CV 61). This notice cancels and supersedes **Federal Register** notices Vol. 67, No. 156, Vol. 66, No. 176, Vol. 69, No. 117, and Vol. 69, No. 55.

DATES: The deadline for submission of a Letter of Intent and Executive Summary is sixty (60) days from the date of this notice.

SUPPLEMENTARY INFORMATION: Under the authority of 10 U.S.C. 7306, eligible recipients for the transfer of a vessel for donation include: (1) Any State, Commonwealth, or possession of the United States or any municipal corporation or political subdivision thereof; (2) the District of Columbia; or (3) any not-for-profit or nonprofit entity.

The transfer of a vessel for donation under 10 U.S.C. 7306 shall be at no cost to the United States Government.

The donee will be required to maintain ex-CANON, ex-FORREST SHERMAN, or ex-RANGER as a static display in a condition that is satisfactory to the Secretary of the Navy.

The Navy has revised its ship donation application process, which applies to ex-CANON, ex-FORREST SHERMAN, and ex-RANGER. Phase I documentation consists of a Letter of Intent and an Executive Summary which must be submitted within sixty (60) days of this **Federal Register** notice. The Navy will provide written notification to those whose Phase I documentation is acceptable to submit Phase II documentation consisting of Business/Financial and Environmental plans, within twelve (12) months of such notice. The Navy will provide written notification to those whose Phase II documentation is acceptable to submit Phase III documentation consisting of Towing, Mooring, Maintenance, and Curatorial/Museum plans, within six (6) months of such notice. Applicants who fail to meet the minimum requirements at any phase may be disqualified from participating in the next phase of these ship donation opportunities.

Actions Required: Within sixty (60) days of this **Federal Register** notice, applicants must complete and submit Phase I documentation for ex-CANON, ex-FORREST SHERMAN, or ex-RANGER, consisting of a Letter of Intent and Executive Summary. The minimum requirements are identified herein. Applicants are advised to take special notice of page length limitations for Phase I documentation.

Phase I of the ship donation application process must include the following documentation addressing the following areas:

a. Letter of Intent: The Letter of Intent must include the following:

(1) Identify the specific vessel sought for donation (ex-CANON, ex-FORREST SHERMAN, or ex-RANGER);

(2) Include a statement that the vessel will be used as a static public display as a museum or memorial without activating any system aboard the vessel for the purpose of navigation or movement of the vessel;

(3) Identify the proposed permanent berthing location for the vessel to be used as a static public display, identify the current property owner of the proposed permanent berthing location, and provide evidence from the current property owner of its intent to make the proposed permanent berthing location available to the applicant;

(4) Include a statement that the applicant understands and agrees that it will be solely responsible to obtain, repair, and maintain the vessel used as a static public display at its own expense, in a condition satisfactory to the Secretary of the Navy, in compliance with all Federal, State, and local laws, that no expense shall be incurred by the United States Government, and that the applicant will not seek financing from the United States Government;

(5) Include a statement that the applicant understands and agrees to take delivery of the vessel in an ''as is/where is'' condition, and assume all costs associated with the vessel's removal from Navy custody, including, but not limited to, towing, insurance, berthing, restoration, maintenance and repair, periodic dry-docking, and, ultimately, ship dismantling in the United States;

(6) Include a statement that the applicant will not use the vessel as a static public display other than as stated, or destroy, transfer, or otherwise dispose of such vessel or any artifacts without the written approval of the Secretary of the Navy or his designee;

(7) Include a statement that the applicant will agree to indemnify, hold harmless, and defend the Government from and against all claims, demands, actions, liabilities, judgment costs, and attorney's fees, arising out of, claimed on account of, or in any manner predicated upon personal injury, death, or property damage caused by or resulting from possession and/or use of the donated property;

(8) If the applicant is not a State, Commonwealth, or possession of the United States, or a political subdivision or municipal corporation thereof, or the District of Columbia, the applicant must provide a copy of a determination letter by the Internal Revenue Service that the applicant is exempt from tax under the Internal Revenue Code, Section 501(c)(3), or submit evidence that the applicant has filed the appropriate documentation in order to obtain tax exempt status;

(9) If the applicant asserts that it is a corporation or an association whose charter or articles of agreement deny it the right to operate for profit, the applicant must provide a properly notarized copy of its charter, a certificate of incorporation, and a copy of the organization's by-laws;

(10) Provide a notarized copy of the resolution or other action of the applicant's governing board authorizing the person signing the Letter of Intent to represent the organization and to sign on its behalf for the purpose of obtaining the vessel;

(11) Provide a signed copy of the Assurance of Compliance Form in compliance with Title VI of the Civil

Rights Act of 1964. See the Ship Donation web page for the Civil Rights Compliance (Assurance of Compliance) Form located as Appendix D to Ship Donation Program Manual (NAVSEA Instruction 4520.1B), at this link: *http://teamships.crane.navy.mil/Inactiveships/Donation/applicationinfo.htm;*

b. Executive Summary: The applicant shall limit the Executive Summary submission to eleven (11) pages total. The Executive Summary must address the following:

(1) Organizational Description: Provide an overview of the applicant's organizational structure, functional components, and names of current key leadership and staff positions;

(2) Market Analysis: Summarize the local and regional market demand for additional museum/memorial attractions. Succinctly define the target market. Discuss the available demographic information, the existing competition in the local and regional area for visitor museum/memorial attractions, visitor attendance numbers for existing area museum/memorial attractions, and projected visitor attendance for the applicant's proposal;

(3) Marketing and Sales Outreach: Outline the overarching marketing strategy for integrating the proposed ship museum/memorial into the local and regional community, and how the applicant plans to penetrate that market. Provide an overview of customer and market analysis, marketing communications, and sales strategies;

(4) Museum/Memorial Services Assessment: Discuss the benefits the proposed ship museum/memorial will offer to visitors/customers and the community. Identify challenges anticipated in establishing a new ship museum/memorial. Cite available data/evidence regarding the willingness of a defined customer base to pay for the services being offered;

(5) Funding: Provide a Rough Order of Magnitude (ROM) cost estimate that the applicant anticipates will be required to cover all costs associated with the acquisition/start-up costs of the proposed ship donation transfer, including mooring, towing, environmental surveys and cleanup, dredging, museum development, maintenance, refurbishment of the vessel to be used as a static public display, pier, insurance, legal services, etc. Separately provide a ROM cost estimate of the annual operational and support costs of the proposed ship museum/memorial. In addition, provide a ROM cost estimate of the applicant's cost of dismantling the vessel in the United States upon completion of its use as a museum/memorial or in the event of bankruptcy or inability to properly maintain the vessel to be used as a static public display;

(6) Financial: Provide a summary of projected sources of income to support both the acquisition/start-up costs and the annual operational and support costs for the vessel used as a static public display;

(7) Environmental: Discuss the challenges anticipated in meeting the environmental requirements regarding hazardous materials, maintenance of polychlorinated biphenyls (PCB) containing materials, endangered species, dredging disposal, and required environmental permits from all cognizant authorities;

(8) Mooring: Discuss the approach to be proposed for the mooring plan for the vessel used as a static public display, including location, design, and mooring system in accordance with U.S. Coast Guard (USCG) requirements;

(9) Towing: Discuss the approach to be proposed for relocating the vessel from its current location to the proposed permanent berth location in conformance with the Navy Tow Manual and USCG requirements;

(10) Maintenance: Discuss the challenges in restoring and preserving for an indefinite period the steel-hulled vessel proposed as a ship museum/memorial; and

(11) Curatorial/Museum: Discuss the approach to be proposed for display and interpretation of the vessel used as a static public display, including collection management procedures.

The Phase I documentation (Letter of Intent and Executive Summary) must be submitted to the Navy Inactive Ships Program in hard copy and electronically on a CD–ROM in either an MS Word document or word searchable PDF format. The Phase I documentation must be mailed to: The Columbia Group, 1201 M Street, SE., Suite 020, Washington, DC 20003; marked for the Ship Donation Project Manager (PMS 333). Applicants are discouraged from photocopying, cutting and pasting, and generally providing information which is easily accessible via the internet and/or is already in the public domain. Original content which is specific to the vessel being donated is of greatest importance to the evaluators.

If the DoN does not receive satisfactory Phase I documentation (Letter of Intent and Executive Summary) from any applicant, the DoN reserves the right to enter into discussions with all applicants in an effort to achieve at least one acceptable submission; or remove the vessel from donation consideration and proceed with disposal of the vessel.

Note that any future changes to guidelines, policy, and law will be reflected in the guidance published on the DoN Ship Donation web page located at: http://teamships.crane.navy.mil/Inactiveships/Donation. Guidance and requirements posted on the Ship Donation Web page shall take precedence over the contents of the **Federal Register** notice. Applicants are advised to read and follow the Web page guidance for the most current set of ship donation requirements.

For Further Information and Submission of Ship Donation Applications, Contact: Ms. Elizabeth Freese of the Naval Sea Systems Command, Navy Inactive Ships Program (PMS 333), telephone number 202–781–4423. Mailed correspondence should be addressed to: The Columbia Group, 1201 M Street SE., Suite 020, Washington, DC 20003; marked for Ship Donation Project Manager (PMS 333).

Dated: June 8, 2009.

A.M. Vallandingham,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E9–14043 Filed 6–12–09; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information; Underground Railroad Educational and Cultural Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2009

Catalog of Federal Domestic Assistance (CFDA) Number: 84.345A.

Dates:

Applications Available: June 15, 2009.

Deadline for Transmittal of Applications: July 30, 2009.

Deadline for Intergovernmental Review: September 28, 2009.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Underground Railroad Educational and Cultural (URR) Program is to help preserve the Underground Railroad's legacy and to help demonstrate how the Underground Railroad's widespread operations network transformed our Nation. In addition, the URR also promotes the formation of public-private partnerships to help disseminate information regarding the Underground Railroad throughout the United States,

including lessons to be drawn from the history of the Underground Railroad.

Program Authority: 20 U.S.C. 1153.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 84, 85, 86, 97, 98 and 99.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $1,945,000.

Estimated Average Size of Awards: $500,000–$1,000,000 total for up to three years.

Estimated Number of Awards: 2.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* Nonprofit educational organizations that are established to research, display, interpret, and collect artifacts relating to the history of the Underground Railroad, including the lessons to be drawn from such history.

2. *Cost Sharing or Matching:* The Federal Government may provide no more than 20 percent of the total funds for any project funded under this competition. See 20 U.S.C. 1153(b)(2). Applicants must provide the remaining funding from non-Federal public or private entities in an amount equal to or greater than four times the amount of the grant awarded under this section. All applicants will be required to provide documentation to substantiate their ability to meet the cost sharing requirement.

3. *Other:*

(a) Each nonprofit educational organization awarded a grant under this competition must establish a facility to—

(i) House, display, interpret, and communicate information regarding the artifacts and other materials related to the history of the Underground Railroad, including the lessons to be drawn from such history;

(ii) Maintain such artifacts and materials;

(iii) Make these efforts, as described in paragraph (i), available including through electronic means, to elementary and secondary schools, institutions of higher education, and the general public.

(b) Each grantee must demonstrate substantial public and private support for the operation of the facility through the implementation of a public-private partnership between one or more State or local public entities and one or more private entities. This public-private partnership must provide the matching funds from non-Federal sources for the support of the facility, as described in the preceding section on cost sharing or matching.

(c) Each grantee must create an endowment to fund any and all shortfalls in the costs of the on-going facility operations.

(d) Grantees may establish and maintain a network of satellite centers throughout the United States to help disseminate information regarding the Underground Railroad, including the lessons to be drawn from the history of the Underground Railroad, if such satellite centers raise 80 percent of the funds required to establish the satellite centers from non-Federal public and private sources.

(e) In addition, grantees must establish and maintain the capability to electronically link the facility with other local and regional facilities that have collections and programs that interpret the history of the Underground Railroad, including the lessons to be drawn from such history.

IV. Application and Submission Information

1. *Address To Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *http://e-grants.ed.gov.* To obtain a copy from ED Pubs, write, fax, or call the following: Education Publications Center, P.O. Box 1398, Jessup, MD 20794–1398. Telephone, toll free: 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.ed.gov/pubs/edpubs.html* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.345A.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative to the equivalent of no more than 30 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, *except* titles, headings, footnotes, quotations, references, and captions. Charts, tables, figures and graphs in the application narrative may be single spaced and will count toward the page limit.
- Use a font that is either 12 point or larger, or no smaller than 10 pitch (characters per inch). However, you may use a 10 point font in charts, tables, figures, and graphs.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; the table of contents; the project abstract; or the appendix. The appendix may include only project documentation; one-page résumés for key personnel; letters of commitment from partners, satellite centers, or electronic linkage partners; letters from professionals who will ensure that the applicant creates, designates, or raises funds for the required project endowment; and bibliographical references or citations.

3. *Submission Dates and Times:*

Applications Available: June 15, 2009.

Deadline for Transmittal of Applications: July 30, 2009.

Applications for grants under this program must be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants site. Please do not use Grant.gov; the Department has moved its grant application mechanism to e-Application on e-Grants. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: September 28, 2009.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Underground Railroad Educational and Cultural Program—CFDA number 84.345A—must be submitted electronically using e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E–Application will not accept an application for this competition after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.
- Your electronic application must comply with any page limit requirements described in this notice.
- Prior to submitting your electronic application, you may wish to print a copy of it for your records.
- After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

- We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application Unavailability: If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2)(a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E-Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of e-Application.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through e-Application because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to e-Application; *and*
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date

falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Claire D. Cornell, U.S. Department of Education, 1990 K Street, NW., room 6145, Washington, DC 20006–8544. FAX: (202) 502–7877.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.345A), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: CFDA Number 84.345A, 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this program are from 34 CFR 75.210 and include: significance (10 points); quality of the project design (40 points); adequacy of resources (20 points); quality of project personnel (10 points); and quality of the project evaluation (20 points). Additional information regarding these criteria is in the application package for this competition.

In making grant awards for this program, the Department will consider information concerning the applicant's performance and use of funds from a prior grant in this program, or in any other Department program, and will consider the applicant's failure to submit an acceptable performance report for a grant in this or any other Department program. 34 CFR 75.217(d)(3).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to: *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

In the annual and final reports, applicants must provide documentation of their efforts to collect, research, display, and interpret artifacts, digital resources, and other materials that collect, preserve, and disseminate information on the Underground Railroad's history, including the lessons to be drawn from such history. If they have created or designated satellite centers, they must provide documentation of their creation or designation of satellite centers, an account of the satellite centers' activities, and documentation of the satellite centers' 4:1 cost share. Grantees must also provide evidence of their creation of electronic links to other organizations and facilities that have collections and programs that interpret the history of the Underground Railroad and lessons drawn from such history. Grantees must document their efforts to make their resources and efforts available through electronic means, to elementary and secondary schools, to institutions of higher education, and to the general public. Finally, each annual report must contain the audited financial statement of the organization for the preceding fiscal year.

4. Performance Measures: Under the Government Performance and Results Act (GPRA), the following measure will be used by the Department in assessing the performance of the Underground

Railroad Educational and Cultural Program: The extent to which funded projects have been institutionalized and are able to continue after URR funding ends.

If funded, you will be asked to collect and report data on these measures in your project's annual performance report (EDGAR, 34 CFR 75.590).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: For Further Information Contact: Claire D. Cornell, Underground Railroad Educational and Cultural Program, U.S. Department of Education, 1990 K Street, NW., Room 6145, Washington, DC 20006–8544. Telephone: (202) 502–7609 or by e-mail: *claire.cornell@ed.gov*. The agency contact person does not mail application materials and does not accept applications.

If you use a TDD, call the Federal Relay Service, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.*, braille, large print, audiotape, or computer diskette) on request to the program contact person listed under *For Further Information Contact* in section VII of this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Delegation of Authority: The Secretary of Education has delegated authority to Daniel T. Madzelan, Director, Forecasting and Policy Analysis for the Office of Postsecondary Education, to perform the functions of the Assistant Secretary for Postsecondary Education.

Dated: June 9, 2009.

Daniel T. Madzelan,

Director, Forecasting and Policy Analysis.

[FR Doc. E9–13881 Filed 6–12–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

State Energy Advisory Board (STEAB)

AGENCY: Department of Energy.

ACTION: Notice of Open Teleconferences.

SUMMARY: This notice announces two teleconferences of the State Energy Advisory Board (STEAB). The Federal Advisory Committee Act (Pub. L. 92–463; 86 Stat.770) requires that public notice of these teleconferences be announced in the **Federal Register**.

DATES: July 22, 2009, at 2–3 p.m. EDT and August 26, 2009, at 2–3 p.m. EDT.

FOR FURTHER INFORMATION CONTACT: Gary Burch, STEAB Designated Federal Officer, Office of Commercialization and Project Management, Golden Field Office, U.S. Department of Energy, 1617 Cole Boulevard, Golden, CO 80401, Telephone 303–275–4801.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: To make recommendations to the Assistant Secretary for the Office of Energy Efficiency and Renewable Energy regarding goals and objectives, programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. 101–440).

Tentative Agenda: Discuss ways STEAB can support DOE's implementation of the Economic Recovery Act, support commercialization efforts for both energy efficiency and renewable energy, consider potential collaborative activities involving the State Energy Offices, and update members on other routine business matters.

Public Participation: The teleconferences are open to the public. Members of the public who wish to make oral statements pertaining to agenda items, or who simply want to listen to the teleconferences, should contact Gary Burch at the address or telephone number listed above. Requests to make oral comments must be received five days prior to the teleconferences; reasonable provision will be made to include requested topic(s) on the agenda. Written statements may be filed with the Board either before or after the teleconferences. The Chair of the Board is empowered to conduct the teleconferences in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of the teleconferences will be available for public review and copying within 60 days on the STEAB Web site, *http://www.steab.org.*

Issued at Washington, DC, on June 10, 2009.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E9–14001 Filed 6–12–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Hydrogen and Fuel Cell Technical Advisory Committee (HTAC)

AGENCY: Department of Energy, Office of Energy Efficiency and Renewable Energy.

ACTION: Notice of open meeting.

SUMMARY: The Hydrogen and Fuel Cell Technical Advisory Committee (HTAC) was established under section 807 of the Energy Policy Act of 2005 (EPACT), Public Law 109–58; 119 Stat. 849. The Federal Advisory Committee Act, Public Law 92–463, 86 Stat. 770, requires that agencies publish notice of an advisory committee meeting in the **Federal Register**. To attend the meeting and/or to make oral statements during the public comment period, please e-mail *HTAC@nrel.gov* at least 5 business days before the meeting. Please indicate if you will be attending the meeting, whether you want to make an oral statement on July 15, 2009, and what organization you represent (if appropriate).

DATES: Wednesday, July 15, 2009, from 8:30 a.m.–5:30 p.m.

ADDRESSES: Hartford/Windsor Marriott, 28 Day Hill Road, Windsor, CT 06095.

FOR FURTHER INFORMATION CONTACT: *HTAC@nrel.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: To provide advice, information, and recommendations to the Secretary on the program authorized by title VIII of EPACT.

Tentative Agenda: (Subject to change; updates will be posted on *http://hydrogen.energy.gov* and copies of the final agenda will available the date of the meeting). The following items will be covered on the agenda:

- DOE Program Update;
- Updates on Key Foreign Government Programs;

- Overview of the DOE Fuel Cell Cost Analysis;
- Activity Updates from Local Connecticut Businesses;
- Electric Vehicle Technology Overview;
- Discussion on the Appropriate Role of the Government in Hydrogen and Fuel Cell RD&D;
- 2009 HTAC Report Planning;
- Open Discussion.

Public Participation: In keeping with procedures, members of the public are welcome to observe the business of the meeting of HTAC and to make oral statements during the specified period for public comment. The public comment period will take place between 8:30 a.m. and 9 a.m. on July 15, 2009. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, e-mail *HTAC@nrel.gov* at least 5 business days before the meeting. Please indicate if you will be attending the meeting, whether you want to make an oral statement, and what organization you represent (if appropriate). Members of the public will be heard in the order in which they sign up for the public comment period. Oral comments should be limited to two minutes in length. Reasonable provision will be made to include the scheduled oral statements on the agenda. The chair of the committee will make every effort to hear the views of all interested parties and to facilitate the orderly conduct of business. If you would like to file a written statement with the committee, you may do so either by submitting a hard copy at the meeting or by submitting an electronic copy to *HTAC@nrel.gov.*

Minutes: The minutes of the meeting will be available for public review at *http://hydrogen.energy.gov.*

Issued at Washington, DC on June 10, 2009.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E9–14002 Filed 6–12–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2188–172]

PPL Montana, LLC; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

June 9, 2009.

a. *Type of Application:* Non-project use of project lands and waters.

b. *Project Number:* 2188–172.

c. *Date Filed:* February 4, 2009, and supplemented on May 4, 2009.

d. *Applicant:* PPL Montana, LLC.

e. *Name of Project:* Missouri-Madison Hydroelectric Project.

f. *Location:* The project is located along the Missouri and Madison Rivers in Gallatin, Madison, Lewis and Clark, and Cascade Counties, Montana. The proposed action would be located at the Gates of the Mountains Lakeshore Homes Subdivision in American Bar area of the project's Holter Development in Lewis and Clark County. The project occupies Federal lands administered by the Bureau of Land Management and the U.S. Forest Service.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a) 825(r) and 799 and 801.

h. *Applicant Contact:* Mr. Jon Jourdonnais, PPL Montana, LLC, 45 Basin Creek Road, Butte, MT 59701. Telephone: (406) 533–3443. E-mail: *jhjourdonnais@pplweb.com.*

i. *FERC Contact:* Any questions on this notice should be addressed to Christopher Yeakel at (202) 502–8132, or e-mail address: *christopher.yeakel@ferc.gov.*

j. *Deadline for filing comments and or motions:* July 9, 2009.

k. *Description of Request:* PPL Montana, LLC proposes to permit the American Bar Landowner's Association to construct 23 seasonal boat docks, a boat launch, access roads, and parking areas in the American Bar area of the project's Holter Development. The facilities would serve an adjoining residential subdivision. The proposed boat docks would be removable floating docks that would not extend farther than 30 feet from the shoreline unless necessary to reach water ten feet in depth. The docks would be arranged into four clusters along the shoreline; they would be 100 feet or less from each other and each cluster would occupy no more than 750 feet of shoreline. The proposed boat ramp would be comprised of concrete and would be 12 feet wide and 26 feet long, and would include a courtesy dock 35 feet long and 4 feet wide. One access road would lead to a gravel parking lot at each location. The licensee consulted with the U.S. Bureau of Land Management (BLM), U.S. Forest Service (Forest Service), Montana Department of Fish, Wildlife and Parks (FWP) in developing the application.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field (p–2188) to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3372 or e-mail *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers (p–2188–172). All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–14029 Filed 6–12–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13466–000]

City of Gresham, OR; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

June 9, 2009.

On May 15, 2009, the City of Gresham (permittee) filed an application for a three-year preliminary permit under Section 4(f) of the Federal Power Act (FPA) [1] to study the feasibility of the proposed 50-kilowatt (kW) City of Gresham Wastewater Treatment Plant Outfall Hydroelectric Project No. 13466. The project would be located in Multnomah County, Oregon. The existing City of Gresham Wastewater Treatment Plant (plant) and outfall is owned by the permittee. 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.

Under current operating conditions, treated wastewater (effluent) from the plant is discharged into three parallel outfall pipes. These three pipes combine into a single pipeline before discharging the effluent into the Columbia River. Under the permittee's proposal, effluent in one of the existing three parallel pipes would flow into a powerhouse to generate electricity before returning to the existing pipeline system. The project would consist of: (1) An existing 3,650-foot-long, 4-foot-diameter outfall pipe directing effluent from the plant to the powerhouse and from the powerhouse to the final outfall pipe; (2) a new 12-foot-high, 16-foot-long concrete powerhouse; (3) a new single turbine/generator unit with an installed capacity of 50 kW; (4) a new 10-foot-long, 10-foot-wide concrete building to house additional controls and equipment; (5) an existing 650-foot-long, 4.5-foot-diameter outfall pipe discharging flows into the Columbia River; (6) a new 100-foot-long, 12.47-kilovolt transmission line extending from the powerhouse to a proposed intertie with a Portland General Electric power line; and (7) appurtenant facilities. The plant and portions of the outfall that are not directly affected by the project are not included as project features. The proposed project would generate about 413 megawatt-hours annually.

Applicant Contact: Michael Nacrelli, Department of Environmental Services, City of Gresham, Oregon, 1333 NW. Eastman Parkway, Gresham, OR 97030; phone: (503) 661–3000.

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. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link located at *http://www.ferc.gov/docs-filing/efiling.asp.* If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13466) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–14028 Filed 6–12–09; 8:45 am]

BILLING CODE 6717–01–P

[1] 16 U.S.C. 797(f). Three years is the maximum term for a preliminary permit. *See* FPA Section 5, 16 U.S.C. 798.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–446–003]

Gulf South Pipeline Company, LP; Notice of Application

June 8, 2009.

Take notice that on May 26, 2009, Gulf South Pipeline Company, LP (Gulf South), filed with the Federal Energy Regulatory Commission (Commission) an application under section 7(c) of the Natural Gas Act (NGA) seeking authorization to amend its existing certificate to reduce to the maximum certificated capacity on the East Texas to Mississippi Expansion Project facilities to reflect refined flow characteristics after a year of operational experience, all as more fully described in the application.

This filing may be also viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (866) 208–3676 or TTY, (202) 502–8659.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify Federal and State agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all Federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Any questions regarding this application should be directed to: J. Kyle Stephens, Vice President of Regulatory Affairs, Boardwalk Pipeline Partners, LP, 9 Greenway Plaza, Suite 2800, Houston, Texas 77046, at 713–479–8033 or fax at 713–479–1846. There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, before the comment date of this notice,

file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: June 29, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–13965 Filed 6–12–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 349–164]

Alabama Power Company of Elmore County, AL; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

June 8, 2009.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Public Lands and Waters.

b. *Project No:* 349–164.

c. *Date Filed:* May 20, 2009.

d. *Applicant:* Alabama Power Company.

e. *Name of Project:* Martin Dam Project.

f. *Location:* Lake Martin, Elmore County, Alabama.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Ryan Robinson, Special Projects Manager, Russell Lands, Inc., 2544 Willow Point Road, Alexander City, Alabama 35010, (256) 496–2188.

i. *FERC Contact:* Jaime Blakesley, Telephone 312–596–4441, and e-mail: *jaime.blakesley@ferc.gov*.

j. *Deadline for filing comments, motions to intervene, and protest:* July 8, 2009.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Request:* Alabama Power Company requests permission to allow specific additions and modifications to Ridge Marina, an existing commercial marina located on Lake Martin and leased to Russell Lands, Inc. The proposed facilities and modifications include: 28 additional boat slips at existing courtesy docks, 4 floating boat slips at the existing fuel dock, 64 floating PWC docking locations along an existing boathouse walkway, 1 additional forklift launch/ramp, and 3 new breakwater sections totaling 750 linear feet. None of the proposed facilities require excavation or fill work. The licensee consulted with the U.S. Fish and Wildlife Service, and appropriate state and local agencies on the proposal.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–13963 Filed 6–12–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2232–568]

Duke Energy Carolinas, LLC of York County, SC; Notice of Application for Amendment of License and Soliciting Comments, Motions to Intervene, and Protests

June 8, 2009.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Public Lands and Waters.

b. *Project No:* 2232–568.

c. *Date Filed:* May 15, 2009.

d. *Applicant:* Duke Energy Carolinas, LLC.

e. *Name of Project:* Catawba-Wateree Project.

f. *Location:* Lake Wylie, York County, South Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Kelvin K. Reagan, Duke Energy Carolinas, Senior Lake Services Representative, P.O. Box 1006, Charlotte, NC 28201–1006, (704) 382–9386.

i. *FERC Contact:* Jaime Blakesley, Telephone 312–596–4441, and e-mail: *jaime.blakesley@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protest:* July 8, 2009.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Request:* Duke Energy Carolinas, LLC requests Commission approval to lease to the City of Tega Cay (Tega Cay) 0.891 acres of project lands at the Catawba-Wateree Project, for a commercial marina on Lake Wylie. The commercial marina will consist of the following facilities: three cluster docks with a total of thirty-two boat slips, a small ship's store with restrooms, a portable pump out facility, picnic tables, a sand volleyball court, and a gazebo. Tega City also proposes to stabilize 305 linear feet of shoreline. The licensee consulted with the U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, and appropriate State and local agencies on the proposal.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the project number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*; for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–13962 Filed 6–12–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09–420–000]

Gulf South Pipeline Company, LP; Notice of Application

June 8, 2009.

Take notice that on May 22, 2009, Gulf South Pipeline Company, LP (Gulf South), filed with the Federal Energy Regulatory Commission (Commission) an application under section 7(c) of the Natural Gas Act (NGA) seeking: (i) authorization to construct, install, own, operate and maintain three new compressor units and yard and station piping, including appurtenant and auxiliary facilities, at two existing Gulf South compressor stations in the State of Louisiana—the Hall Summit Compressor Station, Bienville Parish, Louisiana, where two new turbine compressor units totaling 32,913 horsepower (HP) are proposed, and at the Tallulah Compressor Station, Madison Parish, Louisiana, where one new 17,558 hp turbine compressor unit is proposed, and (ii) a predetermination that Gulf South may charge incremental rates for the capacity created by the compression upgrades, all as more fully described in the application.

This filing may be also viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (866) 208–3676 or TTY, (202) 502–8659.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of

Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Any questions regarding this application should be directed to: J. Kyle Stephens, Vice President of Regulatory Affairs, Boardwalk Pipeline Partners, LP, 9 Greenway Plaza, Suite 2800, Houston, Texas 77046, at 713–479–8033 or fax at 713–479–1846.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, before the comment date of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: June 29, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–13960 Filed 6–12–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09–418–000]

Perryville Gas Storage, LLC; Notice of Application

June 9, 2009.

Take notice that on May 26, 2009, Perryville Gas Storage, LLC (Perryville), Three Riverway, Suite 1350, Houston, Texas 77056, filed in the above referenced docket an application pursuant to section 7(c) of the Natural Gas Act (NGA), for an order granting a certificate of public convenience to construct, own, and operate a new salt dome natural gas storage facility in two caverns and related facilities to be located in Franklin and Richland Parishes, Louisiana. Perryville is requesting blanket certificates under Part 284, Subpart G and Part 157, Subpart F of the Commission's regulations. Perryville also seeks for authorization of market based rates, approval of the pro forma tariff, and waivers of some of the Commission's regulations, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Perryville's new storage project has been designed to provide approximately 15 billion cubic feet (Bcf) of working gas capacity with a maximum injection rate of up to 226 million cubic feet per day (MMcf/d) and a maximum withdrawal rate of 600 MMcf/d. Additionally, Perryville intends to construct a total of 14.4 miles of 24- and 36-inch diameter pipeline to deliver the natural gas to CenterPoint Energy Gas Transmission Company and Columbia Gulf Transmission, as well as one 9,500 horsepower compressor station, leaching facilities, and raw water wells.

Any questions concerning this application may be directed to David Hayden, Sr. Vice President and Chief Operating Officer, Perryville Gas Storage, LLC, Three Riverway, Suite 1350, Houston, Texas 77056, at (713) 350–2500.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in

determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on June 30, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–14031 Filed 6–12–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP09–756–000]

Texas Eastern Transmission, LP; Notice of Filing of Temporary Waiver Request

June 8, 2009.

Take notice that on June 5, 2009, pursuant to Rule 207 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission, 18 CFR 385.207(a)(5) (2008), Texas Eastern Transmission, LP (Texas Eastern) filed a petition for temporary waivers of the Applicable Shrinkage Adjustment (ASA) fuel percentage and section 15.2(C) of the General Terms and Conditions (GT&C) of its FERC Gas Tariff related to service provided on Texas Eastern's Main Pass offshore system during a planned maintenance outage on that system next month. Texas Eastern requests any additional waivers of Texas Eastern's FERC Gas Tariff and the Commission's regulations that are necessary for Texas Eastern to implement the proposal described therein.

Texas Eastern states that these waivers are necessary to maximize the ability of producers connected to a 25-mile portion of its Main Pass offshore system located upstream of the proposed work area to continue to maintain production during the outage period. Texas Eastern states that the temporary waivers requested herein would be effective for a period of approximately one month during July and August this summer while Texas Eastern performs the required maintenance work.

Texas Eastern respectfully requests that the Commission expedite action on this Petition and grant the waiver requested herein by June 19, 2009. In light of this request for expedited action, Texas Eastern requests that the Commission shorten the notice period to one week from the date of this filing.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment due date. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Friday, June 12, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–13959 Filed 6–12–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR09–8–002]

Washington Gas Light Company; Notice of Filing

June 9, 2009.

Take notice that on May 29, 2009, Washington Gas Light Company (Washington Gas) filed a revised Firm Interstate Transportation Service Operating Statement (FITSOS) pursuant to section 284.123(e) of the Commission's regulations. Washington Gas states that it is making the revisions in order to update its new transportation rates for service to Mountaineer Gas Company and to make minor, non-substantive revisions.

Any person desiring to participate in this proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be

considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 23, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–14026 Filed 6–12–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR09–26–000]

Enbridge Pipelines (North Texas) L.P.; Notice of Rate Election and Revised Statement of Operating Conditions

June 9, 2009.

Take notice that on June 1, 2009, Enbridge Pipelines (North Texas) L.P. (EPNT) filed pursuant to section 284.123(e) of the Commission's regulations, a Statement of Operating Conditions (SOC) to reflect the implementation of a demand charge for firm service, numerous housekeeping adjustment, and modifications to its cash out procedure. In addition, EPNT states it included a statement of rates pursuant to Notice of Effectiveness of Regulations issued by the Commission on October 28, 2008 Letter Order in Docket No. RM01–5–000.

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–14030 Filed 6–12–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

June 8, 2009.

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

PROHIBITED communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e) (1) (v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary

link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket No.	File date	Presenter or requester
PROHIBITED		
1. CP07–52–000, *et al.*	4–22–09	Art Gelber.
2. CP09–35–000	5–11–09	Erin Riggs.
EXEMPT		
1. CP09–54–000	6–2–09	Hon. Arnold Schwarzenegger.
2. CP09–161–000	6–1–09	Hon. Brian Schweitzer.
3. P–2100–000	5–13–09	Hon. Wally Herger.
4. P–2210–000	6–5–09	Jeffrey Browning [1]
5. P–2210–169	5–26–09	H. D. Schweizer, Jr.
6. P–2210–169	5–20–09	Doris C. Neudorfer.
7. P–2210–169	5–20–09	Donna English.
8. P–2210–169	5–20–09	Barbara Barnes.
9. P–2210–169	5–20–09	Diane McVaney.
10. P–2835–000	5–26–09	Hon. John M. McHugh.

[1] Telephone record.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–13964 Filed 6–12–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09–429–000]

Columbia Gulf Transmission Company; Notice of Request Under Blanket Authorization

June 9, 2009.

Take notice that on June 8, 2009, Columbia Gulf Transmission Company (Columbia Gulf), 5151 San Felipe, Suite 2500, Houston, Texas 77056, filed a prior notice request pursuant to sections 157.205 and 157.216 of the Commission's regulations under the Natural Gas Act (NGA) for authorization to abandon, pursuant to Columbia Gulf's blanket certificate issued in Docket No. CP83–496–000, certain offshore natural gas facilities, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Specifically, Columbia Gulf proposes to abandon approximately 5.5 miles of 16-inch pipeline (Segment 8310), Measuring Station 689, and appurtenances. Columbia Gulf states that Segment 8310 begins at the Garden Banks 236A platform and extends to a sub-sea interconnection at Garden Banks 149 in offshore Louisiana. Columbia Gulf asserts that Section 8310 will be abandoned in place and will be designated by the Mineral Management Service (MMS) as Segment #17594. Columbia Gulf states that Measuring Station 689 will be removed. Columbia Gulf asserts that production into the subject pipeline ceased in July of 2003, at which time Chevron notified Columbia Gulf that its production had been depleted and that it had no plans for future development. Columbia Gulf avers that the pipeline has been inactive since that time. Columbia Gulf states that Chevron has since notified Columbia Gulf that it intended to abandon its Garden Banks 236A platform to which the pipeline is connected. Columbia Gulf asserts that it does not propose the abandonment of any service as a result of the proposed abandonment nor does Columbia Gulf have any firm contracts utilizing the pipeline. Columbia Gulf estimates the costs of abandoning the pipeline to be approximately $3 million.

Any questions regarding this application should be directed to counsel for Columbia Gulf, Fredric J. George, Senior Counsel, P. O. Box 1273, Charleston, West Virginia 25325–1273; telephone (304) 357–2359, fax (304) 357–3206.

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–14027 Filed 6–12–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of FERC Staff Attendance

June 8, 2009.

Midwest Independent Transmission System Operator, Inc.	Docket No. ER09–411–000
Midwest Independent Transmission System Operator, Inc.	Docket No. ER04–691–000
Ameren Services Company Northern Indiana Public Service Company	Docket No. EL07–86–000
v.	
Midwest Independent Transmission System Operator, Inc.	
Great Lakes Utilities, Indiana Municipal Power Agency, Missouri Joint Municipal Electric Utility Commission, Missouri River Energy Services, Prairie Power, Inc., Southern Minnesota Municipal Power Agency, Wisconsin Public Power Inc.	Docket No. EL07–88–000
v.	
Midwest Independent Transmission System Operator, Inc.	
Wabash Valley Power Association, Inc.	Docket No. EL07–92–000
v.	
Midwest Independent Transmission System Operator, Inc.	

The Federal Energy Regulatory Commission (Commission) hereby gives notice that on June 10, 2009, members of its staff will participate in the Wind Integration Workshop conducted by the Midwest Independent Transmission System Operator, Inc. (Midwest ISO). The agenda and other documents for the meeting are available on the Midwest ISO's Web site, *http://www.midwestiso.org.*

The meeting is open to all market participants, and Commission staff's attendance is part of the Commission's ongoing outreach efforts. The meeting may discuss matters at issue in the above captioned dockets.

For further information, contact Shawn Bennett at *shawn.bennett@ferc.gov,* (202) 502–8930.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–13961 Filed 6–12–09; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2008–0373; FRL–8919–1]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Asphalt Processing and Asphalt Roofing Manufacturing, EPA ICR Number 2029.04, OMB Control Number 2060–0520

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before July 15, 2009.

ADDRESSES: Submit your comments, referencing docket ID number EPA–OECA–2008–0373, to (1) EPA online using *www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Sounjay Gairola, Office of Enforcement and Compliance Assurance, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–4003; e-mail address: *gairola.sounjay@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 30, 2008 (73 FR 31088), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2008–0373, which is available for public viewing online at *http://www.regulations.gov,* in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1927.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov,* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

Title: NESHAP for Asphalt Processing and Asphalt Roofing Manufacturing (Renewal)

ICR Numbers: EPA ICR Number 2029.04, OMB Control Number 2060–0520.

ICR Status: This ICR is scheduled to expire on August 31, 2009. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Asphalt Processing and

Asphalt Roofing Manufacturing (40 CFR part 63, subpart LLLLL) were proposed on January 10, 1989 and promulgated on November 20, 1990.

The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart LLLLL.

Owners or operators of the affected facilities must submit a one-time-only of any physical or operational changes, initial performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 223 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Asphalt processing and asphalt roofing production facilities.

Estimated Number of Respondents: 24.

Frequency of Response: Initially, occasionally and semiannually.

Estimated Total Annual Hour Burden: 12,017.

Estimated Total Annual Cost: $1,041,641, which includes $1,016,234 in Labor costs, $25,407 in O&M costs, and no annualized capital/startup costs.

Changes in the Estimates: There is no change in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. Apparent differences of less than 500 hours are attributable to rounding; in previous years, hours were rounded to the nearest thousand; this ICR presents more exact figures.

Dated: June 9, 2009.

John Moses,

Director, Collection Strategies Division.

[FR Doc. E9–14015 Filed 6–12–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8918–8]

Agency Information Collection Activities OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the Office of Management and Budget's (OMB) responses to Agency Clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

FOR FURTHER INFORMATION CONTACT: Rick Westlund (202) 566–1682, or e-mail at *westlund.rick@epa.gov* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR Number 2357.01; Regulations.gov Exchange Information Collection; was approved 05/18/2009; OMB Number 2025–0008; expires 11/30/2009.

EPA ICR Number 2163.03; NSPS for Other Solid Waste Incineration (OSWI) Units (Renewal); in 40 CFR part 60, subpart EEEE; was approved 05/21/2009; OMB Number 2060–0563; expires 05/31/2012.

EPA ICR Number 1821.06; NESHAP for Steel Pickling, HCI Process Facilities and Hydrochloric Acid Regeneration Plants (Renewal); in 40 CFR part 63, subpart CCC; was approved 05/21/2009; OMB Number 2060–0419; expires 05/31/2012.

EPA ICR Number 2288.01; Pesticides Data Call In Program; in 40 CFR parts 154 and 155; was approved 05/27/2009; OMB Number 2070–0174; expires 05/31/2012.

EPA ICR Number 1084.10; NSPS for Nonmetallic Mineral Processing (Final Rule); in 40 CFR part 60, subpart OOO; was approved 06/01/2009; OMB Number 2060–0050; expires 06/30/2012.

EPA ICR Number 2183.03; Drug Testing for Contractor Employees (Renewal); in 5 CFR parts 731, 732 and 736; was approved 06/02/2009; OMB Number 2030–0044; expires 06/30/2012.

OMB Comments Filed

EPA ICR Number 2300.02; Regulation to Establish Mandatory Reporting of Greenhouse Gases (Proposed Rule); OMB filed comment on 05/21/2009.

Dated: June 9, 2009.

John Moses,

Director, Collection Strategies Division.

[FR Doc. E9–14014 Filed 6–12–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2008–0298; FRL–8918–9]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Benzene Waste Operations (Renewal), EPA ICR Number 1541.09, OMB Control Number 2060–0183

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before July 15, 2009.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2008–0298, to (1) EPA online using *www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Compliance Assessment and Media Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; e-mail address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 30, 2008 (73 FR 31088), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2008–0298, which is available for public viewing online at *http://www.regulations.gov,* in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1927.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper will be made available for public viewing at *http://www.regulations.gov,* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

Title: NESHAP for Benzene Waste Operations (Renewal).

ICR Numbers: EPA ICR Number 1541.09, OMB Control Number 2060–0183.

ICR Status: This ICR is schedule to expire on August 31, 2009. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Benzene Waste Operations, 40 CFR part 61, subpart FF, were proposed on September 14, 1989 and promulgated on March 7, 1990.

These regulations apply to facilities that generate waste containing Benzene, such as chemical manufacturing plants, coke by-product recovery plants, petroleum refineries, and those owners and operators of hazardous waste treatment, storage, and disposal facilities (TSDF) which receive wastes from the above facilities, commencing construction, modification or reconstruction after the date of the proposal. This information is being collected to assure compliance with 40 CFR part 61, subpart FF.

The monitoring, recordkeeping, and reporting requirements outlined in these rules are similar to those required for other NESHAP regulations. Consistent with the NESHAP General Provisions (40 CFR part 63, subpart A), respondents are required to submit initial notifications conduct performance tests, and submit quarterly or semiannual reports, as applicable. They also are required to maintain records of applicability determinations; performance test results; exceedances; periods of startup, shutdown, or malfunction (SSM); monitoring records and all other information needed to determine compliance with the applicable standards.

Any owner or operator subject to the provisions of this subpart must maintain a file of these measurements, and retain the file for at least five years following the collection of such measurements, maintenance reports, and records. All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Number for EPA regulations listed in 40 CFR part 9 and 48 CFR chapter 15, are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information are estimated to average 71 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose and 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. All existing ways will have to adjust to comply with any previously applicable instructions and requirements that have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Benzene waste operations.

Estimated Number of Respondents: 270.

Frequency of Response: On occasion, initially, quarterly and semiannually.

Estimated Total Annual Hour Burden: 19,148.

Estimated Total Annual Cost: $1,738,751 in Labor costs exclusively. There are neither capital/startup nor operation and maintenance (O&M) costs associated with this ICR.

Changes in the Estimates: There is an adjustment in the total estimated burden as currently identified in the OMB Inventory of Approved Burdens. This increase is not due to any program changes. The increase in the number of sources from 234 to 270 was due to a thorough research of the industry and the data obtained from the trade associations and environmental consultant, which resulted in a more accurate count of the affected facilities. This increase was not due to new or reconstructed facilities. This ICR also reflects the most recent hourly labor rates which take into account the managerial, technical and clerical burdens as compared to the previous ICR.

Dated: June 9, 2009.

John Moses,

Director, Collection Strategies Division.

[FR Doc. E9–14013 Filed 6–12–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–SFUND–2005–0007, FRL–8918–4]

Agency Information Collection Activities; Proposed Collection; Comment Request; EPA Worker Protection Standards for Hazardous Waste Operations and Emergency Response (Renewal); EPA ICR Number 1426.08, OMB Control Number 2050–0105

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et seq.), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before July 15, 2009.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–SFUND–2005–0007, to (1) EPA online using *www.regulations.gov* (our preferred method), by e-mail to *superfund.docket@epa.gov* or by mail to: EPA Docket Center, Environmental Protection Agency, Superfund Docket (28221T), 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Sella M. Burchette, U.S. Environmental Response Team, MS 101, Building 18, Edison, NJ 08837, telephone number: 721–321–6726; fax number: 732–321–6724; e-mail address: *burchette.sella@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On Feb 3, 2009, (74 *FR* 5931), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–SFUND–2005–0007, which is available for online viewing at *www.regulations.gov*, or in person viewing at the Superfund Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Superfund Docket is 202–566–0276.

Use EPA's electronic docket and comment system at www.regulations.gov, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

Title: EPA Worker Protection Standards for Hazardous Waste Operation and Emergency Response (Renewal).

ICR numbers: EPA ICR No. 1426.08, OMB Control No. 2050–0105.

ICR Status: This ICR is scheduled to expire on June 30, 2009. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Section 126(f) of the Superfund Amendments and Reauthorization Act of 1986 (SARA) requires EPA to set worker protection standards for State and local employees engaged in hazardous waste operations and emergency response in the 27 States that do not have Occupational Safety and Health Administration approved State plans. The EPA coverage, required to be identical to the OSHA standards, extends to three categories of employees: those engaged in clean-ups at uncontrolled hazardous waste sites, including corrective actions at Treatment, Storage and Disposal (TSD) facilities regulated under the Resource Conservation and Recovery Act (RCRA); employees working at routine hazardous waste operations at RCRA TSD facilities, and employees involved in emergency response operations without regard to location. This ICR renews existing mandatory record keeping collection of ongoing activities including monitoring of any potential employee exposure at uncontrolled hazardous waste sites, maintaining records of employee training, refresher training, medical exams and reviewing emergency response plans.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 12 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: State and local governments in the 27 States and 2 territories that do not have OSHA-approved plans under section 18(b) of the OSH Act.

Estimated Number of Respondents: 25,052.

Frequency of Response: Once, Annually, On Occasion.

Estimated Total Annual Hour Burden: 311,680.

Estimated Total Annual Cost: $4,253,976, includes no annualized capital or O&M costs.

Changes in the Estimates: There is an increase of 56,253 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This is due primarily to the estimated growth in the number of fire departments and other respondents subject to this collection.

Dated: June 9, 2009.

John Moses,

Director, Collection Strategies Division.

[FR Doc. E9–14011 Filed 6–12–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2008–0283; FRL–8918–5]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; State and Federal Emission Guidelines for Hospital/Medical/ Infectious Waste Incineration (Renewal), EPA ICR Number 1899.05, OMB Control Number 2060–0422

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before July 15, 2009.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2008–0283, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Compliance Assessment and Media Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; e-mail address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 30, 2008 (73 *FR* 31088), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2008–0283, which is available for public viewing online at *http://www.regulations.gov*, in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1927.

Use EPA's electronic docket and comment system at *http://www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper will be made available for public viewing at *http://www.regulations.gov*, as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: State and Federal Emission Guidelines for Hospital/Medical/ Infectious Waste Incineration (Renewal).

ICR Numbers: EPA ICR Number 1899.05, OMB Control Number 2060–0422.

ICR Status: This ICR is scheduled to expire on August 31, 2009. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Respondents subject to 40 CFR part 60, subpart Ce, and to 40 CFR part 62, subpart HHH, are owners or operators of hospital, medical, or infectious waste incinerators. Subpart Ce was promulgated on September 15, 1997, and requires states or tribes to develop plans to implement the Emission Guidelines. If approvable State or tribal plans were not developed, EPA was required to develop a Federal plan to implement the Emission Guidelines in such States or tribes. The Federal plan, subpart HHH, was promulgated on September 14, 2000.

Subparts Ce and HHH require initial notifications, performance tests, and annual and semi-annual reporting. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance.

Any owner or operator subject to the provisions of these parts shall maintain a file of these measurements, and retain the file for at least five years following the collection of such measurements, maintenance reports, and records. All reports are sent to the delegated State or tribal authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office. This information is being collected to assure compliance with 40 CFR part 60, subpart Ce and 40 CFR part 62, subpart HHH, as authorized in sections 112 and 114(a) of the Clean Air Act. The required information consists of emissions data and other information that have been determined to be private.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Number for EPA regulations listed in 40

CFR part 9 and 48 CFR chapter 15 are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 320 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose and provide information either 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. All existing ways will have to adjust to comply with any previously applicable instructions and requirements that have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners and operators of hospital/medical/infectious waste incinerators.

Estimated Number of Respondents: 72.

Frequency of Response: Initially, occasionally, annually and semiannually.

Estimated Total Annual Hour Burden: 69,067.

Estimated Total Annual Cost: $5,705,702, which is comprised of $5,575,702 in labor costs, $130,000 in operation and maintenance (O&M) costs, and no capital/startup costs.

Changes in the Estimates: There is no change in the labor hours in this ICR compared to the previous ICR. This is due to two considerations. First, the regulations have not changed over the past three years and are not anticipated to change over the next three years. Secondly, the current growth rate for the industry is very low, negative or nonexistent, so there is no significant change in the overall burden.

Dated: June 8, 2009.

John Moses,

Director, Collection Strategies Division.

[FR Doc. E9–14010 Filed 6–12–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8919–2]

Office of Research and Development; Ambient Air Monitoring Reference and Equivalent Methods: Designation of a New Equivalent Method

AGENCY: Environmental Protection Agency.

ACTION: Notice of the designation of a new equivalent method for monitoring ambient air quality.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) has designated, in accordance with 40 CFR Part 53, a new equivalent method for measuring concentrations of $PM_{10-2.5}$ in the ambient air.

FOR FURTHER INFORMATION CONTACT: Surender Kaushik, Human Exposure and Atmospheric Sciences Division (MD–D205–03), National Exposure Research Laboratory, U.S. EPA, Research Triangle Park, North Carolina 27711. Phone: (919) 541–5691, email: *Kaushik.Surender@epa.gov.*

SUPPLEMENTARY INFORMATION: In accordance with regulations at 40 CFR Part 53, the EPA evaluates various methods for monitoring the concentrations of those ambient air pollutants for which EPA has established National Ambient Air Quality Standards (NAAQSs) as set forth in 40 CFR Part 50. Monitoring methods that are determined to meet specific requirements for adequacy are designated by the EPA as either reference methods or equivalent methods (as applicable), thereby permitting their use under 40 CFR Part 58 by States and other agencies for determining compliance with the NAAQSs.

The EPA hereby announces the designation of a new equivalent method for measuring concentrations of $PM_{10-2.5}$ in the ambient air. This designation is made under the provisions of 40 CFR part 53, as amended on October 17, 2006 (71 FR 61271).

The new $PM_{10-2.5}$ equivalent method utilizes a pair of FEM samplers (EQPM–0308–170), one configured to measure $PM_{2.5}$ and the other to measure PM_{10}. This automated monitoring method utilizes a measurement principle based on sample collection by filtration and analysis by beta-ray attenuation. The newly designated equivalent method is identified as follows:

EQPM–0709–185, ''Met One Instruments BAM–1020 $PM_{10-2.5}$ Measurement System,'' consisting of 2 BAM–1020 monitors, the first of which ($PM_{2.5}$ measurement) is configured as a $PM_{2.5}$ FEM (EQPM–0308–170). The second BAM–1020 monitor (PM_{10} measurement) is configurable as a $PM_{2.5}$ FEM (EQPM–0308–170), but set to monitor PM_{10}. The BAM–1020 monitors are collocated to within 1–4 meters of one another. The BAM–1020 performing the $PM_{2.5}$ measurement is equipped with Met One Instruments, Inc. P/N BX–Coarse interface board and accessories; the units are interconnected to provide concurrent sampling and to report $PM_{10-2.5}$ concentrations directly to the user. Both units are operated in accordance with BAM–1020 PM–Coarse Addendum Rev. 5–5 or later and the BAM–1020 Operations Manual Rev. D or later.

The application for equivalent method determination for this candidate method was received by the EPA on January 22, 2009. The monitor is commercially available from the applicant, Met One Instruments, Inc., 1600 Washington Blvd., Grants Pass, OR 97526.

Test analyzers representative of this method have been tested in accordance with the applicable test procedures specified in 40 CFR part 53 (as amended on October 17, 2006). After reviewing the results of those tests and other information submitted by the applicant in the application, EPA has determined, in accordance with part 53, that this method should be designated as an equivalent method. The information submitted by the applicant will be kept on file, either at EPA's National Exposure Research Laboratory, Research Triangle Park, North Carolina 27711 or in an approved archive storage facility, and will be available for inspection (with advance notice) to the extent consistent with 40 CFR Part 2 (EPA's regulations implementing the Freedom of Information Act).

As a designated equivalent method, this method is acceptable for use by states and other air monitoring agencies under the requirements of 40 CFR part 58, Ambient Air Quality Surveillance. For such purposes, this method must be used in strict accordance with the operation or instruction manual associated with the method and subject to any specifications and limitations (*e.g.,* configuration or operational settings) specified in the applicable designated method description (see the identification of the method above).

Use of the method should also be in general accordance with the guidance and recommendations of applicable sections of the ''Quality Assurance Handbook for Air Pollution Measurement Systems, Volume I,'' EPA/600/R–94/038a and ''Quality Assurance Handbook for Air Pollution Measurement Systems, Volume II, Ambient Air Quality Monitoring Program'' EPA–454/B–08–003,

December, 2008 (available at *http://www.epa.gov/ttn/amtic/qabook.html*). Vendor modifications of a designated equivalent method used for purposes of Part 58 are permitted only with prior approval of the EPA, as provided in part 53. Provisions concerning modification of such methods by users are specified under Section 2.8 (Modifications of Methods by Users) of Appendix C to 40 CFR Part 58.

In general, a method designation applies to any sampler or analyzer which is identical to the sampler or analyzer described in the application for designation. In some cases, similar samplers or analyzers manufactured prior to the designation may be upgraded or converted (*e.g.,* by minor modification or by substitution of the approved operation or instruction manual) so as to be identical to the designated method and thus achieve designated status. The manufacturer should be consulted to determine the feasibility of such upgrading or conversion.

Part 53 requires that sellers of designated reference or equivalent method analyzers or samplers comply with certain conditions. These conditions are specified in 40 CFR 53.9.

Aside from occasional breakdowns or malfunctions, consistent or repeated noncompliance with any of these conditions should be reported to: Director, Human Exposure and Atmospheric Sciences Division (MD–E205–01), National Exposure Research Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of this new equivalent method is intended to assist the States in establishing and operating their air quality surveillance systems under 40 CFR part 58. Questions concerning the commercial availability or technical aspects of the method should be directed to the applicant.

Jewel F. Morris,

Acting Director, National Exposure Research Laboratory.

[FR Doc. E9–14022 Filed 6–12–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8918–6]

Clean Air Act Operating Permit Program; Petition for Objection to Federal Operating Permit for CITGO Refining and Chemicals Company L.P.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final action.

SUMMARY: This document announces that the EPA Administrator has responded to a citizen petition asking EPA to object to the CITGO Refining and Chemicals Company L.P. (CITGO) operating permit issued by the Texas Commission on Environmental Quality. Specifically, the Administrator has partially granted and partially denied the petition submitted by Environmental Integrity Project, the Refinery Reform Campaign, Citizens for Environmental Justice, and Suzie Canales (Petitioners), to object to the title V operating permit for CITGO to operate the West Plant at its refinery in Corpus Christi, Texas.

Pursuant to section 505(b)(2) of the Clean Air Act (Act), the petitioner may seek judicial review of those portions of the petition which EPA denied in the United States Court of Appeals for the appropriate circuit. Any petition for review shall be filed within 60 days from the date this notice appears in the **Federal Register**, pursuant to section 307 of the Act.

ADDRESSES: You may review copies of the final order, the petition, and other supporting information at EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view copies of the final order, petition, and other supporting information. If you wish to examine these documents, you should make an appointment at least 24 hours before visiting day. The final order is also available electronically at: *http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitions/citgo_corpuschristi_west_response2007.pdf*.

FOR FURTHER INFORMATION CONTACT: Bonnie Braganza, Air Permits Section, Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7340, or e-mail at *braganza.bonnie@epa.gov*.

SUPPLEMENTARY INFORMATION: The Act affords EPA a 45-day period to review, and, as appropriate, object to operating permits proposed by State permitting authorities under Title V of the Act. Section 505(b)(2) of the Act authorizes any person to petition the EPA Administrator within 60 days after the expiration of this review period to object to title V operating permits if EPA has not done so. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the State, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period.

On March 30, 2007, EPA received a petition from the Petitioners requesting that EPA object to the issuance of the title V operating permit to CITGO for the operation of the West Plant at its refinery in Corpus Christi, Texas. First, the petitioners claim that the permit's monitoring requirements are not adequate to ensure compliance with all emission limitations and other substantive Act requirements.

Second, the Petitioners claim that the permit's use of incorporation by reference for emission limitations and standards violates title V of the Act and its implementing regulations at 40 CFR part 70 and renders the permit practically unenforceable. Further, the Petitioners claim that (1) the permit should include the emission rate tables located in underlying permits; (2) the Applicable Requirements Summary of the permit must reference a State administrative enforcement order, and the permit should explicitly state the provisions of the order as terms of the permit; and (3) the permit must explicitly incorporate a federal consent decree, and the permit should specifically state the emission limitations and monitoring requirements of the consent decree as terms of the permit.

On May 28, 2009, the Administrator issued an order partially granting and partially denying the petition. The order explains the reasons behind EPA's conclusion to partially grant and partially deny the petition for objection.

Dated: June 5, 2009.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

[FR Doc. E9–14016 Filed 6–12–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8918–7]

Clean Air Act Operating Permit Program; Petition for Objection to Federal Operating Permit for The Premcor Refining Group, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final action.

SUMMARY: This document announces that the EPA Administrator has responded to a citizen petition asking EPA to object to the Premcor Refining

Group Inc., (Premcor) title V operating permit issued by the Texas Commission on Environmental Quality (TCEQ). Specifically, the Administrator has partially granted and partially denied the petition submitted by Environmental Integrity Project, the Community In-Power Development Association, Inc., Public Citizen's Texas Office, and the Refinery Reform Campaign (Petitioners), to object to the permit for Premcor to operate its refinery in Port Arthur, Texas.

Pursuant to section 505(b)(2) of the Clean Air Act (Act), the petitioner may seek judicial review of those portions of the petition which EPA denied in the United States Court of Appeals for the appropriate circuit. Any petition for review shall be filed within 60 days from the date this notice appears in the **Federal Register**, pursuant to section 307 of the Act.

ADDRESSES: You may review copies of the final order, the petition, and other supporting information at EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view copies of the final order, petition, and other supporting information. If you wish to examine these documents, you should make an appointment at least 24 hours before visiting day. The final order is also available electronically at: *http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitions/premcor_portarthur_response2007.pdf.*

FOR FURTHER INFORMATION CONTACT: Bonnie Braganza, Air Permits Section, Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7340, or e-mail at *braganza.bonnie@epa.gov.*

SUPPLEMENTARY INFORMATION: The Act affords EPA a 45-day period to review, and, as appropriate, object to operating permits proposed by State permitting authorities under title V of the Act. Section 505(b)(2) of the Act authorizes any person to petition the EPA Administrator within 60 days after the expiration of this review period to object to title V operating permits if EPA has not done so. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the State, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period.

On February 16, 2007, EPA received a petition from the Petitioners requesting that EPA object to the issuance of the title V operating permit to Premcor for the operation of its refinery in Port Arthur, Texas. First, the petitioners claim that the proposed permit lacks monitoring, recordkeeping, and reporting sufficient to assure compliance with all emission limitations and other substantive Clean Air Act requirements. Specifically the petitioners cite numerous monitoring, recordkeeping, and reporting deficiencies in the underlying permits and permits by rule that are incorporated by reference into the title V permit.

Second, the petitioners claim that the extensive use of incorporation by reference for emission limitations and standards violates title V of the Act and its implementing regulations at 40 CFR part 70, thereby rendering the permit practically unenforceable. The petitioners claim that the use of incorporation by reference makes it practically impossible for the public to discover the requirements of the permit, which defeats the intention of the title V program. Further, the petitioners claim that there is inadequate guidance as to where the referenced permits may be found and they were unable to obtain complete or current copies of a number of the underlying permits from TCEQ.

On May 28, 2009, the Administrator issued an order partially granting and partially denying the petition. The order explains the reasons behind EPA's conclusion to partially grant and partially deny the petition for objection.

Dated: June 5, 2009.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

[FR Doc. E9–14008 Filed 6–12–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8917–7]

Proposed Administrative Cost Recovery Agreement Pursuant to Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) for the Haythorne Logistics Spill Site, Cheboygan County, MI

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

ACTION: Notice and request for public comment.

SUMMARY: In accordance with section 122(i) of CERCLA, 42 U.S.C. 9622(i), notification is hereby given of a proposed administrative settlement agreement regarding partial recovery of costs incurred by EPA in implementing a removal action at the site of a truck accident on Interstate 75 in Cheboygan County, Michigan. EPA proposes to enter into this agreement under the authority of Sections 107 and 122(h) of CERCLA, 42 U.S.C. 9607 and 9622(h). The proposed agreement has been executed by Haythorne Logistics, a trucking company located in Toledo Ohio. Under the proposed agreement, Haythorne Logistics will pay $119,000 to reimburse the Superfund for part of the $137,915 in costs incurred by EPA in implementing the removal action. For thirty days following the date of publication of this notice, EPA will receive written comments relating to the proposed agreement. EPA will consider all comments received and may decide not to enter into the proposed agreement if comments disclose facts or considerations which indicate that the agreement is inappropriate, improper or inadequate.

DATES: Comments on the proposed agreement must be received by EPA on or before July 15, 2009.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, and should refer to: In the Matter of Haythorne Logistics, EPA Docket No. V–W–'09–C–924.

FOR FURTHER INFORMATION CONTACT: Reginald A. Pallesen, Associate Regional Counsel, by mail at: U.S. Environmental Protection Agency, Office of Regional Counsel (C–14J), 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, or by phone at: (312) 886–0555. A copy of the proposed administrative settlement agreement may be obtained in person or by mail from the EPA's Region 5 Office of Regional Counsel, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590. Additional background information relating to the settlement is available for review at the EPA's Region 5 Office of Regional Counsel.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. 9601–9675.

Dated: June 4, 2009.

Douglas E. Ballotti,

Acting Director, Superfund Division, Region 5.

[FR Doc. E9–14025 Filed 6–12–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 29, 2009.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Richard Jordahl, Fargo, North Dakota; to acquire voting shares of Hatton Bancshares, Inc., Fargo, North Dakota, and thereby indirectly acquire voting shares of Farmers and Merchants National Bank, Hatton, North Dakota.

Board of Governors of the Federal Reserve System, June 9, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–13923 Filed 6–12–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 9, 2009.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. First BanCapital Fund I, LP.; First BanCapital Parallel Fund I, LP.; CBCF Partners, L.P.; MJR, LLC; MJR Financial Group, LLL, all of Bethlehem, Pennsylvania; to acquire between 6.1 and 9.7 percent of the voting shares of Old Florida Bancsahres, Inc., and thereby indirectly acquire voting shares of Old Florida National Bank, both of Longwood, Florida.

Board of Governors of the Federal Reserve System, June 9, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–13922 Filed 6–12–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

[File No. 082 3099]

Sears Holdings Management Corporation; Analysis of Agreement Containing Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before July 6, 2009.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to''Sears, File No. 082–3099'' to facilitate the organization of comments. Please note that your comment—including your name and your state—will be placed on the public record of this proceeding, including on the publicly accessible FTC website, at (*http://www.ftc.gov/os/publiccomments.shtm*).

Because comments will be made public, they should not include any sensitive personal information, such as an individual's Social Security Number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential.* * * as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and Commission Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c), 16 CFR 4.9(c).[1]

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink: (*https://secure.commentworks.com/ftc-searsholdings*) (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink:

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

(*https://secure.commentworks.com/ftc-searsholdings*). If this Notice appears at (*http://www.regulations.gov/search/index.jsp*), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC website at *http://www.ftc.gov/* to read the Notice and the news release describing it.

A comment filed in paper form should include the ''Sears, File No. 082 3099 '' reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H–135 (Annex D), 600 Pennsylvania Avenue, NW, Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The Federal Trade Commission Act (''FTC Act'') and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (*http://www.ftc.gov/os/publiccomments.shtm*). As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*).

FOR FURTHER INFORMATION CONTACT: Rick Quaresima, Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, (202) 326–3130.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for June 4, 2009), on the World Wide Web, at (*http://www.ftc.gov/os/actions.shtm*). A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order to Aid Public Comment

The Federal Trade Commission (''FTC'' or ''Commission'') has accepted, subject to final approval, an agreement containing a consent order from Sears Holdings Management Corporation (''Respondent'').

The proposed consent order (''proposed order'') has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

This matter involves the advertising and dissemination from April 2007 through January 2008 of a software application (the ''Application'') that tracked nearly all of the Internet activities that took place on the computers of consumers who installed it as part of Respondent's ''My SHC Community'' market research program. According to the FTC complaint, Respondent represented, in the process of soliciting consumers to download and install the Application, that the Application would track consumers' ''online browsing.'' The complaint alleges that this claim is deceptive because Respondent failed to disclose adequately that the Application, when installed, would do much more. Only in a lengthy user license agreement did Respondent disclose that the Application would: monitor nearly all of the Internet behavior that occurs on consumers' computers, including information exchanged between consumers and websites other than those owned, operated, or affiliated with Respondent, information provided in secure sessions when interacting with third-party websites, shopping carts, and online accounts, and headers of web-based email; track certain non-Internet-related activities taking place on those computers; and transmit nearly all of the monitored information (excluding selected categories of filtered information) to Respondent's remote computer servers.

The proposed order contains provisions designed to prevent Respondent from engaging in similar acts and practices in the future. The proposed consent order defines a ''Tracking Application'' as ''any software program or application . . . that is capable of being installed on consumers' computers and used by or on behalf of respondent to monitor, record, or transmit information about activities occurring on computers on which it is installed, or about data that is stored on, created on, transmitted from, or transmitted to the computers on which it is installed.'' Part I requires that Respondent, in advertising or disseminating any Tracking Application, disclose certain information clearly and prominently, prior to the downloading or installing of the application, and on a separate screen from any final ''end user license agreement'' or similar document. That information would include all the types of data that the Tracking Application will monitor, record, or transmit; how the data may be used; and whether the data may be used by a third party. In describing the types of data, Respondent would be required specifically to disclose: whether the data may include information from the consumer's interactions with a specific set of websites or from a broader range of Internet interaction; whether the data may include transactions or information exchanged between the consumer and third parties in secure sessions, interactions with shopping baskets, application forms, or online accounts; and whether the information may include personal financial or health information. Respondent must also obtain express consent from consumers prior to downloading or installing a Tracking Application.

Part II of the proposed order requires Respondent to post a clear and prominent notice on the myshccommunity.com website advising consumers that the types of information the Application actually collected and transmitted to Sears and advising them how to uninstall the Application. It also requires Sears to provide prompt, toll-free, telephonic and email support to

help affected consumers uninstall the Application.

Part III of the proposed order requires that Respondent, to the extent it has not already done so, cease collecting any data transmitted by any previously installed Tracking Application and to destroy any previously collected data.

Parts IV through VII of the proposed order require Respondent: to keep copies of relevant consumer complaints and inquiries, documents demonstrating order compliance, and advertisements and other documents relating to dissemination of any Tracking Application; to provide copies of the order to certain of their personnel; to notify the Commission of changes in corporate structure that might affect compliance obligations under the order; and to file compliance reports with the Commission. Part VIII provides that the order will terminate after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E9–13955 Filed 6–12–09: 8:45 am]

BILLING CODE: 6750–01–S

FEDERAL TRADE COMMISSION

[File No. 051 0260]

Alta Bates Medical Group; Analysis of Proposed Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before July 6, 2009.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to''Alta Bates, File No. 051 0260'' to facilitate the organization of comments. Please note that your comment—including your name and your state—will be placed on the public record of this proceeding, including on the publicly accessible FTC website, at (*http://www.ftc.gov/os/publiccomments.shtm*).

Because comments will be made public, they should not include any sensitive personal information, such as an individual's Social Security Number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential. . . .,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and Commission Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c), 16 CFR 4.9(c).[1]

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink: (*https://secure.commentworks.com/ftc-altabates*) (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink: (*https://secure.commentworks.com/ftc-altabates*). If this Notice appears at (*http://www.regulations.gov/search/index.jsp*), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC website at *http://www.ftc.gov/* to read the Notice and the news release describing it.

A comment filed in paper form should include the ''Alta Bates, File No. 051 0260'' reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H–135 (Annex D), 600 Pennsylvania Avenue, NW, Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The Federal Trade Commission Act (''FTC Act'') and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (*http://www.ftc.gov/os/publiccomments.shtm*). As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*).

FOR FURTHER INFORMATION CONTACT: Sylvai Kundig or Linda Badger, FTC Western Region, San Francisco, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, (415) 848–5100.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for June 4, 2009), on the World Wide Web, at (*http://www.ftc.gov/os/actions.shtm*). A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326—2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

ADDRESSES section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a proposed Consent Order with Alta Bates Medical Group, Inc., (''ABMG'' or ''Respondent''). The agreement settles charges that ABMG violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, by fixing prices charged to those offering coverage for health care services (''payors'') in the Berkeley and Oakland, California, area and refusing to deal with payors except on a collectively determined basis. The proposed Consent Order has been placed on the public record for 30 days to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make the proposed Consent Order final.

The purpose of this analysis is to facilitate public comment on the proposed Consent Order. The analysis is not intended to constitute an official interpretation of the agreement and proposed Consent Order or to modify their terms in any way. Further, the proposed Consent Order has been entered into for settlement purposes only and does not constitute an admission by Respondent that it violated the law or that the facts alleged in the Complaint (other than jurisdictional facts) are true.

Alta Bates Medical Group, Inc.

ABMG is a multi-specialty independent practice association (''IPA'') comprised of multiple, independent medical practices serving the Berkeley and Oakland, California area. It has a total of approximately 600 physician members, of which approximately 200 are devoted to primary care. Since its formation, ABMG has negotiated group contracts with payors under which it receives capitated (per member per month) payments. These contracts shift the risk of patient illness to the IPA by specifying that the health plan will pay the IPA a flat monthly fee for each enrollee, with almost no regard for patient utilization. This type of contracting is a form of financial integration, so for anititrust purposes, the IPA is treated as a single entity for purposes of these contract negotiations, and not as a group of competing physicians. The complaint does not challenge ABMG's activities concerning these contracts.

ABMG, however, also contracts on behalf of its member physicians with health plans to provide fee-for-service medical care. Under these arrangements, the payor compensates physicians or group practices for services actually rendered pursuant to agreed-upon fee schedules. In the absence of financial risk-sharing or clinical integration on the part of providers, the IPA members are competitors for purposes of antitrust analysis. It is ABMG's negotiation of fee-for-service contracts that is the subject of the allegations in the Commission's Complaint.

The Complaint

Since at least 2001, ABMG, acting as a combination of its physician members, and in conspiracy with its members, has acted to restrain competition with respect to fee-for-service contracts by, among other things, facilitating, entering into, and implementing agreements, express or implied, to fix the prices and other terms at which they would contract with payors; to engage in collective negotiations over terms and conditions of dealing with payors; and to have ABMG members refrain from negotiating individually with payors or contracting on terms other than those approved by ABMG. This type of collective conduct by competitors is inherently suspect under the antitrust laws.

At times, however, IPAs will act as a conduit between physician members and health plans regarding fee-for-service contracts to facilitate the contracting process. Under this model, the IPA merely acts as a messenger and does not negotiate the terms of the contract.

Although claiming to employ a lawful messenger arrangement, ABMG, on behalf of its physician members, instead orchestrated collective negotiations for fee-for-service contracts. Specific acts by ABMG that are alleged in the complaint are: making proposals and counter-proposals, as well as accepting or rejecting offers, without consulting with its individual physician members regarding the prices they unilaterally would accept, and without transmitting the payors' offers to its individual physician members until ABMG had approved the negotiated prices.

The complaint also alleged a concerted refusal to deal intended to impede competition by one of ABMG's major competitors, the Permanente Medical Group, which provides physician services exclusively to Kaiser Foundation Health Plan, Inc. In 2006, Kaiser[2] was expanding a fee-for-service product, under which covered individuals could access physician services through a national third-party network that included ABMG physicians. This expansion by Kaiser threatened ultimately to reduce ABMG's business under its capitated contracts, by giving Kaiser the ability to offer employers both a capitated and fee-for-service health plan option. To impede this expansion, ABMG attempted a concerted refusal to serve Kaiser fee-for-service enrollees. Although ABMG's refusal to deal was ultimately unsuccessful, the sole purpose of this action was to impede competition in the provision of physician services in and around Berkeley and Oakland, California.

ABMG did not engage in any activity that might justify collective agreements on the prices its members would accept for their services. For example, the physicians in ABMG have not clinically or financially integrated their practices to create efficiencies sufficient to justify their acts and practices. As a consequence, the Respondent's actions have restrained price and other forms of competition among physicians in the Berkeley and Oakland, California, area and thereby harmed consumers (including health plans, employers, and individual consumers) by increasing the prices for physician services.

The Proposed Consent Order

The proposed Consent Order is designed to prevent the continuance and recurrence of the illegal conduct alleged in the complaint while it allows ABMG to engage in legitimate, joint conduct. The proposed Consent Order does not affect ABMG's activities in contracting with the payors on a capitated basis.

Paragraph II.A prohibits Respondent from entering into or facilitating any agreement between or among any health care providers: (1) to negotiate on behalf of any physician with any payor; (2) to refuse to deal, or threaten to refuse to deal with any payor; (3) regarding any term, condition, or requirement upon which any physician deals, or is willing to deal, with any payor, including, but not limited to price terms; or (4) not to deal individually with any payor, or not to deal with any payor other than through ABMG.

The other parts of Paragraph II reinforce these general prohibitions.

[2] Kaiser is a trade name for an association of three entities: Kaiser Foundation Health Plan, Inc.; Kaiser Foundation Hospitals; and the Permanente Medical Groups.

Paragraph II.B prohibits the Respondent from facilitating exchanges of information between health care providers concerning whether, or on what terms, to contract with a payor. Paragraph II.C bars attempts to engage in any action prohibited by Paragraph II.A or II.B, and Paragraph II.D proscribes encouraging, suggesting, advising, pressuring, inducing, or attempting to induce any person to engage in any action that would be prohibited by Paragraphs II.A through II.C.

As in other Commission orders addressing health care providers' collective bargaining with health care payors, certain kinds of agreements are excluded from the general bar on joint negotiations. Paragraph II does not preclude ABMG from engaging in conduct that is reasonably necessary to form or participate in legitimate ''qualified risk-sharing'' or ''qualified clinically-integrated'' joint arrangements, as defined in the proposed Consent Order. Also, Paragraph II would not bar agreements that only involve physicians who are part of the same medical group practice, defined in Paragraph I.B, because it is intended to reach agreements between and among independent competitors.

Paragraphs III through VI require ABMG to notify the Commission before it initiates certain contacts regarding contracts with payors. Paragraphs III and IV apply to arrangements under which ABMG would be acting as a messenger on behalf of its member physicians. Paragraphs V and VI discuss arrangements under which ABMG plans to achieve financial or clinical integration.

Paragraph VII.A requires ABMG to send a copy of the Complaint and Consent Order to its physician members, its management and staff, and any payors who communicated with ABMG, or with whom ABMG communicated, with regard to any interest in contracting for physician services, at any time since January 1, 2001.

Paragraph VII.B requires ABMG to terminate, without penalty, pre-existing payer contracts that it had entered into since 2001, at the earlier of (1) receipt by ABMG of a written request for termination by the payer; or (2) the termination date, renewal date, or anniversary date of the contract. This provision is intended to eliminate the effects of ABMG's illegal collective behavior. The payer can delay the termination for up to one year by making a written request to ABMG.

Paragraph VII.D contains three-year notification provisions relating to future contact with physicians, payors, management and staff. This provision requires ABMG to distribute a copy of the Complaint and Consent Order to each physician who begins participating in ABMG; each payor who contacts ABMG regarding the provision of physician services; and each person who becomes an officer, director, manager, or employee for five years after the date on which the Consent Order becomes final. In addition, Paragraph VII.D requires ABMG to publish a copy of the Complaint and Consent Order, annually, in any official publication that it sends to its participating physicians.

Paragraphs VII.E and VIII–IX impose various obligations on ABMG to report or to provide access to information to the Commission to facilitate monitoring its compliance with the Consent Order.

Pursuant to Paragraph X, the proposed Consent Order will expire in 20 years from the date it is issued.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E9–13956 Filed 6–12–09: 8:45 am]

BILLING CODE: 6750–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Low Income Home Energy Assistance Program LIHEAP Leveraging Report.

OMB No.: 0970–0121.

Description: The LIHEAP leveraging incentive program rewards LIHEAP grantees that have leveraged non-federal home energy resources for low-income households. The LIHEAP leveraging report is the application for leveraging incentive funds that these LIHEAP grantees submit to the Department of Health and Human Services for each fiscal year in which they leverage countable resources. Participation in the leveraging incentive program is voluntary and is described at 45 CFR 96.87. The LIHEAP leveraging report obtains information on the resources leveraged by LIHEAP grantees each fiscal year (as cash, discounts, waivers, and in-kind); the benefits provided to low-income households by these resources (for example, as fuel and payments for fuel, as home heating and cooling equipment, and as weatherization materials and installation); and the fair market value of these resources/benefits.

HHS needs this information in order to carry out statutory requirements for administering the LIHEAP leveraging incentive program, to determine countability and valuation of grantees leveraged non-federal home energy resources, and to determine grantees shares of leveraging incentive funds. HHS proposes to request a three-year extension of OMB approval for the currently approved LIHEAP leveraging report information collection.

Respondents: State, Local or Tribal Governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
LIHEAP Leveraging Report	70	1	38	2,660

Estimated Total Annual Burden Hours: 2,660

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it

within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–7245, Attn: Desk Officer for the Administration for Children and Families.

Dated: June 10, 2009.

Janean Chambers,

Reports Clearance Officer.

[FR Doc. E9–13985 Filed 6–12–09; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10266]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Conditions of Participation: Requirements for Approval and Reapproval of Transplant Centers to Perform Organ Transplants and Supporting Regulations in 42 CFR 482.74, 482.94, 482.100, 482.102, 488.61; *Use:* The Conditions of Participation and accompanying requirements specified in the regulations are used by our surveyors as a basis for determining whether a transplant center qualifies for approval or re-approval under Medicare. CMS and the healthcare industry believe that the availability to the facility of the type of records and general content of records is standard medical practice and is necessary in order to ensure the well-being and safety of patients and professional treatment accountability. *Form Number:* CMS–10266 (OMB# 0938–New); *Frequency:* Yearly; *Affected Public:* Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 514; *Total Annual Responses:* 3,270; *Total Annual Hours:* 9,334.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on *July 15, 2009.*

OMB Human Resources and Housing Branch, Attention: OMB Desk Officer, New Executive Office Building, Room 10235, Washington, DC 20503, Fax Number: (202) 395–6974.

Dated: June 5, 2009.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E9–13947 Filed 6–12–09; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–304/304a, CMS–10288, CMS–10289 and CMS–1450 (UB–04)]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* Reconciliation of State Invoice and Prior Quarter Adjustment Statement; *Use:* Section 1927 of the Social Security Act requires drug manufacturers to enter into and have in effect a rebate agreement with CMS in order for States to receive funding for drugs dispensed to Medicaid recipients. Drug manufacturers must complete and submit to States the 304 form (the Reconciliation of State Invoice Form) to explain any rebate payment adjustments for the current quarter, and complete and submit the 304A form (the Prior Quarter Adjustment Statement Form) to States to explain rebate payment adjustments to any prior quarters. Both forms are used to reconcile drug rebate payments made by manufacturers with the State invoices of rebates due. *Form Number:* CMS–304/304a (OMB#: 0938–0676); *Frequency:* Reporting—Quarterly; *Affected Public:* Private Sector: Business or other for profits; *Number of Respondents:* 570; *Total Annual Responses:* 3820; *Total Annual Hours:* 141,080. (For policy questions regarding this collection contact Cindy Bergin at 410–786–1176. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* New Collection; *Title of Information Collection:* State Plan Pre-Print to Implement Required Dental Benefits Pursuant of Children's Health Insurance Program Reauthorizing Act (CHIPRA) 2009; *Use:* Section 501 of CHIPRA 2009 amends XXI and requires that ''child health assistance provide to a targeted low-income child shall include coverage of dental services necessary to prevent disease and promote oral health, restore oral structures to health and function, and treat emergency conditions.'' States that provide coverage in a separate Children's Health Insurance Program may choose between two methods of providing the dental services required in Section 501. The State may define the

services in the dental benefit package and demonstrate that it includes all the required services. Alternatively, the State may provide a dental benefit package that is equivalent to one of the three benchmark packages described in the statute. In order to implement one of these options and comply with the statute, States must amend their State Plan using the State Plan pre-print. *Form Number:* CMS–10288 (OMB #: 0938—NEW); *Frequency:* Reporting One-time; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 51; *Total Annual Responses:* 51; *Total Annual Hours:* 1530. (For policy questions regarding this collection contact Nancy Goetschius at 410–786–0707. For all other issues call 410–786–1326.)

3. *Type of Information Collection Request:* New Collection; *Title of Information Collection:* Optional Dental-only Supplemental Coverage State Plan Amendment Template; *Use:* CHIPRA 2009 provides States with an option to provide supplemental dental-only coverage to children who would be eligible to enroll in the State's Children's Health Insurance Program (CHIP), except that they already have health insurance coverage, either through a group health plan or employer sponsored insurance. If the health insurance plan the child is enrolled in does not provide dental benefits, the State may provide the child with the same State-defined dental package or benchmark benefit plan provided to children who are eligible for the entire CHIP benefit package. The child will only be entitled to the dental services provided to other CHIP children.

In order to choose this option, State must comply with all other requirements of the statute regarding cost sharing, income eligibility level, absence of a waiting list for their entire CHIP program (not just for dental coverage), and not providing more favorable treatment to children eligible for the supplemental dental benefit under this option. In order to implement this option States must amend their State Plan using the Supplemental Dental Benefits State Plan Amendment Template. *Form Number:* CMS–10289 (OMB#: 0938—NEW); *Frequency:* Reporting One-time; *Affected Public:* State, local, or Tribal Governments; *Number of Respondents:* 51; *Total Annual Responses:* 51; *Total Annual Hours:* 1020. (For policy questions regarding this collection contact Nancy Goetschius at 410–786–0707. For all other issues call 410–786–1326.)

4. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare Uniform Institutional Provider Bill and Supporting Regulations in 42 CFR 424.5; *Use:* Section 42 CFR 424.5(a)(5) requires providers of services to submit a claim for payment prior to any Medicare reimbursement. Charges billed are coded by revenue codes. The bill specifies diagnoses according to the International Classification of Diseases, Ninth Edition (ICD–9–CM) code. Inpatient procedures are identified by ICD–9–CM codes, and outpatient procedures are described using the CMS Common Procedure Coding System (HCPCS). These are standard systems of identification for all major health insurance claims payers. Submission of information on the CMS–1450 permits Medicare intermediaries to receive consistent data for proper payment. *Form Numbers:* CMS–1450 (UB–04) (OMB#: 0938–0997); *Frequency:* Reporting—On occasion; *Affected Public:* Not-for-profit institutions, Business or other for-profit; *Number of Respondents:* 53,111; *Total Annual Responses:* 181,909,654; *Total Annual Hours:* 1,567,455. (For policy questions regarding this collection contact Matt Klischer at 410–786–7488. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site at *http://www.cms.hhs.gov/PaperworkReductionActof1995*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by *August 14, 2009:*

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov*. Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number (CMS–10078), Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: June 5, 2009.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E9–13944 Filed 6–12–09; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

[Funding Opportunity Number: HHS–2009–IHS–UIHP–0003]

Office of Urban Indian Health Programs

Announcement Type: Competitive Targeted Solicitation.

Catalog of Federal Domestic Assistance Number: 93.193.

Application Deadline Date: July 15, 2009.

Review Date: July 30, 2009.

Earliest Anticipated Start Date: August 3, 2009.

I. Funding Opportunity Description

The Indian Health Service (IHS), Office of Urban Indian Health Programs (OUIHP) announces a limited targeted solicitation for the 4-in-1 Title V grants responding to an Office of HIV/AIDS Policy (OHAP), Minority AIDS (Acquired Immunodeficiency Syndrome) Initiative (MAI). This program is authorized under the authority of the Snyder Act and 25 U.S.C. 1652, 1653 of the Indian Health Care Improvement Act, Public Law 94–437, as amended. This program is described at 93.193 in the Catalog of Federal Domestic Assistance (CFDA).

This competitive targeted solicitation seeks to expand OUIHP's existing Title V grants to increase the number of American Indian/Alaska Natives (AI/AN) with awareness of his/her HIV status. This will provide routine and/or rapid HIV screening, prevention, pre- and post-test counseling (when appropriate). Enhancement of urban Indian health program HIV/AIDS activities is necessary to reduce the incidence of HIV/AIDS in the urban Indian health communities by increasing access to HIV related services, reducing stigma, and making testing routine.

These grants and supplements will be used to enhance HIV testing, including rapid testing and/or standard HIV antibody testing and to provide a more focused effort to address HIV/AIDS prevention by targeting some of the largest urban Indian populations in the United States. The grantees will attempt

to provide routine HIV screening for adults as per 2006 Centers for Disease Control and Prevention (CDC) guidelines, pre- and post-test counseling (when appropriate). These grants will be used to identify best practices to enhance HIV testing, including rapid testing and/or conventional HIV antibody testing, and to provide a more focused effort to address HIV/AIDS prevention in AI/AN populations in the United States.

The nature of these projects will require collaboration with the OUIHP to: (1) Coordinate activities with the IHS National HIV Program; (2) participate in projects in other operating divisions of the Department of Health and Human Services (HHS) such as the CDC, Substance Abuse and Mental Health Services Administration, Health Resource and Services Administration and the Office of HIV/AIDS Policy; and (3) submit and share anonymous, non-identifiable data on HIV/AIDS testing, treatment, and education.

These grants are also intended to encourage development of sustainable, routine HIV screening programs in urban facilities that are aligned with 2006 CDC HIV Screening guidelines (*http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5514a1.htm*). Key features include streamlined consent and counseling procedures (verbal consent, opt-out), a clear HIV screening policy, identifying and implementing any necessary staff training, community awareness, and a clear followup protocol for HIV positive results including linkages to care. Grantees may choose to bundle HIV tests with STD screening.

II. Award Information

Type of Award: Title V HIV/AIDS New Grants.

Estimated Funds Available: The total amount identified for Fiscal Year (FY) 2009 is five awards totaling $150,000. The award is for three years in duration. Individual awards must include one project evaluation and provide administrative support of the project. Awards under this announcement and all future awards are subject to the availability of funds. IHS has no obligation to provide future funding for this project.

Anticipated Number of Awards: Five grant awards will be made under the program.

Project Period: September 1, 2009–August 31, 2010.

Award Amount: $150,000.

A. Requirements of Recipient Activities

In FY 2009, each grantee's attempted goal shall include screening as many individuals as possible; however, each funded program's *attempted* goal will be to increase screening to a minimum of 300 AI/AN tested per program funded (adjusted due to variations in size of facility and user population), for a total of 4,500 AI/AN tested. This reflects an MAI requirement to maintain the actual cost per MAI Fund HIV testing client below the medical care inflation rate. This does not include counts of re-testing individuals in the same year. Each program shall also collect evidence, as part of the testing process, to document lessons learned, best practices, and barriers to increased routine HIV screening within this population.

III. Eligibility Information

1. *Eligible Applicants:* urban Indian organizations, as defined by 25 U.S.C. 1603(h), and limited to urban Indian organizations which meet the following criteria:

- Received State certification to conduct HIV rapid testing (where required);
- Health professionals and staff have been trained in the HIV/AIDS screening tools, education, prevention, counseling, and other interventions for AI/ANs;
- Developed programs to address community and group support to sustain risk—reduction skills;
- Implemented HIV/AIDS quality assurance and improvement programs; and
- Must provide proof of non-profit status with the application.

2. Cost Sharing or Matching—This program does not require matching funds or cost sharing.

3. If the application budget exceeds the award amount, it will not be considered for review.

IV. Application and Submission Information

1. Applicant package may be found in Grants.gov (*http://www.grants.gov*) or at: *http://www.ihs.gov/NonMedicalPrograms/gogp/gogp_funding.asp*.

Questions regarding the electronic application process may be directed to Michelle G. Bulls at (301) 443–6290.

2. Content and Form of Application Submission:

- Be single spaced.
- Be typewritten.
- Have consecutively numbered pages.
- Use black type not smaller than 12 characters per one inch.
- Contain a narrative that does not exceed 15 typed pages that includes the other submission requirements below.

The 15 page narrative does not include the work plan, standard forms, table of contents, budget, budget justifications, narratives, and/or other appendix items.

Public Policy Requirements: All Federal-wide public policies apply to IHS grants with the exception of the Lobbying and Discrimination public policy.

3. Submission Dates and Times:

The application from each urban Indian organization must be submitted electronically through Grants.gov by 12:00 midnight Eastern Standard Time (EST), July 15, 2009.

If technical challenges arise and the urban Indian organizations are unable to successfully complete the electronic application process, each organization must contact Michelle G. Bulls, Grants Policy Staff (GPS) *fifteen days* prior to the application deadline and advise of the difficulties that they are experiencing. Each organization must obtain prior approval, in writing (e-mails are acceptable), from Ms. Bulls allowing the paper submission. If submission of a paper application is requested and approved, the original and two copies may be sent to the appropriate grants contact that is listed in Section IV.1 above. Applications not submitted through Grants.gov, without an approved waiver, may be returned to the organizations without review or consideration.

A late application will be returned to the organization without review or consideration.

4. Intergovernmental Review: Executive Order 12372 requiring intergovernmental review is not applicable to this program.

5. Funding Restrictions:

A. Pre-award costs are allowable pending prior approval from the awarding agency. However, in accordance with 45 CFR part 74, all pre-award costs are incurred at the recipient's risk. The awarding office is under no obligation to reimburse such costs if for any reason any of the urban Indian organizations do not receive an award or if the award to the recipient is less than anticipated.

B. The available funds are inclusive of direct and appropriate indirect costs.

C. Only one new grant will be awarded to each organization.

D. IHS will acknowledge receipt of the application by e-mail.

6. Other Submission Requirements:

Electronic Submission—Each urban Indian organization must submit through Grants.gov. However, should any technical challenges arise regarding the submission, please contact Grants.gov Customer Support at 1–800–518–4726 or *support@grants.gov*. The

Contact Center hours of operation are Monday-Friday from 7 a.m. to 9 p.m. EST. If you require additional assistance, please call (301) 443–6290 and identify the need for assistance regarding your Grants.gov application. Your call will be transferred to the appropriate grants staff member. Each organization must seek assistance at least fifteen days prior to the application deadline. If an organization does not adhere to the timelines for Central Contractor Registry (CCR), Grants.gov registration and request timely assistance with technical issues, a paper application submission may not be granted.

To submit an application electronically, please use the *Grants.gov* Web site. Download a copy of the application package on the Grants.gov Web site, complete it offline and then upload and submit the application via the Grants.gov site. You may not e-mail an electronic copy of a grant application to IHS.

Please be reminded of the following:

- Under the new IHS application submission requirements, paper applications are not the preferred method. However, if any urban Indian organization has technical problems submitting the application on-line, please contact Grants.gov Customer Support at: *http://www.grants.gov/CustomerSupport*.
- Upon contacting Grants.gov, obtain a Grants.gov tracking number as proof of contact. The tracking number is helpful if there are technical issues that cannot be resolved and a waiver request from Grants Policy must be obtained. If any of the organizations are still unable to successfully submit the application online, please contact Michelle G. Bulls, GPS, at (301) 443–6290 at least fifteen days prior to the application deadline to advise of the difficulties you have experienced.
- If it is determined that a formal waiver is necessary, each organization must submit a request, in writing (e-mails are acceptable), to *Michelle.Bulls@ihs.gov* providing a justification for the need to deviate from the standard electronic submission process. Upon receipt of approval, a hard-copy application package must be downloaded from Grants.gov and sent directly to the Division of Grants Operations (DGO), 801 Thompson Avenue, TMP, 360, Rockville, MD 20852 by July 15, 2009.
- Upon entering the Grants.gov Web site, there is information available that outlines the requirements for each urban Indian organization regarding electronic submission of application and hours of operation. We strongly encourage each organization to not wait until the deadline date to begin the application process as the registration process for CCR and Grants.gov could take up to fifteen working days.
- To use Grants.gov, each urban Indian organization must have a Data Universal Numbering System (DUNS) Number and register in the CCR. Each organization should allow a minimum of ten working days to complete CCR registration. See below on how to apply.
- Each organization must submit all documents electronically, including all information typically included on the SF–424 and all necessary assurances and certifications.
- Please use the optional attachment feature in Grants.gov to attach additional documentation that may be requested by IHS.
- Each organization must comply with any page limitation requirements described in the program announcement.
- After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The DGO will retrieve your application from Grants.gov. The DGO will notify each organization by e-mail that the application has been received.
- You may access the electronic application for this program on Grants.gov.
- You may search for the downloadable application package using either the CFDA number or the Funding Opportunity Number. Both numbers are identified in the heading of this announcement.
- To receive an application package, each urban Indian organization must provide the Funding Opportunity Number: HHS–2009–IHS–UIHP–0003.

E-mail applications will not be accepted under this announcement.

DUNS Number

Applicants are required to have a DUNS number to apply for a grant or cooperative agreement from the Federal Government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Interested parties may wish to obtain their DUNS number by phone to expedite the process.

Applications submitted electronically must also be registered with the CCR. A DUNS number is required before CCR registration can be completed. Many organizations may already have a DUNS number. Please use the number listed above to investigate whether or not your organization has a DUNS number. Registration with the CCR is free of charge.

Applicants may register by calling 1–888–227–2423. Please review and complete the CCR Registration Worksheet located on *http://www.ccr.gov.*

More detailed information regarding these registration processes can be found at *Grants.gov.*

V. Application Review Information

1. Criteria

The instructions for preparing the application narrative also constitute the evaluation criteria for reviewing and scoring the application. Weights assigned to each section are noted in parentheses. The narrative should include all prior years of activity; information for multi-year projects should be included as an appendix (see E. ''Categorical Budget and Budget Justification'') at the end of this section for more information. The narrative should be written in a manner that is clear to outside reviewers unfamiliar with prior related activities of the urban Indian organization. It should be well organized, succinct, and contain all information necessary for reviewers to understand the project fully.

A. Understanding of the Need and Necessary Capacity (15 points)

1. Understanding of the Problem

a. Define the project target population, identify their unique characteristics, and describe the impact of HIV on the population.

b. Describe the gaps/barriers in HIV testing for the population.

c. Describe the unique cultural or sociological barriers of the target population to adequate access for the described services.

2. Facility Capability

a. Briefly describe your clinic programs and services and how this initiative will assist to commence, compliment and/or expand existing efforts.

b. Describe your clinic's ability to conduct this initiative through:

- Your clinic's present resources.
- Collaboration with other providers.
- Partnerships established to accept referrals for counseling, testing, and referral and confirmatory blood tests and/or social services for individuals who test HIV positive.
- Linkages to treatment and care: partnerships established to refer out of your clinic for specialized treatment,

care, confirmatory testing (if applicable) and counseling services.

B. Work Plan (40 points)

1. Project Goal and Objectives

Address all of the following program goals and objectives of the project. The objectives must be specific as well as quantitatively and qualitatively measurable to ensure achievement of goal(s).

• Implementation Plan

a. Identify the proposed program activities and explain how these activities will increase and sustain HIV screening.

b. Describe Policy and Procedure changes anticipated for implementation that include:

(1) Support of the 2006 CDC Revised HIV Testing Recommendations.

(2) Community awareness.

(3) Age ranges of persons to be screened.

(4) Bundling of HIV testing with STD tests.

(5) Type of HIV Screen/Test (Rapid, Conventional, Western Blot) and who will perform test (in-house, send-out).

c. Provide a clear timeline with quarterly milestones for project implementation.

d. Certify that the program identified and agreed to follow the state regulations for HIV testing in their state and how the clinic will follow their state reporting guidelines for seropositive results.

e. Describe how individuals will be selected for testing to identify selection criteria and which group(s)—if any—will you be able, via state regulations to offer testing in an opt-out format.

f. Describe how the program will ensure that clients receive their test results, particularly clients who test positive.

g. Describe how the program will ensure that individuals with initial HIV-positive test results will receive confirmatory tests. If you do not provide confirmatory HIV testing, you must provide a letter of intent or Memorandum of Understanding with an external laboratory documenting the process through which initial HIV-positive test results will be confirmed.

h. Describe the program strategies to linking potential seropositive patients to care.

i. Describe the program quality assurance strategies.

j. Describe how the program will train, support and retain staff providing counseling and testing.

k. Describe how the program will ensure client confidentiality.

l. Describe how the program will ensure that its services are culturally fluent and relevant.

m. Describe how the program will attempt to streamline procedures so as to reduce the overall cost per test administered.

C. Project Evaluation (20 points)

1. Evaluation Plan

The grantee shall provide a plan for monitoring and evaluating the HIV rapid test and/or standard HIV antibody test.

2. Reporting Requirements

The following quantitative and qualitative measures shall be addressed:

• Required Quantitative Indicators (quantitative)

a. Number of tests performed and number of test refusals.

b. Number of clients learning of their serostatus for the first time via this testing initiative (unique patients, non-repeated tests).

c. Number of reactive tests and confirmed seropositive (actual and proportion).

d. Number of clients linked to care/treatment or referrals for prevention counseling.

e. Number of individuals receiving their confirmatory test results.

• Required Qualitative Information

a. Measures in place to protect confidentiality.

b. Identify barriers of implementation as well as lessons learned for best practices to share with other IHS/Urban or tribal entities.

c. Sustainability plan and measures of ongoing testing in future years, after grant money has been spent.

• Other quantitative indicators may be collected to improve clinic processes and add to information reported, however they are not required reporting measures:

a. Number of clients who refused due to prior knowledge of status.

b. Number of rapid versus standard antibody test.

c. Number of false negatives and/or positives after confirmatory testing.

d. Develop a plan for obtaining knowledge, attitudes, and behavior data pending official approval of patient survey.

D. Organizational Capabilities and Qualifications (10 points)

This section outlines the broader capacity of the organization to complete the project outlined in the work plan. It includes the identification of personnel responsible for completing tasks and the chain of responsibility for successful completion of the project outlined in the work plan.

1. Describe the organizational structure.

2. Describe the ability of the organization to manage the proposed project. Include information regarding similarly sized projects in scope and financial assistance as well as other grants and projects successfully completed.

3. Describe what equipment (*i.e.,* phone, Web sites, etc.) and facility space (*i.e.,* office space) will be available for use during the proposed project. Include information about any equipment not currently available that will be purchased throughout the agreement.

4. List key personnel who will work on the project.

• Identify existing personnel and new program staff to be hired.

• In the appendix, include position descriptions and resumes for all key personnel. Position descriptions should clearly describe each position and duties indicating desired qualifications, experience, and requirements related to the proposed project and how they will be supervised. Resumes must indicate that the proposed staff member is qualified to carry out the proposed project activities and who will determine if the work of a contractor is acceptable.

• Note who will be writing the progress reports.

• If a position is to be filled, indicate that information on the proposed position description.

• If the project requires additional personnel beyond those covered by the supplemental grant, (*i.e.,* Information Technology support, volunteers, interviewers, etc.), note these and address how these positions will be filled and, if funds are required, and the source of these funds.

• If personnel are to be only partially funded by this supplemental grant, indicate the percentage of time to be allocated to this project and identify the resources used to fund the remainder of the individual's salary.

E. Categorical Budget and Budget Justification (15 points)

This section should provide a clear estimate of the project program costs and justification for expenses for the entire grant period. The budget and budget justification should be consistent with the tasks identified in the work plan. The budget focus should be on routinizing and sustaining HIV testing services as well as reducing the cost per person tested.

1. Categorical budget (Form SF 424A, Budget Information Non-Construction Programs) completing each of the budget periods requested.

2. Narrative justification for all costs, explaining why each line item is

necessary or relevant to the proposed project. Include sufficient details to facilitate the determination of cost allowability.

3. Budget justification should include a brief program narrative for the second and third years.

4. If indirect costs are claimed, indicate and apply the current negotiated rate to the budget. Include a copy of the rate agreement in the appendix.

2. Review and Selection Process

In addition to the above criteria/requirements, the application will be considered according to the following:

A. *The submission deadline:* July 15, 2009. Applications submitted in advance of or by the deadline and verified by the postmark will undergo a preliminary review to determine that:

- The applicant is eligible in accordance with this grant announcement.
- The application is not a duplication of a previously funded project.
- The application narrative, forms, and materials submitted meet the requirements of the announcement allowing the review panel to undertake an in-depth evaluation; otherwise, it may be returned.

B. The Objective Review date is July 30, 2009.

The applications that are complete, responsive, and conform to this program announcement will be reviewed for merit by the Ad Hoc Objective Review Committee (ORC) appointed by the IHS to review and make recommendations on the applications. Prior to ORC review, the applications will be screened to determine that programs proposed are those which the IHS has the authority to provide, either directly or through funding agreement, and that those programs are designed for the benefit of IHS beneficiaries. If an urban Indian organization does not meet these requirements, the application will not be reviewed. The ORC review will be conducted in accordance with the IHS Objective Review Guidelines. The applications will be evaluated and rated on the basis of the evaluation criteria listed in Section V.1. The guidelines can be obtained from the OUIHP. The criteria are used to evaluate the quality of a proposed project and determine the likelihood of success.

3. Anticipated Announcement and Award Dates

Anticipated announcement and Award Date is August 3, 2009.

VI. Award Administration Information

1. Award Notices:

The Notice of Award (NoA) will be initiated by the DGO and will be mailed via postal mail to the urban Indian organization. The NoA will be signed by the Grants Management Officer and this is the authorizing document under which funds are dispersed. The NoA, the legally binding document, will serve as the official notification of the grant award and will reflect the amount of Federal funds awarded for the purpose of the grant, the terms and conditions of the award, the effective date of the award, and the budget/project period.

2. Administrative Requirements:

Grants are administered in accordance with the following documents:

- This Program Announcement.
- 45 CFR part 74, ''Uniform Administrative Requirements for Awards to Institutions of Higher Education, Hospitals, Other Nonprofit Organizations, and Commercial Organizations.''
- Grants Policy Guidance: HHS Grants Policy Statement, January 2007.
- ''Non-Profit Organizations'' (Title 2 Part 230).
- Audit Requirements: OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations.''

3. Indirect Costs: This section applies to indirect costs in accordance with HHS Grants Policy Statement, Part II–27. The IHS requires applicants to have a current indirect cost rate agreement in place prior to award. The rate agreement must be prepared in accordance with the applicable cost principles and guidance as provided by the cognizant agency or office. A current rate means the rate covering the applicable activities and the award budget period. If the current rate is not on file with the awarding office, the award shall include funds for reimbursement of indirect costs. However, the indirect costs portion will remain restricted until the current rate is provided to the DGO.

If an urban Indian organization has questions regarding the indirect costs policy, please contact the DGO at (301) 443–5204.

4. Reporting:

A. Progress Report. Program progress reports on number of tests performed and milestones reached are required quarterly by the OUIHP in order to satisfy quarterly reports due to funding source at MAI. These reports will include a brief comparison of actual accomplishments to the goals established for the period, reasons for unmet milestones (if applicable), and other pertinent information as required.

B. A Final Assessment and Evaluation report must be submitted within 90 days of expiration of the budget/project period.

C. Financial Status Report. Semi-annual financial status reports must be submitted within 30 days of the end of the half year. Final financial status reports are due within 90 days of expiration of the budget period. Standard Form 269 (long form) will be used for financial reporting.

D. Participation in a minimum of two teleconferences.

Teleconferences will be required semi-annually (unless further followup is needed) for Technical Assistance and information to be provided and progress to be shared among grantees with the OUIHP and National HIV Program Consultant.

Failure to submit required reports within the time allowed may result in suspension or termination of an active agreement, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in one or both of the following: (1) The imposition of special award provisions; and (2) the non-funding or non-award of other eligible projects or activities. This applies whether the delinquency is attributable to the failure of the organization or the individual responsible for preparation of the reports. Telecommunication for the hearing impaired is available at: TTY (301) 443–6394.

VII. Agency Contacts

For program-related and general information regarding this announcement: Danielle Steward, Health Systems Specialist, Office of Urban Indian Health Programs, 801 Thompson Avenue, Reyes Building, Suite 200, Rockville, MD 20852, (301) 443–4680 or *danielle.steward@ihs.gov.*

For specific grant-related and business management information: Denise Clark, Senior Grants Management Specialist, 801 Thompson Avenue, TMP, Suite 360, Rockville, MD 20852, (301) 443–5204 or *denise.clark@ihs.gov.*

Dated: June 8, 2009.

Randy Grinnell,

Deputy Director, Indian Health Service.

[FR Doc. E9–14044 Filed 6–12–09; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0254]

Determination That THORAZINE (Chlorpromazine Hydrochloride) Injection and 18 Other Drug Products Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that the 19 drug products listed in this document were not withdrawn from sale for reasons of safety or effectiveness. This determination means that FDA will not begin procedures to withdraw approval of abbreviated new drug applications (ANDAs) that refer to these drug products, and it will allow FDA to continue to approve ANDAs that refer to the products as long as they meet relevant legal and regulatory requirements.

FOR FURTHER INFORMATION CONTACT: Olivia Pritzlaff, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6308, Silver Spring, MD 20993–0002, 301–796–3601.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. Sponsors of ANDAs do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA). The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is generally known as the ''Orange Book.'' Under FDA regulations, a drug is withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

Under § 314.161(a) (21 CFR 314.161(a)), the agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness: (1) Before an ANDA that refers to that listed drug may be approved; (2) whenever a listed drug is voluntarily withdrawn from sale and ANDAs that refer to the listed drug have been approved; and (3) when a person petitions for such a determination under 21 CFR 10.25(a) and 10.30. Section 314.161(d) provides that if FDA determines that a listed drug was withdrawn from sale for reasons of safety or effectiveness, the agency will initiate proceedings that could result in the withdrawal of approval of the ANDAs that refer to the listed drug.

FDA has become aware that the drug products listed in the table in this document are no longer being marketed. (As requested by the applicants, FDA withdrew approval of NDA 20–225 for IMDUR (isosorbide mononitrate) Extended-Release Tablets in the **Federal Register** of February 11, 2009 (74 FR 6896) and NDA 11–556 for ANTURANE (sulfinpyrazone) Tablets and Capsules, NDA 15–500 for TOLINASE (tolazamide) Tablets, NDA 18–285 for VISKEN (pindolol) Tablets, NDA 20–137 for DEMADEX (torsemide) Injection, and NDA 20–154 for VIDEX (didanosine) Chewable Tablets in the **Federal Register** of May 19, 2009 (74 FR 23407)).

Application No.	Drug	Applicant
NDA 9–149	THORAZINE (chlorpromazine hydrochloride (HCl)) Injection, 25 milligrams (mg)/milliliter (mL)	GlaxoSmithKline, 2301 Renaissance Blvd., King of Prussia, PA 19406
NDA 9–149	THORAZINE (chlorpromazine HCl) Oral Concentrate, 30 mg/mL and 100 mg/mL	Do.
NDA 9–149	THORAZINE (chlorpromazine HCl) Oral Syrup, 10 mg/5 mL	Do.
NDA 9–149	THORAZINE (chlorpromazine) Suppositories, 25 mg and 100 mg	Do.
NDA 11–552	STELAZINE (trifluoperazine HCl) Tablets, Equivalent to (EQ) 1 mg base, EQ 2 mg base, EQ 5 mg base, and EQ 10 mg base	Do.
NDA 11–556	ANTURANE (sulfinpyrazone) Tablet, 100 mg	Novartis Pharmaceuticals Corp., One Health Plaza, East Hanover, NJ 07963
NDA 11–556	ANTURANE (sulfinpyrazone) Capsule, 200 mg	Do.
NDA 12–940	ISORDIL (isosorbide dinitrate) Sublingual Tablets, 2.5 mg, 5 mg, and 10 mg	Biovail Pharmaceuticals, Inc., 700 Route 202–206 North, Bridgewater, NJ 08807–0980
NDA 15–500	TOLINASE (tolazamide) Tablets, 100 mg, 250 mg, and 500 mg	Pfifzer, Inc., 235 East 42d St., New York, NY 10017

Application No.	Drug	Applicant
NDA 18–154	LONITEN (minoxidil) Tablets, 2.5 mg and 10 mg	Pharmacia & Upjohn Co., c/o Pfizer, Inc.
NDA 18–285	VISKEN (pindolol) Tablets, 5 mg and 10 mg	Novartis Pharmaceuticals Corp.
NDA 18–445	DOLOBID (diflunisal) Tablets, 250 mg and 500 mg	Merck & Co., Inc., Sunneytown Pike, P.O. Box 4, BLA–20, West Point, PA 19486
NDA 19–661	CYTOVENE IV (ganciclovir sodium) Injection, EQ 500 mg base/vial	Roche Laboratories, Inc., 340 Kingsland St., Nutley, NJ 07110–1199
NDA 20–027	CARDIZEM (diltiazem HCl) Injection, 5 mg/mL and 25 mg/vial	Biovail Pharmaecuticals, Inc.
NDA 20–137	DEMADEX (torsemide) Injection, 20 mg/2 mL (10 mg/mL) and 50 mg/5 mL (10 mg/mL)	Roche Laboratories, Inc.
NDA 20–154	VIDEX (didanosine) Chewable Tablets, 25 mg, 50 mg, 100 mg, 150 mg, and 200 mg	Bristol-Myers Squibb Co., P.O. Box 5100, Wallingford, CT 06492–7660
NDA 20–225	IMDUR (isosorbide mononitrate) Extended-Release Tablets, 30 mg, 60 mg, and 120 mg	Schering Corp., 2000 Galloping Hill Rd., Kenilworth, NJ 07033
NDA 21–238	KYTRIL (granisetron HCl) Oral Solution, EQ 2 mg base/10 mL	Roche Laboratories, Inc.
NDA 21–301	LEVOXYL (levothyroxine sodium) Tablet, 0.3 mg	King Pharmaceuticals, Inc., 501 Fifth St., Bristol, TN 37620

FDA has reviewed its records and, under § 314.161, has determined that the drug products listed in this document were not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the agency will continue to list the drug products listed in this document in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' identifies, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness.

Approved ANDAs that refer to the NDAs listed in this document are unaffected by the discontinued marketing of the products subject to those NDAs. Additional ANDAs that refer to these products may also be approved by the agency if they comply with relevant legal and regulatory requirements. If FDA determines that labeling for these drug products should be revised to meet current standards, the agency will advise ANDA applicants to submit such labeling.

Dated: June 5, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–14000 Filed 6–12–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of Federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Improved Antibodies Against ErbB4/Her4

Description of Technology: ErbB4/Her4 is a receptor tyrosine kinase that regulates cell proliferation, cell differentiation and cell survival. ErbB4 has been implicated in the pathology of numerous cancers (*e.g.,* breast cancer, non-small cell lung carcinoma, adenocarcinoma), as well as psychiatric disorders (*e.g.,* schizophrenia). As a result, ErbB4 is an excellent target for developing therapies against these diseases. Unfortunately, the study of ErbB4 has been slowed by the lack of highly specific and functional antibodies against the receptor.

In order to overcome the deficiencies with current ErbB4 antibodies, NIH inventors have generated three rabbit monoclonal antibodies with improved properties and versatility. Specifically, the mAb-6, mAb-7 and mAb-10 hybridomas produce antibodies with a high degree of specificity and affinity for ErbB4. These antibodies recognize specific epitopes on the intracellular domains of ErbB4 without cross-reaction against other proteins, and can be used successfully in the immunostaining of fixed tissue. Each antibody recognizes both human and mouse ErbB4, whereas only mAb-7 and mAb-10 recognize rat ErbB4.

Applications:

- Basic research tool for the study of ErbB4;

• Reagent for diagnostic applications such as Western Blotting, ELISA, immunofluorescence and immunohistochemistry in fixed tissue samples;

• Reagent for biochemical techniques such as immunoprecipitation.

Advantages:

• Potential to be the gold standard for ErbB4 antibodies due to its specificity and affinity;

• Greater affinity for ErbB4 than currently available antibodies, giving them superior properties in diagnostic and biochemical applications;

• Unlike currently available polyclonal antibodies to ErbB4, the monoclonal antibodies do not cross-react with other proteins;

• Unlike currently available antibodies, these antibodies are capable of immunostaining fixed tissue samples;

• The epitopes on ErbB4 that are recognized by each monoclonal antibody have been mapped.

Relevant Publications:

1. G Carpenter. ErbB-4: mechanism of action and biology. Exp Cell Res. 2003 Mar 10;284(1):66–77.

2. S Britsch. The neruregulin-1/ErbB signaling system in development and disease. Adv Anat Embryol Cell Biol. 2007;190:1–65.

Inventors: Andres Buonanno and Detlef Vullhorst (*NICHD*)

Patent Status: HHS Reference No. E–171–2009/0—Research Material. Patent protection is not being pursued for this technology.

Licensing Status: The technology is available under a biological materials license.

Licensing Contact: David A. Lambertson, PhD; 301–435–4632; *lambertsond@mail.nih.gov.*

Collaborative Research Opportunity: The Eunice Kennedy Shriever National Institute of Child Health and Human Development, Section on Molecular Neurobiology, is seeking statements of capability or interest from parties interested in collaborative research to further evaluate or commercialize specific rabbit monoclonal antibodies generated against the ErbB4 receptor (also known as HER4). Please contact Joseph Conrad III, PhD at 301–435–3107 or *jmconrad@mail.nih.gov* for more information.

Mouse Model of Individual Unresponsive to Interferon

Description of Technology: NIAID has developed a mouse model that produces very high levels of Interferon-alpha-receptor 2 (IFNAR2), both in liver cells and free-floating in serum.

Chronic co-infection of HIV and hepatitis C virus (HCV) is associated with increased overall morbidity and mortality compared to those infected with just one virus. Recent data further suggests that co-infection is also associated with a more rapid progression of liver disease, higher HCV RNA viral levels, decreased cure rate of HCV, and increased toxicities of anti-HCV therapy. Finally, clinical trials have shown that many patients infected with both viruses do not respond to Interferon-based therapy. Research strongly suggests that non-responding patients have an increased level of a free-floating form of IFNAR2, which could block Interferon activity.

Resistance to Interferon therapy also occurs in other diseases, such as autoimmune diseases (*e.g.,* lupus, scleroderma, psoriasis, vasculitis) and certain forms of cancer (*e.g.,* Kaposi's sarcoma, follicular lymphoma). The various means by which resistance arises is currently being researched.

Applications: Study of mechanisms of resistance to Interferon therapy in selected diseases, such as HCV/HIV co-infection and certain cancers; study of Interferon-alpha in auto-immune diseases such as lupus, scleroderma, psoriasis, and vasculitis; drug design and screening.

Advantages:

• A model to screen, develop, and test drugs for HCV among HCV/HIV co-infected patients not responding to Interferon;

• A model for basic research, to study the biology and role of IFNAR2 and its function, along with the role of the Interferon receptor in the development of disease resulting from activation of the immune system.

Development Status: Proof-of-principle studies showing that the mice represent HCV/HIV co-infected individuals not responding to Interferon treatment.

Market: HIV/HCV co-infection is documented in one-third of all HIV-infected persons in the United States, an estimated 250,000 people. Moreover, certain cancers (*e.g.,* Kaposi's sarcoma, follicular lymphoma) normally treated with Interferon-alpha either show initial resistance or develop resistance during therapy, but the mechanism of resistance is highly complex; this mouse model will be useful in learning the paths through which resistance develops, and perhaps in designing strategies to overcome resistance. Finally, autoimmune diseases known to be caused (in whole or in part) by Interferon-alpha include lupus, scleroderma, psoriasis, and vasculitis.

Inventors: Shyamasundaran Kottilil (NIAID), Howard Young (NCI), Michael Polis (NIAID), Anthony Suffredini (NIHCC).

Patent Status: HHS Reference No. E–106–2009/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Status: Available for non-exclusive Biological Materials Licensing.

Licensing Contact: Bruce Goldstein, J.D., M.S.; 301–435–5470; *goldsteb@mail.nih.gov.*

Collaborative Research Opportunity: The National Institute of Allergy and Infectious Diseases, Laboratory of Immunoregulation, is interested in collaborative research directed toward molecular strategies for vaccine and antiviral development, and animal models of viral hepatitis C. For more information, please contact Rick Williams at 301–402–0960.

Enhanced Immune Response Against Influenza Virus by Priming With a DNA-based Vaccine

Description of Technology: Available for licensing and commercial development are compositions and methods for enhancing an immune response to influenza viruses by priming with DNA-based vaccines encoding influenza proteins. The priming compositions contain DNA constructs with inserted nucleic acids encoding influenza virus hemagglutinin (HA) or an epitope-bearing domain thereof, while the boosting compositions are inactivated influenza vaccines. The DNA constructs are based on proprietary expression systems that increase protein expression relative to commonly used alternatives.

A potential influenza pandemic caused by H5N1 strains of avian influenza virus (bird flu) is a major global concern. The seasonal influenza caused by other subtypes of influenza is also a cause of concern. Vaccination is one of the most effective ways to minimize suffering and death from influenza. However, influenza vaccination does not reduce the risk of community-acquired pneumonia in elderly nor does it decrease the rate of influenza infection in children aged 6–23 months. Strategies to elicit protective immunity with greater potency and breadth therefore remain a priority. The present invention discloses the ability of gene-based priming with influenza hemagglutinin (HA) to prime for an increase in titer and cross-reactivity of the neutralizing antibody response after inactivated influenza virus vaccine boost. After priming with a DNA vaccine encoding HA from a H1N1 strain, boosting with a seasonal influenza vaccine containing this

inactivated virus stimulated a 100-fold increase in the titer of H1 neutralizing antibodies. Of note, this combination immunization, in contrast to either component alone, elicited heterotypic neutralizing antibodies against a H5N1 strain. Similar priming was also observed with a DNA vaccine encoding an HA from a H5N1 strain, with the H5N1 subvirion vaccine boost. These results show that gene-based priming prior to vaccinating with the traditional influenza vaccine boost induced humoral immunity against different subtypes of influenza viruses that increases the potency and breadth of the neutralizing antibody response.

Applications: This invention provides a vaccine strategy for potentially controlling influenza epidemics, including avian flu should it cross over to humans, and seasonal flu strains.

Development Status: Animal studies

Inventors: Gary J. Nabel and Chih-jen Wei (VRC/NIAID)

Patent Status: U.S. Provisional Application No. 61/100,621 filed 26 Aug 2008, entitled ''DNA Prime/Inactivated Vaccine Boost Immunization to Influenza Virus'' (HHS Reference No. E–341–2008/0–US–01).

Related Technology: U.S. Patent No. 7,094,598 issued 22 Aug 2006 and associated foreign rights (proprietary expression system with CMV/R promoter) (HHS Reference No. E–241–2001).

Licensing Status: Available for licensing.

Licensing Contact: Cristina Thalhammer-Reyero, PhD, MBA; 301–435–4507; *thalhamc@mail.nih.gov.*

Use of MMP–8 as a Prognostic Marker for Melanoma

Description of Technology: Cutaneous malignant melanoma is the most common fatal skin cancer, and the incidence of this disease increases each year. The average survival time for patients diagnosed with malignant melanoma is less than ten months. Consequently, it is important to identify and understand genetic alterations leading to malignant melanoma so that new treatments strategies can be developed.

Matrix Metalloproteinases (MMPs) have been associated with increased metastasis and several small molecule inhibitors have been developed as potential anticancer agents. Unfortunately, these inhibitors have been largely unsuccessful despite the research suggesting otherwise and it is clear that additional analyses are warranted. The NIH inventors have recently performed a mutational analysis of the MMP gene family in human cutaneous metastatic melanoma and have identified several novel somatic mutations, most notably mutations in MMP–8. This invention provides methods of identifying specific inhibitors to MMP–8 that could be used to treat patients with MMP–8 mutations. It also provides methods for predicting the prognosis of patients with MMP–8 mutations. Thus, this invention could not only help identify the roles of specific MMPs in melanoma, but also help further the development MMP inhibitors to treat melanoma patients.

Applications:

- Diagnostic array for the detection of MMP–8 mutations.
- Method of predicting the prognosis of melanoma patients.
- Method of identifying MMP–8 activators as therapeutic agents to treat malignant melanoma patients.

Development Status: The technology is currently in the pre-clinical stage of development.

Market:

- Approximately 160,000 new cases of melanoma are diagnosed worldwide each year. Malignant melanoma is increasing faster than any other cancer.
- Melanoma is the most prevalent cancer among women between the ages of 25–29 and the second most prevalent cancer among woman ages 30–34.
- Cutaneous malignant melanoma is the most serious form of skin cancer and accounts for about 75% of all skin cancer deaths.
- One person dies from melanoma every hour.

Inventors: Yardena R. Samuels (NHGRI).

Publication: LH Palavalli et al: Analysis of the matrix metalloproteinase family reveals that MMP8 is often mutated in melanoma. Nat Genet 2009 May;41(5):518–520.

Patent Status: U.S. Provisional Application No. 61/198,384 filed 03 Nov 2008 (HHS Reference No. E–273–2008/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Whitney Hastings; 301–451–7337; *hastingw@mail.nih.gov.*

Collaborative Research Opportunity: The National Human Genome Research Institute's Cancer Genetics Branch is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, and/or commercialize this newly identified candidate melanoma diagnostic and prognostic marker as well as to identify and develop possible MMP–8 activators for testing as possible anti-melanoma agents. Please contact NHGRI's Technology Development Coordinator (TDC) Claire T. Driscoll at *cdriscol@mail.nih.gov* for more information.

Methods for Preparing Immunogenic Conjugates

Description of Technology: This technology describes improved methods of synthesis for conjugate vaccines, specifically those against anthrax. The inventors' method is designed to synthesize immunogenic conjugates (*i.e.,* a protein carrier conjugated to a bacterially derived synthetic peptide) that are prepared at a physiological pH, not reversible and do not require reduction with borohydride. The inventors' method comprises reacting the protein carrier with a dihydrazide, and the peptide with a benzaldehyde, or the reverse, then reacting the derivatized peptide and the derivatized protein with each other to form an immunogenic conjugate.

Application: Methods for making conjugate vaccines and reagents.

Advantages: More efficient conjugation methods, higher conjugate yields.

Development Status: Vaccine candidates have been synthesized and preclinical studies have been performed.

Inventors: Rachel Schneerson (NICHD), Joanna Kubler-Kielb (NICHD), Fathy Majadly (NICHD), Stephen Leppla (NIAID), John Robbins (NICHD), Darrel Liu (NICHD), Joseph Shiloach (NIDDK).

Related Publication: J Kubler-Kielb et al. Additional conjugation methods and immunogenicity of Bacillus anthracis poly-gamma-D-glutamic acid-protein conjugates. Infect Immun. 2006 Aug;74(8):4744–4749.

Patent Status: U.S. Patent Application No. 11/005,851 filed 06 Dec 2004 (HHS Reference No. E–040–2005/0–US–01); Foreign Rights Available.

Licensing Status: Available for licensing.

Licensing Contact: Peter A. Soukas, J.D.; 301–435–4646; *soukasp@mail.nih.gov.*

Dated: June 8, 2009.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E9–13943 Filed 6–12–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; 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 section 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 Heart, Lung, and Blood Institute Special Emphasis Panel. Data Coordinating Center for the NHLBI Asthma Network.

Date: June 29, 2009.

Time: 7 p.m. to 10 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard Marriott—Arlington Crystal City, 2899 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Robert Blaine Moore, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7213, Bethesda, MD 20892. 301–594–8394. *mooreb@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel. Clinical Centers for the NHLBI Asthma Network.

Date: June 30–July 1, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard Marriott—Arlington Crystal City, 2899 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Robert Blaine Moore, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7213, Bethesda, MD 20892. 301–594–8394. *mooreb@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: June 8, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–13935 Filed 6–12–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Team Science in Diabetes, Endocrinology, and Metabolic Diseases.

Date: July 28, 2009.

Time: 1 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: Robert Wellner, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 757, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4721, *rw175w@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: June 8, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–13946 Filed 6–12–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, AARA P50 Supplement Review.

Date: June 29, 2009

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call)

Contact Person: Atul Sahai, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK National Institutes of Health, Room 759, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–2242, *sahaia@niddk.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: June 8, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–13948 Filed 6–12–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material,

and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Initial Review Group; Genome Research Review Committee.
Date: August 5, 2009.
Time: 11:30 a.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 5635 Fishers Lane, Rockville, MD 20852 (Telephone Conference Call).
Contact Person: Ken D. Nakamura, PhD, Scientific Review Officer, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301 402–0838.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: June 8, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–13941 Filed 6–12–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review, Special Emphasis Panel; Radiation Therapy and Biology SBIR/STTR.
Date: June 29, 2009.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Bo Hong, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 7804, Bethesda, MD 20892, 301–435–5879, *hongb@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review, Special Emphasis Panel; Biobehavioral and Behavioral Processes.
Date: June 29–30, 2009.
Time: 10 a.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Cheri Wiggs, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 7848, Bethesda, MD 20892, (301) 435–1261, *wiggsc@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review, Special Emphasis Panel; Dietary Influence and Vascular Function During the Aging Process.
Date: June 30, 2009.
Time: 2 p.m. to 5 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: Neelakanta Ravindranath, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5140, MSC 7843, Bethesda, MD 20892, 301–435–1034, *ravindrn@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: AIDS and Related Research Integrated Review Group; AIDS Molecular and Cellular Biology Study Section.
Date: July 6, 2009.
Time: 7:30 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: 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; Community Health Promotion.
Date: July 9–10, 2009.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: William N. Elwood, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3162, MSC 7770, Bethesda, MD 20892, 301/435–1503, *elwoodwi@csr.nih.gov*.

Name of Committee: Center for Scientific Review, Special Emphasis Panel; Infectious Diseases and Microbiology Fellowships.
Date: July 9–10, 2009.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Mayflower Park Hotel, 405 Olive Way, Classic Queen, Seattle, WA 98101.
Contact Person: Alexander D. Politis, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3210, MSC 7808, Bethesda, MD 20892, (301) 435–1150, *politisa@csr.nih.gov*.

Name of Committee: Center for Scientific Review, Special Emphasis Panel; Rehabilitation Sciences.
Date: July 10, 2009.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Alexandria Old Town, 1767 King Street, Washington/Jefferson, Alexandria, VA 22314.
Contact Person: Jo Pelham, BA, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7814, Bethesda, MD 20892, (301) 435–1786, *pelhamj@csr.nih.gov*.

Name of Committee: Center for Scientific Review, Special Emphasis Panel; Computational Modeling and Sciences for Biomedical and Clinical Applications.
Date: July 13, 2009.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Guo Feng Xu, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5122, MSC 7854, Bethesda, MD 20892, 301–435–1032, *xuguofen@csr.nih.gov*.

Name of Committee: Center for Scientific Review, Special Emphasis Panel; Genes, Genomes and Genetics Shared Instrumentation.
Date: July 13, 2009.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.
Contact Person: Richard Panniers, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2212, MSC 7890, Bethesda, MD 20892, (301) 435–1741, *pannierr@csr.nih.gov*.

Name of Committee: Center for Scientific Review, Special Emphasis Panel; HDM Competitive Revision Applications.
Date: July 14, 2009.
Time: 11 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: Karin F. Helmers, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7770, Bethesda, MD 20892, 301–435–1017, *helmersk@csr.nih.gov*.

Name of Committee: Center for Scientific Review, Special Emphasis Panel; Molecular, Cellular and Developmental Neurobiological Small Business Applications.
Date: July 16, 2009.
Time: 8 a.m. to 5 p.m.
Time: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Eugene Carstea, PhD, Scientific Review Officer, Center for Scientific Review, Nationa Institutes of Health, 6701 Rockledge Drive, Room 5199, MSC 7846, Bethesda, MD 20892, (301) 435–0634.

Name of Committee: Center for Scientific Review, Special Emphasis Panel; Diet and Physical Activity Methodologies.
Date: July 16–17, 2009.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Fungai F. Chanetsa, MPH, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3135, MSC 7770, Bethesda, MD 20892, 301–435–1262, *chanetsaf@csr.nih.gov*.

Name of Committee: Center for Scientific Review, Special Emphasis Panel; Pilot-Scale Libraries for High-Throughput Screening RFA–RM–08–003.
Date: July 16, 2009.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.
Contact Person: Kathryn M. Koeller, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4166, MSC 7806, Bethesda, MD 20892, 301–435–2681, *koellerk@csr.nih.gov*.

Name of Committee: Center for Scientific Review, Special Emphasis Panel; Biotechnology Fellowship.
Date: July 16–17, 2009.
Time: 9 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Alessandra M. Bini, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5142, MSC 7840, Bethesda, MD 20892, 301–435–1024, *binia@csr.nih.gov*.

Name of Committee: Center for Scientific Review, Special Emphasis Panel; RFA–OD–09–003 Challenge Grants Panel #3.
Date: July 20–21, 2009.
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: Noni Byrnes, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5130, MSC 7840, Bethesda, MD 20892, (301) 435–1023, *byrnesn@csr.nih.gov*.

Name of Committee: Center for Scientific Review, Special Emphasis Panel; RFA OD–09–003: Challenge Grants Panel 1.
Date: July 20–21, 2009.
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: Michael Micklin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3136, MSC 7759, Bethesda, MD 20892, (301) 435–1258, *micklinm@csr.nih.gov*.

Name of Committee: Center for Scientific Review, Special Emphasis Panel; RFA OD–09–003 Challenge Grants Panel 20.
Date: July 20–21, 2009.
Time: 8 a.m. to 9 p.m.
Agenda: To review and evaluate grant applications.
Place: One Washington Circle Hotel, One Washington Circle, NW., Washington, DC 20037.
Contact Person: Ai-Ping Zou, MD, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, 301–435–1777, *zouai@csr.nih.gov*.

Name of Committee: Center for Scientific Review, Special Emphasis Panel; RFA OD–09–003 Challenge Grants Panel 15.
Date: July 20–21, 2009.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Sooja K. Kim, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6182, MSC 7892, Bethesda, MD 20892, (301) 435–1780, *kims@csr.nih.gov*.

Name of Committee: Center for Scientific Review, Special Emphasis Panel; RFA OD–09–003: Challenge Grants Panel 1.
Date: July 20–21, 2009.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Pier 5 Hotel, 711 Eastern Avenue, Baltimore, MD 21202.
Contact Person: Bob Weller, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3160, MSC 7770, Bethesda, MD 20892, (301) 435–0694, *wellerr@csr.nih.gov*.

Name of Committee: Center for Scientific Review, Special Emphasis Panel; RFA OD09–003 Challenge Grant Panel #10.
Date: July 20–21, 2009.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.
Contact Person: Sherry L. Dupere, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5136, MSC 7843, Bethesda, MD 20892, (301) 435–1021, *duperes@csr.nih.gov*.

Name of Committee: Center for Scientific Review, Special Emphasis Panel; RFA–OD–09–003: Challenge Grants Panel 19.
Date: July 20–21, 2009.
Time: 8 a.m. to 7:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Lawrence E. Boerboom, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7814, Bethesda, MD 20892, (301) 435–8367, *boerboom@nih.gov*.

Name of Committee: Center for Scientific Review, Special Emphasis Panel; RFA09–003 Challenge Grants Panel 9.
Date: July 20–21, 2009.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.
Contact Person: Alexander D. Politis, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3210, MSC 7808, Bethesda, MD 20892, (301) 435–1150, *politisa@csr.nih.gov*.

Name of Committee: Center for Scientific Review, Special Emphasis Panel; Behavioral Neuroscience Fellowship.
Date: July 20–21, 2009.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Hilton Hotel, 8727 Colesville Road, Silver Spring, MD 20910.
Contact Person: Kristin Kramer, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5205, MSC 7846, Bethesda, MD 20892, (301) 435–1172, *kramerkm@csr.nih.gov*.

Name of Committee: Center for Scientific Review, Special Emphasis Panel; STEM Challenge Grants.
Date: July 20–21, 2009.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications. Baltimore Marriott Waterfront, 700 Aliceanna Street, Baltimore, MD 21202.
Contact Person: Jonathan Arias, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7840, Bethesda, MD 20892, 301–435–2406, *ariasj@csr.nih.gov*.

Name of Committee: Center for Scientific Review, Special Emphasis Panel; RFA OD–09–003 Challenge Grants Panel 6.

Date: July 20–21, 2009.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.
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, 301–435–3566, *cooperc@csr.nih.gov.*

Name of Committee: Center for Scientific Review, Special Emphasis Panel; NCSD Competitive Revisions.
Date: July 21–22, 2009.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting)
Contact Person: Alexandra M. Ainsztein, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5144, MSC 7840, Bethesda, MD 20892, 301–451–3848, *ainsztea@csr.nih.gov.*

Name of Committee: Center for Scientific Review, Special Emphasis Panel; Fellowships: Physiology and Pathobiology of Cardiovascular and Respiratory Systems.
Date: July 22, 2009.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: AVENUE Hotel Chicago, 160 E Huron, Chicago, IL 60611.
Contact Person: Abdelouahab Aitouche, PhD, Scientific Review Officer, Center of Scientific Review, RKLG I, Room 2188, 6701 Rockledge Drive, Bethesda, MD 20892, 301–435–2365, *aitouchea@csr.nih.gov.*

Name of Committee: Center for Scientific Review, Special Emphasis Panel; Flow-Cytometry.
Date: July 23–24, 2009.
Time: 8 a.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.
Contact Person: Alessandra M. Bini, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5142, MSC 7840, Bethesda, MD 20892, 301–435–1024, *binia@csr.nih.gov.*

Name of Committee: Center for Scientific Review, Special Emphasis Panel; Infectious Agent and Toxin Detection, Disinfection and Bioremediation.
Date: July 24, 2009.
Time: 8:30 a.m. to 10 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Richard G. Kostriken, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3192, MSC 7808, Bethesda, MD 20892, 301–402–4454, *kostrikr@csr.nih.gov.*

Name of Committee: Center for Scientific Review, Special Emphasis Panel; Microbiology Member Conflicts.
Date: July 24, 2009.
Time: 9 a.m. to 9 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: John C. Pugh, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7808, Bethesda, MD 20892, (301) 435–2398, *pughjohn@csr.nih.gov.*

Name of Committee: Center for Scientific Review, Special Emphasis Panel; Roadmap HTS Assay for MLPCN.
Date: July 30, 2009.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Doubletree Hotel & Executive Meeting Center, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: James J. Li, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7849, Bethesda, MD 20892, 301–435–2417, *lijames@csr.nih.gov.*

Name of Committee: Center for Scientific Review, Special Emphasis Panel; Small Business—Respiratory Sciences.
Date: July 30–31, 2009.
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: Ghenima Dirami, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7814, Bethesda, MD 20892, 301–594–1321, *diramig@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: June 8, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–13939 Filed 6–12–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Center for Research Resources Special Emphasis Panel, July 20, 2009, 8 a.m. to July 24, 2009, 5 p.m., National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 which was published in the **Federal Register** on May 27, 2009, 74 FR 25262.

The previously published July 20–24, 2009, meeting has been changed to a one day meeting on July 24, 2009. The meeting is closed to the public.

Dated: June 8, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–13950 Filed 6–12–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Microbiology, Infectious Diseases and AIDS Initial Review Group; Acquired Immunodeficiency Syndrome Research Review Committee.
Date: July 13, 2009.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: DoubleTree Hotel and EMC, 8120 Wisconsin Ave, Bethesda, MD 20814.
Contact Person: Erica L. Brown, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–451–2639, *ebrown@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: June 8, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–13949 Filed 6–12–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; CF Center Competitive Revisions.

Date: July 29, 2009.

Time: 3 p.m. to 4 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: Michele L. Barnard, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–8898, *barnardm@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; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: June 8, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–13940 Filed 6–12–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2009–0087]

The Critical Infrastructure Partnership Advisory Council (CIPAC)

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: Update of CIPAC council membership.

SUMMARY: The Department of Homeland Security (DHS) announced the establishment of the Critical Infrastructure Partnership Advisory Council (CIPAC) by notice published in the **Federal Register** Notice (71FR 14930–14933) dated March 24, 2006. That notice identified the purpose of CIPAC as well as its membership. This notice provides (i) the quarterly CIPAC membership update, (ii) instructions on how the public can obtain the CIPAC membership roster and other information on the Council, and (iii) information on recently completed CIPAC meetings.

FOR FURTHER INFORMATION CONTACT: Nancy Wong, Director Partnership Programs and Information Sharing Office, Partnership and Outreach Division, Office of Infrastructure Protection, National Protection and Programs Directorate, United States Department of Homeland Security, Washington, DC 20528, telephone (703) 235–3999 or via e-mail at *CIPAC@dhs.gov.*

Responsible DHS Official: Nancy J. Wong, Director Partnership Programs and Information Sharing Office, Partnership and Outreach Division, Office of Infrastructure Protection, National Protection and Programs Directorate, United States Department of Homeland Security, Washington, DC 20528, telephone (703) 235–3999 or via e-mail at *CIPAC@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Purpose and Activity: CIPAC facilitates interaction between government officials and representatives of the community of owners and/or operators for each of the critical infrastructure or key resource (CIKR) sectors defined by Homeland Security Presidential Directive 7 (HSPD–7) and identified in the National Infrastructure Protection Plan (NIPP). The scope of activities covered by CIPAC includes planning; coordinating among government and CIKR owner/operator security partners; implementing security program initiatives; conducting operational activities related to critical infrastructure protection security measures, incident response, recovery, infrastructure resilience, reconstituting CIKR assets and systems for both man-made as well as naturally occurring events; and sharing threat, vulnerability, risk mitigation, and infrastructure continuity information and best practices.

Organizational Structure: CIPAC members are organized into eighteen HSPD–7 critical infrastructure and/or key resource sectors. Within all of the sectors containing private sector CIKR owners/operators there generally exists a Sector Coordinating Council (SCC) that includes CIKR owners and/or operators or their representative trade associations. Each of the sectors also has a Government Coordinating Council (GCC) whose membership includes a lead Federal agency that is defined as the Sector Specific Agency (SSA), and all of the relevant Federal, State, local, Tribal, and/or Territorial government agencies (or their representative bodies) whose mission interests also involve the scope of the CIPAC activities for that particular sector.

CIPAC Membership: CIPAC Membership includes (i) CIKR owner and/or operator members of an SCC; (ii) trade association members who are members of a SCC representing the interests of CIKR owners and/or operators. CIKR owners and operators own and invest in infrastructure assets or in the systems and processes to secure them. CIKR owners and/or operators are held responsible by the public for CIKR operations and the response and recovery when their CIKR assets and systems are disrupted; (iii) each sector's Government Coordinating Council (GCC); and, based upon DHS' recent establishment of this council; (iv) State, local, Tribal, and Territorial governmental officials comprising the DHS State, local, Tribal, Territorial GCC.

CIPAC Membership Roster and Council Information: The current roster of CIPAC membership is published on the CIPAC Web site (*http://www.dhs.gov/cipac*) and is updated as the CIPAC membership changes. Members of the public may visit the CIPAC Web site at any time to obtain current CIPAC membership as well as the current and historic list of CIPAC meetings and agendas.

Dated: June 1, 2009.

Nancy Wong,

Designated Federal Officer for the CIPAC.

[FR Doc. E9–13887 Filed 6–12–09; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent To Request Approval From OMB of One New Public Collection of Information: Highway Corporate Security Review

AGENCY: Transportation Security Administration, DHS.

ACTION: Notice of reinstatement.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on an information collection requirement abstracted below that we will submit to the Office of Management and Budget (OMB) for approval in compliance with the Paperwork Reduction Act. This collection will assess the current security practices in the highway and motor carrier industry by way of its Highway Corporate Security Program, which encompasses site visits and interviews, and is part of the larger domain awareness, prevention, and protection program supporting TSA's and the Department of Homeland Security's missions.

DATES: Submit comments by August 14, 2009.

ADDRESSES: Comments may be mailed or delivered to Ginger LeMay, PRA Officer, Office of Information Technology, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011.

FOR FURTHER INFORMATION CONTACT: Ginger LeMay, PRA Officer, Office of Information Technology, TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011; telephone (571) 227–3616; e-mail: *ginger.lemay@dhs.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Reinstatement of *OMB Control Number 1652–0036; Corporate Security Review*. Under the Aviation and Transportation Security Act (ATSA) [1] and delegated authority from the Secretary of Homeland Security, TSA has broad responsibility and authority for ''security in all modes of transportation * * * including security responsibilities * * * over modes of transportation that are exercised by the Department of Transportation,'' [2] TSA has additional authorities as well. TSA is specifically empowered to develop policies, strategies, and plans for dealing with threats to transportation,[3] ensure the adequacy of security measures for the transportation of cargo,[4] oversee the implementation and ensure the adequacy of security measures at transportation facilities,[5] and carry out other appropriate duties relating to transportation security.[6]

One way TSA carries out its surface transportation responsibilities is by assessing the current security practices in the trucking, school bus, and motor coach industries as well as at State Departments of Transportation (DOTs), by way of its Corporate Security Review (CSR) program. The CSR program encompasses site visits and interviews, and is one piece of a much larger domain awareness, prevention, and protection program in support of TSA's and the Department of Homeland Security's missions. TSA is seeking to reinstate its OMB approval for this information collection so that TSA can continue to ascertain minimum security standards and identify coverage gaps, activities that are critical to carrying out its transportation security mission.

The CSR is an ''instructive'' review that provides TSA with an understanding of certain surface transportation owner/operators' security programs, if they have adopted such programs. In carrying out CSRs, Transportation Security Specialists from TSA's Highway and Motor Carrier Division and Transportation Security Inspectors—Surface (TSI–S) conduct site visits of trucking, school bus, and motor coach companies and State DOTs throughout the nation. The TSA representatives analyze the owner's/operator's security plan, if the owner/operator has adopted one, and determine if the mitigation measures included in the plan are being properly implemented. In addition to examining the security plan document, TSA reviews one or more assets of the owner/operator or State DOT.

During the site visits, TSA completes a CSR form, which asks questions concerning eleven topics: Management and oversight of the security plan, threat assessment, criticality assessment, vulnerability assessment, personnel security, training, physical security countermeasures, en route security, information technology security, security exercises and drills, and a hazardous materials addendum. TSA conducts this collection through voluntary face-to-face visits at the headquarters of the subject surface transportation owners/operators. Typically, TSA sends one to three employees to conduct a two to three hour discussion/interview with representatives from the owner/operator. TSA plans to collect information from businesses of all sizes in the course of conducting these surface mode CSRs.

TSA conducts these interviews to ascertain information on security measures and to identify security gaps. The interviews also provide the TSA with a method to encourage the surface transportation owners/operators affected by the CSRs to be diligent in effecting and maintaining security-related improvements. This program provides TSA with real-time information on current security practices within the trucking, school bus, and motor coach modes of the surface transportation sector. This information allows TSA to adapt programs to the changing threat dynamically, while incorporating an understanding of the improvements owners/operators make in their security posture. Without this information, the ability of the TSA to perform its security mission would be severely hindered.

[1] Public Law 107–71, 115 Stat. 597 (November 19, 2001).

[2] *See* 49 U.S.C. 114(d). The TSA Assistant Secretary's current authorities under ATSA have been delegated to him by the Secretary of Homeland Security. Section 403(2) of the Homeland Security Act (HSA) of 2002, Public Law 107–296, 116 Stat. 2315 (2002), transferred all functions of TSA, including those of the Secretary of Transportation and the Under Secretary of Transportation of Security related to TSA, to the Secretary of Homeland Security. Pursuant to DHS Delegation Number 7060.2, the Secretary delegated to the Assistant Secretary (then referred to as the Administrator of TSA), subject to the Secretary's guidance and control, the authority vested in the Secretary with respect to TSA, including that in sec. 403(2) of the HSA.

[3] 49 U.S.C. 114(f)(3).

[4] 49 U.S.C. 114(f)(10).

[5] 49 U.S.C. 114(f)(11).

[6] 49 U.S.C. 114(f)(15).

Additionally, the relationships these face-to-face contacts foster are critical to the Federal Government's ability to reach out to the surface transportation stakeholders affected by the CSRs. The relationships foster a sense of trust and a willingness to share information with the Federal Government. TSA assures respondents that the portion of their responses that is deemed Sensitive Security Information will be handled as such, as described in 49 CFR parts 15 and 1520.

The annual hour burden for this information collection is estimated to be 1,200 hours. While TSA estimates a total of 400 potential respondents, this estimate is based on TSA conducting 400 visits per year, each visit lasting two to three hours. The total annual cost burden to respondents is $0.00.

Issued in Arlington, Virginia, on June 9, 2009.

Ginger LeMay,

Paperwork Reduction Act Officer, Business Improvements and Communications, Office of Information Technology.

[FR Doc. E9–13957 Filed 6–12–09; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–102, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Form I–102, Application for Replacement/Initial Nonimmigrant Arrival-Departure Document; OMB Control No. 1615–0079.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted 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 March 10, 2009, at 74 FR 10260, allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until July 15, 2009. 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 Information and Regulatory Affairs, Office of Management and Budget (OMB), USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Products Division, Clearance Office, 111 Massachusetts Avenue, Washington, DC 20529–2210. 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 202–395–6974 or via e-mail at *oira_submission@omb.eop.gov.*

When submitting comments by e-mail, please make sure to add OMB Control Number 1615–0079 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 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 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:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Application for Replacement/Initial Nonimmigrant Arrival-Departure Document.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–102. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households. Nonimmigrants temporarily residing in the United States use this form to request a replacement of his or her arrival evidence document.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 12,195 responses at 25 minutes (.416) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 5,073 annual burden hours.

If you need a copy of the proposed information collection instrument, or additional information, please visit the Web site at: *http://www.regulations.gov/search/index.jsp.*

If additional information is required contact: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, Washington, DC 20529–2210, (202) 272–8377.

Stephen Tarragon,

Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services.

[FR Doc. E9–13998 Filed 6–12–09; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–694, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-day notice of information collection under review: Form I–694, Notice of Appeal of Decision Under Section 210 or 245A of the Immigration and Nationality Act; OMB Control No. 1615–0034.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted 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 March 10, 2009, at 74 FR 10262, allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until July 15, 2009.

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 Information and Regulatory Affairs, Office of Management and Budget (OMB), USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Products Division, Clearance Office, 111 Massachusetts Avenue, Washington, DC 20529–2210. 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 202–395–6974 or via e-mail at *oira_submission@omb.eop.gov*.

When submitting comments by e-mail, please make sure to add OMB Control Number 1615–0034 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 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 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:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Notice of Appeal of Decision Under Section 210 or 245A of the Immigration and Nationality Act.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–694. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households. This information collection will be used by USCIS in considering appeals of denials or termination of temporary and permanent residence status by legalization applicants and special agricultural workers, under sections 210 and 245A of the Immigration and Nationality Act, and related applications for waiver of grounds of inadmissibility.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,192 respondents at 30 minutes (.50) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 596 annual burden hours.

If you need a copy of the proposed information collection instrument, or additional information, please visit the Web site at: *http://www.regulations.gov/search/index.jsp*.

If additional information is required contact: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, Washington, DC 20529–2210, (202) 272–8377.

Dated: June 9, 2009.

Stephen Tarragon,

Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services.

[FR Doc. E9–13997 Filed 6–12–09; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–817; Extension of an Existing Information Collection; Comment Request

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day Notice of Information Collection Under Review; Form I–817, Application for Family Unity Benefits; OMB Control No. 1615–0005.

The Department Homeland Security, U.S. Citizenship and Immigration Services has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until August 14, 2009.

During this 60 day period, USCIS will be evaluating whether to revise the Form I–817. Should USCIS decide to revise Form I–817 we will advise the public when we publish the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30 days to comment on any revisions to the Form I–817.

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), USCIS, Chief, Regulatory Products Division, Clearance Officer, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov*. When submitting comments by e-mail, please make sure to add OMB Control No. 1615–0005 in the subject box. Written comments and suggestions from the public and affected agencies concerning the collection of information 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 agencies 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:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Application for Family Unity Benefits.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–817; 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 information collected will be used to determine whether the applicant meets the eligibility requirements for benefits under 8 CFR 236.14 and 245a.33.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 6,000 responses at 2 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 12,000 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, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210, Telephone number 202–272–8377.

Dated: June 10, 2009.

Stephen Tarragon,

Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E9–13996 Filed 6–12–09; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Survey of Recently Naturalized Citizens; New Information Collection; Comment Request

ACTION: 30-day notice of information collection under review: Survey of recently naturalized citizens.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted 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 April 8, 2009, at 74 FR 15999, allowing for a 60-day public comment period. USCIS did not receive any comments.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until July 15, 2009. 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 Information and Regulatory Affairs, Office of Management and Budget (OMB), USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Products Division, Clearance Office, 111 Massachusetts Avenue, Washington, DC 20529–2210. 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 202–395–6974 or via e-mail at *oira_submission@omb.eop.gov*.

When submitting comments by e-mail please make sure to add OMB–52 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 agencies 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:* Survey of Recently Naturalized Citizens.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No Agency Form Number; File No. OMB–52. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households. USCIS will use this survey to collect data from recently naturalized citizens to help predict future naturalization trends.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 7,150 responses (introductory call), one response per respondent, at one (.0333) 2 minutes per response. 5,000 responses (questionnaire), one response per respondent at (0.416) 25 minutes per response.

An estimate of the total public burden (in hours) associated with the collection: 2,316 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov/fdmspublic/component/main.*

We may also be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210, telephone number 202–272–8377.

Dated: June 9, 2009.

Stephen Tarragon,

Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E9–13994 Filed 6–12–09; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent To Request Renewal From OMB of One Current Public Collection of Information: Employment Standards

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-day Renewal Notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), OMB control number 1652–0006, abstracted below that we will submit to the Office of Management and Budget (OMB) for renewal in compliance with the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden. The collection involves the requirement for airport and aircraft operators to maintain records of compliance with 49 CFR parts 1542 and 1544.

DATES: Send your comments by August 14, 2009.

ADDRESSES: Comments may be mailed or delivered to Ginger LeMay, Office of Information Technology, TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011.

FOR FURTHER INFORMATION CONTACT: Ginger LeMay at the above address, or by telephone (571) 227–3616 or e-mail *ginger.lemay@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

OMB Control Number 1652–0006; Employment Standards, 49 CFR parts 1542 and 1544. The information collected is used to determine compliance with 49 CFR parts 1542 and 1544. Airport operators maintain records of compliance with part 1542 for those employees with access privileges to Security Identification Display Areas of the airport. Aircraft operators maintain records of compliance with part 1544 for selected crew and security employees. TSA Transportation Security Inspectors (TSIs) review these records to ensure that the safety and security of the public is not compromised, to include using this information to take corrective action when necessary. These regulations establish procedures that airports and airlines must carry out to protect persons and property against acts of criminal violence, aircraft piracy, and terrorist activities. The current estimated annual reporting burden is 183,506 hours.

Issued in Arlington, Virginia, on June 9, 2009.

Ginger LeMay,

Paperwork Reduction Act Officer, Business Improvements and Communications, Office of Information Technology.

[FR Doc. E9–13958 Filed 6–12–09; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1840–DR; Docket ID FEMA–2008–0018]

Florida; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Florida (FEMA–1840–DR), dated May 27, 2009, and related determinations.

DATES: *Effective Date:* May 27, 2009.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 27, 2009, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Florida resulting from severe storms, flooding, tornadoes, and straight-line winds beginning on May 17, 2009, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Florida.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas and any other forms of assistance under the Stafford Act that you deem appropriate. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Other Needs Assistance will be limited to 75 percent of the total eligible costs. If Public Assistance and Hazard Mitigation are later requested and warranted, Federal funds provided under those programs will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Jeffery L. Bryant, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Florida have been designated as adversely affected by this major disaster:

Volusia County for Individual Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. E9–14040 Filed 6–12–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1838–DR; Docket ID FEMA–2008–0018]

West Virginia; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of West Virginia (FEMA–1838–DR), dated May 15, 2009, and related determinations.

DATES: *Effective Date:* June 2, 2009.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of West Virginia is hereby

amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of May 15, 2009.

Calhoun, Gilmer, Lewis, Roane, Upshur, and Wirt Counties for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. E9–14041 Filed 6–12–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R9-WSR-2009-N125] [[91400-5110-POLI-7B and 91400-9410-POLI-7B]

Information Collection Sent to the Office of Management and Budget (OMB) for Approval; OMB Control Number 1018-0109; Wildlife and Sport Fish Grants and Cooperative Agreements

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (Fish and Wildlife Service) have sent an Information Collection Request (ICR) to OMB for review and approval. The ICR, which is summarized below, describes the nature of the collection and the estimated burden and cost. OMB approval for this information collection is scheduled to expire on June 30, 2009. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. However, under OMB regulations, we may continue to conduct or sponsor this information collection while it is pending at OMB.

DATES: You must send comments on or before July 15, 2009.

ADDRESSES: Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB-OIRA at (202) 395-5806 (fax) or OIRA_DOCKET@OMB.eop.gov (e-mail). Please provide a copy of your comments to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222-ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail) or hope_grey@fws.gov (e-mail).

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Hope Grey by mail or e-mail (see ADDRESSES) or by telephone at (703) 358–2482.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 1018-0109.

Title: Wildlife and Sport Fish Grants and Cooperative Agreements.

Service Form Number(s): None.

Type of Request: Revision of a currently approved collection.

Affected Public: States; the Commonwealths of Puerto Rico and the Northern Mariana Islands; the District of Columbia; the territories of Guam, U.S. Virgin Islands, and American Samoa; federally-recognized tribal governments; institutions of higher education; and nongovernmental organizations.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: We require applications annually for new grants. We require amendments on occasion when key elements of a project change. We require quarterly and final performance reports in the National Outreach and Communication Program and annual and final performance reports in the other 17 programs. We may require more frequent reports under the conditions stated at 43 CFR 12.52 and 43 CFR 12.914.

Activity	Number of annual respondents	Number of annual responses	Completion time per response	Annual burden hours
Initial Application (project narrative)	200	2,500	40 hours	100,000
Amendment	150	1,500	2 hours	3,000
Performance Reports	200	3,500	6 hours	21,000
Totals	550	7,500		124,000

Abstract: We administer 18 wildlife and sport fish financial assistance programs. For a list of the programs included in this information collection, see our previous notice published on March 18, 2009 (74 FR 11596). We provide most of this financial assistance as grants, but cooperative agreements are possible if the Federal Government is substantially involved in carrying out the project.

To compete for financial assistance funds, you must submit an application that describes in substantial detail project locations, benefits, funding, and other characteristics. Materials to assist applicants in formulating project proposals are available on Grants.gov. We use the application to determine:

(1) Eligibility for the grant.

(2) The scale of resource values or relative worth of the project.

(3) The effect of the project on environmental and cultural resources.

(4) How well the proposed project will meet the purposes of the program's establishing legislation.

Persons or entities receiving grants must submit periodic performance reports that contain information necessary for us to track costs and accomplishments.

Comments: On March 18, 2009, we published in the **Federal Register** (74 FR 11596) a notice of our intent to request that OMB renew this information collection. In that notice, we solicited comments for 60 days, ending on May 18, 2009. We received one comment in response to the notice. The commenter stated that many of the grant programs ''need cutting'' and opposed any expenditure of public funds for hunter education and safety training. The commenter did not address the information collection requirements, and we did not did not make any changes based on this comment.

We again invite comments concerning this information collection on:

(1) Whether or not the collection of information is necessary, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this 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.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: June 9, 2009

Hope Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

FR Doc. E9–14036 Filed 6–12–09; 8:45 am

BILLING CODE 4310–55–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–R–2009–N0093]; [1265–0000–10137–S3]

Oregon Islands, Three Arch Rocks, and Cape Meares National Wildlife Refuges, Lincoln County, OR

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability: draft comprehensive conservation plan, draft wilderness stewardship plan, and environmental assessment; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of our draft comprehensive conservation plan and environmental assessment (Draft CCP/EA) for the Cape Meares, Oregon Islands, and Three Arch Rocks National Wildlife Refuges (Refuges), and a draft wilderness stewardship plan (Draft WSP) for the Oregon Islands and Three Arch Rocks Refuges (collectively Draft CCP/WSP/EA). The Draft CCP/WSP/EA is available for public review and comment. It describes our proposal for managing the Refuges for the next 15 years. The Oregon Coast National Wildlife Refuge Complex office, located in Newport, Oregon, manages the Refuges, which are scattered along the Oregon coast in Clatsop, Tillamook, Lincoln, Lane, Coos, and Curry Counties.

DATES: To ensure consideration, we need to receive your written comments by July 15, 2009. See **ADDRESSES** for delivery options.

ADDRESSES: Address comments on the Draft CCP/WSP/EA to: Roy Lowe, Project Leader, Oregon Coast National Wildlife Refuge Complex, 2127 SE Marine Science Drive, Newport, OR 97365–5258; fax (541) 867–4551; or e-mail *FW1PlanningComments@fws.gov*. Please use ''Oregon Islands CCP'' in the subject. Additional information concerning the Refuges can be found on the Internet at *http://www.fws.gov/oregoncoast/*. For more information on reviewing documents, see ''Public Availability of Documents'' and ''Public Comments'' under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Roy Lowe, Project Leader, (541) 867–4550.

SUPPLEMENTARY INFORMATION:

Background

The CCP Process

The Draft CCP/WSP/EA was prepared pursuant to the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997; the National Environmental Policy Act of 1969, (42 U.S.C. 4321 *et seq.*) (NEPA); and the Service's Wilderness Stewardship Policy (610 FW 3). The Administration Act requires us to develop a CCP for each national wildlife refuge. The purpose of developing a CCP is to provide refuge managers a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies. In addition to outlining broad management direction for conserving wildlife and habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

Public Involvement

We began the public scoping phase of the planning process for the Draft CCP/WSP/EA by publishing a Notice of Intent in the **Federal Register** on October 26, 2006 (71 FR 62605), announcing our intention to complete a CCP/WSP/EA for the Refuges and inviting public comments. A list of public involvement efforts we have completed to date follow.

- In October 2006, we distributed Planning Update 1 to our project mailing list and public outlets located near one or more Refuges. In it, we announced the initiation of the planning process, invited the public to a series of public open house meetings, provided background information on the Refuges, and requested public comments on Refuge management issues.
- Between November 1 and 15, 2006, we held five public open house meetings in communities along the Oregon coast, to meet the public and obtain comments on refuge management issues. The public meetings were announced through local media via press releases, on the Refuge Complex Web site, and in Planning Update 1.
- In March 2007, we distributed Planning Update 2, which included a summary of the public open house meetings and the public comments we obtained at the meetings and through other means, a planning schedule, and draft vision statements for the Refuges.

Overview of the Refuges

Cape Meares Refuge is located on Oregon's Pacific Coast between Tillamook Bay and Netarts Bay. It is comprised of two separate units consisting of vertical coastal cliffs, rock outcroppings, and rolling headlands with old-growth forest dominated by Sitka spruce and western hemlock. This small Refuge protects one of the last stands of old-growth coastal forest in Oregon. The vertical sea cliffs around the headland support nesting seabird populations including tufted puffins, common murres, pigeon guillemots, pelagic cormorants, and others. Peregrine falcons nest on the cliffs, and bald eagles forage on the headland.

The Oregon Islands Refuge includes 1,854 rocks, reefs and islands, and two headland units, and spans 320 miles of the Oregon Coast. With the exception of the two headlands and Tillamook Rock, all of the Refuge's rocks, reefs, and islands are included in the Oregon Islands Wilderness. Most of Oregon's estimated 1.2 million nesting seabirds are found on this Refuge. A large percentage of Oregon's seal and sea lion (pinnipeds) populations use the Refuge for haulout and/or pupping, including more than 5,000 harbor seals, 4,000 California sea lions, 4,000 threatened

Steller sea lions, and 100 northern elephant seals.

The Three Arch Rocks Refuge is located a half-mile west of the town of Oceanside in Tillamook County, Oregon. The Refuge is comprised of 9 rocks and islands with a total land area of 15 acres, and supports one of the largest seabird breeding colonies—mainly tufted puffins and common murre—in Oregon. It is also the only breeding site for the threatened Steller sea lion on the north coast of Oregon. The Refuge is a designated wilderness area known as Three Arch Rocks Wilderness.

Draft Alternatives We Are Considering

We identified and evaluated two alternatives for managing the Refuges for the next 15 years. Alternative 1 is the No Action Alternative, and Alternative 2 is the Preferred Alternative, which is a collaborative approach to protection and management of refuge lands. Draft compatibility determinations for public uses are available for review with the Draft CCP/WSP/EA. Brief descriptions of the alternatives follow.

Alternative 1

This alternative assumes no change from current Refuge management programs. We would continue to protect and maintain habitat for priority species, including seabirds and pinnipeds. Efforts to prevent wildlife disturbance on rocks, reefs, and islands would continue, including prohibiting public access, posting educational and regulatory signs, and deploying buoys annually, to delineate the seasonal 500-foot watercraft exclusion buffer zone around Three Arch Rocks Refuge. Habitat management would consist primarily of monitoring and treating invasive plant infestations as funding allows. We would continue to conduct regularly scheduled aerial, boat, and land surveys of nesting seabirds. Existing public uses, including wildlife observation and photography, would continue at current levels. We would continue to partner with Oregon Parks and Recreation Department (OPRD) to provide quality wildlife viewing opportunities at Cape Meares Refuge and other parks adjacent to rocks, reefs, and islands within Oregon Islands and Three Arch Rocks Refuges.

Alternative 2

Under the Preferred Alternative, a collaborative approach to protection and management of the Refuges' rock, reef, island, and old-growth habitats would be emphasized over the current staff-directed approach. We would develop a Geographic Information System (GIS) based inventory and monitoring program for pinnipeds, seabirds and other migratory birds, terrestrial mammals, reptiles, amphibians, invertebrates, and plant species, and invasive species would be monitored and aggressively treated.

Partners would be actively sought to collaborate on research, design, and implementation of studies that would directly contribute toward maintaining or restoring the biological integrity, diversity, and environmental health of the Refuges. We would establish formal agreements with coastal resource management agencies to cooperate on strategies to protect wildlife.

New partnerships would also be established with public and private entities to develop interpretive panels and new wildlife viewing opportunities. The Refuges' Volunteer Interpreter Program would be expanded to include priority sites with heavy visitation and prime wildlife viewing opportunities. We would also develop a quality environmental education program focusing on the Refuges' wildlife.

Public Availability of Documents

We encourage you to stay involved in the CCP planning process by reviewing and commenting on the proposals we have developed in the Draft CCP/WSP/EA.

Copies of the Draft CCP/WSP/EA on compact disk are available upon request from the Refuge Complex at phone number (541) 867–4550. Copies may be reviewed at the Oregon Coast National Wildlife Refuge Complex, 2127 SE Marine Science Drive, Newport, OR. The Draft CCP/WSP/EA is also available for viewing and downloading on the Internet at *http://www.fws.gov/oregoncoast/*. Printed copies will be available for review at the following libraries.

- Chetco Community Public Library, 405 Alder St., Brookings, OR 97415,
- Bandon Public Library, 1204 11th St. SW., Bandon, OR 97411,
- Newport Public Library, 35 NW Nye St., Newport, OR 97365,
- Driftwood Public Library, 801 SW Hwy 101 #201, Lincoln City, OR 97367,
- Tillamook County Library, 1716 3rd St., Tillamook, OR 97141, and
- Seaside Public Library, 1131 Broadway, Seaside, OR 97138.

Public Comments

Public comments are requested, considered, and incorporated throughout the planning process. Comments on the Draft CCP/WSP/EA will be analyzed by the Service and addressed in final planning documents. All comments received from individuals become part of the official public record and may be released. Requests for such comments will be handled in accordance with the Freedom of Information Act (5 U.S.C. 552), NEPA regulations, and Service and Department of the Interior policies and procedures.

Dated: May 11, 2009.

David J. Wesley,

Regional Director, Region 1, Portland, Oregon.

[FR Doc. E9–13564 Filed 6–12–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–R–2009–N0070; 80230–1265–0000–53]

Modoc National Wildlife Refuge, Modoc County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability: draft comprehensive conservation plan and environmental assessment; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft comprehensive conservation plan (CCP) and environmental assessment (EA) for Modoc National Wildlife Refuge (NWR) for public review and comment. In these documents, we describe alternatives, including our preferred alternative, to manage this refuge for the 15 years following approval of the final CCP. Draft compatibility determinations for several public uses are also available for review and public comment in the Draft CCP/EA.

DATES: To ensure consideration, we must receive your written comments by July 30, 2009. We will announce upcoming public meeting in local news media.

ADDRESSES: You may submit comments or requests for copies or more information by any of the following methods. You may request hard copies or a CD–ROM of the documents.

E-mail: Jackie_Ferrier@fws.gov. Include ''Modoc NWR Draft CCP and EA'' in the subject line of the message.

Fax: Attn: Jackie Ferrier, Refuge Planner, (530) 934–7814.

U.S. Mail: Sacramento NWR Complex, 752 County Road 99W, Willows, CA 95988.

In-Person Drop-off, Viewing, or Pickup: Call (530) 233–3572 to make an appointment (necessary for view/pickup only) during regular business hours at

the Modoc NWR, at 5364 County Road 115, Alturas, CA 96101 during business hours. For more information on locations for viewing or obtaining documents, see ''Public Availability of Documents'' under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Steve Clay, Project Leader at Modoc NWR, (530) 233–3572 (telephone) or Jackie Ferrier, Refuge Planner at Sacramento NWR Complex at (530) 934–2801 (telephone).

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we continue the CCP process for Modoc NWR. We started this process through a notice in the **Federal Register** (72 FR 44850; August 9, 2007).

The 7,021 acre Modoc National Wildlife Refuge is located southeast of Alturas, California. The Refuge was established in 1960 pursuant to the Migratory Bird Conservation Act (16 U.S.C. 715d) and the Refuge Recreation Act (16 U.S.C. 460k–460 K.4). Lands within the Refuge have been set aside for use as an inviolate sanctuary, and other management purposes, for migratory birds, for incidental fish and wildlife-oriented recreational development, for the protection of natural resources, and for the conservation of endangered species or threatened species.

Located near the confluence of the north and south forks of the Pit River, the Refuge conserves, protects, and manages a mosaic of freshwater lakes and ponds, seasonal wetlands, irrigated meadows, grasslands, and sagebrush/juniper upland habitats. These habitats provide important resting, feeding, and nesting areas for ducks, geese, and other migratory birds including the greater sandhill crane.

Background

The CCP Process

The National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee) (Improvement Act), which amended the National Wildlife Refuge System Administration Act of 1966, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Improvement Act.

Public Outreach

We started the CCP for Modoc NWR in August 2007. At that time and throughout the process, public comments were requested, considered, and incorporated in numerous ways. Public outreach has included a public scoping meeting, planning updates, a CCP Web page, and **Federal Register** notices. Comments we received cover topics such as wildlife, habitat, refuge management, invasive species management, partnerships, and visitor services. We have considered and evaluated all of these comments, with many incorporated into the various alternatives addressed in the draft CCP and the EA.

CCP Alternatives We Are Considering

During the public scoping process with which we started work on this draft CCP, we, other governmental partners, Tribes, and the public raised several issues. Our draft CCP addresses them. A full description of each alternative is in the EA. To address these issues, we developed and evaluated the following alternatives, summarized below.

The Draft EA/CCP presents an evaluation of the environmental effects of four alternatives for managing the Modoc Refuge for the next 15 years. The Service proposes to implement Alternative C, as described in the EA. Alternative C best achieves the Refuge's purposes, vision, and goals; contributes to the Refuge System mission; addresses the significant issues and relevant mandates; and is consistent with principles of sound fish and wildlife management. This alternative is described in more detail in the CCP.

There are many features of proposed Refuge management that are common to all four alternatives. Features common to all alternatives include invasive species management, habitat management and restoration, implementation of a hunting and fishing program, and providing wildlife observation, photography, environmental education, and interpretation opportunities. There are also many features of each alternative that are distinct.

Alternative A, the no action alternative, assumes no change from current management programs and is considered the baseline to compare other alternatives against. Under Alternative A, the primary management focus of the Refuge would continue to be providing habitat for migrating and nesting migratory and resident birds with an emphasis on migratory birds by restoring and maintaining wetland, riparian, and grassland habitats. The Refuge would continue to offer wildlife-dependent recreation including wildlife observation, photography, environmental education, interpretative programs, fishing and hunting, with emphasis on youth and disabled hunters.

Under Alternative B, the Refuge would emphasize management for biological resources. Biological opportunities would be maximized to allow optimum wildlife and habitat management throughout the majority of the Refuge. The Refuges would continue its current focus of providing migratory and nesting habitat for migratory birds. Habitat and invasive species management programs would be expanded. Environmental education, interpretation, wildlife observation, wildlife photography, fishing, and hunting, programs would be reduced.

Under Alternative C, the Refuge would achieve an optimal balance of biological resource objectives and visitor services opportunities. Habitat management and associated biological resource monitoring would be improved. Visitor service opportunities would focus on quality wildlife-dependant recreation distributed throughout the Refuge. In addition, environmental education, interpretation, wildlife observation, photography, fishing, and hunting programs would be expanded beyond Alternative A.

Under Alternative D, the Refuge would emphasize management for visitor services. Wildlife-dependant recreational opportunities would be expanded on the Refuge. Opportunities for the six priority public uses: hunting, fishing, wildlife observation, photography, environmental education, and interpretation, would be expanded beyond Alternatives A, B, and C.

Public Availability of Documents

In addition to any methods in **ADDRESSES**, you can view or obtain documents at the following locations:

- *Our Web site: http://www.fws.gov/modoc.*
- *Public Libraries:* Modoc County Library 212 West Third Street Alturas, CA 96101, Cedarville Branch Library 460 Main Street, Cedarville, CA 96104, Conservation Library, USFWS–NCTC,

698 Conservation Way, Shepherdstown, WV 25443 during regular library hours.

Next Steps

After this comment period ends, we will analyze the comments and address them in the form of a final CCP.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made 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: June 2, 2009.

Margaret T. Kolar,

Acting Regional Director, Pacific Southwest Region, Sacramento, California.

[FR Doc. E9–13303 Filed 6–12–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan; Devils Postpile National Monument; Mono County, CA; Notice of Intent To Prepare an Environmental Impact Statement

SUMMARY: In accordance with 102(2)(C) of the National Environmental Policy Act of 1969, the National Park Service—in cooperation with Inyo National Forest—is undertaking a conservation planning and environmental impact analysis process for creating a new General Management Plan (GMP) for Devils Postpile National Monument (monument), California. The GMP is intended to set forth the basic management philosophy for this unit of the National Park System and provide the strategies for addressing issues and achieving identified management objectives for that unit. The GMP will serve as a ''blueprint'' to guide management of natural and cultural resources and visitor use during the next 15–20 years.

In addition to identifying an ''environmentally preferred'' alternative, one or more development concept plans, which guide more detailed, site-specific preservation and development, may also be included with the GMP. The GMP will also include an eligibility assessment for wild and scenic river designation for the upper Middle Fork San Joaquin River, as required by NPS Management Policies 2006 for rivers and river segments in the National Park System.

The National Park Service (NPS) will serve as lead agency and the U.S. Forest Service shall assume the role of cooperating agency in preparing the Environmental Impact Statement (EIS). Devils Postpile National Monument is working in cooperation with the Inyo National Forest on this GMP so as to seamlessly address visitor opportunities within the valley (such as facilities, transit, and overall visitor experience) and resource management issues in the upper Middle Fork San Joaquin River watershed (such as watershed management, biodiversity, and response to climate change). For any actions that the Forest Service determines would be necessary to be undertaken on Forest Service lands, the Forest Service would approve appropriate compliance separately.

Background Information: Devils Postpile National Monument was established in 1911 by presidential proclamation. The 798-acre monument rests along the Middle Fork San Joaquin River on the Sierra Nevada's western slope and was established to preserve the columnar formation, Devils Postpile, and 101-foot Rainbow Falls. The formation Devils Postpile ranks as one of the world's finest examples of columnar jointing. Its columns tower 60 feet high and display an unusual symmetry. The monument also preserves natural mountain scenery and serves as a portal to the High Sierra backcountry. Both the John Muir Trail and Pacific Crest Trail pass through the monument.

Originally administered by the U.S. Forest Service, the monument was transferred to the national park system in 1934. After the transfer, the monument was managed as a satellite unit first by Yosemite and then by Sequoia and Kings Canyon National Parks before becoming an independent unit of the national park system. Congress also included 747 acres of the monument in the Ansel Adams Wilderness in 1984, consequently over 90% of the monument is designated as Wilderness.

The National Park Service oversees the 798-acre Devils Postpile National Monument, while the U.S. Forest Service manages the lands surrounding the monument. These two Federal agencies work as partners to manage public lands in this area. Access to Devils Postpile is primarily via a mandatory bus system managed by the Forest Service. Hiking trails wind seamlessly in and out of the monument and onto the adjacent national forest. Both agencies are also responsible for wilderness areas. The Devils Postpile trailhead provides one of three main access points to the Pacific Crest and John Muir trails as well as portals to the Ansel Adams and John Muir Wildernesses. Wilderness permits for the national forest may be obtained through the monument.

Preliminary Issues: A comprehensive management plan that provides a broad, long-term vision for management of Devils Postpile National Monument has never been developed. Management direction was previously provided through Yosemite and Sequoia and Kings Canyon National Parks. Programmatic strategies to protect, maintain or restore resources and address visitor access, services, and development specific to the monument are needed.

Consistent with NPS Planning Program Standards, this GMP will: (1) Describe the monument's purpose, significance, and primary interpretive themes; (2) identify the fundamental resources and values of the monument, its other important resources and values, and describe the condition of these resources; (3) describe desired conditions for cultural and natural resources and visitor experiences throughout the monument; (4) develop management zoning to support these desired conditions; (5) develop alternative applications of these management zones to the monument's landscape (*i.e.* zoning alternatives); (6) address user capacity; (7) analyze potential boundary modifications; (8) ensure that management recommendations are developed in consultation with interested stakeholders and the public and adopted by NPS leadership after an adequate analysis of the benefits, environmental impacts, and economic costs of alternative courses of action; (9) develop cost estimates for implementing each of the alternatives; and (10) identify and prioritize subsequent detailed studies, plans and actions that may be needed to implement the GMP, including further wild and scenic river planning or Wilderness management planning that may be required.

Scoping Process: The purpose of this scoping outreach effort is to elicit early public feedback regarding potential issues and concerns, the nature and extent of potential environmental impacts (and as appropriate, mitigation measures), and alternative concepts which should be addressed in developing the monument's first plan. Through the outreach activities planned in the scoping phase, the NPS welcomes information and suggestions from the

public regarding resource protection, visitor use, and land management. All scoping comments must be postmarked or transmitted by September 25, 2009.

Comments may be provided online through the NPS Planning, Environment and Public Comment Web site *http://parkplanning.nps.gov/depo.* If it is more convenient, or if you do not have access to a computer, written comments may also be addressed to: General Management Plan, Devils Postpile National Monument, Attn: Deanna Dulen, Superintendent, P.O. Box 3999, Mammoth Lakes, California 93546. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be 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.

During the summer of 2009, the NPS, in cooperation with the Inyo National Forest, will host two rounds of public open houses in Mammoth Lakes, California. These open houses are planned for July 8 and July 9, 2009 and for September 9 and September 10, 2009. Detailed information including times, specific locations and directions for these meetings will be posted on the GMP project Web site at *http://parkplanning.nps.gov/depo.* All attendees will be given the opportunity to ask questions and provide comments to the planning team. The GMP Web site will provide the most up-to-date information regarding the project, including project description, planning updates, meeting notices, reports and documents, and useful links associated with the planning process.

Decision Process: Following the scoping phase and consideration of public concerns and other agency comments, a Draft EIS/GMP will be prepared and released for public review (at this time anticipated to occur in summer 2011). Availability of the forthcoming Draft EIS/GMP will be formally announced through the publication of a Notice of Availability in the **Federal Register**, as well as through local and regional news media, direct mailing to the project mailing list, and via the Internet at *http://www.nps.gov/depo/parkmgmt/plan.htm.*

Following due consideration of all agency and public comment, a Final EIS will be prepared (at this time the final plan is expected to be available in 2012). As a delegated EIS, the official responsible for the final decision on the proposed plan is the Regional Director, Pacific West Region, National Park Service. Subsequently, the official responsible for implementation of the approved plan is the Superintendent, Devils Postpile National Monument.

Dated: May 13, 2009.

Jonathan B. Jarvis,

Regional Director, Pacific West.

[FR Doc. E9–13883 Filed 6–12–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree in United States v. Waste Management of Wisconsin, Inc., et al. Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

Notice is hereby given that on June 5, 2009, a proposed Consent Decree was lodged with the United States District Court for the Eastern District of Wisconsin in *United States* v. *Waste Management of Wisconsin, Inc., et al.*, Case No. 09–cv–0135. The Consent Decree between the United States, on behalf of the U.S. Environmental Protection Agency (''U.S. EPA''), and the settling defendants relates to certain liabilities under the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9601 *et seq.,* in connection with the Watertown Tire Fire Site in Watertown, Wisconsin (the ''Site'').

Under the proposed Consent Decree, the settling defendants will reimburse the United States for $340,898 of the approximately $1,131,828 in unreimbursed response costs incurred by U.S. EPA in connection with the Site.

The Department of Justice will receive comments relating to the 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 *United States* v. *Waste Management of Wisconsin, Inc., et al.,* DJ Ref. No. 90–11–3–09429.

The Consent Decree may be examined at the Office of the United States Attorney for the Eastern District of Wisconsin, 517 E. Wisconsin Ave., Suite 530, Milwaukee, WI 53202–4580 by request to Assistant U.S. Attorney Matthew Richmond, and at the U.S. EPA Region V, 77 West Jackson Blvd., Chicago, IL 60604. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $10.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–13953 Filed 6–12–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[OMB Number 1117–0014]

Agency Information Collection Activities: Proposed Collection; Comments Requested: Application for Registration (DEA Form 224); Application for Registration Renewal (DEA Form 224a); Affidavit for Chain Renewal DEA Retail Pharmacy Registration (DEA Form 224b); Application for Modification of Registration for Online Pharmacies (DEA–224c)

ACTION: 60-day notice of information collection under review.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until August 14, 2009. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Mark W. Caverly, Chief, Liaison and Policy Section, Office of

Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152, Telephone (202) 307–7297.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of Information Collection 1117–0014:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:*

Application for Registration (DEA Form 224);

Application for Registration Renewal (DEA Form 224a);

Affidavit for Chain Renewal (DEA Form 224b);

Application for Modification of Registration for Online Pharmacies (DEA–224c).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:*

Form Number: DEA Form 224, 224a, 224b, and 224c; Office of Diversion Control, Drug Enforcement Administration, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: Not-for-Profit Institutions; State, Local or Tribal Government.

Abstract: All firms and individuals who distribute or dispense controlled substances must register with the DEA under the Controlled Substances Act. Registration is needed for control measures over legal handlers of controlled substances and is used to monitor their activities.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 12,094 persons complete DEA Form 224 on paper, at 12 minutes per form, for an annual burden of 2,418.8 hours. It is estimated that 59,283 persons complete DEA Form 224 electronically, at 8 minutes per form, for an annual burden of 7,904.4 hours. It is estimated that 159,678 persons complete DEA Form 224a on paper, at 12 minutes per form, for an annual burden of 31,935.6 hours. It is estimated that 209,285 persons complete DEA Form 224a electronically, at 4 minutes per form, for an annual burden of 13,952.3 hours. It is estimated that 16 persons complete DEA Form 224b, at 5 hours per form, for an annual burden of 80 hours. It is estimated that 250 persons complete DEA Form 224c electronically, at 15 minutes per form, for an annual burden of 62.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* It is estimated that this collection will create a burden of 56,354 annual burden hours.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: June 10, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9–14033 Filed 6–12–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[OMB Number 1117–0050]

Agency Information Collection Activities: Proposed Collection; Comments Requested: Reports of Dispensing of Controlled Substances by Online Pharmacies (DEA Form 332)

ACTION: 60-day notice of information collection under review.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until August 14, 2009. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Mark W. Caverly, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152, Telephone (202) 307–7297.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of Information Collection 1117–0050:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Reports of dispensing of controlled substances by online pharmacies (DEA Form 332).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:*

Form Number: DEA Form 332; Office of Diversion Control, Drug Enforcement Administration, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: Not-for-Profit Institutions; State, Local or Tribal Government.

Abstract: The Controlled Substances Act (21 U.S.C. 827(d)(2)) requires online pharmacies to report to DEA the total quantity of controlled substances that the pharmacy has dispensed during each calendar month by any means, regardless of whether the controlled substances are dispensed by means of the Internet. Reports are required to be filed by every pharmacy that, at any time during a calendar month, holds a modification of registration authorizing it to operate as an online pharmacy, regardless of whether the online pharmacy dispenses any controlled substances by means of the Internet during the month. Such reporting is mandated by the Ryan Haight Act and permits DEA to monitor the dispensing of controlled substances by online pharmacies.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 250 persons complete DEA Form 332 electronically, at 15 minutes per form, for an annual burden of 750 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* It is estimated that this collection will create a burden of 750 annual burden hours.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: June 10, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9–14034 Filed 6–12–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–0021]

Training Division; FBI National Academy Level III Evaluation; Proposed Collection, Comments Requested

ACTION: 60-day notice of information collection under review: Approval of a reinstated collection; FBI National Academy Post-Course Questionnaire for Graduates. FBI National Academy Post-Course Questionnaire for Supervisors of Graduates.

The Department of Justice (DOJ), Federal Bureau of Investigation (FBI), Training Division's Office of Technology, Research, and Curriculum Development (OTRCD) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until August 14, 2009. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments (especially on the estimated public burden or associated response time), suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact *Candace Matthews, Evaluation Program Manager, Federal Bureau of Investigation, Training Division, Curriculum Development and Evaluation Unit, FBI Academy, Quantico, Virginia 22135 or facsimile at (703) 632–3111.*

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following three points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's/component's estimate of the burden of the proposed collection of the information, including the validity of the methodology and assumptions used;

(3) 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 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

1. *Type of Information Collection:* Approval of a reinstated collection.

2. *Title of the Forms:*

FBI National Academy Post-Course Questionnaire for Graduates.

FBI National Academy Post-Course Questionnaire for Supervisors of Graduates.

3. *Agency Form Number, if any, and the applicable component of the department sponsoring the collection:*

Form Number: 1110–0021.

Sponsor: Training Division of the Federal Bureau of Investigation (FBI), Department of Justice (DOJ).

4. *Affected Public who will be asked or required to respond, as well as a brief abstract:*

Primary: FBI National Academy graduates and their identified supervisors that represents state and local police and sheriffs' departments, military police organizations, and Federal law enforcement agencies from the United States and over 150 foreign nations.

Brief Abstract: This collection is requested by FBI National Academy. These surveys have been developed that will measure the effectiveness of services that the FBI National Academy provides and will utilize the graduates and their supervisors' comments to improve upon the current process.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are approximately 2,000 FBI National Academy graduates that will respond to the FBI National Academy Post-Course Questionnaire for Graduates. It is predicted that we will receive a 75% respond rate. The average response time for reading the directions for the FBI National Academy Post-Course Questionnaire or Graduates for the FBI National Academy graduates is estimated to be 2 minutes; time to complete the survey is estimated to be 30 minutes.

There are approximately 2,000 FBI National Academy graduates who have identified their supervisors that will respond to the FBI National Academy Post-Course Questionnaire for Supervisors of Graduates. It is predicted that we will receive a 75% respond rate. The average response time for reading the directions for the FBI National Academy Post-Course Questionnaire for Supervisors of Graduates for the supervisors is estimated to be 2 minutes; time to complete the survey is estimated to be 30 minutes. The total hour burden for both surveys is 3,088 hours.

6. *An estimate of the total public burden (in hours) associated with the collection:* The average hour burden for completing all the surveys combined is 3,088 hours.

If additional information is required, contact: Ms. Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry

Building, 601 D Street, NW., Washington, DC 20530.

Dated: June 9, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9–14035 Filed 6–12–09; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Notice of Charter Reestablishment

In accordance with the provisions of the Federal Advisory Committee Act, Title 5, United States Code, Appendix, and Title 41, Code of Federal Regulations, Section 101–6.1015, with the concurrence of the Attorney General, I have determined that the reestablishment of the Criminal Justice Information Services (CJIS) Advisory Policy Board (APB) is in the public interest. In connection with the performance of duties imposed upon the FBI by law, I hereby give notice of the reestablishment of the APB Charter.

The APB provides me with general policy recommendations with respect to the philosophy, concept, and operational principles of the various criminal justice information systems managed by the FBI's CJIS Division.

The APB includes representatives from local and state criminal justice agencies; tribal law enforcement representatives; members of the judicial, prosecutorial, and correctional sectors of the criminal justice community, as well as one individual representing a national security agency; a representative of Federal agencies participating in the CJIS Division Systems; and representatives of criminal justice professional associations (*i.e.,* the American Probation and Parole Association; American Society of Crime Laboratory Directors, Inc.; International Association of Chiefs of Police; National District Attorneys' Association; National Sheriffs' Association; Major Cities Chiefs' Association; Major County Sheriffs' Association; and a representative from a national professional association representing the courts or court administrators nominated by the Conference of Chief Justices). The Attorney General has granted me the authority to appoint all members to the APB.

The APB functions solely as an advisory body in compliance with the provisions of the Federal Advisory Committee Act. The Charter has been filed in accordance with the provisions of the Act.

Dated: June 4, 2009.

Robert S. Mueller, III,

Director.

[FR Doc. E9–13848 Filed 6–12–09; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Sensory System for Critical Infrastructure Defect Recognition, Visualization and Failure Prediction

Notice is hereby given that, on April 14, 2009, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Sensory System for Critical Infrastructure Defect Recognition, Visualization and Failure Prediction (''Sensory System'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: ELXSI, Orlando, FL; Louisiana Tech University, Ruston, LA; and Beyond Vision, LLC, Ruston, LA. The general area of Sensory System's planned activity is to develop a novel, deep-penetrating scanning system based on ultrawideband radar for inspecting buried infrastructure such as pipelines, tunnels, and culverts that can detect fractures, quantify corrosion and determine the presence of voids in the surrounding soil to ''see'' beyond the structure to prevent accidents. The technology provides analysis which cannot be detected by current pipe inspection. The sensory system would be used by dull engineers to rehabilitate and replace critical non-conductive infrastructure such as concrete bridges, concrete dams, sea walls, highways, runways and non-ferrous pipelines. The activities of this joint venture project will be partially funded by award #7ONANB9H9009 from the Technology Innovation Program, National Institute of Standards and Technology, U.S. Department of Commerce.

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E9–13928 Filed 6–12–09; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Network Centric Operations Industry Consortium, Inc.

Notice is hereby given that, on May 12, 2009, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Network Centric Operations Industry Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, LinQuest Corporation, Los Angeles, CA has been added as a party to this venture. Also, AMERICOM Government Services, McLean, VA; Aydin Yazlim ve Elektronik Sanayii A.S., Ankara, Turkey; Objectivity, Inc., Sunnyvale, CA; Sun Microsystems, Inc., Santa Clara, CA; Terma A/S, Lystrup, Denmark; BEA Government Systems, McLean, VA; LMI Government Consulting, McLean, VA; and BARCO, Kuurne, Belgium have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Network Centric Operations Industry Consortium, Inc. intends to file additional written notifications disclosing all changes in membership.

On November 19, 2004, Network Centric Operations Industry Consortium, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 2, 2005 (70 FR 5486).

The last notification was filed with the Department on February 18, 2009. A notice was published in the **Federal**

Register pursuant to section 6(b) of the Act on March 26, 2009 (74 FR 13228).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E9–13926 Filed 6–12–09; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Joint Venture To Perform Project Entitled Next Generation SCADA for Prevention and Mitigation of Water System Infrastructure Disaster

Notice is hereby given that, on April 22, 2009, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Joint Venture to Perform Project Entitled Next Generation SCAIJA for Prevention and Mitigation of Water System Infrastructure Disaster (''Next Generation SCADA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: Earth Mechanics, Inc., Fountain Valley, CA; Irvine Ranch Water District, Irvine, CA; Orange County Sanitation District, Fountain Valley, CA; Santa Ana Watershed Project Authority, Riverside, CA and The Regents of the University of California, Irvine, CA.

The general area of Next Generation SCADA's planned activity is to develop a novel monitoring and inspection system for large water pipe networks with the ability not only to detect a fracture or failure in a pipeline but also to evaluate in real time the remaining useful life at the original design capacity in the damaged system. This system will enable more effective and strategic planning of repair operations and maintenance. The project success will aid in extending the useful life and reliability of the water system infrastructure.

The activities of this joint venture project will be partially funded by award 70NANB9H9013 from the Technology Innovation Program, National Institute of Standards and Technology, U.S. Department of Commerce.

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E9–13925 Filed 6–12–09; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ASTM International

Notice is hereby given that, on May 18, 2009, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 et seq. (''the Act''), ASTM International (''ASTM'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ASTM has provided an updated list of current, ongoing ASTM standards activities originating between February 2009 and May 2009 designated as Work Items. A complete listing of ASTM Work Items, along with a brief description of each, is available at *http://www.astm.org.*

On September 15, 2004, ASTM filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 10, 2004 (69 FR 65226).

The last notification was filed with the Department on February 17, 2009. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 13, 2009 (74 FR 10966).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E9–13921 Filed 6–12–09; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection Request Submitted for Public Comment; Request to the Department of Labor for Expedited Review of Denial of COBRA Premium Reduction

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (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. Currently, the Employee Benefits Security Administration (EBSA) is soliciting comments on the *Application to the Department of Labor for Expedited Review of Denial of COBRA Premium Reduction* (the ''Application'') and the *Plan Administrator Information Sheet* (the ''Letter''). A copy of the information collection request (ICR) may be obtained by contacting the office listed in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office shown in the **ADDRESSES** section on or before August 14, 2009.

ADDRESSES: Please direct all written comments regarding the information collection request and burden estimates to G. Christopher Cosby, Office of Policy and Research, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5647, Washington, DC 20210. Telephone: (202) 693–8410; Fax: (202) 219–4745. These are not toll-free numbers. Comments may also be submitted electronically to the following Internet e-mail address: *ebsa.opr@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The continuation coverage provisions of section 601 through 608 of ERISA (and parallel provisions of the Internal Revenue Code (Code)) generally require group health plans to offer qualified beneficiaries' the opportunity to elect

continuation coverage following certain events that would otherwise result in the loss of coverage. Continuation coverage is a temporary extension of the qualified beneficiary's previous group health coverage. The right to elect continuation coverage allows individuals to maintain group health coverage under adverse circumstances and to bridge gaps in health coverage that otherwise could limit their access to health care.

COBRA provides the Secretary of Labor (the Secretary) with authority under section 608 of ERISA to carry out the continuation coverage provisions. The Conference Report that accompanied COBRA divided interpretive authority over the COBRA provisions between the Secretary and the Secretary of the Treasury (the Treasury) by providing that the Secretary has the authority to issue regulations implementing the notice and disclosure requirements of COBRA, while the Treasury is authorized to issue regulations defining the required continuation coverage.

On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act (ARRA) of 2009 (Pub. L. 111–5). Section 3001(a)(5) of ARRA provides that if individuals request treatment as an assistance eligible individual and are denied such treatment because of their ineligibility for COBRA continuation coverage, the Secretary of Labor must provide for expedited review of the denial upon application to the Secretary in the form and manner the Secretary provides. The Secretary of Labor is required to act in consultation with the Secretary of the Treasury and must make a determination within 15 business days after receipt of an individual's application for review.

The Application is the form that will be used by individuals to file their expedited review appeals with EBSA. All of the information requested on the Application must be completed, and an Application may be denied if sufficient information is not provided. In certain situations, EBSA will have to contact plan administrators for additional information regarding an applicant's appeal of a denial of premium reduction. The Letter will be used for this purposes in cases where the Department has otherwise been unable to contact a plan administrator.

On May 20, 2009, the Office of Management and Budget (OMB) approved the Application and the Letter (OMB Control Number 1210–0135) under the emergency procedures for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35) and 5 CFR 1320.13. The approval is scheduled to expire on November 30, 2009.

II. Current Actions

This notice requests public comment pertaining to the Department's request for extension of OMB's approval of the Application. After considering comments received in response to this notice, the Department intends to submit an ICR to OMB for continuing approval. No change to the existing ICR is proposed or made at this time. The Department notes that an agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a valid OMB control number. A summary of the ICR and the current burden estimates follows:

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Request to the Department of Labor for Expedited Review of Denial of COBRA Premium Reduction

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0135.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 593,000.

Frequency of Responses: On occasion.

Responses: 104,500.

Estimated Total Burden Hours: 99,750.

Estimated Total Burden Cost (Operating and Maintenance): $52,000.

III. Desired Focus of Comments

The Department of Labor is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Dated: June 8, 2009.

Joseph S. Piacentini,

Director, Office of Policy and Research, Employee Benefits Security Administration.

[FR Doc. E9–13995 Filed 6–12–09; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,884]

Progressive Stamping Company, Royal Oak, MI; Notice of Termination of Investigation

In accordance with Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 5, 2009 in response to a petition filed by a company official on behalf of workers of Progressive Stamping Company, Royal Oak, Michigan.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 15th day of May 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–13919 Filed 6–12–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,858]

Schnadig Corporation, Des Plaines, IL; Notice of Termination of Investigation

In accordance with Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 28, 2009 in response to a worker petition filed on behalf of workers of Schnadig Corporation, Des Plaines, Illinois.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 7th day of May 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–13912 Filed 6–12–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,845]

Broyhill Furniture, Inc., Broyhill Rutherford Distribution Center, Rutherfordton, NC; Notice of Termination of Investigation

In accordance with Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 24, 2009 in response to a petition filed on behalf of workers of Broyhill Furniture, Inc., Broyhill Rutherfordton Distribution Center, Rutherfordton, North Carolina.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 20th day of May, 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–13910 Filed 6–12–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,788]

Schlumburger, Casper, WY; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 13, 2009 in response to a worker petition filed on behalf of the workers of Schlumburger, Casper, Wyoming.

The petitioners requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 15th day of May 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–13901 Filed 6–12–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,795]

Caye Upholstery, Amory, MS; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 15, 2009 in response to a worker petition filed by workers of Caye Upholstery, Amory, Mississippi.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 19th day of May 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–13892 Filed 6–12–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,632]

Duct Sox Corporation, a Subsidiary of Rite Hite, Dubuque, IA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 18, 2009 in response to a worker petition filed by workers of Duct Sox Corporation, a subsidiary of Rite Hite, Dubuque, Iowa.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 19th day of May 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–13894 Filed 6–12–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,662]

Leed's; Warren, OH; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 23, 2009 in response to a worker petition filed by workers of Leed's, Warren, Ohio.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 19th day of May 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–13896 Filed 6–12–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,856]

V & E Components, Inc., High Point, NC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 28, 2009 in response to a petition filed by a company official on behalf of workers of V & E Components, Inc., High Point, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 13th day of May 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–13911 Filed 6–12–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,825]

Castec, Inc., North Hollywood, CA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 21, 2009 in response to a worker petition filed by workers of Castec, Inc., North Hollywood, California.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 20th day of May 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–13907 Filed 6–12–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,820]

Swanson Group/Swanson Aviation LLC, Grants Pass, OR; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 20, 2009 in response to a petition filed on behalf of workers at Swanson Group/Swanson Aviation LLC, Grants Pass, Oregon.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 14th day of May 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–13906 Filed 6–12–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,817]

BAE Systems Controls, Inc., Irving, TX; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 20, 2009 in response to a petition filed by a company official on behalf of workers of BAE Systems Controls, Inc., Irving, Texas.

The petitioner requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 15th day of May 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–13905 Filed 6–12–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,802]

UGN, Inc., Jackson, TN; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 15, 2009 in response to a worker petition filed on behalf of workers of UGN, Inc., Jackson, Tennessee.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 15th day of May 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–13904 Filed 6–12–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,789]

Bracalente Manufacturing Company, Inc., Trumbaursvile, PA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 14, 2009 in response to a petition filed on behalf of workers of Bracalente Manufacturing Company, Inc., Trumbaursville, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 13th day of May 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–13902 Filed 6–12–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,776]

Mercedes-Benz United States International, Inc., Vance, AL; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 8, 2009 in response to a petition filed on behalf of workers at Mercedes-Benz United States International, Inc., Vance, Alabama. The workers at the subject facility produce GL class, M class and R class vehicles.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 18th day of May 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–13900 Filed 6–12–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,718]

Weyerhaeuser Company, iLevel Dallas Sawmill, Dallas, OR; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 31, 2009 in response to a petition filed by a company official on behalf of workers at Weyerhaeuser Company, iLevel Dallas Sawmill, Dallas, Oregon. The workers at the subject facility produced rough planed lumber.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 18th day of May 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–13898 Filed 6–12–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,690]

Tube Fabrication Industries, Inc., Logansport, IN; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 27, 2009 in response to a petition filed by a company official on behalf of workers at Tube Fabrication Industries, Inc., Logansport, Indiana. The workers at the subject facility produce steel tube components.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 18th day of May 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–13897 Filed 6–12–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,885]

Morgan AM & T, Coudersport, PA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 5, 2009 in response to a petition filed by the International Union of Electronic and Communication Workers of America, Local 88612 on behalf of workers at Morgan AM & T, Coudersport, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 14th day of May 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–13920 Filed 6–12–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,880]

Carpenter Company, Cookeville, TN; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 4, 2009, in response to a petition filed on behalf of workers at the Carpenter Company, Cookeville, Tennessee.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 12th day of May 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–13918 Filed 6–12–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,878]

BCF Industries, Altavista, VA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 4, 2009, in response to a petition filed on behalf of workers of BCF Industries, Altavista, Virginia.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 19th day of May, 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–13917 Filed 6–12–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,877]

Albion Associates, Inc., High Point, NC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 4, 2009 in response to a petition filed on behalf of the workers at Albion Associates, Inc., High Point, North Carolina.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 14th day of May 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–13916 Filed 6–12–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,876]

Magneti Marelli Powertrain USA, LLC, Sanford, NC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 4, 2009 in response to a petition filed by a company official on behalf of workers of Magneti Marelli Powertrain USA, LLC, Sanford, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 11th day of May 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–13915 Filed 6–12–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,873]

Tyco Electronics, Greensboro, NC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 1, 2009 in response to a petition filed on behalf of workers of Tyco Electronics, Greensboro, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 13th day of May 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–13914 Filed 6–12–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,859]

T. Rad North America, Inc., Hopkinsville, KY; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 28, 2009 in response to a petition filed on behalf of workers at T. Rad North America, Inc., Hopkinsville, Kentucky.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 15th day of May 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–13913 Filed 6–12–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,345]

Quala-Die, Inc., St. Marys, PA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 23, 2009, in response to a petition filed on behalf of workers at Quala-Die, Inc., St. Marys, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 15th day of May 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–13893 Filed 6–12–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,886]

BG Labs, a Subsidiary of Standex, Binghamton, NY; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 5, 2009 in response to a petition filed by a company official on behalf of workers of BG Labs, a subsidiary of Standex, Binghamton, New York.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 11th day of May 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–13891 Filed 6–12–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,747]

Parker Hannifin Corporation, Nichols Portland Division, Portland, ME; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 3, 2009 in response to a petition filed on behalf of workers at Parker Hannifin Corporation, Nichols Portland Division, Portland, Maine. The workers at the subject facility produce gerotors.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 18th day of May 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–13899 Filed 6–12–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,844]

Murphy Veneer, White City, OR; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 24, 2009 in response to a petition on behalf of workers of Murphy Veneer, White City, Oregon.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 11th day of May 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–13909 Filed 6–12–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,831]

Cox Manufacturing Company Inc., Hildebran, NC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 22, 2009 in response to a petition filed on behalf of the workers of Cox Manufacturing Company Inc., Hildebran, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 15th day of May 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–13908 Filed 6–12–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,791]

Commercial Vehicle Group/Trim Systems, Dublin, VA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 14, 2009 in response to a petition filed by a company official on behalf of workers at Commercial Vehicle Group/Trim Systems, Dublin, Virginia. The workers at the subject facility produce truck interiors.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 20th day of May 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–13903 Filed 6–12–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,658]

Semitool Southwest Regional Office, Phoenix, AZ; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 23, 2009 in response to a petition filed on behalf of workers of Semitool Southwest Regional Office, Phoenix, Arizona.

The petitioning group of workers is covered by an active certification (TA–W–61,554C) which expires on July 16, 2009. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 15th day of May 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–13895 Filed 6–12–09; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[(09–048)]

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 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Jasmeet Seehra, Desk Officer for NASA, Office of Information and Regulatory Affairs, Room 10236, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dr. Walter Kit, PRA Clearance Officer, Office of the Chief Information Officer, NASA Headquarters, 300 E Street, SW., JF000, Washington, DC 20546, (202) 358–1350, *walter.kit-1@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This information collection is used to assess the contribution of NASA Small Business Innovation Research (SBIR) technology to the National Economy in accordance with the Government Performance and Results Act (GPRA).

II. Method of Collection

The survey will be electronic and is available on NASA's SBIR Web site at *http://www.sbir.nasa.gov/SBIR/survey.html.* Electronic submission of the subject information is available to 100% of all surveyed firms.

III. Data

Title: NASA Small Business Innovation Research Commercial Metrics.

OMB Number: 2700—0095.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,000/once every 3 years.

Estimated Total Annual Burden Hours: 200.

Estimated Total Annual Cost: $11,000.

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.

Walter Kit,

NASA Clearance Officer.

[FR Doc. E9–13989 Filed 6–12–09; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (09–047)]

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 Dr. Walter Kit, 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 Dr. Walter Kit, NASA PRA Clearance Officer, NASA Headquarters, 300 E Street, SW., JF000, Washington, DC 20546, (202) 358–1350, *Walter.Kit-1@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection provides a means by which NASA employees and contractors can voluntarily and confidentially report any safety concerns or hazards pertaining to NASA programs, projects, or operations.

II. Method of Collection

The current, paper-based reporting system ensures the protection of a submitter's anonymity and secure submission of the report by way of the U.S. Postal Service.

III. Data

Title: NASA Safety Reporting System.

OMB Number: 2700–0063.

Type of review: Extension of currently approved collection.

Affected Public: Federal Government; Business or other for-profit.

Number of Respondents: 75.

Responses per Respondent: 1.

Annual Responses: 75.

Hours per Request: 15 min.

Annual Burden Hours: 19.

Frequency of Report: As needed.

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.

Walter Kit,

NASA PRA Clearance Officer.

[FR Doc. E9–13991 Filed 6–12–09; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act; Notice of Agency Meeting

TIME AND DATE: 10 a.m., Thursday, June 18, 2009.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

Matters To Be Considered

1. Interim Final Rule—Section 701.21(f) of NCUA's Rules and Regulations, Exception to the Maturity Limit on Second Mortgages.
2. Final Rule —Section 701.26 of NCUA's Rules and Regulations, Operating Fees.
3. Temporary Corporate Credit Union Stabilization Fund.
4. Insurance Fund Report.

RECESS: 11 a.m.

TIME AND DATE: 11:15 a.m., Thursday, June 18, 2009.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

Matters To Be Considered

1. Insurance Appeal. Closed pursuant to Exemption (6).
2. Consideration of Supervisory Activities (3). Closed pursuant to Exemptions (8) and (9)(A)(ii) and 9(B).
3. Personnel. Closed pursuant to Exemptions (2) and (6).

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, Telephone: 703–518–6304.

Mary Rupp,

Board Secretary.

[FR Doc. E9–14129 Filed 6–11–09; 4:15 pm]

BILLING CODE 7535–01–P

NUCLEAR REGULATORY COMMISSION

Seeks Qualified Candidates for the Advisory Committee on Reactor Safeguards

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Request for résumés.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) seeks qualified candidates for the Advisory Committee on Reactor Safeguards (ACRS). Submit résumés to Ms. Janet Riner, Executive Secretary, ACRS, Mail Stop T2E–26, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or e-mail *JML1@NRC.GOV.*

SUPPLEMENTARY INFORMATION: The ACRS is a part-time advisory group, which is statutorily mandated by the Atomic Energy Act of 1954, as amended. ACRS provides independent expert advice on matters related to the safety of existing and proposed nuclear power plants and on the adequacy of proposed reactor safety standards. Of primary importance are the safety issues associated with the operation of 104 commercial nuclear power plants in the United States and regulatory initiatives, including risk-informed and performance-based regulations, license renewal, power uprates, and the use of mixed oxide and high burnup fuels. An increased emphasis is being given to safety issues associated with new reactor designs and technologies, including passive system reliability and thermal hydraulic phenomena, use of digital instrumentation and control, international codes and standards used in multinational design certifications, material and structural engineering, nuclear analysis and reactor core performance, and nuclear materials and radiation protection. In addition, the ACRS may be requested to provide advice on radiation protection, radioactive waste management and earth sciences in the agency's licensing reviews for fuel fabrication and enrichment facilities, waste disposal facilities, and facilities related to the Department of Energy's nuclear energy initiatives.

The ACRS also has some involvement in security matters related to the integration of safety and security of commercial reactors. See the NRC Web site at *http://www.nrc.gov/aboutnrc/regulatory/advisory/acrs.html* for additional information about ACRS. Criteria used to evaluate candidates include education and experience, demonstrated skills in nuclear reactor safety matters, the ability to solve complex technical problems, and the ability to work collegially on a board, panel, or committee. The Commission, in selecting its Committee members, considers the need for a specific expertise to accomplish the work expected to be before the ACRS. ACRS Committee members are appointed for four-year terms and normally serve no more than three terms. The Commission looks to fill one vacancy as a result of this request. For this position, a candidate must have at least 10 years of broad experience in the area of nuclear engineering coupled with operational exposure to issues relative to new reactor designs such as digital instrumentation and control, civil/structural engineering, or radiation protection.

Candidates with pertinent graduate level experience will be given additional consideration. Consistent with the requirements of the Federal Advisory Committee Act, the Commission seeks candidates with diverse backgrounds, so that the membership on the Committee is fairly balanced in terms of the points of view represented and functions to be performed by the Committee. Candidates will undergo a thorough security background check to obtain the security clearance that is mandatory for all ACRS members. The security background check will involve the completion and submission of paperwork to NRC. Candidates for ACRS appointments may be involved in or have financial interests related to NRC-regulated aspects of the nuclear industry. However, because conflict-of-interest considerations may restrict the participation of a candidate in ACRS activities, the degree and nature of any such restriction on an individual's activities as a member will be considered in the selection process. Each qualified candidate's financial interests must be reconciled with applicable Federal and NRC rules and regulations prior to final appointment. This might require divestiture of securities or discontinuance of certain contracts or grants. Information regarding these restrictions will be provided upon request. A résumé describing the educational and professional background of the candidate, including any special accomplishments, publications, and professional references should be provided. Candidates should provide their current address, telephone number, and e-mail address. All candidates will receive careful consideration. Appointment will be made without regard to factors such as race, color, religion, national origin, sex, age, or disabilities. Candidates must be citizens of the United States and be able to devote approximately 100 days per year to Committee business. Résumés will be accepted until September 30, 2009.

Dated at Rockville, MD, this 9th day of June 2009.

For the U.S. Nuclear Regulatory Commission.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. E9–13993 Filed 6–12–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 03032029; License No. 52–25133–01; EA–08–332;NRC–2009–0240]

In the Matter of: S&M Testing Laboratory, Gurabo, PR; Order Imposing Civil Monetary Penalties

I

S&M Testing Laboratory (S&M Testing) (Licensee), formerly Turabo Corporation is the holder of Materials License No. 52–25133–01 issued on March 25, 1991, by the Nuclear Regulatory Commission (NRC or Commission). On September 17, 2001, the Licensee name was changed to Turabo Testing, Inc. and during December 2001, filed for bankruptcy under Chapter 11. On September 22, 2008, the Licensee's name was changed to S&M Testing Laboratory and the license was revoked on September 22, 2008, for non-payment of fees. The license authorizes the Licensee to use byproduct material in accordance with the conditions specified therein.

II

An inspection of the Licensee's activities was conducted from May 1, 2007, through September 23, 2008. In addition, the NRC Office of Investigations (OI) initiated an investigation on March 7, 2008, to: (1) Locate the President of S&M Testing; (2) determine the location of the licensed material that S&M Testing was authorized to possess; (3) determine if S&M Testing deliberately failed to confine possession of licensed material to locations authorized on its NRC license, as required by 10 CFR 30.34(c); and, (4) determine if S&M Testing deliberately failed to provide an opportunity to inspect the material, activities, and facilities to verify security of the licensed material in S&M Testing's possession, as required by 10 CFR 30.52(a).

Based on the results of the inspection and the investigation, the NRC concluded that violations of NRC requirements had occurred, involving: (1) The deliberate failure to confine possession of byproduct material to locations authorized by NRC License 52–25133–01; (2) the deliberate failure to provide the NRC an opportunity to inspect byproduct material and the premises where the byproduct material was stored, as required by 10 CFR 30.52(a); and, (3) the failure to utilize a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal whenever the gauges were not under the control and constant surveillance of the Licensee, as required by 10 CFR 30.34(i).

III

A written Notice of Violation and Proposed Imposition of Civil Penalties (Notice), stating the violations and the amount of civil penalties proposed for the violations, was served upon the Licensee by a letter dated March 23, 2009. Although a response to the Notice was required within 30 days of the date of the letter transmitting the Notice (*i.e.*, by April 22, 2009), as of the date of this Order, the Licensee has failed to respond to the letter and the proposed civil penalties. Therefore, NRC staff has determined, that the proposed penalties for the violations designated in the Notice should be imposed, in the amount of $16,250.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, it is hereby ordered that:

> The Licensee pay civil penalties in the amount of $16,250 within 30 days of the date of this Order, in accordance with NUREG/BR–0254. In addition, at the time payment is made, the Licensee shall submit a statement indicating when and by what method payment was made, to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738.

V

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order within 20 days of its issuance. In addition, the Licensee and any other person adversely affected by this Order may request a hearing on this Order within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, and include a statement of good cause for the extension.

A request for a hearing must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August, 2007, 72 FR 49,139 (Aug. 28, 2007). The E-Filing process requires participants to submit and serve documents over the internet or, in some cases, to mail copies on electronic optical storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below. To comply with the procedural requirements associated with E-Filing, at least five (5) days prior to the filing deadline the requestor must contact the Office of the Secretary by e-mail at *HEARINGDOCKET@NRC.GOV*, or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any NRC proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances when the requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html*. Information about applying for a digital ID certificate also is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html*.

Once a requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for a hearing through EIE. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the filer submits its document through EIE. To be timely, electronic filings must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request is filed so that they may obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-*

submittals.html or by calling the NRC technical help line, which is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays. The help line number is (866) 672–7640.

Participants who believe that they have good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, Participants are requested not to include copyrighted materials in their works.

If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d).

If a hearing is requested by a Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearings. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained. In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. If payment has not been made by that time, the matter may be referred to the Attorney General, for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the Licensee was in violation of the Commission's requirements as set forth in the Notice referenced in Section II above, and

(b) Whether, on the basis of such violations, this Order should be sustained.

Dated this 8th day of June 2009.

For the Nuclear Regulatory Commission.

Cynthia A. Carpenter,

Director, Office of Enforcement.

[FR Doc. E9–13992 Filed 6–12–09; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 38a–1; SEC File No. 270–522; OMB Control No. 3235–0586.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 38a–1 (17 CFR 270.38a–1) under the Investment Company Act of 1940 (15 U.S.C. 80a) (''Investment Company Act'') is intended to protect investors by fostering better fund compliance with securities laws. The rule requires every registered investment company and business development company (''fund'') to: (i) Adopt and implement written policies and procedures reasonably designed to prevent violations of the federal securities laws by the fund, including procedures for oversight of compliance by each investment adviser, principal underwriter, administrator, and transfer agent of the fund; (ii) obtain the fund board of director's approval of those policies and procedures; (iii) annually review the adequacy of those policies and procedures and the policies and procedures of each investment adviser, principal underwriter, administrator, and transfer agent of the fund, and the effectiveness of their implementation; (iv) designate a chief compliance officer to administer the fund's policies and procedures and prepare an annual report to the board that addresses certain specified items relating to the policies and procedures; and (v) maintain for five years the compliance policies and procedures and the chief compliance officer's annual report to the board.

The rule contains certain information collection requirements that are designed to ensure that funds establish and maintain comprehensive, written internal compliance programs. The information collections also assist the Commission's examination staff in assessing the adequacy of funds' compliance programs.

While Rule 38a–1 requires each fund to maintain written policies and procedures, most funds are located within a fund complex. The experience of the Commission's examination and oversight staff suggests that each fund in a complex is able to draw extensively from the fund complex's ''master'' compliance program to assemble appropriate compliance policies and procedures. Many fund complexes already have written policies and procedures documenting their compliance programs. Further, a fund needing to develop or revise policies and procedures on one or more topics in order to achieve a comprehensive compliance program can draw on a number or outlines and model programs available from a variety of industry representatives, commentators, and organizations.

There are approximately 4638 funds subject to Rule 38a–1. Among these funds, 105 were newly registered in the past year. These 105 funds, therefore, were required to adopt and document the policies and procedures that make up their compliance programs. Commission staff estimates that the average annual hour burden for a fund to adopt and document these policies and procedures is 80 hours. Thus, we estimate that the aggregate annual burden hours associated with the adoption and documentation requirement is 8,400 hours.

All funds are required to conduct an annual review of the adequacy of their existing policies and procedures and the policies and procedures of each investment adviser, principal underwriter, administrator, and transfer agent of the fund, and the effectiveness of their implementation. In addition, each fund chief compliance officer is required to prepare an annual report that addresses the operation of the policies and procedures of the fund and the policies and procedures of each investment adviser, principal underwriter, administrator, and transfer agent of the fund, any material changes made to those policies and procedures since the date of the last report, any material changes to the policies and procedures recommended as a result of the annual review, and certain compliance matters that occurred since the date of the last report. The staff estimates that each fund spends 42 hours per year, on average, conducting the annual review and preparing the annual report to the board of directors. Thus, we estimate that the aggregate annual burden hours associated with the annual review and annual report requirement is 194,796 hours.

Finally, the staff estimates that each fund spends 11 hours annually, on average, maintaining the records required by proposed Rule 38a–1. Thus, the aggregate annual burden hours associated with the recordkeeping requirement is 51,018 hours.

In total, the staff estimates that the aggregate annual information collection burden of Rule 38a–1 is 254,214 hours. The estimate of burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. Complying with this collection of information requirement is mandatory. Responses will not be kept confidential. 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 control number.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: June 9, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–14007 Filed 6–12–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–28763; File No. 812–13664]

Deutsche Bank Securities Inc., et al.; Notice of Application and Temporary Order

June 9, 2009.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 (''Act'').

SUMMARY OF APPLICATION: Applicants have received a temporary order exempting them from section 9(a) of the Act, with respect to an injunction entered against Deutsche Bank Securities Inc. (''DBSI'') on June 9, 2009 by the United States District Court for the Southern District of New York (''Injunction''), until the Commission takes final action on an application for a permanent order. Applicants also have applied for a permanent order.

APPLICANTS: DBSI, Deutsche Investment Management Americas, Inc. (''DIMA''), Deutsche Asset Management (Hong Kong) Limited (''DeAM (HK)''), Deutsche Asset Management International GmbH (''DeAMI''), Deutsche Asset Management (Japan) Limited (''DeAMJ''), Deutsche Investments Australia Limited (''DIAL''), RREEF America LLC (''RREEF''), RREEF Global Advisors Limited (''RREEF (G)''), and DWS Investments Distributors, Inc. (''DIDI'') (collectively, other than DBSI, the ''Fund Servicing Applicants'' and together with DBSI, the ''Applicants'').[1]

DATES: *Filing Date:* The application was filed on June 9, 2009.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 6, 2009, and should be accompanied by proof of service on Applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants: DBSI, 60 Wall Street, New York, NY 10005; DIMA, 345 Park Avenue, New York, NY 10154; DeAM (HK), 48/F Cheung Kong Centre, 2 Queen's Road Central, Hong Kong, China; DeAMI, Mainzer Landstrasse 178–190, Frankfurt am Main, 60327; DeAMJ, Sanno Park Tower, 2–11–1, Nagata-Cho, Chiyoda-Ku, Tokyo, 100–6173; DIAL, Deutsche Bank Place, Level 16, CNR Hunter and Phillip Streets, Sydney, NSW 2000; RREEF, 875 N. Michigan Avenue, 41st Floor, Chicago, IL 60611; RREEF (G), Winchester House, 1 Great Winchester Street, London, United Kingdom EC2N 2DB; and DIDI, 222 South Riverside Plaza, Chicago, IL 60606.

FOR FURTHER INFORMATION CONTACT: Steven I. Amchan, Senior Counsel, at (202) 551–6826, or Julia Kim Gilmer, Branch Chief, at (202) 551–6821, (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a temporary order and 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. Deutsche Bank AG (''DB'') is a stock corporation organized under the laws of the Federal Republic of Germany. DBSI is an indirect wholly-owned subsidiary of DB, and an affiliated person of each Fund Servicing Applicant within the meaning of section 2(a)(3) of the Act (by

[1] Applicants request that any relief granted pursuant to the application also apply to any other company of which DBSI is or may become an affiliated person (together with the Applicants, the ''Covered Persons'').

virtue of being under common control with the Fund Servicing Applicants). DBSI provides securities brokerage and investment advisory services to private clients and institutions and correspondent clearing services to broker-dealers. DBSI also provides a variety of capital raising, market making, and brokerage services for its government, financial institution, and corporate clients, including fixed income and equity sales and trading, emerging markets activities, and equity market research and investment banking.

2. DIMA, DeAM (HK), DeAMI, DeAMJ, DIAL, RREEF, and RREEF (G) are registered as investment advisers under the Investment Advisers Act of 1940, as amended (''Advisers Act'') and provide investment advisory or subadvisory services to registered investment companies (''Funds''). DIDI is a broker-dealer registered under the Securities Exchange Act of 1934 (''Exchange Act'') and serves as principal underwriter to Funds.

3. On June 9, 2009, the United States District Court for the Southern District of New York entered a judgment against DBSI (''Judgment'') in a matter brought by the Commission.[2] The Commission alleged in the complaint (''Complaint'') that DBSI violated section 15(c) of the Exchange Act by marketing auction rate securities as highly liquid investments comparable to cash or money market instruments and by selling auction rate securities to its customers without adequately disclosing the risks involved in purchasing such securities. Without admitting or denying the allegations in the Complaint, except as to jurisdiction, DBSI consented to the entry of the Judgment that included, among other things, the entry of the Injunction and other equitable relief including undertakings to take various remedial actions for the benefit of purchasers of certain auction rate securities.

Applicants' Legal Analysis

1. Section 9(a)(2) of the Act, in relevant part, prohibits a person who has been enjoined from, among other things, engaging in or continuing any conduct or practice in connection with the purchase or sale of a security, or in connection with activities as an underwriter, broker or dealer, from acting, among other things, as an investment adviser or depositor of any registered investment company or a principal underwriter for any registered open-end investment company, registered unit investment trust or registered face-amount certificate company. Section 9(a)(3) of the Act makes the prohibition in section 9(a)(2) applicable to a company, any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Section 2(a)(3) of the Act defines ''affiliated person'' to include, among others, any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that DBSI is an affiliated person of each of the other Applicants within the meaning of section 2(a)(3) of the Act. Applicants state that the entry of the Injunction results in Applicants being subject to the disqualification provisions of section 9(a) of the Act.

2. Section 9(c) of the Act provides that the Commission shall grant an application for exemption from the disqualification provisions of section 9(a) if it is established that these provisions, as applied to the Applicants, are unduly or disproportionately severe or that the Applicants' conduct has been such as not to make it against the public interest or the protection of investors to grant the exemption. Applicants have filed an application pursuant to section 9(c) seeking a temporary and permanent order exempting them and Covered Persons from the disqualification provisions of section 9(a) of the Act.

3. Applicants believe they meet the standard for exemption specified in section 9(c). Applicants state that the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe and that the conduct of the Applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption from section 9(a).

4. Applicants state that the alleged conduct giving rise to the Injunction did not involve any of the Applicants acting in the capacity of investment adviser, subadviser or depositor to any Fund or in the capacity of principal underwriter for any open-end Fund, UIT, or registered face-amount certificate company. Applicants also state that none of the current or former directors, officers, or employees of the Fund Servicing Applicants had any responsibility for, or had any involvement in, the conduct alleged in the Complaint. Applicants further state that the personnel at DBSI who were involved in the violations alleged in the Complaint have had no and will not have any future involvement in providing investment advisory, subadvisory, depository or underwriting services to Funds.

5. Applicants state that their inability to continue to provide investment advisory, subadvisory and underwriting services to Funds would result in potential hardship for the Funds and their shareholders. Applicants state that they will, as soon as reasonably practicable, distribute written materials, including an offer to meet in person to discuss the materials, to the boards of directors (''Boards'') of the Funds for which the Applicants serve as investment adviser, investment subadviser or principal underwriter, including the directors who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, of such Funds, and their independent legal counsel as defined in rule 0–1(a)(6) under the Act, relating to the circumstances that led to the Injunction, any impact on the Funds, and the application. Applicants state they will provide the Boards of the Funds with all information concerning the Injunction and the application that is necessary for the Funds to fulfill their disclosure and other obligations under the Federal securities laws.

6. Applicants also state that, if the Fund Servicing Applicants were barred from providing services to the Funds, the effect on their businesses and employees would be severe. Applicants state that they have committed substantial resources to establish an expertise in providing advisory and principal underwriting services to Funds. Applicants further state that prohibiting the Fund Servicing Applicants from providing such services would not only adversely affect their businesses, but would also adversely affect over 500 employees who are involved in those activities.

7. Applicants previously have received exemptions under section 9(c) as the result of conduct that triggered section 9(a) as described in greater detail in the application.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Covered Persons, including, without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary

[2] *Securities and Exchange Commission* v. *Deutsche Bank Securities Inc.,* Judgment on Consent Against Defendant Deutsche Bank Securities Inc., 09 Civ. 5174 (S.D.N.Y. June 9, 2009).

exemptions granted under the Act in connection with the application.

Temporary Order

The Commission has considered the matter and finds that Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly,

It is hereby ordered, pursuant to section 9(c) of the Act, that Applicants and any other Covered Persons are granted a temporary exemption from the provisions of section 9(a), solely with respect to the Injunction, subject to the condition in the application, from June 9, 2009, until the Commission takes final action on their application for a permanent order.

By the Commission.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–13981 Filed 6–12–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–28762; File No. 812–13663]

RBC Capital Markets Corporation, et al.; Notice of Application and Temporary Order

June 9, 2009.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 (''Act'').

SUMMARY OF APPLICATION: Applicants have received a temporary order exempting them from section 9(a) of the Act, with respect to an injunction entered against RBC Capital Markets Corporation (''RBC'') on June 9, 2009 by the United States District Court for the Southern District of New York (''Injunction''), until the Commission takes final action on an application for a permanent order. Applicants also have applied for a permanent order.

APPLICANTS: RBC, Voyageur Asset Management Inc. (''Voyageur''), Tamarack Distributors Inc. (''Tamarack''), and Sky Investment Counsel Inc. (''Sky'') (collectively, other than RBC, the ''Fund Servicing Applicants'' and together with RBC, the ''Applicants'').[1]

FILING DATE: The application was filed on June 3, 2009. 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 July 6, 2009, and should be accompanied by proof of service on Applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants: RBC, One Liberty Plaza, 165 Broadway, New York, NY 10006; Voyageur and Tamarack, 100 South Fifth Street, Suite 2300, Minneapolis, MN 55402; and Sky, 1 Adelaide Street East, Suite 2310, Toronto, ON, Canada M5C 2V9.

FOR FURTHER INFORMATION CONTACT: Jaea F. Hahn, Senior Counsel, at (202) 551–6870, or Julia Kim Gilmer, Branch Chief, at (202) 551–6821, (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a temporary order and 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. RBC is a full service investment banking firm engaged in securities underwriting, sales and trading, investment banking, financial advisory services and investment research services. RBC is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934, as amended (''Exchange Act'') and as an investment adviser under the Investment Advisers Act of 1940, as amended (''Advisers Act''). RBC is an indirect, wholly owned subsidiary of Royal Bank of Canada (''Royal Bank''), a Canada-based global financial services firm.

2. Voyaguer and Sky are registered as investment advisers under the Advisers Act and provide investment advisory or subadvisory services to registered investment companies (''Funds''). Voyageur is an indirect, wholly owned subsidiary of Royal Bank. Royal Bank indirectly owns a controlling interest in Sky. Tamarack is a broker-dealer registered under the Exchange Act and serves as principal underwriter to open-end Funds. None of the Applicants serve as depositor to any Fund.

3. On June 9, 2009, the United States District Court for the Southern District of New York entered a judgment against RBC (''Judgment'') in a matter brought by the Commission.[2] The Commission alleged in the complaint (''Complaint'') that RBC violated section 15(c) of the Exchange Act by misrepresenting to many of its customers that auction rate securities were safe, highly liquid investments that were substitutes for cash or money market funds. The Complaint further alleges that on February 11, 2008, RBC determined not to place bids in most of its auctions, as it had historically done, resulting in failed auctions. Without admitting or denying the allegations in the Complaint, except as to jurisdiction, RBC consented to the entry of the Injunction and other equitable relief including undertakings to take various remedial actions for the benefit of purchasers of certain auction rate securities.

Applicants' Legal Analysis

1. Section 9(a)(2) of the Act, in relevant part, prohibits a person who has been enjoined from, among other things, engaging in or continuing any conduct or practice in connection with the purchase or sale of a security, or in connection with activities as an underwriter, broker or dealer, from acting, among other things, as an investment adviser or depositor of any registered investment company or a principal underwriter for any registered open-end investment company, registered unit investment trust or registered face-amount certificate company. Section 9(a)(3) of the Act makes the prohibition in section 9(a)(2) applicable to a company, any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Section 2(a)(3) of the Act defines ''affiliated person'' to include, among others, any person directly or indirectly controlling, controlled by, or under

[1] Applicants request that any relief granted pursuant to the application also apply to any other company of which RBC is or may become an affiliated person (together with the Applicants, the ''Covered Persons'').

[2] *Securities and Exchange Commission* v. *RBC Capital Markets Corporation,* Judgment as to Defendant RBC Capital Markets Corporation, 09–cv–5172 (S.D.N.Y., June 9, 2009).

common control with, the other person. Applicants state that RBC is an affiliated person of each of the other Applicants within the meaning of section 2(a)(3) of the Act. Applicants state that the entry of the Injunction results in Applicants being subject to the disqualification provisions of section 9(a) of the Act.

2. Section 9(c) of the Act provides that the Commission shall grant an application for exemption from the disqualification provisions of section 9(a) if it is established that these provisions, as applied to the Applicants, are unduly or disproportionately severe or that the Applicants' conduct has been such as not to make it against the public interest or the protection of investors to grant the exemption. Applicants have filed an application pursuant to section 9(c) seeking a temporary and permanent order exempting them and Covered Persons from the disqualification provisions of section 9(a) of the Act.

3. Applicants believe they meet the standards for exemption specified in section 9(c). Applicants state that the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe and that the conduct of the Applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption from section 9(a).

4. Applicants state that the alleged conduct giving rise to the Injunction did not involve any of the Applicants acting in the capacity of investment adviser or subadviser to any Fund or in the capacity of principal underwriter for any open-end Fund. Applicants also state that none of the current or former directors, officers, or employees of the Fund Servicing Applicants had any knowledge of, or had any involvement in, the conduct alleged in the Complaint. Applicants further state that the personnel at RBC who were involved in the violations alleged in the Complaint have had no involvement in providing investment advisory, subadvisory or principal underwriting services to Funds and will not have any future involvement in such activities.

5. Applicants state that the inability to continue to provide investment advisory and subadvisory services to Funds and principal underwriting services to open-end Funds would result in potential hardship for the Funds and their shareholders. Applicants state that they will, as soon as reasonably practical, distribute written materials, including an offer to meet in person to discuss the materials, to the boards of directors of the Funds (''Boards'') for which the Applicants serve as investment adviser, investment subadviser or principal underwriter, including the directors who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, of such Funds, and their independent legal counsel as defined in rule 0–1(a)(6) under the Act, relating to the circumstances that led to the Injunction, any impact on the Funds, and the application. Applicants state they will provide the Boards with all information concerning the Injunction and the application that is necessary for the Funds to fulfill their disclosure and other obligations under the federal securities laws.

6. Applicants also state that, if they were barred from providing services to Funds, the effect on their businesses and employees would be severe. Applicants state that they have committed substantial resources to establish an expertise in providing advisory and distribution services to Funds. Applicants further state that prohibiting them from providing such services would not only adversely affect their businesses, but would also adversely affect approximately 35 employees who are involved in those activities.

7. Applicants have not previously received an exemption under section 9(c) as the result of conduct that triggered section 9(a).

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Covered Persons, including, without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

Temporary Order

The Commission has considered the matter and finds that Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly,

It is hereby ordered, pursuant to section 9(c) of the Act, that Applicants and any other Covered Persons are granted a temporary exemption from the provisions of section 9(a), solely with respect to the Injunction, subject to the condition in the application, from June 9, 2009, until the Commission takes final action on their application for a permanent order.

By the Commission.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–13980 Filed 6–12–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–28764; File No. 812–13662]

Banc of America Securities LLC, et al.; Notice of Application and Temporary Order

June 9, 2009.

AGENCY: Securities and Exchange Commission.

ACTION: Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 (''Act'').

SUMMARY: *Summary of Application:* Applicants have received a temporary order exempting them from section 9(a) of the Act, with respect to an injunction entered against Banc of America Securities LLC (''BAS'') and Banc of America Investment Services, Inc. (''BAI'') on June 9, 2009 by the United States District Court for the Southern District of New York (''Injunction'') until the Commission takes final action on an application for a permanent order. Applicants also have applied for a permanent order.

APPLICANTS: BAS, BAI, Columbia Management Advisors, LLC (''CMA''), Columbia Wanger Asset Management, LP (''CWAM''), Columbia Management Distributors, Inc. (''CMDI''), Banc of America Investment Advisors, Inc. (''BAIA''), Bank of America Capital Advisors LLC (''BACA''), U.S. Trust Hedge Fund Management, Inc. (''USTHFM''), Merrill Lynch, Pierce, Fenner & Smith, Incorporated (''MLPFS''), IQ Investment Advisors LLC (''IQ''), Roszel Advisors, LLC (''Roszel''), Nuveen Asset Management (''NAM''), Nuveen Investments Advisers Inc. (''NIA''), Nuveen Investments Institutional Services Group, LLC (''ISG''), Nuveen HydePark Group, LLC (''Nuveen HydePark''), NWQ Investment Management Company LLC (''NWQ''), Nuveen Investment Solutions, Inc. (''NIS''), Santa Barbara Asset Management, LLC (''Santa Barbara''), Symphony Asset Management LLC (''Symphony''), Tradewinds Global Investors, LLC (''Tradewinds'') and Winslow Capital Management, Inc. (''Winslow'', together with NAM, NIA, ISG, Nuveen HydePark, NWQ, NIS,

Santa Barbara, Symphony and Tradewinds, the ''Nuveen Advisers''), Nuveen Investments, LLC (''Nuveen Investments''), KECALP Inc. (''KECALP'') and Merrill Lynch Ventures, LLC (''Ventures'') (collectively, ''Applicants'').[1]

DATES: *Filing Date:* The application was filed on June 3, 2009. 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 July 6, 2009, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants: BAS, One Bryant Park, New York, NY 10036; BAI, CMA, BAIA, BACA, 100 Federal Street, Boston, MA 02110; CWAM, 227 West Monroe Street, Suite 3000, Chicago, IL 60606; CMDI, One Financial Center, Boston, MA 02110; USTHFM, 225 High Ridge Road, West Building, Stamford, CT 06905; MLPFS, IQ, KECALP, Ventures, North Tower, 4 World Financial Center, New York, NY 10080; Roszel, 1700 Merrill Lynch Drive, Pennington, NJ 08534; and the Nuveen Advisers and Nuveen Investments, 333 West Wacker Drive, Chicago, IL 60606.

FOR FURTHER INFORMATION CONTACT: Emerson S. Davis, Senior Counsel, at 202–551–6868, or Julia Kim Gilmer, Branch Chief, at 202–551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a temporary order and 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. BAS, an indirect wholly owned subsidiary of Bank of America Corporation (''BAC''), is a full service U.S. investment bank and brokerage firm that provides a wide range of investment banking, and financial advisory services to corporate, institutional and individual clients. BAS is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act'') and is registered as a broker-dealer under the Securities Exchange Act of 1934 (''Exchange Act''). BAI is a wholly owned subsidiary of Bank of America, N.A. and also an indirect subsidiary of BAC. BAI is registered as an investment adviser under the Advisers Act and is registered as a broker-dealer under the Exchange Act. While BAS and BAI do not currently serve, and no existing company of which BAS or BAI is an affiliated person (other than the Applicants) currently serves, as investment adviser, depositor or principal underwriter for a registered investment company (''RIC''), or principal underwriter for any registered open-end investment company, registered investment trust (''UIT'') or face amount certificate company or employees' securities companies (''ESC'', and together with RICs, the ''Funds,'' and such services, the ''Fund Servicing Activities''), each may do so in the future. CMA, CWAM, BAIA, BACA, USTHFM, IQ, Roszel, the Nuveen Advisers and KECALP are registered as investment advisers under the Advisers Act and provide investment advisory or subadvisory services to Funds. Ventures provides investment advisory services to an ESC. CMDI, MLPFS and Nuveen Investments are registered as broker-dealers under the Exchange Act and serve as principal underwriters for certain Funds. Nuveen Investments also serves as depositor to certain UITs.

2. On June 9, 2009, the United States District Court for the Southern District of New York entered a judgment, which included the Injunction, against BAS and BAI (''Judgment'') in a matter brought by the Commission.[2] The Commission alleged in the complaint (''Complaint'') that BAS and BAI violated section 15(c) of the Exchange Act in connection with the marketing and sale of auction rate securities (''ARS''). The Complaint alleged that BAS and BAI misled customers regarding the fundamental nature and increasing risk associated with ARS that they underwrote, marketed and sold. Without admitting or denying any of the allegations in the Complaint, except as to jurisdiction, BAS and BAI consented to the entry of the Judgment that included, among other things, the entry of the Injunction and certain undertakings to take various remedial actions for the benefit of purchasers of certain ARS.

Applicants' Legal Analysis

1. Section 9(a)(2) of the Act, in relevant part, prohibits a person who has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security, or in connection with activities as an underwriter, broker or dealer, from acting, among other things, as an investment adviser or depositor of any registered investment company or a principal underwriter for any registered open-end investment company, registered unit investment trust, or registered face-amount certificate company. Section 9(a)(3) of the Act makes the prohibition in section 9(a)(2) applicable to a company, any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Section 2(a)(3) of the Act defines ''affiliated person'' to include, among others, any person directly or indirectly controlling, controlled by, or under common control, with the other person. Applicants state that BAS and BAI are or may be considered affiliated persons of each of the other Applicants within the meaning of section 2(a)(3). Applicants state that, as a result of the Injunction, they would be subject to the prohibitions of section 9(a).

2. Section 9(c) of the Act provides that the Commission shall grant an application for exemption from the disqualification provisions of section 9(a) of the Act if it is established that these provisions, as applied to Applicants, are unduly or disproportionately severe or that the conduct of the Applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption. Applicants have filed an application pursuant to section 9(c) seeking a temporary and permanent order exempting the Applicants and the other Covered Persons from the disqualification provisions of section 9(a).

[1] Applicants request that any relief granted pursuant to the application also apply to any other company of which BAS or BAI is or may become an affiliated person (together with the Applicants, the ''Covered Persons'').

[2] *Securities and Exchange Commission* v. *Banc of America Securities LLC and Banc of America Investment Services, Inc.,* Judgment against Banc of America Securities LLC and Banc of America Investment Services, Inc., 09 CIV 5170 (S.D.N.Y., entered June 9, 2009).

3. Applicants believe they meet the standards for exemption specified in section 9(c). Applicants state that the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe and that the conduct of Applicants has been such as not to make it against the public interest or the protection of investors to grant the requested exemption from section 9(a).

4. Applicants state that the conduct alleged in the Complaint did not involve any of the Applicants acting in their capacity as investment adviser, sub-adviser, depositor or principal underwriter for any of the Funds. Applicants also state that to the best of their knowledge, none of the current directors and officers of the Applicants (other than BAS and BAI) or their employees that engage in Fund Servicing Activities (or any other persons in such roles during the time period covered by the Complaint) participated in the conduct alleged in the Complaint to have constituted the violations that provide a basis for the Injunction. Applicants further state that any personnel at BAS and BAI who participated in the conduct alleged in the Complaint to have constituted the violations that provide a basis for the Injunction have had no, and will not have any future involvement in the Applicants' Fund Servicing Activities.

5. Applicants state that the inability of the Applicants to engage in Fund Servicing Activities would result in potentially severe financial hardships for the Funds they serve and the Funds' shareholders or unitholders. Applicants state that they will distribute written materials, including an offer to meet in person to discuss the materials, to the boards of directors of the Funds (the ''Boards''), including the directors who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, of the Funds and their independent legal counsel as defined in rule 0–1(a)(6) under the Act, if any, regarding the Injunction, any impact on the Funds, and the application. Applicants state that they will provide the Boards with all information concerning the Injunction and the application that is necessary for the Funds to fulfill their disclosure and other obligations under the Federal securities laws.

6. Applicants also state that, if they were barred from providing Fund Servicing Activities to the Funds, the effect on their businesses and employees would be severe. Applicants state that they have committed substantial capital and resources to establishing an expertise in providing Fund Servicing Activities. Applicants further state that prohibiting them from providing Fund Servicing Activities would not only adversely affect their businesses (except for BAI and BAS) but would also adversely affect their employees who are involved in Fund Servicing Activities. Applicants also state that disqualifying KECALP and Ventures from continuing to provide investment advisory services to ESCs is not in the public interest or in furtherance of the protection of investors and would frustrate the expectations of eligible employees who invest in ESCs. Applicants state that it would not be consistent with the purposes of the ESC provisions of the Act to require another entity not affiliated with Merrill Lynch & Co., Inc., or BAC to manage the ESCs.

7. Applicants state that several Applicants and certain of their affiliates have previously received orders under section 9(c), as described in greater detail in the application.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Covered Persons, including without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

Temporary Order

The Commission has considered the matter and finds that the Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly,

It is hereby ordered, pursuant to section 9(c) of the Act, that Applicants and any other Covered Persons are granted a temporary exemption from the provisions of section 9(a), solely with respect to the Injunction, subject to the condition in the application, from June 9, 2009, until the Commission takes final action on their application for a permanent order.

By the Commission.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–14006 Filed 6–12–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–9037A; 34–60032A; IC–28757A; File No. 265–25]

Investor Advisory Committee; Notice of Federal Advisory Committee Establishment; Correction

In FR Doc. No. E9–13349, on page 27359 for Tuesday, June 9, 2009, the link for sending electronic comments to the Commission was incorrectly stated in two places. The correct link reads as follows: (*http://www.sec.gov/rules/other.shtml*).

Dated: June 9, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–13934 Filed 6–12–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Friday, June 19, 2009 at 11 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Paredes, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Friday, June 19, 2009 will be: institution and settlement of injunctive actions; institution and settlement of administrative proceedings; and other matters related to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: June 10, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–14075 Filed 6–11–09; 11:15 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60072; File No. SR–NYSEArca–2009–46]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to the Listing and Trading of Safety First Trust Certificates Linked to the S&P 500® Index

June 9, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 28, 2009, NYSE Arca, Inc. (''NYSE Arca'' 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 and is approving the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, through its wholly-owned subsidiary NYSE Arca Equities, Inc. (''NYSE Arca Equities'' or the ''Corporation''), proposes to list under NYSE Arca Equities Rule 5.2(j)(7) (''Trust Certificates'') Safety First Trust Series 2009–3, Principal-Protected Trust Certificates Linked to the S&P 500® Index. The text of the proposed rule change is available on the Exchange's Web site at *http://www.nyse.com*, at the Exchange's principal office and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Trust Certificates are certificates representing an interest in a special purpose trust created pursuant to a trust agreement. The trust only issues Trust Certificates, which may or may not provide for the repayment of the original principal investment amount. The sole purpose of the trust is to invest the proceeds from its initial public offering to provide for a return linked to the performance of specified assets and to engage only in activities incidental to these objectives. Trust Certificates pay an amount at maturity based upon the performance of an underlying index or indexes of equity securities an (''Equity Index Reference Asset''); instruments that are direct obligations of the issuing company, either exercisable throughout their life (*i.e.*, American style) or exercisable only on their expiration date (*i.e.*, European style), entitling the holder to a cash settlement in U.S. dollars to the extent that the foreign or domestic index has declined below (for a put warrant) or increased above (for a call warrant) the pre-stated cash settlement value of the index (''Index Warrants''); or a combination of two or more Equity Index Reference Assets or Index Warrants, as set forth in Rule 5.2(j)(7).

The Exchange proposes to list under Rule 5.2(j)(7) the Safety First Trust Series 2009–3, Principal-Protected Trust Certificates Linked to the S&P 500® Index (''Certificates'').[3] According to the Registration Statement, the Certificates are preferred securities of Safety First Trust Series 2009–3 (''Trust'') and will mature on a specified date in 2014 (''Maturity Date'').[4] Investors will receive at maturity for each certificate held intact (that is, that has not been exchanged by the holder, as described below) an amount in cash equal to $10 plus a ''Supplemental Distribution Amount'', which may be positive or zero. The Supplemental Distribution Amount will be based on the percentage change of the value of the S&P 500 Index (''Index'') during the term of the Certificates. The Supplemental Distribution Amount for each Certificate will equal the product of (a) $10, (b) the percentage change in the value of the Index and (c) the Participation Rate, which is 90%–100%,[5] provided that the Supplemental Distribution Amount will not be less than zero.[6]

A holder of the Certificates has an interest in two separate securities—equity index participation securities (''Securities'') and equity index warrants (''Warrants'') of Citigroup Funding Inc.[7] The assets of the Trust will consist of the Securities and the Warrants. Beginning on the date the Certificates are issued and ending one business day prior to the Valuation Date,[8] a holder can exercise an ''exchange right''. A holder can exercise the exchange right by providing notice to his or her broker and instructing the broker to forward that notice to the institutional trustee for the Certificates (U.S. Bank National Association), on any business day, to exchange the Certificates the investor holds for a pro rata portion of the assets of the Trust, which consist of the Securities and the Warrants. According to the Registration Statement, such holders will lose the benefit of principal protection at maturity, and this could result in their receiving substantially less than the amount of the original investment in the Certificates. In order to exercise the exchange right, the investor's account must be approved for options trading.[9]

The Securities will mature on the Maturity Date. At maturity, each Security will pay a ''Security Payment'' equal to $10 plus a ''Security Return Amount'', which could be positive, zero or negative. If the value of the Index on the Valuation Date is greater than its value on the pricing date, the Security Return Amount for each Security will equal the product of (a) $10, (b) the percentage increase in the Index and (c) the Participation Rate, which equals 90%–100% (*e.g.*, assuming a Participation Rate of 90%, if the Index rises 30%, the Security Return Amount would be $2.70 ($10 times 0.30 times

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* the Registration Statement for Safety First Trust Series 2009–3, dated October 31, 2008 (Nos. 333–154914, 154914–06, 154914–11); Registration Statement for Safety First Trust Series 2009–3, dated February 18, 2009 (Nos. 333–157386 and 333–157386–01) (''Registration Statements'').

[4] The Certificates will be subject to acceleration to an earlier Maturity Date upon one of the acceleration events described in the Registration Statements.

[5] The Participation Rate will be determined at the time of issuance of the Certificates.

[6] The Trust payments will not be guaranteed pursuant to a financial guaranty insurance policy.

[7] The Securities and Warrants will not be exchange-listed and may trade over-the-counter.

[8] Capitalized terms used but not defined herein have the meanings set forth in the Registration Statements.

[9] *See* NYSE Arca Equities Rule 5.2(j)(7), Commentary .08.

0.90), and the Security Payment would be $12.70 ($10 plus $2.70)).

If the value of the Index on the Valuation Date is less than or equal to its value on the pricing date, the Security Return Amount for each security will equal the product of (a) $10 and (b) the percentage decrease in the Index. Thus, because the holder's participation in the depreciation of the S&P 500 is not limited by the Participation Rate, if the value of the Index on the Valuation Date is less than its value on the pricing date, investors will participate fully in the depreciation of the Index (*e.g.*, if the Index falls 30%, the Security Return Amount would be $ − 3.00 ($10 times − 0.30) and the Security Payment would be $7.00 ($10 minus $3.00). The Security Return Amount will be used only for the purpose of determining the Security Payment for the Securities and is different from the Supplemental Distribution Amount used in determining the maturity payment on the Certificates.

The Warrants will be automatically exercised on the Maturity Date. If the value of the Index increases or does not change, the Warrants will pay zero. If the value of the Index decreases, the warrants will pay a positive amount equal to the product of (a) $10 and (b) the percentage decrease in the value of the Index.

The Certificates are similar to securities previously approved by the Commission for listing on the Exchange, including Trust Certificates issued by Citigroup Funding, Inc. based on the Index.[10] At least one million publicly held trading units will be issued prior to listing and trading on the Exchange, with at least 400 public beneficial holders. The issuer of the Certificates, Citigroup Funding, Inc. has total assets of at least $100 million and net worth of at least $10 million. In addition, the issuer will be required to have a minimum tangible net worth of $250,000,000, and, in the alternative, the issuer will be required to have a minimum tangible net worth of $150,000,000 and the original issue price of the Certificates combined with all of the issuer's other Trust Certificates listed on a national securities exchange or otherwise publicly traded in the United States, must not be greater than 25 percent of the issuer's tangible net worth at the time of issuance.[11] The Certificates also will be subject to the continued listing criteria of Rule 5.2(j)(7)[12] and will meet all other criteria of Rule 5.2(j)(7).

Additional information relating to Citigroup Funding, Inc., the Trust, Certificates, Securities, Warrants, exercise right, Security Return Amount, Supplemental Distribution Amount, and risks is included in the Registration Statements.

Exchange Rules Applicable to Trust Certificates. The Certificates will be subject to all Exchange rules governing the trading of equity securities. The Exchange's equity margin rules will apply to transactions in Trust Certificates. The Certificates will trade during trading hours set forth in Rule 7.34(a).[13]

Trading Halts. With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in Trust Certificates. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in Trust Certificates inadvisable. These may include: (1) The extent to which trading is not occurring in the underlying securities; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[14]

Information Dissemination. The value of the Index is calculated and disseminated on at least a 15-second basis. If the Index is not being disseminated as required, the Exchange may halt trading during the day on which the interruption first occurs. If such interruption persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

Quotation and last sale information will be disseminated by the Exchange via the Consolidated Tape. The value of the Index is widely disseminated by major market data vendors and financial publications.

Firewalls. Standard & Poor's (''S&P''),[15] which publishes the Index, is not a registered broker-dealer, and Citigroup Funding, Inc. is not affiliated with S&P. With respect to any index upon which the value of an issue of Trust Certificates is based that is maintained by a broker-dealer, the Exchange would require that such broker-dealer erect a ''firewall'' around personnel responsible for the maintenance of such index or who have access to information concerning adjustments to the index, and the index would be required to be calculated by a third party who is not a broker-dealer.

Surveillance. The Exchange intends to utilize its existing surveillance procedures applicable to derivative products, which include Trust Certificates, to monitor trading in the securities. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the securities in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The Exchange's current trading surveillance focuses on detecting when securities trade outside their normal patterns. When such situations are detected, surveillance analysis follows

[10] *See* Securities Exchange Release Nos. 59861 (May 5, 2009), 74 FR 21839 (May 11, 2009) (SR–NYSEArca–2009–33) (order approving Safety First Trust Certificates based on the Dow Jones Industrial Average); 59747 (April 10, 2009), 74 FR 18012 (April 20, 2009) (SR–NYSEArca–2009–20) (order approving Safety First Trust Certificates based on the S&P 500 Index); 59051 (December 4, 2008), 73 FR 75155 (December 10, 2008) (SR–NYSEArca–2008–123) (order approving Rule 5.2(j)(7) and listing on the Exchange of 14 issues thereunder.) Three of the issues in SR–NYSEArca–2008–123 related to Trust Certificates based on the Index: Safety First Investments TIERS® Principal-Protected Minimum Return Trust Certificates, Series S&P 2003–23; Safety First Trust Series 2008–2 Principal-Protected Trust Certificates Linked to the Index; and Safety First Trust Series 2008–4 Principal-Protected Trust Certificates Linked to the Index. The Certificates have similar characteristics and payout provisions to the Trust Certificates previously approved in the above-referenced Exchange proposed rule changes for Safety First Trust Certificates.

[11] The parameters relating to number of units, number of public beneficial holders and issuer assets and net worth and minimum tangible net worth are similar to those in NYSE Arca Equities Rule 5.2(j)(6)(A).

[12] Commentary .01 provides criteria for continued listing and provides that the Corporation will commence delisting or removal proceedings with respect to an issue of Trust Certificates (unless the Commission has approved the continued trading of such issue) (i) if the aggregate market value or the principal amount of the securities publicly held is less than $400,000; (ii) if the value of the index or composite value of the indexes is no longer calculated or widely disseminated on at least a 15-second basis with respect to indexes containing only securities listed on a national securities exchange, or on at least a 60-second basis with respect to indexes containing foreign country securities; or (iii) if such other event shall occur or condition exists which in the opinion of the Corporation makes further dealings on the Corporation inadvisable.

[13] Pursuant to NYSE Arca Rule 7.34(a), the NYSE Arca Marketplace will have three trading sessions each day the Corporation is open for business unless otherwise determined by the Corporation:

Opening Session—begins at 1:00:00 a.m. (Pacific Time) and concludes at the commencement of the Core Trading Session. The Opening Auction and the Market Order Auction shall occur during the Opening Session.

Core Trading Session—begins for each security at 6:30:00 a.m. (Pacific Time) or at the conclusion of the Market Order Auction, whichever comes later, and concludes at 1:00:00 p.m. (Pacific Time).

Late Trading Session—begins following the conclusion of the Core Trading Session and concludes at 5:00:00 p.m. (Pacific Time).

[14] *See* NYSE Arca Equities Rule 7.12, Commentary .04.

[15] S&P is a division of The McGraw-Hill Companies, Inc.

and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange may obtain information via ISG from other exchanges who are members of the ISG.[16]

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin. Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading an issue of Trust Certificates and suitability recommendation requirements.

Specifically, the Information Bulletin will discuss the following: (1) The procedures for purchases and exchanges of Trust Certificates; (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading an issue of Trust Certificates; (3) trading hours; and (4) trading information.

In addition, the Information Bulletin will reference that an issue of Trust Certificates is subject to various fees and expenses described in the applicable prospectus.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[17] of the Act in general and furthers the objectives of Section 6(b)(5)[18] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, and, in general to protect investors and the public interest. The proposed rule change will permit listing on the Exchange in a timely manner of the Certificates. The Exchange believes that the provisions of Rule 5.2(j)(7), together with the Exchange's applicable surveillance, serve to foster investor protection and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[16] For a list of current members of the ISG, *see http://www.isgportal.org.*

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2009–46 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2009–46. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSEArca–2009–46 and should be submitted on or before July 6, 2009.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[19] In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act[20] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, and, in general to protect investors and the public interest.

The Commission believes that the proposal to list and trade the Certificates on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[21] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. The Exchange will disseminate quotation and last-sale data information via the Consolidated Tape. In addition, the value of the Index is calculated on at least a 15-second basis and is widely disseminated by major market data vendors and financial publications.

The Commission further believes that the proposal to list and trade the Certificates is reasonably designed to promote fair disclosure of information that may be necessary to price the Certificates. The Exchange represents that, if the value of the Index is not being disseminated as required, the Exchange may halt trading during the day on which the interruption first occurs. If such interruption persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. The Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in Trust

[19] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[20] 15 U.S.C. 78f(b)(5).

[21] 15 U.S.C. 78k–1(a)(1)(C)(iii).

Certificates.[22] S&P, which publishes the Index, is not a registered broker-dealer, and Citigroup Funding, Inc. is not affiliated with S&P. With respect to any index upon which the value of an issue of Trust Certificates is based and that is maintained by a broker-dealer, the Exchange would require that such broker-dealer erect a ''firewall'' around personnel responsible for the maintenance of such index or who have access to information concerning adjustments to the index, and the index would be required to be calculated by a third party who is not a broker-dealer. In addition, the Exchange states that it has a generally policy prohibiting the distribution of material, non-public information by its employees.

The Commission also notes that the Trust Certificates will be subject to the requirements of NYSE Arca Equities Rule 5.2(j)(7), including the continued listing criteria thereunder. Additionally, NYSE Arca states that: (1) At least one million publicly held trading units will be issued prior to listing and trading on the Exchange, with at least 400 public beneficial holders; (2) the issuer, Citigroup Funding, Inc., has total assets of at least $100 million and a net worth of at least $10 million; and (3) the issuer will be required to have either (a) a minimum tangible net worth of $250,000,000, or (b) a minimum tangible net worth of $150,000,000 and the original issue price of the Certificates, combined with all of the issuer's other Trust Certificates listed on a national securities exchange or otherwise publicly traded in the United States, must not be greater than 25% of the issuer's tangible net worth at the time of issuance.[23]

Further, the Exchange represents that the Certificates are equity securities subject to the Exchange's rules governing the trading of equity securities, including the Exchange's equity margin rules. In support of this proposal, the Exchange has made representations, including:

(1) The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Certificates in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange may obtain information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members of the ISG.

(2) Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Certificates. Specifically, the Information Bulletin will discuss the following: (a) The procedures for purchases and exchanges of Trust Certificates; (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading an issue of Trust Certificates; (c) trading hours; and (d) trading information. In addition, the Information Bulletin will reference that an issue of Trust Certificates is subject to various fees and expenses described in the applicable prospectus.

This approval order is based on the Exchange's representations.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[24] for approving the proposed rule change prior to the 30th day after the date of publication of notice in the **Federal Register**. The Commission notes that it has previously approved for listing and trading on the Exchange other issues of Trust Certificates issued by Citigroup Funding, Inc. based on the Index and other indexes that have similar characteristics and payout provisions to the Certificates.[25] The Commission believes that the Exchange's proposal to list and trade the Certificates does not present any novel or significant regulatory issues. The Commission believes that accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for Trust Certificates.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[26] that the proposed rule change (SR–NYSEArca–2009–46) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–14005 Filed 6–12–09; 8:45 am]

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[22] Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in Trust Certificates inadvisable. These may include: (1) The extent to which trading is not occurring in the underlying securities; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

[23] The Commission notes that the foregoing criteria relating to the issuance and the issuer are substantially similar to the requirements applicable to Index-Linked Securities. *See* NYSE Arca Equities Rule 5.2(j)(6)(A).

[24] 15 U.S.C. 78s(b)(2).

[25] *See* Securities Exchange Release Nos. 59861 (May 5, 2009), 74 FR 21839 (May 11, 2009) (SR–NYSEArca–2009–33) (approving the listing and trading of Safety First Trust Certificates linked to the Dow Jones Industrial Average); 59051 (December 4, 2008), 73 FR 75155 (December 10, 2008) (SR–NYSEArca–2008–123) (approving the listing and trading of 14 issues of Trust Certificates under NYSE Arca Equities Rule 5.2(j)(7)); and 59747 (April 10, 2009), 74 FR 18012 (April 20, 2009) (SR–NYSEArca–2009–20) (approving the listing and trading of Trust Certificates linked to the S&P 500 Index).

[26] 15 U.S.C. 78s(b)(2).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60062; File No. SR–NYSE–2009–53]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Extending the Moratorium Related to the Qualification and Registration of Registered Competitive Market Makers Pursuant to NYSE Rule 107A and Competitive Traders Pursuant to NYSE Rule 110 to the Earlier of the Approval of SR–NYSE–2009–08 or June 30, 2009

June 8, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on June 2, 2009, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the moratorium related to the qualification and registration of Registered Competitive Market Makers (''RCMMs'') pursuant to NYSE Rule 107A and Competitive Traders (''CTs'') pursuant to NYSE Rule 110 to the earlier of the approval of SR–NYSE–2009–08 or June 30, 2009.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend the moratorium related to the qualification and registration of Registered Competitive Market Makers (''RCMMs'') pursuant to NYSE Rule 107A and Competitive Traders (''CTs'') pursuant to NYSE Rule 110 to the earlier of the approval of SR–NYSE–2009–08 [4] or June 30, 2009.

On September 22, 2005, the Exchange filed SR–NYSE–2005–63 [5] with the Securities and Exchange Commission (''Commission'') proposing to implement a moratorium on the qualification and registration of new RCMMS and CTs (''Moratorium'').[6] The Moratorium allowed the Exchange to review the viability of RCMMs and CTs in the Exchange's evolving more electronic market.

During the Moratorium, the Exchange reviewed the quarterly volume data of RCMM and CT trading data to determine the average trading volume of RCMMs. As a result of its review, the Exchange concluded that RCMMs and CTs no longer serve as viable supplemental market makers. Accordingly, the Exchange determined that RCMMs and CTs should no longer be viable classes of traders on the Exchange. On April 10, 2009, the Exchange filed a separate proposed rule change, SR–NYSE–2009–08 (''2009–08'') with the Commission to eliminate RCMMs and CTs as viable classes of NYSE traders.[7]

The Exchange proposes to extend the Moratorium as amended [8] to the earlier of the approval of proposed rule change 2009–08 or June 30, 2009 to allow 2009–08 to complete the rule filing process pursuant to Rule 19b–4.[9]

The Exchange will issue an Information Memo announcing the extension of the Moratorium.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the ''Act'') for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the instant filing is consistent with these principles. Based on its review of data associated with RCMM and CT trading, the Exchange has concluded that RCMMs and CTs no longer serve as viable supplemental market makers. In this instant filing, the Exchange seeks an extension of the Moratorium to complete the 19b–4 rule filing process following its proposed rule filing to eliminate RCMMs and CTs as viable classes of NYSE traders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) thereunder [11] because the foregoing proposed rule: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.[12] The Exchange believes that an extension of the Moratorium is appropriate to permit the resolution of the rule filing process with respect to SR–NYSE–2009–08. Therefore, the Commission believes that this proposed rule change qualifies for immediate effectiveness under paragraph (f)(6) of Rule 19b–4.[13]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [14] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [15] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The NYSE has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it would allow the Moratorium to continue without interruption while awaiting the completion of the rule filing process with respect to SR–NYSE–2009–08. Therefore, the Commission designates that the proposed rule change become operative immediately.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and

[4] *See* Securities Exchange Act Release No. 59746 (April 10, 2009), 74 FR 17702 (April 16, 2009) (SR–NYSE–2009–08).

[5] *See* Securities Exchange Act Release No. 52648 (October 21, 2005), 70 FR 62155 (October 28, 2005) (SR–NYSE–2005–63).

[6] *See* Securities Exchange Act Release Numbers 54140 (July 13, 2006), 71 FR 41491 (July 21, 2006) (SR–NYSE–2006–48); 54985 (December 21, 2006), 72 FR 171 (January 3, 2007) (SR–NYSE–2006–113); 55992 (June 29, 2007), 72 FR 37289 (July 9, 2007) (SR–NYSE–2007–57); 56556 (September 27, 2007), 72 FR 56421 (October 3, 2007) (SR–NYSE–2007–86); 57072 (December 31, 2007), 73 FR 1252 (January 7, 2008) (SR–NYSE–2007–125); 57601 (April 2, 2008), 73 FR 19123 (April 8, 2008) (SR–NYSE–2008–22); 58033 (June 26, 2008), 73 FR 38265 (July 3, 2008) (SR–NYSE–2008–49); 58713 (October 2, 2008), 73 FR 59024 (October 8, 2008) (SR–NYSE–2008–96); 59069 (December 8, 2008); 73 FR 76081 (December 15, 2008) (SR–NYSE–2008–124); 59551 (March 10, 2009), 74 FR 11624 (March 18, 2009) (SR–NYSE–2009–24).

[7] *See* Securities Exchange Act Release No. 59746 (April 10, 2009), 74 FR 17702 (April 16, 2009) (SR–NYSE–2009–08).

[8] *See* Securities Exchange Act Release No. 53549 (March 24, 2006), 71 FR 16388 (March 31, 2006) (SR–NYSE–2006–11) (making certain amendments to the Moratorium).

[9] 17 CFR 240.19b–4.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to give the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. NYSE has satisfied this requirement.

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] 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. 15 U.S.C. 78c(f).

arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2009–53 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2009–53. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the self-regulatory organization. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2009–53 and should be submitted on or before July 6, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–13968 Filed 6–12–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60055; File No. SR–NYSEAmex–2009–24]

Self-Regulatory Organizations; NYSE Amex LLC, Notice of Filing of a Proposed Rule Change Amending Rule 70.25 To Permit All Available Contra-side Liquidity To Trigger the Execution of a d-Quote

June 5, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 4, 2009, NYSE Amex LLC (''NYSE Amex'' 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 NYSE Amex. 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 Rule 70.25 to permit all available contra-side liquidity to trigger the execution of a d-Quote. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Amex Equities Rule 70.25(c)(iii) to provide that all available contra-side liquidity within the possible execution range of a d-Quote will be considered when determining whether to activate a d-Quote.[3]

Background

As described more fully in a related rule filing,[4] NYSE Euronext acquired The Amex Membership Corporation (''AMC'') pursuant to an Agreement and Plan of Merger, dated January 17, 2008 (the ''Merger''). In connection with the Merger, the Exchange's predecessor, the American Stock Exchange LLC (''Amex''), a subsidiary of AMC, became a subsidiary of NYSE Euronext and was renamed NYSE Amex LLC (''NYSE Amex'' or the ''Exchange''), and continues to operate as a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, as amended (the ''Act'').[5] The effective date of the Merger was October 1, 2008.

In connection with the Merger, on December 1, 2008, the Exchange relocated all equities trading conducted on the Exchange legacy trading systems and facilities located at 86 Trinity Place, New York, New York, to trading systems and facilities located at 11 Wall Street, New York, New York (the ''Equities Relocation''). The Exchange's equity trading systems and facilities at 11 Wall Street (the ''NYSE Amex Trading Systems'') are operated by the NYSE on behalf of the Exchange.[6]

As part of the Equities Relocation, NYSE Amex adopted NYSE Rules 1–1004, subject to such changes as necessary to apply the Rules to the Exchange, as the NYSE Amex Equities Rules to govern trading on the NYSE Amex Trading Systems.[7] The NYSE

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[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The purpose of the proposed rule changes is to amend NYSE Amex Equities Rule 70.25 to conform with proposed amendments to corresponding NYSE Rule 70.25 submitted in a companion filing by the New York Stock Exchange LLC (''NYSE''). *See* SR–NYSE–2009–55, formally submitted June 2, 2009.

[4] *See* Securities Exchange Act Release No. 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR–NYSE–2008–60 and SR–Amex 2008–62) (approving the Merger).

[5] 15 U.S.C. 78f.

[6] *See* Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR–Amex 2008–63) (approving the Equities Relocation).

[7] *See* Securities Exchange Act Release Nos. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008)

Continued

Amex Equities Rules, which became operative on December 1, 2008, are substantially identical to the current NYSE Rules 1–1004 and the Exchange continues to update the NYSE Amex Equities Rules as necessary to conform with rule changes to corresponding NYSE Rules filed by the NYSE.

NYSE Amex Equities Rule 70.25

Rule 70.25 governs the entry, validation, and execution of bids and offers represented by a Floor broker on the Floor of the Exchange via agency interest files (''e-Quotes'') that include discretionary instructions as to size and/or price (''d-Quotes''). The discretionary instructions that a Floor broker may include with an e-Quote can relate to the price at which the d-Quote may trade and the number of shares to which the discretionary price instruction applies.

Rule 70.25(c) provides that a Floor broker may designate the amount of his or her e-Quote to which discretionary pricing instructions apply. Floor brokers may also designate a minimum or maximum size of contra-side volume with which the Floor broker is willing to trade using discretionary pricing instructions. However, under current Rule 70.25(c)(iii), Exchange systems currently look only at the contra-side displayed interest on the Display Book® [8] (''Book'') to determine whether the contra-side volume is within the d-Quote's discretionary size range. Therefore, the displayed bid or offer must meet the minimum volume of the d-Quote before a d-Quote can be activated.

For example, assuming the Exchange Best Bid and Offer (''BBO'') is .05 bid for 1,000 shares and offering 1,000 shares at .08, a d-Quote bidding for .05 with four cents of price discretion and a minimum share volume subject to such discretionary pricing instructions of 4,000 shares would not be activated because the displayed offer of 1,000 shares is not sufficient to fill the discretionary size instructions. Accordingly, that d-Quote would not trade.

Similarly, the d-Quote would not be activated even if the Book has contra-side undisplayed interest that could meet both the discretionary pricing and volume instructions of the d-Quote. Taking the same example as above, if Exchange systems have 3,000 shares offered at .09, which is not part of the displayed offer but is both within the discretionary pricing and volume instructions of the d-Quote (1,000 shares at the displayed offer at .08 plus 3,000 shares of contra-side volume at .09 meets the 4,000 minimum size and price instruction of the d-Quote), the d-Quote would not trade. Or, if in addition to the 1,000 shares offered at .08 that is displayed, there is an additional 3,000 shares offered at .08 in reserve interest, notwithstanding that the displayed offer and reserve interest at the .08 price point would meet the discretionary volume instructions of the d-Quote, the d-Quote would not trade.

The Exchange notes that decreasing the minimum discretionary size of the d-Quote would not permit the d-Quote to trade with the contra-side liquidity because the discretionary pricing instructions of a d-Quote are active only for that portion of an e-Quote that also has discretionary size instructions.[9] For example, if a d-Quote for 1,000 shares has a discretionary price range of .04 and a minimum volume of 100 shares, in the above example, only those 100 shares would trade against the displayed offer. The remaining 900 shares would be treated as an e-Quote bid for .05 and would not be eligible to trade with the displayed offer or any other interest within the discretionary price instructions.

Proposed Amendment

The Exchange proposes to amend Rule 70.25(c)(iii) to remove the restriction that only the displayed interest will be considered when determining whether the contra-side volume is within the discretionary pricing instructions of the d-Quote. The Exchange believes that all interest willing to trade at certain price points should be permitted to trade. Because Exchange systems have both displayed and undisplayed liquidity, considering only displayed contra-side liquidity does not take into account the true state of liquidity when determining whether to activate a d-Quote. The current rule therefore restricts which interest may be considered rather than allow willing interest to interact.

As proposed, if all available contra-side volume within the discretionary price and size instructions of a d-Quote is considered, such d-Quote will trade against such contra-side liquidity in the same manner that a market order or a marketable limit order would execute against such available contra-side liquidity. For example, assuming that the Exchange BBO is still .05 bid for 1,000 shares and offering 1,000 shares at .08, if a market order or marketable limit order to buy 4,000 shares entered Exchange systems, such order would trade not only with the displayed offer of .08, but would also trade with any reserve interest that is better than the displayed offer (*e.g.*, if there is non-displayed interest offered at .07), reserve interest at the price of the displayed offer, and if there is insufficient liquidity at the displayed offer price or better, the market order would sweep up the Book. Similarly, as proposed, if the d-Quote bid for .05 had four cents of price discretion for a minimum size of 4,000 shares, that d-Quote would interact with the market the same as a market order or a marketable limit order to buy 4,000 shares.

The Exchange notes that the d-Quote functionality sought with this rule proposal provides Floor brokers with functionality similar to that previously available to Floor brokers at the NYSE and Amex.[10] As permitted by former NYSE Rule 123A.30(a), a CAP–DI order was the elected or converted portion of a percentage order that was convertible on a destabilizing tick and designated for immediate execution or cancel election. When elected, a CAP–DI order would have automatically executed against any contra-side volume available at the electing price and was eligible to participate in a sweep. The Rule 70.25(c)(iii) limitation that only displayed interest is considered when determining whether the contra-side volume meets the d-Quotes discretionary size instructions was added during a time when Floor brokers still had the ability to enter CAP–DI orders.

In connection with the Next Generation Market Model, the NYSE eliminated CAP orders in part because the manner in which such orders were processed impeded the efficiency of the

(SR–Amex 2008–63); 58833 (October 22, 2008), 73 FR 64642 (October 30, 2008) (SR–NYSE–2008–106); 58839 (October 23, 2008), 73 FR 64645 (October 30, 2008) (SR–NYSEALTR–2008–03); 59022 (November 26, 2008), 73 FR 73683 (December 3, 2008) (SR–NYSEALTR–2008–10); and 59027 (November 28, 2008), 73 FR 73681 (December 3, 2008) (SR–NYSEALTR–2008–11).

[8] The Display Book system is an order management and execution facility. The Display Book system receives and displays orders to the DMMs, contains the Book, and provides a mechanism to execute and report transactions and publish results to the Consolidated Tape. The Display Book system is connected to a number of other Exchange systems for the purposes of comparison, surveillance, and reporting information to customers and other market data and national market systems.

[9] *See* Rule 70.25(a)(iv) (''Discretionary instructions will be applied only if all d-Quoting prerequisites are met. Otherwise, the d-Quote will be handled as a regular e-Quote, notwithstanding the fact that the Floor broker has designated the e-Quote as a d-Quote.'').

[10] Historically, Amex Floor brokers also had convert-and-parity (''CAP'') functionality similar to the NYSE CAP functionality. Amex eliminated this functionality in connection with the implementation of Regulation NMS.

Book.[11] Accordingly, Floor brokers no longer have the capability to enter an order into Exchange systems that would be elected at certain price points and then be eligible to trade with any available contra-side liquidity. The Exchange notes that, when the NYSE eliminated CAP orders, it did not have the technology to permit d-Quotes to fully replicate the functionality of a CAP order. Moreover, when d-Quote functionality was introduced in October 2006, the NYSE did not offer the ability to enter fully dark reserve interest. Since that time, the NYSE and NYSE Amex have added two new order types, the Minimum Display Reserve Order and the Non-Displayable Reserve Order.[12] By restricting d-Quotes to be active only when the displayed interest meets the discretionary size instructions, d-Quotes are limited in their ability to interact with the type of liquidity that exists at the Exchange.

The Exchange therefore believes that the modernization of d-Quote functionality proposed in this rule filing enables willing interest to trade with all willing contra-side liquidity, including reserve interest, which will result in greater executed volume, better fill rates, new price improvement opportunities for incoming orders, and improved overall market quality. Additionally, the proposed functionality for d-Quotes is consistent with the initial purpose of providing Floor brokers with functionality to replicate the functionalities and characteristics that Floor brokers exercised in an auction-market model and to modernize such tools as the manner of trading at the Exchange evolves. As such, this enhancement does not expand functionality available to Floor brokers but merely restores functionality that previously existed, albeit in a slightly different format.

The Exchange further believes that providing this improved functionality provides customers with a greater array of execution and representation choices when routing an order to the Exchange. For example, a customer currently can choose, among others, to route an order directly to the Book electronically from an off-Floor location or route an order to a Floor broker for the Floor broker to represent on the Floor of the Exchange. These options provide different benefits for the customer. For example, routing an order directly to Exchange systems provides the benefit of an ultra low latency execution, which is particularly important for an algorithmically-driven trading strategy. Additionally, a customer may choose to use a Floor broker because that customer wants the benefit of that broker's expertise in managing complex orders, performing price discovery, and exercising discretion at the point of sale.

By modernizing d-Quote functionality, the Exchange is therefore not only replacing functionality that was previously eliminated, but is also providing customers who elect to use a Floor broker with functionality to meet the diverse needs of all customers.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act[13] which requires the rules of an exchange 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 rule change also is designed to support the principles of Section 11A(a)(1)[14] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets and the practicability of brokers executing investor's orders in the best market. The Exchange believes that permitting d-Quotes to consider all available contra-side liquidity when determining whether the discretionary size range of the d-Quote has been met meets such goals because it ensures that customer orders eligible to trade will execute against willing contra-side liquidity.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

The Exchange has requested accelerated approval of this proposed rule change prior to the 30th day after the date of publication of the notice in the **Federal Register**. The Commission is considering granting accelerated approval of the proposed rule change at the end of a 21-day comment period.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEAmex–2009–24 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2009–24. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington,

[11] *See* Securities Exchange Act Release Nos. 58845 (Oct. 24, 2008), 73 FR 64379 (Oct. 29, 2008) (SR–NYSE–2008–46) and 59022 (November 26, 2008), 73 FR 73683 (December 3, 2008) (SR–NYSEALTR–2008–10).

[12] *See id.*

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78k–1(a)(1).

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 NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSEAmex–2009–24 and should be submitted on or before July 6, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–13966 Filed 6–12–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60070; File No. SR–FINRA–2009–038]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Repeal Incorporated NYSE Rule 134 (Differences and Omissions—Cleared Transactions) and NYSE Rule 440I (Records of Compensation Arrangements—Floor Brokerage) as Part of the Process To Develop the Consolidated FINRA Rulebook

June 8, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on June 1, 2009, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) 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 FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to repeal Incorporated NYSE Rule 134 (Differences and Omissions—Cleared Transactions) and Incorporated NYSE Rule 440I (Records of Compensation Arrangements—Floor Brokerage), as part of the process of developing the consolidated FINRA rulebook.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

As part of the process of developing a new consolidated rulebook (''Consolidated FINRA Rulebook''),[3] FINRA is proposing to repeal NYSE Incorporated Rule 134 (Differences and Omissions—Cleared Transactions) and NYSE Incorporated Rule 440I (Records of Compensation Arrangements—Floor Brokerage), to remove rules that are specific to the New York Stock Exchange, LLC (''NYSE'') marketplace and relate primarily to activities by floor brokers.

Incorporated NYSE Rule 134 (Differences and Omissions—Cleared Transactions)

The proposed rule change would repeal Incorporated NYSE Rule 134, which sets forth procedures for clearing member firms to identify uncompared transactions and resolve them by making any necessary additions, deletions or changes to their data on the facility system. The rule provides guidelines for the review of uncompared transactions by clearing member firms and details the manner and timing of notifications that must be provided and the types of records that must be maintained.

Further, NYSE Rule 134(d) requires floor brokers to maintain or participate in an error account in which all *bona fide* error transactions are processed and recorded. The rule defines an ''error'' to include an execution outside of an order's written instructions (e.g., wrong security, wrong side of the market, outside the limit price, over buying or selling, duplicate execution, etc.) or missing the market on a ''held'' order. In such cases, floor brokers use their error account to assume or acquire a position as a result of a legitimate error. Floor brokers are required pursuant to the rule to maintain a signed, time-stamped record, including supporting documentation of such error. The rule further requires every member not associated with a member organization, and every member associated with a member organization that derives at least 75% of its revenue from floor brokerage based on execution of orders on the floor to report to the NYSE error transactions in such member's or his or her member organization's account which result in a profit of more than $500 for any transaction, or for more than $3,000 in any calendar week. Such reports must contain a detailed record of the errors and liquidating transactions.

FINRA is proposing to delete Incorporated NYSE Rule 134 from the Transitional Rulebook and not adopt the rule into the Consolidated FINRA Rulebook because the rule is narrowly directed to the trading activities of NYSE floor brokers. FINRA believes that it is not necessary to transfer NYSE Rule 134 into the Consolidated FINRA Rulebook because the resolution of trading errors on the NYSE and recordkeeping of error accounts is specific to the NYSE.[4]

Incorporated NYSE Rule 440I (Records of Compensation Arrangements—Floor Brokerage)

The proposed rule change would also repeal Incorporated NYSE Rule 440I, which requires each member and member organization that is ''primarily engaged as an agent in executing transactions on the Floor of the Exchange'' (e.g., $2 brokers or

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[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (''Incorporated NYSE Rules'') (together, the NASD Rules and Incorporated NYSE Rules are referred to as the ''Transitional Rulebook''). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see* FINRA *Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

[4] In addition to being subject to SEC and FINRA rules, Dual Members also remain subject to the NYSE's rulebook. FINRA notes that the NYSE may determine to retain NYSE Rule 134 for its own purposes.

independent brokers) to maintain certain records of compensation arrangements in excess of $5,000 per year. The records must include a description of each type of arrangement and identify, by name, the parties to each type of arrangement in effect. The rule applies only if the member or member organization derives at least 75 percent of its revenue from floor brokerage. The rule also excludes any compensation arrangement involving the transmission of orders solely through the NYSE's electronic order routing system.

NYSE Rule 440I was adopted in 1999 following an SEC order relating to the settlement of an enforcement action against the NYSE for failure to enforce compliance with Section 11(a) of the Act,[5] Rule 11a–1 thereunder,[6] and NYSE Rules 90, 95, and 111, which relate to conduct by floor brokers.[7] NYSE Rule 440I was adopted to enhance the NYSE's oversight of floor brokerage compensation arrangements while also fulfilling some of the requirements imposed by the SEC's order. Thus, the NYSE determined to limit the rule to floor brokers and exclude other members in part because ''the requirements would be unduly burdensome on and impractical for those members and member organizations, based on the diverse nature and size of their business activities and customer base.'' [8]

The proposed rule change would delete Incorporated NYSE Rule 440I from the Transitional Rulebook and would not adopt the rule into the Consolidated FINRA Rulebook. NYSE Rule 440I was adopted following the issuance of an SEC order to enhance the NYSE's ability to surveil the activity and compensation arrangements of floor brokers and to examine for their compliance with Section 11(a) of the Act, Rule 11a–1 thereunder, and NYSE Rules 90, 95, and 111.[9] FINRA does not believe it is necessary to incorporate NYSE Rule 440I into the Consolidated FINRA Rulebook.[10]

FINRA will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[11] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change would remove rules that are specific to the NYSE marketplace and relate primarily to activities by floor brokers. The proposed rule change would also advance the development of a more efficient and effective Consolidated FINRA Rulebook.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2009–038 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2009–038. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2009–038 and should be submitted on or before July 6, 2009.

[5] 15 U.S.C. 78k(a).

[6] 17 CFR 240.11a–1.

[7] *See* Securities Exchange Act Release No. 41996 (October 8, 1999), 64 FR 56560 (October 20, 1999). Subject to certain exceptions, these provisions generally prohibit exchange members from effecting transactions on the floor of an exchange for their own accounts, the accounts of associated persons, or an account over which they or their associated persons have investment discretion. *See also* Securities Exchange Act Release No. 41574, Admin. Proceeding File No. 3–9925 (June 29, 1999).

[8] *See* Securities Exchange Act Release No. 41441 (May 24, 1999), 64 FR 29723 (June 2, 1999).

[9] NYSE Rules 90, 95, and 111 were not incorporated into the Transitional FINRA Rulebook. Those rules, however, remain part of the NYSE's rulebook.

[10] In addition to being subject to SEC rules (including SEA Rule 17a–4(b)(7) (requiring every member, broker, or dealer to retain all written agreements (or copies thereof) entered into by such member, broker, or dealer relating to its business as such, including agreements with respect to any account) and FINRA rules, Dual Members also remain subject to the NYSE's rulebook. FINRA notes that the NYSE may determine to retain NYSE Rule 440I for its own purposes.

[11] 15 U.S.C. 78*o*–3(b)(6).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–13975 Filed 6–12–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60069; File No. SR–NASDAQ–2009–051]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify Pricing for NASDAQ ''Flash'' Functionality for Routable Orders

June 8, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 4, 2009, The NASDAQ Stock Market LLC (''NASDAQ'' 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

NASDAQ proposes a rule change to modify pricing for NASDAQ members that trade equities in the NASDAQ Market Center using the ''Flash'' functionality set forth in NASDAQ Rule 4758(a)(1)(A). This proposed rule change, which is effective upon filing, will become operative when the Flash functionality becomes available, currently scheduled for June 8, 2009. The text of the proposed rule change is available at *http://nasdaqomx.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, NASDAQ 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. NASDAQ 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

NASDAQ is establishing the price for members trading equities in the NASDAQ Market Center using NASDAQ's new pre-routing display or ''Flash'' functionality described in NASDAQ Rule 4758(a)(1)(A). The Flash functionality provides an optional pre-routing display period for orders using NASDAQ's DOT, SCAN or STGY routing strategies. When voluntarily employed by a member, the Flash-enabled routing strategies will first execute to the maximum extent possible in NASDAQ's book, before displaying the remaining share amounts and prices to NASDAQ market participants and market data vendors for a period of time not to exceed one-half of one second. If at the end of the Flash period the order is not executed or is partially executed, NASDAQ will route the order automatically to the appropriate venue selected by the chosen routing strategy.[3]

When Flash routing functionality becomes available for use it will be assessed the following fees: $0.0015 per share executed during the Flash period for firms that add more than 35 million shares of liquidity daily on average for the month, and $0.0010 per share executed during the Flash period for all other firms.

An order that is designated as Flash for routing can execute in a variety of ways. The following example will illustrate how an execution occurs and how NASDAQ will assess fees. An order that is designated as Flash for routing and that takes liquidity from the NASDAQ book prior to the Flash period will be assessed the standard fee of $0.0030 per share executed prior to the Flash period. If the unexecuted portion of that order provides liquidity on NASDAQ during the Flash period, it will be provided a liquidity rebate of either $0.0010 or $0.0015 per share executed during the Flash period based upon the member's average daily volume of liquidity provided. If the still unexecuted portion of the order is then routed to an away market, NASDAQ will assess the standard rate for routing (generally $0.0026). The remaining unexecuted shares are posted on the NASDAQ book and provided the standard rebate based on the firms' average daily liquidity provided based on the existing pricing tiers.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general, and with Section 6(b)(4) of the Act,[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls. The proposed fee is consistent with that standard in that it applies equally to all members using the Flash functionality. It also recognizes the benefits of additional liquidity delivered to the NASDAQ market place when NASDAQ members utilize the Flash functionality.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[6] and subparagraph (f)(2) of Rule 19b–4 thereunder.[7] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing,

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] For further details on the processing of Flash routing strategies, refer to Securities Exchange Act Release 59875 (May 6, 2009); 74 FR 22874 (May 14, 2009) (SR–NASDAQ–2009–043).

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(a)(ii).

[7] 17 CFR 240.19b–4(f)(2).

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–2009–051 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–2009–051. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2009–051 and should be submitted on or before July 6, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–13974 Filed 6–12–09; 8:45 am]

BILLING CODE 8010–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60068; File No. SR–NSX–2009–04]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Fee and Rebate Schedule To (i) Increase From 50,000 to 5 Million the Liquidity Adding Average Daily Volume Thresholds in the Automatic Execution Mode of Order Interaction (''AutoEx''); (ii) Include Securities Less Than One Dollar in the Calculation of Liquidity Adding and Total Average Volume Thresholds in AutoEx; and (iii) Eliminate the Two Lower Tiers With Respect to the AutoEx Liquidity Adding Zero Display Order Rebate

June 8, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 29, 2009, National Stock Exchange, Inc. 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 comment on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

National Stock Exchange, Inc. (''NSX®'' or ''Exchange'') is proposing to amend the Fee and Rebate Schedule (the ''Fee Schedule'') issued pursuant to Exchange Rule 16.1(c) in order to (i) increase from 50,000 to 5 million the liquidity adding average daily volume thresholds in the Automatic Execution Mode of order interaction (''AutoEx''); (ii) include securities less than one dollar in the calculation of liquidity adding and total average volume thresholds in AutoEx; and (iii) eliminate the two lower tiers with respect to the AutoEx liquidity adding zero display order rebate.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nsx.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Purpose

With this rule change, the Exchange is proposing to make three changes to the Fee Schedule, in each case only with respect to AutoEx.[3]

First, the liquidity adding average daily volume (''Liquidity Adding ADV'') thresholds in AutoEx that are currently set at 50,000 are proposed to be increased to 5 million. This threshold is used to determine both the amount of the liquidity taking fee in AutoEx and eligibility for receipt of the liquidity adding zero display order rebate in AutoEx. Under the Fee Schedule in effect prior to effectiveness of the instant proposed rule change, an ETP Holder needs to achieve a Liquidity Adding ADV[4] of 50,000 in order to obtain a reduced liquidity taking fee from $0.0030 to $0.0028 per share. The instant rule filing proposes to increase the Liquidity Adding ADV used with respect to AutoEx liquidity taking fees from 50,000 to 5 million. In addition, under the Fee Schedule in effect prior to effectiveness of the instant proposed rule change, an ETP Holder needs to achieve a Liquidity Adding ADV of 50,000 in order to become eligible to receive rebates for submitting liquidity adding Zero Display Orders[5] in AutoEx. If an ETP Holder fails to achieve a Liquidity Adding ADV of 50,000, such ETP Holder is not eligible to receive a liquidity adding Zero Display Order rebate. The instant rule filing proposes to increase the Liquidity Adding ADV used with respect to eligibility to receive a liquidity adding Zero Display

[3] The Exchange's two modes of order interaction are described in NSX Rule 11.13(b).

[4] Explanatory Endnote 3 of the Fee Schedule contains the definition of ''Liquidity Adding ADV.''

[5] ''Zero Display Orders'' means ''Zero Display Reserve Orders'' as specified in NSX Rule 11.11(c)(2)(A).

Order rebate in AutoEx from 50,000 to 5 million.

Second, the instant rule change proposes to include securities less than one dollar in the calculation of Liquidity Adding ADV and Total ADV.[6] Prior to effectiveness of the instant rule change, securities less than one dollar were excluded from such calculations except only with respect to the volume tier thresholds relative to the AutoEx liquidity adding displayed order rebate for Tape A and C securities.[7] The instant rule change would include sub-dollar securities in all calculations of both Liquidity Adding ADV and Total ADV.

Third, the two lower of the three tiers used to determine the amount, if any, of an ETP Holder's rebate for liquidity adding Zero Display Orders in AutoEx would be eliminated under the proposed rule change. Under the Fee Schedule prior to effectiveness of the instant proposed rule change, progressively higher rebates may be awarded where an ETP Holder achieves Total ADV of 1 million,[8] 15 million [9] and 30 million [10] shares. The instant rule change proposes to eliminate the 1 million and 15 million tiers (together with the associated lesser rebate amounts of $0.0022 and $0.0023 per share, respectively), such that the sole remaining Total ADV tier would be 30 million, for which the associated rebate would remain $0.0025 per share.

The proposed rule change would not modify other calculations of average daily volume, volume tiers, or associated fees that are included in the Fee Schedule.

Rationale

The Exchange has determined that these changes are necessary to increase the volume of liquidity adding and sub-dollar orders in AutoEx for the purpose of increasing the revenue of the Exchange and adequately funding its regulatory and general business functions. The proposed modifications are reasonable and equitably allocated to those ETP Holders that opt to provide liquidity adding and sub-dollar orders in AutoEx, and are not discriminatory because ETP Holders are free to elect whether or not to send such orders. Based upon the information above, the Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest.

Operative Date and Notice

The Exchange intends to utilize the proposed volume thresholds effective June 1, 2009. Pursuant to Exchange Rule 16.1(c), the Exchange will ''provide ETP Holders with notice of all relevant dues, fees, assessments and charges of the Exchange'' through the issuance of a Regulatory Circular of the changes to the Fee Schedule and will post a copy of the rule filing on the Exchange's Web site (*http://www.nsx.com*).

Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,[11] in general, and Section 6(b)(4) of the Act,[12] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using the facilities of the Exchange. Moreover, the proposed fee and rebate structure is not discriminatory in that all ETP Holders are eligible to submit (or not submit) liquidity adding and sub-dollar trades and quotes, and may do so at their discretion in the daily volumes they choose during the course of the measurement period.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has taken effect upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act [13] and subparagraph (f)(2) of Rule 19b–4 [14] thereunder, because, as provided in (f)(2), it changes ''a due, fee or other charge applicable only to a member'' (known on the Exchange as an ETP Holder). At any time within sixty (60) days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NSX–2009–04 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–NSX–2009–04. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the self-regulatory organization. All comments received will be posted without change; the

[6] ''Total ADV'' is used to determine the amount, if any, of an ETP Holder's liquidity adding Zero Display Order rebate in AutoEx. See Explanatory Endnote 5 of the Fee Schedule.

[7] *See* SR–NSX–2009–03 (filed My [sic] 15, 2009).

[8] The first tier is $0.0022 per share (applicable to shares executed in AutoEx which added liquidity as Zero Display Orders), where Total ADV is greater than or equal to 1 million and less than 15 million.

[9] The second tier is $0.0023 per share (applicable to shares executed in AutoEx which added liquidity as Zero Display Orders), where Total ADV is greater than or equal to 15 million and less than 30 million.

[10] The third tier is $0.0025 per share (applicable to shares executed in AutoEx which added liquidity as Zero Display Orders), where Total ADV is greater than or equal to 30 million.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78s(b)(3)(A)(ii).

[14] 17 CFR 240.19b–4 [sic].

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–NSX–2009–04 and should be submitted on or before July 6, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–13973 Filed 6–12–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60067; File No. SR–NYSEArca–2009–48]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Schedule of Fees and Charges for Exchange Services

June 8, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on May 29, 2009, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. NYSE Arca filed the proposal pursuant to Section 19(b)(3)(A)[4] of the Act and Rule 19b–4(f)(2)[5] thereunder. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the section of its Schedule of Fees and Charges for Exchange Services (the ''Schedule''). While changes to the Schedule pursuant to this proposal will be effective upon filing, the changes will become operative on June 1, 2009. A copy of this filing is available on the Exchange's Web site at *http://* www.nyse.com, at the Exchange's principal office and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to make multiple changes to its Schedule that will take effect on June 1, 2009. A more detailed description of the proposed changes follows.

Tier 1 Rates:

Currently, Tier 1 rates are applied to customers with an average daily share volume per month greater than 90 million shares in Tape A, B and C securities, including adding liquidity of more than 45 million shares. The Exchange proposes making Tier 1 rates more attainable for customers by lowering the adding liquidity component from 45 million shares to 30 million shares. In Tape A and Tape C securities, the Exchange proposes a rebate of $0.0030 per share for orders that add liquidity (previously $0.0029) and a take fee of $0.0030 per share for orders that remove liquidity (previously $0.0028).

Tier 2 Rates:

Tier 2 rates are applied to customers with an average daily share volume per month greater than 60 million shares in Tape A, B and C securities, including adding liquidity of more than 30 million shares. The Exchange proposes making Tier 2 rates more attainable for customers by lowering the adding liquidity component from 30 million shares to 20 million shares. In Tape A and Tape C securities, the Exchange proposes a rebate of $0.0028 per share for orders that add liquidity (previously $0.0027) and a take fee of $0.0030 per share for orders that remove liquidity (previously $0.0029).

Take Tier:

The Take Tier rates are applied to customers that take liquidity or route to an away market center with an average daily share volume per month greater than 85 million shares and route an average daily share volume per month greater than 2 million shares. The Exchange proposes to eliminate the Take Tier.

The proposed changes will become operative on June 1, 2009.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (the ''Act''),[6] in general, and Section 6(b)(4) of the Act,[7] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The proposed rates are part of the Exchange's continued effort to attract and enhance participation on the Exchange, by offering attractive rebates for liquidity providers and volume-based incentives. The Exchange believes that the proposed changes to the Schedule are equitable in that they apply uniformly to our Users.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A)[8] of the Act and subparagraph (f)(2) of Rule 19b–4[9] thereunder, because it establishes a due, fee, or other charge imposed by NYSE Arca.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors,

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(2).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(2).

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–NYSEArca–2009–48 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2009–48. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2009–48 and should be submitted on or before July 6, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–13972 Filed 6–12–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60066; File No. SR–FINRA–2009–036]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Adopt FINRA Rules 2124 (Net Transactions With Customers), 2220 (Options Communications), 4370 (Business Continuity Plans and Emergency Contact Information) and 5250 (Payments for Market Making) in the Consolidated FINRA Rulebook

June 8, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 21, 2009, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to adopt NASD Rules 2220 (Options Communications), 2441 (Net Transactions with Customers), 2460 (Payments for Market Making), 3510 (Business Continuity Plans) and 3520 (Emergency Contact Information) as FINRA rules in the consolidated FINRA rulebook without substantive change. The proposed rule change would renumber NASD Rule 2220 as FINRA Rule 2220, NASD Rule 2441 as FINRA Rule 2124, NASD Rule 2460 as FINRA Rule 5250, and NASD Rules 3510 and 3520 would be combined into FINRA Rule 4370 in the consolidated FINRA rulebook.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As part of the process of developing a new consolidated rulebook (''Consolidated FINRA Rulebook''),[3] FINRA is proposing to adopt NASD Rules 2220 (Options Communications), 2441 (Net Transactions with Customers), 2460 (Payments for Market Making), 3510 (Business Continuity Plans) and 3520 (Emergency Contact Information) as FINRA rules in the consolidated FINRA rulebook without substantive change.

Proposed FINRA Rule 2220

FINRA is proposing to adopt NASD Rule 2220 (Options Communications) without substantive change into the Consolidated FINRA Rulebook as FINRA Rule 2220. NASD Rule 2220 sets forth a member's obligations with respect to its options communications with the public. In 2008, FINRA revised NASD Rule 2220 to make it more consistent with FINRA's general rules on communications with the public and the options communications rules of other self-regulatory organizations (SROs).[4] As amended, NASD Rule 2220,

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[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (''Incorporated NYSE Rules'') (together, the NASD Rules and Incorporated NYSE Rules are referred to as the ''Transitional Rulebook''). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see* FINRA *Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

[4] *See* Securities Exchange Act Release No. 58738 (October 6, 2008), 73 FR 60371 (October 10, 2008) (Order Approving File No. SR–FINRA–2008–013).

among other things: (1) Uses, to the extent appropriate, the same terminology and definitions as in FINRA's general rules on communications with the public; (2) makes the requirements for principal review of correspondence concerning options the same as for correspondence generally; and (3) updates the standards on the content of communications that precede the delivery of the options disclosure document (ODD). The amended rule became effective on March 4, 2009.[5]

FINRA recommends that NASD Rule 2220 be transferred as FINRA Rule 2220 into the Consolidated FINRA Rulebook without substantive change in light of the recent amendments.

Proposed FINRA Rule 2124

FINRA is proposing to adopt NASD Rule 2441 (Net Transactions with Customers) without substantive change into the Consolidated FINRA Rulebook as FINRA Rule 2124. NASD Rule 2441 requires members to provide disclosure and obtain consent when trading on a ''net'' basis with customers.[6] With respect to non-institutional customers, the member must obtain the customer's written consent on an order-by-order basis prior to executing the transaction and such consent must evidence the customer's understanding of the terms and conditions of the order. With respect to institutional customers, a member must obtain the customer's consent prior to executing the transaction and such consent may be obtained by either: (1) Use of a negative consent letter; (2) oral disclosure and consent on an order-by-order basis; or (3) written consent on an order-by-order basis.

Rule 2441 was approved by the SEC in 2006, and was the product of notice and comment rulemaking.[7] There have not been subsequent amendments to the rule, and FINRA does not believe any substantive changes to this rule are necessary. Therefore, FINRA recommends that NASD Rule 2441 be transferred without substantive change into the Consolidated FINRA Rulebook as FINRA Rule 2124.

Proposed FINRA Rule 5250

FINRA is proposing to adopt NASD Rule 2460 (Payment for Market Making) without substantive change into the Consolidated FINRA Rulebook as FINRA Rule 5250. NASD Rule 2460 prohibits any payments by an issuer or an issuer's affiliates and promoters, directly or indirectly, to a member or person associated with a member for publishing a quotation, acting as a market maker, or submitting an application in connection therewith. The rule contains two exceptions that permit a member to accept (1) payment for bona fide services, including, but not limited to, investment banking services and (2) reimbursement for registration or listing fees. The SEC approved NASD Rule 2460 after notice and comment in July 1997 with no subsequent amendments.[8]

FINRA believes no changes to this rule are appropriate or necessary. FINRA continues to believe, as stated in FINRA's 1997 rule filing, that a market maker should have considerable latitude and freedom to make or terminate market making activities in an issuer's securities. The decision by a firm to make a market in a given security and the question of price generally are dependent on a number of factors, including, among others, supply and demand, the firm's expectations toward the market, its current inventory, and exposure to risk and competition. This decision should not be influenced by payments to the member from issuers or promoters. Therefore, FINRA proposes to transfer NASD Rule 2460 without substantive change into the Consolidated FINRA Rulebook as FINRA Rule 5250.

Proposed FINRA Rule 4370

FINRA is proposing to adopt NASD Rule 3510 (Business Continuity Plans) and NASD Rule 3520 (Emergency Contact Information) without substantive change into the Consolidated FINRA Rulebook and combine the rules as FINRA Rule 4370 (Business Continuity Plans and Emergency Contact Information). NASD Rule 3510 requires members to create and maintain a written business continuity plan identifying procedures relating to an emergency or significant business disruption and enumerates the minimum elements that a member's business continuity plan must address, to the extent those elements are applicable and necessary to the member's business. NASD Rule 3510 further requires members to update their business continuity plans upon any material change and, at a minimum, conduct an annual review of their plans. Each member also must disclose to its customers how its business continuity plan addresses the possibility of a future significant business disruption and how the member plans to respond to events of varying scope. Each member must make this disclosure, at a minimum, in writing to customers at account opening, by posting it on the member's Web site (if the member maintains a Web site), and by mailing it to customers upon request.

NASD Rules 3510 is one part of the NASD Rule 3500 Series (Emergency Preparedness), which requires members to establish emergency preparedness plans and procedures. NASD Rule 3520, which comprises the remainder of the NASD Rule 3500 Series, requires members to designate two emergency contact persons and provide this information to FINRA via electronic process.[9]

FINRA recommends that NASD Rules 3510 and 3520 be adopted as one rule, FINRA Rule 4370, in the Consolidated FINRA Rulebook without any substantive changes to the respective rules' provisions.

FINRA will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[10] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and

[5] *See Regulatory Notice* 08–73 (December 2008) (SEC Approves Amendments to NASD Rule 2220 to Update the Standards for Options Communications). There is no longer a comparable Incorporated NYSE Rule. FINRA previously deleted substantially similar Incorporated NYSE Rule 791 (Communications to Customers) as part of a rule change that, among other things, reduced regulatory duplication for Dual Members during the interim period before the completion of the Consolidated FINRA Rulebook. *See* Securities Exchange Act Release No. 58533 (September 12, 2008), 73 FR 54652 (September 22, 2008) (Order Approving File No. SR–FINRA–2008–036).

[6] A ''net'' transaction is a principal transaction in which a market maker, after having received an order to buy (sell) an equity security, purchases (sells) the equity security at one price (from (to) another broker-dealer or another customer) and then sells to (buys from) the customer at a different price.

[7] *See* Securities Exchange Act Release No. 54088 (June 30, 2006), 71 FR 38950 (July 10, 2006) (Order Approving File No. SR–NASD–2004–135).

[8] *See* Securities Exchange Act Release No. 38812 (July 3, 1997), 62 FR 37105 (July 10, 1997) (Order Approving File No. SR–NASD–97–29).

[9] There is no longer a comparable Incorporated NYSE Rule to NASD Rules 3510 and 3520. FINRA previously deleted from the Transitional Rulebook NYSE Rule 446 (Business Continuity and Contingency Plans), which contained substantially similar requirements as the two NASD rules, as part of the rule change to reduce regulatory duplication for Dual Members during the period before completion of the Consolidated FINRA Rulebook. *See* Securities Exchange Act Release No. 58533 (September 12, 2008), 73 FR 54652 (September 22, 2008) (Order Approving File No. SR–FINRA–2008–036).

[10] 15 U.S.C. 78*o*–3(b)(6).

equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that transferring NASD Rule 2220 into the Consolidated Rulebook protects investors and the public interest by providing the investing public with options communications rules that are designed to provide appropriate safeguards and greater clarity by promoting harmonization between FINRA's and other SROs' options communications rules. FINRA believes that transferring NASD Rule 2441 into the Consolidated FINRA Rulebook promotes investor protection by requiring members to provide disclosure and obtain customer consent when trading on a net basis. In addition, FINRA believes that the benefits to investors of requiring certain disclosures and obtaining customer consent when trading on a net basis outweighs the additional responsibilities placed on broker-dealers. FINRA believes that transferring NASD Rule 2460 into the Consolidated FINRA Rulebook will protect investors and the public interest and avert a potential conflict of interest by prohibiting members from receiving compensation or other payments from an issuer or others for listing, quoting or making a market in an issuer's securities. Finally, FINRA believes that transferring and combining NASD Rules 3510 and 3520 in the Consolidated FINRA Rulebook will help ensure that members are prepared in the event of a significant business disruption. The proposed rule change makes non-substantive changes to rules that have proven effective in meeting the statutory mandates.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2009–036 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2009–036. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2009–036 and should be submitted on or before July 6, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–13971 Filed 6–12–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60065; File No. SR–NYSEArca–2009–47]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Generic Listing Rules for Currency Trust Shares

June 8, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on May 28, 2009, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I 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 and is approving the proposed rule change on an accelerated basis.[3]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, through its wholly owned subsidiary NYSE Arca Equities, Inc. (''NYSE Arca Equities'' or the ''Corporation''), proposes to amend its rules governing NYSE Arca, LLC, which is the equities trading facility of NYSE Arca. NYSE Arca is proposing to amend NYSE Arca Equities Rule 8.202 (Currency Trust Shares) to provide generic listing and trading rules for such securities. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*[4]

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[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See infra* notes 7 and 36 and accompanying text.

[4] E-mail from Michael Cavalier, Chief Counsel, NYSE Euronext, to Edward Cho, Special Counsel, Division of Trading and Markets, Commission, dated June 4, 2009 (''Exchange Confirmation'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently has rules permitting the listing and trading, including trading pursuant to unlisted trading privileges (''UTP''), of Currency Trust Shares (NYSE Arca Equities Rule 8.202).[5] The Exchange proposes to amend NYSE Arca Equities Rule 8.202 to include provisions for the listing and trading (including trading pursuant to UTP) of Currency Trust Shares pursuant to Rule 19b–4(e)[6] under the Act.[7]

Generic Listing Standards

Rule 19b-4(e) under the Act provides that the listing and trading of a new derivative securities product by a self-regulatory organization (''SRO'') shall not be deemed a proposed rule change, pursuant to Section (c)(1) of Rule 19b-4,[8] if the Commission has approved, pursuant to Section 19(b) of the Act,[9] the SRO's trading rules, procedures, and listing standards for the product class that would include the new derivatives securities product, and the SRO has a surveillance program for the product class.[10]

The Exchange is proposing to adopt generic listing standards under amended Rule 8.202 for Currency Trust Shares,[11] pursuant to which it will be able to trade such securities without Commission approval of each individual product pursuant to Section 19(b)(2) of the Act.[12] Instead, the Exchange represents that any securities it lists and/or trades pursuant to NYSE Arca Equities Rule 8.202 will satisfy the standards set forth therein. The Exchange states that within five (5) business days after commencement of trading of a security pursuant to NYSE Arca Equities Rule 8.202, the Exchange will file a Form 19b-4(e).[13]

Currency Trust Shares

The Exchange proposes to amend the definition of the term ''Currency Trust Shares'' in NYSE Arca Equities Rule 8.202(c) to provide that Currency Trust Shares may be issued by a trust that holds more than one non-U.S. currency. In addition, NYSE Arca Equities Rule 8.202(c) would be amended to provide that Currency Trust Shares may be surrendered to the Trust by an Authorized Participant (as defined in the Trust's prospectus), and the Trust will deliver to the redeeming Authorized Participant the specified non-U.S. currency or currencies.[14] The reference to surrender of Currency Trust Shares by the beneficial owner would be deleted. NYSE Arca Equities Rule 8.202(d) relating to designation of a non-U.S. currency would be amended to clarify the rule's application to an issue of Currency Trust Shares that holds more than one currency. Commentary .01 also would be amended to clarify that Currency Trust Shares are Trust Issued Receipts that can hold multiple currencies.

The Exchange proposes to amend Commentary .04 to NYSE Arca Equities Rule 8.202 to incorporate generic listing and trading standards for Currency Trust Shares.[15] In addition to the general requirements of NYSE Arca Equities Rule 8.202, Currency Trust Shares listed on the Exchange must satisfy the following initial listing criteria. For a series of Currency Trust Shares listed on the Exchange, a minimum of 100,000 shares of a series of Currency Trust Shares is required to be outstanding at commencement of trading.[16] In addition, for both listed Currency Trust Shares and those traded pursuant to UTP: (1) The value of the applicable non-U.S. currency must be disseminated by one or more major market data vendors on at least a 15-second delayed basis; (2) the Indicative Trust Value must be calculated and widely disseminated by the Corporation or one or more major market data vendors on at least a 15-second basis during the Core Trading Session as defined in NYSE Arca Equities Rule 7.34; and (3) the Corporation will implement written surveillance procedures applicable to Currency Trust Shares.

Proposed Commentary .05 to NYSE Arca Equities Rule 8.202 provides certain ''firewall'' requirements where the value of a Currency Trust Share is based in whole or in part on an index that is maintained by a broker-dealer, as well as requirements on any advisory committee, supervisory board or similar entity that advises or that makes certain decisions regarding the index, similar to the requirements currently specified in NYSE Arca Equities Rule 5.2(j)(3), Commentary .01(b)(1).

Commentary .06 provides that Currency Trust Shares will be subject to the Exchange's equity trading rules. Commentary .07 provides that, if the

[5] *See* Securities Exchange Act Release No. 53253 (February 8, 2006), 71 FR 8029 (February 15, 2006) (SR–PCX–2005–123) (order approving Rule 8.202 and trading on the Exchange pursuant to UTP of shares of the Euro Currency Trust).

[6] 17 CFR 240.19b–4(e).

[7] The Exchange previously filed a proposed rule change to permit listing pursuant to Rule 19b–4(e) of Commodity-Based Trust Shares, Currency Trust Shares, and Commodity Index Trust Shares. *See* Securities Exchange Act Release No. 58332 (August 8, 2008), 73 FR 47996 (August 15, 2008) (SR–NYSEArca–2008–51) (Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto To Adopt Generic Listing and Trading Rules for Commodity-Based Trust Shares, Currency Trust Shares, and Commodity Index Trust Shares). The Exchange withdrew NYSEArca–2008–51 on May 18, 2009. The amendments to NYSE Arca Equities Rule 8.202 proposed herein are substantially identical to changes to NYSE Arca Equities Rule 8.202 proposed in SR–NYSEArca–2008–51.

[8] 17 CFR 240.19b-4(c)(1).

[9] 17 U.S.C. 78s(b).

[10] *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998) (File No. S7–13–98).

[11] *See* Exchange Confirmation, *supra* note 4 (replacing the term ''Shares'' with ''Currency Trust Shares'' where applicable).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 240.19b-4(e)(2)(ii); 17 CFR 249.820.

[14] *See* Exchange Confirmation, *supra* note 4.

[15] The Commission has previously approved a number of issues of Currency Trust Shares for exchange listing and trading. *See, e.g.,* Securities Exchange Act Release No. 52843 (November 28, 2005), 70 FR 72486 (December 5, 2005) (SR–NYSE 2005–65) (order granting accelerated approval for NYSE to list and trade shares of the CurrencyShares Euro Trust); Securities Exchange Act Release No. 54020 (June 20, 2006), 71 FR 36579 (June 27, 2006) (SR–NYSE–2006–35) (order granting accelerated approval for NYSE to list and trade shares of the CurrencyShares Australian Dollar Trust, CurrencyShares British Pound Sterling Trust, CurrencyShares Canadian Dollar Trust, CurrencyShares Mexican Peso Trust, CurrencyShares Swedish Krona Trust and CurrencyShares Swiss Franc Trust); Securities Exchange Act Release No. 55268 (February 9, 2007), 72 FR 7793 (February 20, 2007) (SR–NYSE–2007–03) (order granting accelerated approval for NYSE to list and trade shares of the CurrencyShares Japanese Yen Trust); and Securities Exchange Act Release No. 56131 (July 25, 2007), 72 FR 42212 (August 1, 2007) (SR–NYSEArca-2007–57) (order granting accelerated approval for listing on NYSE Arca of CurrencyShares Trusts).

[16] The Exchange notes that the proposed 100,000 share minimum is the same as the requirement in NYSE Arca Equities Rule 5.2(j)(3)(d) applicable to Investment Company Units (''Units''), which provides that a minimum of 100,000 shares of a series of Units is required to be outstanding at commencement of trading. In addition, the 100,000 share minimum is comparable to requirements previously applied to series of Units approved by the Commission for exchange listing pursuant to Section 19(b)(2) of the Act. *See, e.g.,* Securities Exchange Act Release No. 52816 (November 21, 2005), 70 FR 71574, 71578 n.19 and accompanying text (November 29, 2005) (SR–NYSE–2005–70).

Indicative Trust Value, or the value of the currency, currencies or currency index applicable to a series of Currency Trust Shares is not being disseminated as required, the Exchange may halt trading during the day on which such interruption first occurs. If such interruption persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. If the Exchange becomes aware that the net asset value applicable to a series of Currency Trust Shares is not being disseminated to all market participants at the same time, it will halt trading in such series until such time as the net asset value is available to all market participants.

Proposed NYSE Arca Equities Rule 8.202(j) provides that the Exchange may submit a rule filing pursuant to Section 19(b)(2) of the Act [17] to permit the listing and trading of Currency Trust Shares that do not otherwise meet the standards set forth in proposed Commentary .04 to NYSE Arca Equities Rule 8.202.

Exchange Rules Applicable to Currency Trust Shares

Currency Trust Shares will be subject to all Exchange rules governing the trading of equity securities. The Exchange's equity margin rules will apply to transactions in Currency Trust Shares. Currency Trust Shares will trade during trading hours set forth in Rule 7.34(a).[18]

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products, including Currency Trust Shares, to monitor trading in the securities. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the securities in all trading sessions and to deter and detect violations of Exchange rules or applicable Federal securities laws.

The Exchange's current trading surveillance focuses on detecting when securities trade outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The components underlying Currency Trust Shares are based on spot prices of the relevant currency, and such underlying currencies are traded in over-the-counter markets rather than on exchanges.

The Exchange may obtain information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members of the ISG.[19]

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading an issue of Currency Trust Shares, including risks inherent with trading such securities during the Opening and Late Trading Sessions and suitability recommendation requirements.

Specifically, the Information Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Currency Trust Shares; (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on ETP Holders to learn the essential facts relating to every customer prior to trading an issue of Currency Trust Shares; (3) how information regarding the Indicative Trust Value is disseminated; (4) the risks involved in trading an issue of Currency Trust Shares during the Opening and Late Trading Sessions when an updated Indicative Trust Value will not be calculated or publicly disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Currency Trust Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information. For example, the Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the relevant issue of Currency Trust Shares. The Exchange notes that investors purchasing Currency Trust Shares directly from the applicable trust will receive a prospectus. ETP Holders purchasing Currency Trust Shares from the trust for resale to investors will deliver a prospectus to such investors.

In addition, the Information Bulletin will reference that an issue of Currency Trust Shares is subject to various fees and expenses described in the applicable prospectus. The Information Bulletin will also reference the fact that there is no regulated source of last sale information regarding non-U.S. currencies, and that the Commission has no jurisdiction over the trading of currencies or futures contracts on which the value of an issue of Currency Trust Shares may be based.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) [20] of the Act in general and furthers the objectives of Section 6(b)(5) [21] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rules applicable to trading pursuant to generic listing and trading criteria, together with the Exchange's surveillance procedures applicable to trading in the securities covered by the proposed rules serve to foster investor protection. The proposed rules will also enhance market competition by assisting in bringing Currency Trust Shares to market more quickly, consistent with the Commission's adoption of Rule 19b–4(e) [22] under the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

[17] 17 U.S.C. 78s(b)(2).

[18] Pursuant to NYSE Arca Rule 7.34(a), the NYSE Arca Marketplace will have three trading sessions each day the Corporation is open for business unless otherwise determined by the Corporation:

Opening Session—begins at 1:00:00 a.m. (Pacific Time) and concludes at the commencement of the Core Trading Session. The Opening Auction and the Market Order Auction shall occur during the Opening Session.

Core Trading Session—begins for each security at 6:30:00 a.m. (Pacific Time) or at the conclusion of the Market Order Auction, whichever comes later, and concludes at 1:00:00 p.m. (Pacific Time).

Late Trading Session—begins following the conclusion of the Core Trading Session and concludes at 5:00:00 p.m. (Pacific Time).

[19] For a list of current members of the ISG, *see http://www.isgportal.org.*

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(5).

[22] 17 CFR 240.19b–4(e).

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2009–47 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca-2009–47. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2009–47 and should be submitted on or before July 6, 2009.

IV. Commissions Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[23] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[24] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and national market system, and, in general, to protect investors and the public interest.

A. Generic Listing Standards for Currency Trust Shares

To list and trade Currency Trust Shares, the Exchange currently must file a proposed rule change with the Commission pursuant to Section 19(b)(1) of the Act[25] and Rule 19b–4 thereunder.[26] Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by an SRO will not be deemed a proposed rule change pursuant to Rule 19b–4(c)(1) if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO's trading rules, procedures, and listing standards for the product class that would include the new derivative securities product, and the SRO has a surveillance program for the product class. The Exchange proposes to adopt certain provisions that would permit it to list and trade Currency Trust Shares pursuant to Rule 19b–4(e).

The Commission notes that it has previously approved the adoption of generic listing standards for various classes of new derivative securities products, including currency-related derivative securities products, to be listed and traded pursuant to Rule 19b–4(e).[27] In addition, the Commission notes that it has approved multiple series of Currency Trust Shares for listing and trading on the Exchange.[28] In approving these securities for Exchange trading, the Commission considered the applicable Exchange rules that govern their trading. The Commission believes that proposed generic listing standards for Currency Trust Shares should fulfill the intended objective of Rule 19b–4(e) and allow securities that satisfy the proposed generic listing standards to commence trading without the need for public comment and Commission approval.[29] The Exchange's ability to rely on Rule 19b–4(e) to list and trade Currency Trust Shares that meet the applicable requirements and minimum standards should reduce the time frame for bringing these securities to market and thereby reduce the burdens on issuers and other market participants, while also promoting competition and making such securities available to investors more quickly.

B. Listing and Trading Currency Trust Shares

Taken together, the Commission finds that the proposal contains adequate rules and procedures to govern the listing and trading of Currency Trust Shares pursuant to Rule 19b–4(e) on the Exchange. Products listed and traded under the proposed generic standards will be subject to the full panoply of NYSE Arca Equities rules and procedures, including the equity rules relating to margin, that currently govern the trading of equity securities on the Exchange.

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[23] In approving the proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[24] 15 U.S.C. 78f(b)(5).

[25] 15 U.S.C. 78s(b)(1).

[26] 17 CFR 240.19b–4. *See* Commentary .04 to NYSE Arca Equities Rule 8.202 (providing that NYSE Arca Equities must file separate proposals under Section 19(b) of the Act before trading, either by listing or pursuant to unlisted trading privileges, Currency Trust Shares).

[27] *See, e.g.,* Securities Exchange Act Release No. 56637 (October 10, 2007), 72 FR 58704 (October 16, 2007) (SR–NYSEArca-2007–92) (approving, among other things, generic listing and trading rules for Currency-Linked Securities). *See also, e.g.,* Securities Exchange Act Release Nos. 44551 (July 12, 2001), 66 FR 37716 (July 19, 2001) (SR–PCX–2001–14) (approving, among other things, generic listing standards for Units); 55621 (April 12, 2007), 72 FR 19571 (April 18, 2007) (SR–NYSEArca-2006–86) (approving, among other things, generic listing standards for Units based on foreign equity securities); 55783 (May 17, 2007), 72 FR 29194 (May 24, 2007) (SR–NYSEArca-2007–36) (approving generic listing standards for Units based on fixed income indexes); 52204 (August 3, 2005), 70 FR 46559 (August 10, 2005) (SR–PCX–2005–63) (approving generic listing standards for Index-Linked Securities); and 57701 (April 23, 2008), 73 FR 23281 (April 29, 2008) (SR–NYSEArca-2008–20) (approving generic listing rules for Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities).

[28] *See supra* note 15 (indicating prior Commission orders approving the listing and trading of Currency Trust Shares).

[29] The Commission notes that the failure of a particular product or index to comply with the proposed generic listing standards under Rule 19b–4(e), however, would not preclude the Exchange from submitting a separate filing pursuant to Section 19(b)(1) of the Act, requesting Commission approval to list and trade a particular series of Currency Trust Shares. *See* proposed NYSE Arca Equities Rule 8.202(j) (providing that NYSE Arca Equities may submit a proposed rule change pursuant to Section 19(b) of the Act to permit the listing and trading of Currency Trust Shares that do not otherwise meet the generic listing standards set forth in the relevant rules).

Each of the proposed modifications to the listing requirements under NYSE Arca Equities Rule 8.202 provide the following:

- For the Exchange to approve each applicable issue for listing, each such issue must satisfy all of the criteria set forth in the relevant rule,[30] and, for those issues approved for trading pursuant to UTP, each such issue must satisfy the requirements relating to the dissemination of the underlying asset and/or index values and the Indicative Trust Values and the implementation of written surveillance procedures applicable to Currency Trust Shares;
- The Exchange may submit a proposed rule change to permit the listing and trading of Currency Trust Shares that do not otherwise meet the proposed generic listing standards set forth in Commentary .04 to NYSE Arca Rule 8.202; [31]
- A minimum of 100,000 Currency Trust Shares is required to be outstanding at the commencement of trading;
- The values of the underlying non-U.S. currency, currencies, or currency index, as the case may be, must be disseminated by one or more major market data vendors on at least a 15-second delayed basis;
- The Indicative Trust Value must be calculated and widely disseminated by NYSE Arca Equities or one or more major market data vendors on at least a 15-second basis during the Core Trading Session;
- The Exchange must implement written surveillance procedures applicable to Currency Trust Shares; and
- Currency Trust Shares will be subject to the Exchange's equity trading rules; and
- If the Indicative Trust Value or the values of the underlying non-U.S. currency, currencies, or currency index, as the case may be, is not being disseminated as required, the Exchange may halt trading during the day on which such interruption first occurs. If such interruption persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. In addition, if the Exchange becomes aware that the net asset value applicable to a series of Currency Trust Shares is not being disseminated to all market participants at the same time, it will halt trading in such series until such time as the net asset value is available to all market participants.

In addition, the Commission notes that the proposed ''firewall'' provisions in Commentary .05 to NYSE Arca Equities Rules 8.202 are virtually identical to the ''firewall'' restrictions applicable to all types of Index-Linked Securities, including Currency-Linked Securities.[32]

To clarify the definition of Currency Trust Shares under NYSE Arca Equities Rule 8.202(c), with respect to the procedures for surrendering or redeeming Currency Trust Shares, the proposal provides that such Currency Trust Shares may be surrendered or redeemed, when aggregated in some specified minimum number, to the trust only by, or at the request of, an Authorized Participant, as such term is defined in the relevant trust prospectus. The proposal also seeks to modify the definition of Currency Trust Shares and other provisions under NYSE Arca Equities Rule 8.202 such that the underlying asset thereof may be represented by more than one non-U.S. currency deposited with the trust.

The Commission believes that the proposal is designed to maintain fair and orderly markets for the listing and trading of Currency Trust Shares. The proposed generic listing standards seek to ensure a minimum level of transparency with respect key values of the underlying currency assets, establish events that would trigger a trading halt in Currency Trust Shares when the availability of such key information related to Currency Trust Shares becomes impaired, and prevent conflicts of interest and the use and dissemination of material, non-public information with respect to the personnel responsible for the maintenance of an underlying index maintained by a broker-dealer. The Commission notes that all of the existing continued listing standards applicable to Currency Trust Shares, requirements relating to information barriers and accounts with respect to ETP Holders acting as registered Market Makers or Market Maker Authorized Traders in Currency Trust Shares, and prospectus delivery requirements continue to apply to Currency Trust Shares. The Commission further notes that the Exchange has a general policy prohibiting the distribution of material, non-public information by its employees.

C. Surveillance

Proposed Commentary .04(d) to NYSE Arca Equities Rule 8.202 provides that NYSE Arca Equities will implement written surveillance procedures applicable to Currency Trust Shares. The Commission notes that Currency Trust Shares would be subject to the Exchange's existing surveillance procedures applicable to derivative products, including Currency Trust Shares. The Exchange has represented that its surveillance procedures are adequate to properly monitor the trading of Currency Trust Shares in all trading sessions and to deter and detect violations of Exchange rules or applicable federal securities laws.

The Exchange states that, with respect to Currency Trust Shares based on spot prices of a currency or currencies, such underlying currencies are traded in OTC markets rather than on exchanges. The Commission notes that information relating the trading of such assets in the OTC markets may not be readily available.

D. Information Bulletin

The Exchange has represented that, prior to the commencement of trading in Currency Shares, it will inform its ETP Holders in an Information Bulletin describing the special characteristics and risks associated with trading an issue of Currency Trust Shares. Specifically, the Information Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Currency Trust Shares; (2) suitability requirements; (3) how information regarding the Indicative Trust Value is disseminated; (4) the risks involved in trading an issue of Currency Trust Shares during the Opening and Late Trading Sessions when an updated Indicative Trust Value will not be calculated or publicly disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Currency Trust Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

The Information Bulletin will also advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the relevant issue of Currency Trust Shares. The Exchange notes that investors purchasing Currency Trust Shares directly from the applicable trust will receive a prospectus; ETP Holders purchasing Currency Trust Shares from the trust for resale to investors will deliver a

[30] The Commission notes that each issue of Currency Trust Shares to be traded on the Exchange, whether by listing or pursuant to UTP, must satisfy not only those requirements proposed to be adopted herein, but also all of the other existing applicable requirements in the respective rules for Currency Trust Shares.

[31] *See supra* note 29.

[32] *See* NYSE Arca Equities Rule 5.2(j)(6)(C) (setting forth similar firewall restrictions with respect to all types of Index-Linked Securities); *see also* Commentary .01(b)(1) to NYSE Arca Equities Rule 5.2(j)(3) (setting forth similar firewall restrictions with respect to Units).

prospectus to such investors. Finally, the Information Bulletin will reference that: An issue of Currency Trust Shares is subject to various fees and expenses described in the applicable prospectus; that there is no regulated source of last-sale information regarding non-U.S. currencies; and the Commission has no jurisdiction over the trading of physical currencies on which the value of an issue of Currency Trust Shares may be based.

E. Firewall Procedures

Currency Trust Shares, which are securities issued by a trust that may hold multiple currencies, will be subject to the firewall requirements under proposed Commentary .05 to NYSE Arca Equities Rule 8.202. The firewall requirements provide that, if the value of a Currency Trust Share is based in whole or in part on an index that is maintained by a broker-dealer, the broker-dealer shall erect a ''firewall'' around the personnel responsible for the maintenance of the underlying index or who have access to information concerning changes and adjustments to the index, and the index shall be calculated by a third party who is not a broker-dealer. Furthermore, any advisory committee, supervisory board, or similar entity that advises an index licensor or administrator or that makes decisions regarding the index or portfolio composition, methodology, and related matters must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the applicable index or portfolio.

The Commission believes that the proposed ''firewall'' restrictions applicable to Currency Trust Shares are designed to prevent the use and dissemination of material, non-public information regarding an underlying index and prevent conflicts of interest with respect to personnel of a broker-dealer maintaining an index underlying such securities. The Commission notes that such proposed restrictions are substantially similar to restrictions adopted for the listing and trading of Index-Linked Securities and Units.[33]

F. Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[34] for approving the proposed rule change prior to the 30th day after publication of notice in the **Federal Register.** The Commission notes that the Exchange previously filed a proposed rule change (NYSEArca–2008–51) seeking to adopt generic listing standards for Currency Trust Shares and other commodity-related derivative securities products.[35] Notice of the proposed rule change was published in the **Federal Register** on August 15, 2008 for a 21-day comment period, and no comments were received by the Commission.[36] The Commission further notes that the proposed changes to NYSE Arca Equities Rule 8.202 in NYSEArca–2008–51 are substantively identical to this proposed rule change. The Commission believes that the Exchange's proposed amendments to NYSE Arca Equities Rule 8.202 do not raise any new issues or significant regulatory concerns. The Commission believes that accelerating approval of this proposal should benefit investors by creating, without undue delay, enhanced competition in the market for Currency Trust Shares, consistent with Section 6(b) of the Act and Rule 19b–4(e) thereunder.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[37] that the proposed rule change (SR–NYSEArca–2009–47) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[38]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–13970 Filed 6–12–09; 8:45 am]

BILLING CODE 8010–01–P

[33] *See id.* and accompanying text.

[34] 15 U.S.C. 78s(b)(2).

[35] *See supra* note 7.

[36] *See id.* (noting that the Exchange subsequently withdrew the proposed rule change on May 18, 2009).

[37] 15 U.S.C. 78s(b)(2).

[38] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60064; File No. SR–NYSEArca–2009–30]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to the Adoption of Listing Standards for Managed Trust Securities and the Listing and Trading of Shares of the iShares® Diversified Alternatives Trust

June 8, 2009.

I. Introduction

On April 9, 2009, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange''), through its wholly owned subsidiary, NYSE Arca Equities, Inc. (''NYSE Arca Equities'' or ''Corporation''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b\4 thereunder,[2] a proposed rule change to: (1) Adopt listing standards for Managed Trust Securities; (2) amend NYSE Arca Equities Rule 7.34 and its Listing Fees to add references to proposed NYSE Arca Equities Rule 8.700 relating to Managed Trust Securities; and (3) list and trade shares (''Shares'') of the iShares® Diversified Alternatives Trust (''Trust''). On April 24, 2009, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on May 6, 2009.[3] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposal

A. Listing Standards for Managed Trust Securities

The Exchange proposes to adopt new NYSE Arca Equities Rule 8.700 to list and trade, or trade pursuant to unlisted trading privileges, Managed Trust Securities. A Managed Trust Security as a security that is registered under the Securities Act of 1933, as amended, and (a) is issued by a trust that (i) is a commodity pool, as defined in the Commodity Exchange Act (''CEA'') and regulations thereunder, and is managed by a commodity pool operator registered with the Commodity Futures Trading Commission (''CFTC''), and (ii) holds long and/or short positions in exchange-traded futures contracts and/or currency forward contracts selected by the trust's advisor consistent with the trust's investment objectives,[4] which would only include exchange-traded futures contracts involving commodities, currencies, stock indices, fixed income indices, interest rates and sovereign, private, and mortgage or asset backed debt instruments[5] and/or forward contracts on specified currencies, as disclosed in the trust's prospectus, as

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 59835 (April 28, 2009), 74 FR 21041 (''Notice'').

[4] It should be noted that the trust holdings will be actively managed in accordance with the trust's investment objectives; therefore, products listed under proposed NYSE Arca Equities Rule 8.700 are ineligible for listing under any other existing Exchange rule (*e.g.,* NYSE Arca Equities Rules 8.203 and 8.204).

[5] The trust may only hold exchange-traded futures contracts on sovereign, private, and mortgage- or asset-backed debt and not the debt itself.

such may be amended from time to time, and (b) is issued and redeemed continuously in specified aggregate amounts at the next applicable net asset value (''NAV'').

Additional details of proposed NYSE Arca Equities Rule 8.700 and the proposed conforming changes to NYSE Arca Equities Rule 7.34 and the NYSE Arca Equities Listing Fee Schedule can be found in the Notice.

B. Description of the Trust and the Shares

The Exchange also proposes to list and trade the Shares.[6] The Shares represent ownership of a fractional undivided beneficial interest in the net assets of the Trust. The Trust will be a commodity pool, as defined in the CEA and the applicable rules of the CFTC, and will be formed as a Delaware statutory trust.[7]

The investment objective of the Trust will be to maximize absolute returns from its portfolio of (i) exchange-traded futures contracts involving commodities, currencies, certain eligible stock and/or bond indices, interest rates and sovereign, private and mortgage- or asset-backed debt instruments[8] and/or (ii) certain currency forward contracts in the top 25 most liquid or actively traded currencies measured by turnover in the most recent BIS Central Bank Survey, each as disclosed in the Trust's prospectus as such may be amended from time to time, while seeking to reduce the risks and volatility inherent in those investments by taking long and short positions in historically correlated assets. The Trust will also earn interest on the assets used to collateralize its trading positions. The return on assets in the portfolio, if any, is not intended to track the performance of any index or benchmark.

Additional details regarding creations and redemptions of the Shares, the organization and structure of the Trust, the commodity trading advisor of the Trust, the dissemination and availability of information about the underlying assets, trading halts, applicable trading rules, surveillance, and the Information Bulletin can be found in the Notice and/or the Registration Statement.

III. Discussion and Commission's Findings

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[9] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[10] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

With respect to the Exchange's proposal to adopt new NYSE Arca Equities Rule 8.700 relating to the listing and trading of Managed Trust Securities, the Commission notes that the standards proposed therein are based on listing standards of other derivative securities products that have previously been approved by the Commission. Except for the definition of ''Managed Trust Securities,'' each of the defined terms under new NYSE Arca Equities Rule 8.700(c) are substantively identical to those applicable to Managed Fund Shares under NYSE Arca Equities Rule 8.600.[11] In addition, almost all of the proposed initial and continued listing criteria and Commentaries under new NYSE Arca Equities Rule 8.700 are substantively identical to those applicable to Managed Fund Shares set forth in NYSE Arca Equities Rule 8.600. Specifically with respect to the proposed continued listing criteria for Managed Trust Securities, the Commission notes that new NYSE Arca Equities Rule 8.700(e)(2)(C)(i) is substantively identical to the continued listing criteria applicable to other types of commodity- and currency-based derivative securities products.[12] The Commission also notes that proposed NYSE Arca Equities Rules 8.700(e)(2)(E), 8.700(e)(3)–(5), and 8.700(f)–(g), relating to the trust, trustee, voting rights, Market Maker accounts, and limitation of liability of the Corporation, are substantively identical to those respective provisions applicable to other types of commodity- and currency-based derivative securities products.[13] Further, the Commission notes that the Exchange is required to file a proposed rule change pursuant to Section 19(b)(1) of the Act to list and trade each issue of Managed Trust Securities. The Commission believes that the proposed new listing rule, NYSE Arca Equities Rule 8.700, is reasonably designed to protect investors and the public interest.

In addition, the Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[14] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association CQ High-Speed Lines, and one or more major market data vendors will disseminate the Intraday Indicative Value (''IIV'') at least every 15 seconds during the time the Shares trade on the Exchange. In addition, the Trust will make available daily on its Web site the Disclosed Portfolio, which will include, as applicable, the name identifier and

[6] The Exchange represents that the Shares will conform to the initial and continued listing criteria under proposed NYSE Arca Equities Rule 8.700 and that the Trust is required to comply with Rule 10A–3 under the Act for the initial and continued listing of the Shares. *See* 17 CFR 240.10A–3. Rule 10A–3(e)(3) provides that, in the case of a listed limited partnership or limited liability company where such entity does not have a board of directors or equivalent body, the term ''board of directors'' means the board of directors of the managing general partner, managing member or equivalent body. The Trust itself has no employees or board of directors and its operations are conducted by the Trustee, subject to the direction by the Sponsor. Accordingly, the Trust has designated a committee of the board of directors of the Sponsor to act as the audit committee of the Trust for Rule 10A–3 purposes. The Sponsor's role under the governing documents of the Trust makes the Sponsor analogous to the managing member of a limited liability company. The Exchange believes it is reasonable to interpret Rule 10A–3(e)(3) as permitting a trust to utilize a committee of the board of directors of its sponsor as the trust's audit committee for purposes of compliance with Rule 10A–3, *provided* that the sponsor's role with respect to the trust is analogous to the relationship between a managing member and a limited liability company.

[7] The Trust is not an investment company registered under the Investment Company Act of 1940, according to the Registration Statement on Form S–1 for the Trust, which was filed with the Commission on August 20, 2008 (File No. 333–153099) (''Registration Statement'').

[8] *See supra* note 5.

[9] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

[11] *See* Securities Exchange Act Release No. 57619 (April 4, 2008), 73 FR 19544 (April 10, 2008) (SR–NYSEArca-2008–25) (approving the adoption of NYSE Arca Equities Rule 8.600 governing the listing and trading of Managed Fund Shares). *See also* NYSE Arca Equities Rule 8.600.

[12] *See, e.g.,* NYSE Arca Equities Rule 8.200 (Trust Issued Receipts), NYSE Arca Equities Rule 8.201 (Commodity-Based Trust Shares), NYSE Arca Equities Rule 8.202 (Currency-Based Trust Shares), and NYSE Arca Equities Rule 8.204 (Commodity Futures Trust Shares).

[13] *See id.*

[14] 15 U.S.C. 78k–1(a)(1)(C)(iii).

number of each futures contract, the amount and currency type of each forward contract, and the amount of cash held. The Web site for the Trust will also contain the following information: (1) The prior business day's NAV per Share [15] and the reported closing price; (2) the mid-point of the bid-ask price in relation to the NAV per Share as of the time the NAV is calculated (''Bid-Ask Price''); [16] (3) calculation of the premium or discount of such price against such NAV per Share; (4) data in chart form displaying the frequency distribution of discounts and premiums of the Bid-Ask Price against the NAV per Share, within appropriate ranges for each of the four previous calendar quarters; (5) the prospectus and the most recent periodic reports filed with the Commission or required by the CFTC;[17] and (6) other applicable quantitative information. The Exchange will disseminate for the Trust on a daily basis by means of Consolidated Tape Association CQ High Speed Lines information with respect to the recent Trust NAV, number of Shares outstanding, and the basket amount. The Exchange will also make available on its Web site daily trading volume, closing prices, and the Trust's NAV per Share. The Exchange states that pricing for futures contracts is available from the relevant exchange on which such futures contracts trade, and pricing for forward contracts is available from major market data vendors. Lastly, information regarding the market price and volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and the previous day's closing price and trading volume information for the Shares will be published daily in the financial sections of newspapers.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange will obtain a representation from the Trust that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.[18] Additionally, if the Exchange becomes aware that the NAV or the Disclosed Portfolio is not disseminated daily to all market participants at the same time, the Exchange will halt trading in the Shares until such information is available to all market participants.[19] Further, if the IIV is not being disseminated as required, the Exchange may halt trading during the day in which the disruption occurs; if the interruption persists past the day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.[20] The Exchange represents that Barclays Global Fund Advisors, the commodity trading advisor of the Trust, is affiliated with a broker-dealer. As a result, Barclays Global Fund Advisors and its applicable affiliated broker-dealers that are authorized to conduct trading have in place (or will erect before launch) policies and procedures designed to prevent the disclosure of material non-public information, including changes and adjustments to the Disclosed Portfolio.[21] Finally, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the portfolio.[22]

The Exchange has represented that the Shares are deemed equity securities subject to the Exchange's rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

(1) The Shares will conform to the initial and continued listing criteria under proposed NYSE Arca Equities Rule 8.700.

(2) The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. In addition, the Exchange has an Information Sharing Agreement in place with the New York Mercantile Exchange, the Kansas City Board of Trade, ICE Futures, and the London Metal Exchange for the purpose of providing information in connection with trading in or related to futures contracts traded on such exchanges. Further, for components traded on exchanges, not more than 10% of the weight of the Trust's portfolio in the aggregate shall consist of components whose principal trading market is not a member of the Intermarket Surveillance Group or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

(3) Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares and that Shares are not individually redeemable; (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (d) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IIV will not be calculated or publicly disseminated; and (e) trading information.

(4) The Fund will be in compliance with Rule 10A–3 under the Act.[23]

[15] The most recent end-of-day NAV of the Trust and NAV per Share will be published by the Sponsor as of 4 p.m. Eastern Time daily on Reuters and/or Bloomberg and on the Trust's Web site at *http://www.iShares.com*. The end-of-day NAV per Share will also be published the following morning on the Consolidated Tape.

[16] The Bid-Ask Price of Shares is determined using the highest bid and lowest offer as of the time of calculation of the NAV per Share.

[17] Monthly account statements conforming to applicable CFTC and NFA requirements are posted on the Trust's Web site at *http://www.iShares.com*. Additional reports may be posted on the Trust's Web site in the discretion of the Sponsor or as required by regulatory authorities.

[18] *See* proposed NYSE Arca Equities Rule 8.700(e)(1)(B).

[19] *See* proposed NYSE Arca Equities Rule 8.700(e)(2)(D).

[20] *See id*. Trading in the Shares may also be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the underlying futures contracts or currency forward contracts; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. E-mail from Sudhir Bhattacharrya, Vice President—Legal, NYSE Euronext, to Edward Cho, Special Counsel, Division of Trading and Markets, Commission, dated May 26, 2009.

[21] E-mail from Sudhir Bhattacharrya, Vice President—Legal, NYSE Euronext, to Edward Cho, Special Counsel, Division of Trading and Markets, Commission, dated May 26, 2009. The Exchange further represents that personnel who make decisions concerning the Trust's portfolio composition are subject to procedures designed to prevent the use and dissemination of material, non-public information, including information relating to the applicable Trust portfolio. *See* Commentary .05 to proposed NYSE Arca Equities Rule 8.700.

[22] *See* proposed NYSE Arca Equities Rule 8.700(e)(2)(B)(ii).

[23] *See supra* note 6.

(5) A minimum of 100,000 Shares will be required to be outstanding at the start of trading.[24]

This approval order is based on the Exchange's representations.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act [25] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[26] that the proposed rule change (SR–NYSEArca–2009–30), as modified by Amendment No. 1 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–13969 Filed 6–12–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60061; File No. SR–FINRA–2009–011]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change as Modified by Amendment No. 1 Thereto To Amend the Panel Composition Rules of the Code of Arbitration Procedure for Industry Disputes

June 5, 2009.

On March 4, 2009, the Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the panel composition rules of the Code of Arbitration Procedure for Industry Disputes (''Industry Code''). On April 7, 2009, FINRA filed Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on May 4, 2009.[3] The Commission received no comments on the proposed rule change. This order approves the proposed rule change, as modified by Amendment No. 1.

I. Description of the Proposal

FINRA proposed to amend the Industry Code to change the criteria for determining the panel composition when the claim involves an associated person in industry disputes.

Currently, Rule 13402(a) of the Industry Code requires an all non-public panel for disputes between members, and for employment disputes between or among members and associated persons that relate exclusively to employment contracts, promissory notes, or receipt of commissions.[4] In all other disputes between or among members and associated persons, Rule 13402(b) requires a majority public panel, where one arbitrator would be a non-public arbitrator and two would be public arbitrators.[5]

FINRA proposed to amend the Industry Code to change the criteria for determining panel composition when the claim involves an associated person in industry disputes.[6] Specifically, FINRA proposed to amend Rule 13402 and related rules of the Industry Code to:

- Require that the parties receive a majority public panel for all industry disputes involving associated persons (excluding disputes involving statutory employment discrimination claims which require a specialized all public panel); [7]
- Clarify that in disputes involving only members, parties will receive an all non-public panel; and
- Provide that if a party amends its pleadings to add an associated person to a previously all member case, parties will receive a majority public panel.

Thus, cases involving only members would have an all non-public panel; cases involving a member and an associated person (excluding cases involving a claim for statutory discrimination) would have a majority public panel; and cases involving an associated person with a statutory discrimination claim would have a specialized all public panel.[8] Moreover, if a member amends its pleadings to add an associated person, the case would receive a majority public panel, and the rules that apply to cases between associated persons and members would govern list selection and the administration of the arbitration proceeding.

Employment Disputes Involving Associated Persons

Currently, in employment disputes between or among members and associated persons, FINRA requires that the panel consist of all non-public arbitrators in cases that arise out of the employment or termination of employment of an associated person, and that relate exclusively to (1) employment contracts, (2) promissory notes, or (3) receipt of commissions. However, if a party adds a claim that does not meet these criteria, the parties receive a majority public panel.

FINRA proposed to amend Rule 13402 of the Industry Code to clarify that for all employment disputes between or among members and associated persons (except for statutory employment discrimination cases), the parties must select a majority public panel.[9] Rule 13402(a) would be amended to delete the title of the rule, which contains the exceptions to the majority public panel requirement, and replace it with a concise description, which clarifies that Rule 13402(a) would apply to disputes involving only members. Rule 13402(b) would be amended to modify the title of the rule to clarify that for all industry disputes involving associated persons (excluding disputes involving statutory employment discrimination claims), the parties would receive a majority public panel. FINRA also proposed to make similar title changes to Rules 13403(a) and 13403(b), which govern generating and sending lists to parties, and to Rules 13406(a) and 13406(b), which govern appointment of arbitrators and discretion to appoint arbitrators not on the list.

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[24] *See* proposed NYSE Arca Equities Rule 8.700(e)(1)(A).

[25] 15 U.S.C. 78f(b)(5).

[26] 15 U.S.C. 78s(b)(2).

[27] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 59836 (April 28, 2009); 74 FR 20519 (May 4, 2009).

[4] If the panel consists of one arbitrator, the arbitrator will be a non-public arbitrator selected from the non-public chairperson roster described in Rule 13400(c). *See* Rule 13402(a).

[5] If the panel consists of one arbitrator, the arbitrator will be a public arbitrator selected from the chairperson roster described in Rule 12400(c) of the Code of Arbitration Procedure for Customer Disputes (''Customer Code''). *See* Rule 13402(b).

[6] The proposed changes discussed in this order will not apply to claims filed under the Customer Code.

[7] The proposal would not apply to disputes involving a claim of statutory employment discrimination. *See* Rule 13802.

[8] *See* Rule 13802(c) (panel composition rule for statutory employment discrimination claims).

[9] The proposed change would be consistent with the rules and procedures of the former New York Stock Exchange (''NYSE'') arbitration forum. In the NYSE arbitration forum, cases involving associated persons received a majority public panel because the rules classified associated persons as non-members, and non-members received a majority public panel. *See* NYSE Rule 607(a)(1).

Employment Disputes Involving Only Members

FINRA proposed to amend Rule 13402(a) to clarify that, in disputes involving only members, the parties will receive an all non-public panel. FINRA noted that the proposed amendment to Rule 13402(a) is consistent with the current rule and its intent, which is that disputes involving only members should receive an all non-public panel.

Amendments to Pleadings That Add an Associated Person

FINRA proposed to add a provision to Rule 13402(a) to address amended pleadings that add an associated person as a party. Under the proposed rule change, if a member in a dispute involving only members amends a pleading to add a party who is an associated person, the parties will receive a majority public panel. If lists of potential arbitrators have not been sent to parties, the Neutral List Selection System (NLSS) would generate three lists as outlined in Rule 13403(b)(2) of the Industry Code. Specifically, FINRA would send a public chairperson list, a public arbitrator list, and a non-public arbitrator list. If the panel consists of one arbitrator,[10] NLSS would generate a public chairperson list, and FINRA would send this list only to the parties.[11]

If the lists have been sent to parties but are not yet due, FINRA would send two new lists to the parties: A public chairperson list and a public arbitrator list as outlined in Rule 13403(b)(2).[12] The parties would keep the non-public chairperson list provided to them as described in Rule 13403(a), and would select the non-public arbitrator from this list. The arbitrator selected from the public chairperson list would be the chairperson of the panel. If the panel consists of one arbitrator, FINRA would send only a new public chairperson list to the parties.[13]

If the ranked lists are due, then the parties may not amend a pleading to add a new party until a panel has been selected and the panel grants a motion to add the party.[14] If the panel grants the motion to add an associated person, FINRA will retain the non-public chairperson from the panel, and remove the remaining non-public arbitrators.[15] The parties would select two public arbitrators from new lists that FINRA would send to them in the same manner as if the ranked lists are not yet due. The arbitrator selected from the public chairperson list would be the chairperson of the panel. If the panel consists of one arbitrator and the arbitrator grants a motion to add an associated person, the arbitrator would be replaced with a public chair-qualified arbitrator that the parties select from a new public chairperson list that NLSS would generate.[16]

II. Discussion

After careful review, 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.[17] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[18] in that it is designed, among other things, to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change will protect the public interest by simplifying the criteria for panel composition in industry disputes, establishing an objective standard for determining panel composition, and ensuring that panel composition is determined by the types of parties involved, and not by the types of claims filed.

III. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities association.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (SR–FINRA–2009–011), as modified by Amendment No. 1, be and hereby is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–13967 Filed 6–12–09; 8:45 am]

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[10] In a dispute between members, if the panel consists of one arbitrator, the arbitrator will be selected from FINRA's non-public chairperson arbitrator roster. *See* Rule 13402(a).

[11] *See* Rule 13403(b)(1). FINRA has raised the amount in controversy that will be heard by a single chair-qualified arbitrator to $100,000. The rule became effective on March 30, 2009. *See* Exchange Act Release No. 59340 (February 2, 2009), 74 FR 6335 (February 6, 2009) (File No. SR–FINRA–2008–047); *see also* Regulatory Notice 09–13.

[12] Pursuant to Rule 13407(a), FINRA will send the list of non-public arbitrators to the new party, with employment history for the past 10 years and other background information for each arbitrator listed. The newly added party may rank and strike arbitrators in accordance with Rule 13404.

[13] *See* note 8 *supra.*

[14] *See* Rule 13309(c) of the Industry Code.

[15] Pursuant to Rule 13407(b), the newly added party may not strike the non-public arbitrator but may challenge the arbitrator for cause in accordance with Rule 13410.

[16] *See* note 8 *supra.*

[17] In approving the proposed rule change, the Commission has considered the rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[18] 15 U.S.C. 78*o*–3(b)(6).

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 6662]

Notice of Proposed Information Collection

30–Day Notice of Proposed Information Collection: Form DS–7002, Training/Internship Placement Plan, OMB Control Number 1405–0170.

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

* *Title of Information Collection:* Training/Internship Placement Plan.
* *OMB Control Number:* 1405–0170.
* *Type of Request:* Revision of a Currently Approved Collection.
* *Originating Office:* Bureau of Educational and Cultural Affairs, ECA/EC.
* *Form Number:* Form DS–7002.
* *Respondents:* Entities designated by the Department of State as sponsors of exchange visitor programs in the trainee or intern categories and U.S. businesses that provide the training or internship opportunity.
* *Estimated Number of Respondents:* 160.
* *Estimated Number of Responses:* 30,000.
* *Average Hours per Response:* 2 hours.
* *Total Estimated Burden:* 60,000.
* *Frequency:* On occasion.
* *Obligation To Respond:* Required to obtain a benefit.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from June 15, 2009.

ADDRESSES: Direct comments and questions to Katherine Astrich, the Department of State Desk Officer in the

Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), who may be reached at 202–395–4718. You may submit comments by any of the following methods:

* *E-mail: kastrich@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.

* *Mail (paper, disk, or CD–ROM submissions):* Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503.

* *Fax:* 202–395–5806.

FOR FURTHER INFORMATION CONTACT: You may obtain copies of the proposed information collection and supporting documents from Stanley S. Colvin, Deputy Assistant Secretary for Private Sector Exchange, U.S. Department of State, SA–44, 301 4th Street, SW., Room 734, Washington, DC 20547; or e-mail at *jexchanges@state.gov.*

SUPPLEMENTARY INFORMATION:

We are soliciting public comments to permit the Department to:

* Evaluate whether the proposed information collection is necessary to properly perform our functions.

* Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.

* Enhance the quality, utility, and clarity of the information to be collected.

* Minimize the reporting burden on those who are to respond,

Abstract of Proposed Collection

The collection is the continuation of information collected and needed by the Bureau of Educational and Cultural Affairs in administering the Exchange Visitor Program (J–Visa) under the provisions of the Mutual Educational and Cultural Exchange Act, as amended. Trainee/Internship Placement Plans are to be completed by designated program sponsors. A Training/Internship Placement Plan is required for each trainee or intern participant. It will set forth the training or internship program to be followed and includes the skills the trainee or intern will obtain, whether the trainee or intern will receive any remuneration for housing and living expenses (and if so, the amount), and estimates the living expenses and other costs the trainees or interns are likely to incur while in the United States. The Plan must be signed by the trainee or intern, a sponsor official, and the third party placement organization, if a third party organization is used in the conduct of the training or internship.

Methodology

The collection will be submitted to the Department by mail or fax as requested by DoS during the review of a program sponsor's file, redesignation of a sponsor organization, during the investigation of a complaint or incident, etc.

Dated: June 8, 2009.

Stanley S. Colvin,

Deputy Assistant Secretary for Private Sector Exchange, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. E9–14012 Filed 6–12–09; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub-No. 275)]

Union Pacific Railroad Company—Abandonment—in Rusk County, TX

On May 26, 2009, Union Pacific Railroad Company (UP) filed with the Board an application for permission to abandon its Henderson Industrial Lead, extending from milepost 0.59, near Overton, to milepost 16.28, near Henderson, a distance of 15.69 miles, in Rusk County, TX (the Henderson Industrial Lead or the line). The line includes no stations and traverses United States Postal Service ZIP Code 75652.

The line does not contain federally granted rights-of-way. Any documentation in UP's possession will be made available promptly to those requesting it. The applicant's entire case for abandonment (case-in-chief) was filed with the application.

This line of railroad has appeared on UP's system diagram map or been included in the narrrative in category 1 since August 28, 2008.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

Any interested person may file with the Board written comments concerning the proposed abandonment, or protests (including the protestant's entire case in opposition), by July 10, 2009. All interested persons should be aware that following any abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 U.S.C. 10905 (49 CFR 1152.28) and any request for a trail use condition under 16 U.S.C. 1247(d) (49 CFR 1152.29) must be filed by July 10, 2009. Each trail use request must be accompanied by a $250 filing fee. *See* 49 CFR 1002.2(f)(27). Applicant's reply to any opposition statements and its response to trail use requests must be filed by July 27, 2009. *See* 49 CFR 1152.26(a).

Persons opposing the abandonment who wish to participate actively and fully in the process should file a protest. Persons who oppose the abandonment but who do not wish to participate fully in the process by submitting verified statements of witnesses containing detailed evidence should file comments. Persons seeking information concerning the filing of protests should refer to 49 CFR 1152.25. Persons interested only in seeking public use or trail use conditions should also file comments.

In addition, a commenting party or protestant may provide: (i) An offer of financial assistance (OFA) for continued rail service under 49 U.S.C. 10904 (due 120 days after the application is filed or 10 days after the application is granted by the Board, whichever occurs sooner); (ii) recommended provisions for protection of the interests of employees; (iii) a request for a public use condition under 49 U.S.C. 10905; and (iv) a statement pertaining to prospective use of the right-of-way for interim trail use and rail banking under 16 U.S.C. 1247(d) and 49 CFR 1152.29.

All filings in response to this notice must refer to STB Docket No. AB–33 (Sub-No. 275) and must be sent to: (1) Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001; and (2) Mack H. Shumate, Jr., Senior General Attorney, 101 North Wacker Drive, Room 1920, Chicago, IL 60606. The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service. Except as otherwise set forth in part 1152, every document filed with the Board must be served on all parties to the abandonment proceeding. 49 CFR 1104.12(a).

The line sought to be abandoned will be available for subsidy or sale for continued rail use, if the Board decides to permit the abandonment, in accordance with applicable laws and regulations (49 U.S.C. 10904 and 49 CFR 1152.27). Each OFA must be accompanied by a $1,500 filing fee.[1] *See* 49 CFR 1002.2(f)(25). No subsidy arrangement approved under 49 U.S.C. 10904 shall remain in effect for more

[1] On June 4, 2009, the Board increased the fee for offers of financial assistance and trail use requests. *See Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services—2009 Update*, STB Ex Parte No. 542 (Sub-No. 16) (STB served May 5, 2009).

than 1 year unless otherwise mutually agreed by the parties (49 U.S.C. 10904(f)(4)(B)). Applicant will promptly provide upon request to each interested party an estimate of the subsidy and minimum purchase price required to keep the line in operation. The carrier's representative to whom inquiries may be made concerning sale or subsidy terms is set forth above.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0230 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 33 days of the filing of the application. The deadline for submission of comments on the EA will generally be within 30 days of its service. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: June 8, 2009.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. E9–13834 Filed 6–12–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Special Permit

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for modification of special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modification of special permits (*e.g.*, to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. These applications have been separated from the new application for special permits to facilitate processing.

DATES: Comments must be received on or before June 30, 2009.

ADDRESS COMMENTS TO: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue, Southeast, Washington, DC or at *http://fdms.gov.*

This notice of receipt of applications for modification of special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on June 2, 2009.

Delmer F. Billings,

Director, Office of Hazardous, Materials, Special Permits and Approvals.

MODIFICATION SPECIAL PERMITS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permit thereof
8495—M		Kidde Aerospace, Wilson, NC.	49 CFR 173.304(a)(1) 178.47; 175.3.	To modify the special permit to authorize the removal of the girth weld process and the post weld x-ray inspection.
9408–M		MEMC Pasadena, Inc., Pasadena, TX.	49 CFR 173.301(d)(2); 173.302.	To modify the special permit to authorize the lowering of service pressure from 2200 to 1600 psi.
11156–M		Alaska Pacific Powder Company, Anchorage, AK.	49 CFR 173.62; 173.212(b).	To modify the special permit to authorize cargo aircraft as an authorized mode of transport.
13556–M		Stericycle, Inc., Lake Forest, IL.	49 CFR 172.301(a)(1); 172.301(c).	To modify the special permit to delete the requirement that no other lading is authorized in the vehicle.
14466–M		Alaska Pacific Powder Company, Anchorage, AK.	49 CFR 172.101 Column (9B).	To modify the special permit to authorize additional Division 2.1 hazardous materials.
14584–M		WavesinSolids LLC, State College, PA.	49 CFR 173.302 and 180.209.	To modify the special permit to authorize additional cylinders and to allow cylinders to be charged to 110 percent of the usual settled filled pressure or 110 percent of the stamped service pressure (whichever is greater).
14600–M		McLane Company, Inc., Temple, TX.	49 CFR 173.308	To modify the special permit to authorize two addtional BIC lighters.

MODIFICATION SPECIAL PERMITS—Continued

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permit thereof
14817–M	.....	Questar, Inc., North Canton, OH.	49 CFR 173.12(b)(2)	To modify the special permit to authorize the manufacture, marking, sale and use of a larger (66 gallon) corrugated fiberboard box for use as the outer packaging for lab pack applications in accordance with 49 CFR 173.12(b).

[FR Doc. E9–13932 Filed 6–12–09; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2009–21]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before July 6, 2009.

ADDRESSES: You may send comments identified by Docket Number FAA–2009–0320 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Maria G. Delgado, ANM–113, (425) 227–2775, FAA, Transport Airplane Directorate, 1601 Lind Ave., SW., Renton, Washington 98057–3356; or Ralen Gao, ARM–200, (202) 267–3168, FAA, Office of Rulemaking, 800 Independence Ave., SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on June 9, 2009.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2009–0320.

Petitioner: The Boeing Company.

Sections of 14 CFR Affected: §§ 25.301, 25.303, 25.305, 25.307, 25.601, 25.603, 25.613, 25.901(b)(2), 25.901(c), 25.1103(d), 25.1191, and 25.1301(d).

Description of Relief Sought: The petitioner requests an exemption from the requirements for the thrust reverser inner wall structure and operating temperatures, and from the requirements for addressing a pneumatic duct failure condition. The exemption would apply to certain Boeing Model 777–200 and –300 series airplanes equipped with Rolls-Royce RB211 Trent 800 series turbofan engines. The exemption, if granted, would be time-limited to permit the incorporation of incremental design improvements to the thrust reverser and engine as they become available, in order to reduce the risk of a hazardous thrust reverser inner wall failure.

[FR Doc. E9–13930 Filed 6–12–09; 8:45 am]

BILLING CODE 4910–13–P

TENNESSEE VALLEY AUTHORITY

Environmental Impact Statement; Integrated Resource Plan

AGENCY: Tennessee Valley Authority.

ACTION: Notice of intent.

SUMMARY: The Tennessee Valley Authority (TVA) is conducting a comprehensive study of its energy, resource and sustainability choices called TVA's Environmental and Energy Future. The purpose of this study is to evaluate TVA's portfolio of resource options for achieving a sustainable future and meeting the future electrical energy and resource stewardship needs of the Tennessee Valley. As part of the study, TVA will prepare a programmatic environmental impact statement (EIS). TVA will use the EIS process to elicit and prioritize the values and concerns of stakeholders; identify issues, trends, events, and tradeoffs affecting TVA's policies; formulate, evaluate and compare alternative portfolios of resource options; provide opportunities for public review and comment; and ensure that TVA's evaluation of future resource portfolios reflects a full range of stakeholder input. Public comment is invited concerning both the scope of the EIS and environmental issues that should be addressed as a part of this EIS.

DATES: Comments on the scope of the EIS must be received on or before August 14, 2009. Public meetings will be held to obtain comments on the scope of the EIS and to provide information about TVA's planning processes. The locations and times for these meetings will be announced later on the project Web site and in local and regional newspapers.

ADDRESSES: Written comments should be sent to Charles P. Nicholson, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 11D, Knoxville, Tennessee 37902. Comments also may be submitted on the project Web site at *http://www.tva.gov/irp,* by e-mail at *IRP@tva.gov,* or by fax at 865–632–2345.

FOR FURTHER INFORMATION CONTACT: Randall E. Johnson, IRP Project Manager, Tennessee Valley Authority, 1101 Market Street, LP 5U, Chattanooga, Tennessee 37401, telephone 423–751–3520, or e-mail *rejohnson1@tva.gov.*

SUPPLEMENTARY INFORMATION:

Background

This notice is provided in accordance with the Council on Environmental Quality's Regulations (40 CFR parts 1500 to 1503) and TVA's procedures for implementing the National Environmental Policy Act (NEPA).

TVA is an agency and instrumentality of the United States, established by an act of Congress in 1933, to foster the social and economic welfare of the people of the Tennessee Valley region and to promote the proper use and conservation of the region's natural resources. One component of this mission is the generation, transmission, and sale of reliable and affordable electric energy. Another component of this mission is to manage the natural resources of the Valley for the benefit of the region and the nation. This is done through management of the Tennessee River system and associated public lands to reduce flood damage, maintain navigation, support power production and recreational uses, improve water quality and supply, and protect shoreline resources. TVA's mission also includes aiding the economic development of the Valley in order to benefit the people of the region and being a leader in technological innovation.

TVA Power System

TVA operates the nation's largest public power system, producing 4 percent of all the electricity in the nation. TVA provides electricity to most of Tennessee and parts of Virginia, North Carolina, Georgia, Alabama, Mississippi, and Kentucky. It serves about 9 million people in this seven-State region through 158 power distributors and 58 directly served large industries and Federal facilities. The TVA Act requires the TVA power system to be self-supporting and operated on a nonprofit basis and directs TVA to sell power at rates as low as are feasible.

Dependable capacity on the TVA power system is about 37,000 megawatts. TVA generates most of this with 3 nuclear plants, 11 coal-fired plants, 9 combustion-turbine plants, 29 hydroelectric dams, a pumped-storage facility, a wind farm, a methane-gas cofiring facility, and several small solar photovoltaic facilities. A portion of delivered power is provided through long-term power purchase agreements. About 60 percent of TVA's annual generation is from fossil fuels, predominantly coal; 30 percent is from nuclear; and the remainder is from hydro and other renewable energy resources. TVA transmits electricity from these facilities over 15,000 miles of transmission lines. Like other utility systems, TVA has power interchange agreements with utilities surrounding its region and purchases and sells power on an economy basis almost daily.

Energy Power Planning Activities

In the mid-1990s, TVA developed an integrated resource plan with extensive public involvement. This process was completed with publication of the Energy Vision 2020 IRP/Final EIS in 1995 and the associated Record of Decision in 1996. Based on the extensive evaluation, TVA decided to adopt a flexible portfolio of supply- and demand-side energy resource options to meet the growing demand for electricity in the region and achieve the goals of the TVA Act and other congressional directives. This portfolio of energy resource options, as amended through subsequent EISs, will be a baseline for evaluations conducted as part of this EIS process. As appropriate, TVA expects to continue to implement the existing portfolio of resource options during this EIS process.

Environmental Stewardship Planning Activities

The management of the Tennessee Valley reservoirs and the lands adjacent to them, and the manner in which TVA complies with environmental laws and regulations, have long been integral components of TVA's mission. In carrying out its mandate, TVA developed an integrated reservoir system that includes 49 dams and reservoirs. TVA originally acquired approximately 1.3 million acres of land for these projects. The construction and operation of the reservoir system inundated approximately 470,000 acres with water. TVA has transferred or sold approximately 508,000 acres, the majority of which was transferred to other Federal and State agencies for public uses. TVA retains a role in the management of much of this land through deed restrictions. TVA currently owns approximately 293,000 acres which continue to be managed for a variety of purposes including recreation, wildlife habitat, and resource protection. TVA recognizes that these resources and their management are important for the region's quality of life.

In 2006, the TVA Board of Directors approved the TVA Land Policy which states that it is TVA's policy to preserve reservoir lands remaining under its control in public ownership except in those rare instances where the benefits to the public will be so significant that transferring lands from TVA control to private ownership or another public entity is justified.

TVA has addressed environmental stewardship policies and activities in two programmatic EISs. In 2004, TVA completed the comprehensive Reservoir Operations Study which supported the adoption of robust policy for the integrated operation of TVA's reservoir system. In 1998, TVA completed the Shoreline Management Initiative Final EIS which supported the adoption of a policy for the management of residential shoreline development on TVA reservoirs. As appropriate, TVA expects to continue to implement these policies and employ associated resource tools during this EIS process. These policies will help provide the baseline for the IRP EIS, and TVA does not plan to revisit them in this EIS. The IRP EIS will focus on stewardship activities mainly occurring on TVA's lands across the Valley.

Existing TVA Policies

In 2007, the TVA Board adopted its current strategic plan which sets the following broad objectives: (1) Maintain power reliability, provide competitive rates, and build trust with TVA's customers; (2) build pride in TVA's performance and reputation; (3) adhere to a set of sound financial guiding principles to improve TVA's fiscal performance; (4) use TVA's assets to meet market demand and deliver public value; and (5) improve performance to be recognized as an industry leader. In 2008, the TVA Board approved the current environmental policy which sets forth broad environmental goals for TVA in the six major categories of climate change mitigation, air quality improvement, water resource protection and improvement, waste minimization, sustainable land use, and natural resource management. The IRP will use these goals and objectives as guidance to help formulate alternative resource portfolios and determine their value. TVA would appreciate stakeholder input on the value of these goals and objectives.

Proposed Issues To Be Addressed

Based on both internal and external stakeholder discussions, TVA anticipates that the major issues to be addressed in the IRP EIS will be the cost and reliability of power, the effects of power production on the environment, including climate change, the effects of climate change on the Valley, the availability and use of renewable power resources, the effectiveness and implementation of demand side management options, including energy efficiency, handling waste and byproducts of TVA's power operations, selecting and prioritizing techniques for the management of ecological and cultural resources, meeting the future recreational needs of the Valley, and the relationship of the economy to all of these activities. Generic resource options will be the primary focus of the EIS.

Because of the programmatic nature of this study, TVA anticipates that the environmental effects which are examined will primarily be those at a regional level with some extending to a national or global level. This would include such potential environmental effects and issues as emissions of greenhouse gases, air quality, water quality and quantity, waste generation and disposal, and ecological and cultural resources. Socioeconomic impacts within the region that may result from alternative energy and stewardship strategies will also be considered. The more site-specific effects will not be addressed in detail and would be addressed in later tiered assessments of specific implementing activities.

This list of issues is preliminary and is intended to facilitate public comment on the scope of this EIS. TVA invites suggestions concerning the list of issues which should be addressed. TVA also invites specific comments on the questions that will begin to be answered by IRP:

* How should TVA measure its success in the future?

* Should the current power generation mix (*e.g.,* coal, nuclear power, natural gas, hydro, renewables) change? If so, how?

* Should renewable power be available and added in the Valley at a significant scale? If so, how?

* How should energy efficiency and demand response be considered in planning for future energy needs and how can TVA directly affect electricity usage by consumers?

* What stewardship activities should TVA focus on over the next 10–20 years?

* And how will all of this affect reliability and the price we pay for electricity?

Analytical Approach

The IRP/EIS will address the demand for power and stewardship in the TVA service area, the value of various resource options to the public served by TVA, the means of meeting that demand, and the potential environmental, economic, and operating effects of those means. The IRP/EIS will project future resource demands over at least a 10–20-year period.

Generally speaking, TVA will conduct the following steps in the IRP process:

1. Demand forecasting for both power and stewardship resources in the Valley.

2. Resource characterization to define the resource options and their physical, cost, and environmental characteristics.

3. Implementation strategy building by creating alternative resource portfolios.

4. Risk characterization to determine various types of risk for different resources.

5. A multi-attribute tradeoff analysis which will help show tradeoffs that may have to be made in the selection of competing resource options.

6. Finally, and most importantly, the study will evaluate how the various options help TVA meet its legislated mission and the constraints imposed by Congress and the Administration through various laws and regulations, both specific to TVA and for our society in general.

These steps would be conducted in an iterative manner to test alternative portfolios or strategies with the goal of identifying a number of alternative strategies that are robust in the sense that they perform reasonably well under a number of scenarios.

Scoping Process

While most people value reliable, affordable, and environmentally friendly electricity along with resource protection and recreation opportunities, different people place different weight on these values. Some are more concerned about energy prices, some on reliability of energy services, while others are more concerned about environmental quality. Ultimately, it is TVA's responsibility to balance all of these factors as it plans for the future. We believe strongly that if we get a diverse group of interested people to participate, our plans for the next 10–20 years will best serve the Valley.

Scoping, which is integral to the process for implementing NEPA, provides an early and open process to ensure that (1) issues are identified early and properly studied; (2) issues of little significance do not consume substantial time and effort; (3) the draft EIS is thorough and balanced; and (4) delays caused by an inadequate EIS are avoided.

With the help of the public, TVA will identify the most effective energy and resource stewardship portfolio that will meet TVA's mission and serve the people of the Valley for the next 10–20 years. To ensure that the full range of issues and a comprehensive portfolio of energy resources and environmental stewardship activities are addressed, TVA invites members of the public as well as Federal, State, and local agencies and Indian tribes to comment on the scope of the IRP EIS. As part of the EIS process, TVA anticipates asking representatives from key stakeholder groups to participate in a public review group which will meet several times over the course of the study to learn about the issues, discuss tradeoffs association with different resource options, and work with TVA on what a model resource portfolio will look like. It is important that Valley residents and all of those interested in planning the energy and stewardship future of the Tennessee Valley region participate in this process. As part of both the scoping and draft EIS review processes, TVA intends to seek out the views of and meet regularly with members of the public, representatives of various stakeholder groups, and the public review group.

TVA will hold public information meetings about the IRP EIS. The dates and locations of the information meetings will be posted on the IRP EIS Web site and published in local and regional newspapers.

Comments on the scope of this EIS should be submitted no later than the date given under the **DATES** section of this notice. Any comments received, including names and addresses, will become part of the administrative record and will be available for public inspection.

After consideration of the comments received during this scoping period, TVA will develop and distribute a document which will summarize public and agency comments that were received and identify the issues and alternatives to be addressed in the EIS and identify the schedule for completing the EIS process. Following analysis of the issues, TVA will prepare a draft EIS for public review and comment. Notice of availability of the draft EIS will be published by the U.S. Environmental Protection Agency in the **Federal Register**. TVA will solicit comments on the draft EIS and hold

public meetings to address it. TVA expects to release the draft EIS in early 2010.

Dated: June 8, 2009.

Anda A. Ray,

Senior Vice President, Office of Environment and Research.

[FR Doc. E9–13986 Filed 6–12–09; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0681]

Agency Information Collection (IL Assessment) Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 15, 2009.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0681'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@va.gov*. Please refer to ''OMB Control No. 2900–0681.''

SUPPLEMENTARY INFORMATION:

Title: Preliminary Independent Living (IL) Assessment, VA Form 28–0791.

OMB Control Number: 2900–0681.

Type of Review: Extension of a currently approved collection.

Abstract: VA case managers use VA Form 28–0791 while evaluating the independent living needs of veterans with severe disabilities. The data is used to determine the scope of the veteran's independent living needs under the Vocational Rehabilitation and Employment program.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 3, 2009, at pages 15325–15326.

Affected Public: Individuals or households.

Estimated Annual Burden: 2,500.

Estimated Average Burden per Respondent: 1 hour.

Frequency of Response: One-time.

Estimated Number of Respondents: 2,500.

Dated: June 10, 2009.

By direction of the Secretary:

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–13984 Filed 6–12–09; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Monday,
June 15, 2009

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 218

Taking and Importing Marine Mammals; U.S. Navy Training in the Virginia Capes Range Complex, Taking and Importing Marine Mammals; U.S. Navy Training in the Jacksonville Range Complex, Taking and Importing Marine Mammals; U.S. Navy Training in the Cherry Point Range Complex; Final Rules

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 218

RIN 0648–AW78

Taking and Importing Marine Mammals; U.S. Navy Training in the Virginia Capes Range Complex

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

ACTION: Final rule.

SUMMARY: NMFS, upon application from the U.S. Navy (Navy), is issuing regulations to govern the unintentional taking of marine mammals incidental to activities conducted at the Virginia Capes (VACAPES) Range Complex for the period of June 2009 through June 2014. The Navy's activities are considered military readiness activities pursuant to the Marine Mammal Protection Act (MMPA), as amended by the National Defense Authorization Act for Fiscal Year 2004 (NDAA). These regulations, which allow for the issuance of ''Letters of Authorization'' (LOAs) for the incidental take of marine mammals during the described activities and specified timeframes, prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species and their habitat, as well as requirements pertaining to the monitoring and reporting of such taking.

DATES: Effective June 8, 2009 and is applicable to the Navy on June 5, 2009 through June 4, 2014.

ADDRESSES: A copy of the Navy's application (which contains a list of the references used in this document), NMFS' Record of Decision (ROD), and other documents cited herein may be obtained by writing to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225 or by telephone via the contact listed here (see **FOR FURTHER INFORMATION CONTACT**). Additionally, the Navy's LOA application may be obtained by visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.*

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS, (301) 713–2289, ext. 137.

SUPPLEMENTARY INFORMATION:

Extensive Supplementary Information was provided in the proposed rule for this activity, which was published in the **Federal Register** on Friday, December 12, 2008 (73 FR 75631). This information will not be reprinted here in its entirety; rather, all sections from the proposed rule will be represented herein and will contain either a summary of the material presented in the proposed rule or a note referencing the page(s) in the proposed rule where the information may be found. Any information that has changed since the proposed rule was published will be addressed herein. Additionally, this final rule contains a section that responds to the comments received during the public comment period.

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) during periods of not more than five consecutive years each if certain findings are made and regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as:

> An impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The NDAA (Pub. L. 108–136) removed the ''small numbers'' and ''specified geographical region'' limitations and amended the definition of ''harassment'' as it applies to a ''military readiness activity'' to read as follows (Section 3(18)(B) of the MMPA):

> (i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or
>
> (ii) Any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].

Summary of Request

On March 17, 2008, NMFS received an application from the Navy requesting authorization for the take of 13 cetacean species incidental to the proposed training activities in the VACAPES Range Complex over the course of 5 years. These training activities are classified as military readiness activities. The Navy states that these training activities may cause various impacts to marine mammal species in the proposed VACAPES Range Complex area. The Navy requests an authorization to take individuals of these cetacean species by Level B Harassment. Further, the Navy requests authorization to take 1 individual Atlantic spotted, 20 common, 1 pantropical spotted, and 3 striped dolphins per year by injury, and 1 individual common dolphin per year by mortality, as a result of the proposed training activities in the VACAPES Range Complex. Please refer to Table 29 of the LOA application for detailed information of the potential exposures from explosive ordnance (per year) for marine mammals in the VACAPES Range Complex. However, due to the proposed mitigation and monitoring measures, NMFS does not expect that the proposed action would result in any marine mammal mortality. Therefore, no mortality would be authorized for the Navy's VACAPES Range Complex training activities.

Background of Navy Request

The proposed rule contains a description of the Navy's mission, their responsibilities pursuant to Title 10 of the United States Code, and the specific purpose and need for the activities for which they requested incidental take authorization. The description contained in the proposed rule has not changed (73 FR 75631; December 12, 2008).

Description of the Specified Activities

The proposed rule contains a complete description of the Navy's specified activities that are covered by these final regulations, and for which the associated incidental take of marine mammals will be authorized in the related LOAs. The proposed rule describes the nature and number of the training activities. These training activities consist of surface warfare [Missile Exercise (MISSILEX) and High-speed Anti-Radiation Missile Exercise (HARMEX)], mine warfare [Mine Exercises (MINEX)], amphibious warfare

[Firing Exercise (FIREX)], strike warfare [Bombing Exercise (BOMBEX)], and vessel movement to, from and within the VACAPES Range Complex Study Area. The narrative description of the action contained in the proposed rule has not changed. Table 1 summarizes the nature and levels of these planned activities.

TABLE 1—LEVELS OF TRAINING EVENTS INVOLVE EXPLOSIVES PLANNED IN THE VACAPES RANGE COMPLEX PER YEAR

Operation	Platform	System/ordnance	Number of events	Duration per event
Missile Exercise (MISSILEX) (Air to Surface).	MH–60S, HH–60H	AGM–114 (Hellfire missile)	60 sorties (60 missiles)	1 hour.
	F/A–18, P–3C, and P–8A	AGM–65 E/F (Maverick missile).	20 sorties (20 missiles)	1 hour.
Bombing Exercise (BOMBEX) (Air-to-Surface, At-Sea).	F/A–18	MK–83/GBU–32 [1,000 lb High Explosive (HE) bomb].	5 events (20 bombs, 4 bombs/event).	1 hour.
Mine Neutralization	MH–60S	AMNS	140 sorties (30 rounds)	1.5 hours.
	EOD	20 lb charges	24 events	6–8 hours.
FIREX with IMPASS	CG, DDG	5″ gun (IMPASS)	22 events (858 HE rounds, 39 HE per event)).	8 hours.

VACAPES Range Complex

The VACAPES Range Complex proposed rule contains a description of the VACAPES Study Area along with a description of the areas in which certain types of activities will occur. Table 2, included here, summarizes the areas in which explosive events will occur and their frequency of occurrence. The description of the VACAPES Range Complex Study Area in the proposed rule has not changed.

TABLE 2—NUMBER OF EVENTS UTILIZING MUNITIONS WITHIN THE VACAPES RANGE COMPLEX

Sub-area	Ordnance	Winter	Spring	Summer	Fall	Annual totals
	MISSILEX					80
Air-K	Hellfire	11.25	11.25	11.25	11.25	
W–72A (2)	Hellfire	3.75	3.75	3.75	3.75	
Air-K	Maverick	5	5	5	5	
	FIREX					22
5C/D	5″ rounds	1.83	1.83	1.83	1.83	
7C/D and 8C/D	5″ rounds	1.83	1.83	1.83	1.83	
1C1/2	5″ rounds	1.83	1.83	1.83	1.83	
	MINEX					54
W–50 UNDET	5 LB*	7.50	7.50	7.50	7.50	
W–50 UNDET	20 LB	4.00	4.00	12.00	4.00	
	BOMBEX					5
Air-K	MK–83**	1.25	1.25	1.25	1.25	

* The use of 3.24 lb charges during AMNS training were conservatively modeled as 5 lb charges.
** One event using the MK–83 bombs consists of 4 bombs being dropped in succession. For example, in VACAPES Air-K there are 5 MK–83 events, which mean that a total of 20 bombs will be dropped per year.

Description of Marine Mammals in the Area of the Specified Activities

There are 34 marine mammal species with possible or confirmed occurrence in the VACAPES Range Complex. As indicated in Table 3, there are 33 cetacean species (7 mysticetes and 26 odontocetes) and one pinniped species. Table 6 also includes the federal status of these marine mammal species. Six marine mammal species listed as federally endangered under the Endangered Species Act (ESA) occur in the VACAPES Range Complex: the humpback whale, North Atlantic right whale, sei whale, fin whale, blue whale, and sperm whale. Although it is possible that any of the 34 species of marine mammals may occur in the VACAPES Range Complex, only 24 of those species are expected to occur regularly in the region. The proposed rule also includes a discussion of the methods used to estimate marine mammal density in the VACAPES Study Area. The Description of Marine Mammals in the Area of the Specified Activities section has not changed from what was in the proposed rule (73 FR 75631, pages 75635–75636).

TABLE 3—MARINE MAMMAL SPECIES FOUND IN THE VACAPES RANGE COMPLEX

Family and scientific name	Common name	Federal status
Order Cetacea		
Suborder Mysticeti (baleen whales)		
Eubalaena glacialis	North Atlantic right whale	Endangered.
Megaptera novaeangliae	Humpback whale	Endangered.
Balaenoptera acutorostrata	Minke whale.	

TABLE 3—MARINE MAMMAL SPECIES FOUND IN THE VACAPES RANGE COMPLEX—Continued

Family and scientific name	Common name	Federal status
B. brydei	Bryde's whale.	
B. borealis	Sei whale	Endangered.
B. physalus	Fin whale	Endangered.
B. musculus	Blue whale	Endangered.
Suborder Odontoceti (toothed whales)		
Physeter macrocephalus	Sperm whale	Endangered.
Kogia breviceps	Pygmy sperm whale.	
K. sima	Dwarf sperm whale.	
Ziphius cavirostris	Cuvier's beaked whale.	
Mesoplodon minus	True's beaked whale.	
M. europaeus	Gervais' beaked whale.	
M. bidens	Sowerby's beaked whale.	
M. densirostris	Blainville's beaked whale.	
Steno bredanensis	Rough-toothed dolphin.	
Tursiops truncatus	Bottlenose dolphin.	
Stenella attenuata	Pantropical spotted dolphin.	
S. frontalis	Atlantic spotted dolphin.	
S. longirostris	Spinner dolphin.	
S. clymene	Clymene dolphin.	
S. coeruleoalba	Striped dolphin.	
Delphinus delphis	Common dolphin.	
Lagenodephis hosei	Fraser's dolphin.	
Lagenorhynchus acutus	Atlantic white-sided dolphin.	
Grampus griseus	Risso's dolphin.	
Peponocephala electra	Melon-headed whale.	
Feresa attenuata	Pygmy killer whale.	
Pseudorca crassidens	False killer whale.	
Orcinus orca	Killer whale.	
Globicephala melas	Long-finned pilot whale.	
G. macrorhynchus	Short-finned pilot whale.	
Phocoena phocoena	Harbor porpoise.	
Order Carnivora		
Suborder Pinnipedia		
Phoca vitulina	Harbor seal.	
Suborder Sirenia		
Trichechus manatus	West Indian manatee.	

Potential Impacts to Marine Mammal Species

With respect to the MMPA, NMFS' effects assessment serves four primary purposes: (1) to prescribe the permissible methods of taking (*i.e.,* Level B Harassment (behavioral harassment), Level A Harassment (injury), or mortality, including an identification of the number and types of take that could occur by Level A or B harassment or mortality) and to prescribe other means of effecting the least practicable adverse impact on such species or stock and its habitat (*i.e.,* mitigation); (2) to determine whether the specified activity will have a negligible impact on the affected species or stocks of marine mammals (based on the likelihood that the activity will adversely affect the species or stock through effects on annual rates of recruitment or survival); (3) to determine whether the specified activity will have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (however, there are no subsistence communities in the VACAPES study area); and (4) to prescribe requirements pertaining to monitoring and reporting.

In the Potential Impacts to Marine Mammal Species section of the proposed rule, NMFS included a qualitative discussion of the different ways that underwater explosive detonations from MISSILEX, BOMBEX, MINEX, and FIREX may potentially affect marine mammals (some of which NMFS would not classify as harassment). See 73 FR 75631; December 12, 2008; pages 75636–75646. Marine mammals may experience direct physiological effects (such as threshold shift), acoustic masking, impaired communications, stress responses, and behavioral disturbance. The information contained in Potential Impacts to Marine Mammal Species section from MISSILEX, BOMBEX, MINEX, and FIREX from the proposed rule has not changed.

The information pertaining to HARMEX has changed from the Proposed Rule. Further analyses show that HARMEX would have no effects on marine mammals because these types of missiles detonate 30–60 ft (9.1–18.3 m) above the water surface. Therefore, they are not included in the underwater explosive exposure modeling in the Final Rule since no marine mammal exposures are anticipated.

Later, in the Estimated Take of Marine Mammals Section, NMFS relates and quantifies the potential effects to marine mammals from underwater detonation of explosives discussed here to the MMPA definitions of Level A and Level B Harassment. NMFS has also considered the effects of mortality on

these species, although mortality is neither expected, nor will it be authorized.

Additional analyses on potential impacts to marine mammals from vessel movement within the VACAPES Range Complex Study Area are added below.

Vessel Movement

There are limited data concerning marine mammal behavioral responses to vessel traffic and vessel noise, and a lack of consensus among scientists with respect to what these responses mean or whether they result in short-term or long-term adverse effects. In those cases where there is a busy shipping lane or where there is large amount of vessel traffic, marine mammals may experience acoustic masking (Hildebrand, 2005) if they are present in the area (*e.g.,* killer whales in Puget Sound; Foote *et al.,* 2004; Holt *et al.,* 2008). In cases where vessels actively approach marine mammals (*e.g.,* whale watching or dolphin watching boats), scientists have documented that animals exhibit altered behavior such as increased swimming speed, erratic movement, and active avoidance behavior (Bursk, 1983; Acevedo, 1991; Baker and MacGibbon, 1991; Trites and Bain, 2000; Williams *et al.,* 2002; Constantine *et al.,* 2003), reduced blow interval (Ritcher *et al.,* 2003), disruption of normal social behaviors (Lusseau, 2003; 2006), and the shift of behavioral activities which may increase energetic costs (Constantine *et al.,* 2003; 2004)). A detailed review of marine mammal reactions to ships and boats is available in Richardson *et al.* (1995). For each of the marine mammals taxonomy groups, Richardson *et al.* (1995) provided the following assessment regarding cetacean reactions to vessel traffic:

Toothed whales: ''In summary, toothed whales sometimes show no avoidance reaction to vessels, or even approach them. However, avoidance can occur, especially in response to vessels of types used to chase or hunt the animals. This may cause temporary displacement, but we know of no clear evidence that toothed whales have abandoned significant parts of their range because of vessel traffic.''

Baleen whales: ''When baleen whales receive low-level sounds from distant or stationary vessels, the sounds often seem to be ignored. Some whales approach the sources of these sounds. When vessels approach whales slowly and nonaggressively, whales often exhibit slow and inconspicuous avoidance maneuvers. In response to strong or rapidly changing vessel noise, baleen whales often interrupt their normal behavior and swim rapidly away. Avoidance is especially strong when a boat heads directly toward the whale.''

It is important to recognize that behavioral responses to stimuli are complex and influenced to varying degrees by a number of factors such as species, behavioral contexts, geographical regions, source characteristics (moving or stationary, speed, direction, etc.), prior experience of the animal, and physical status of the animal. For example, studies have shown that beluga whales reacted differently when exposed to vessel noise and traffic. In some cases, naïve beluga whales exhibited rapid swimming from ice-breaking vessels up to 80 km away, and showed changes in surfacing, breathing, diving, and group composition in the Canadian high Arctic where vessel traffic is rare (Finley *et al.,* 1990). In other cases, beluga whales were more tolerant of vessels, but differentially responsive by reducing their calling rates, to certain vessels and operating characteristics (especially older animals) in the St. Lawrence River where vessel traffic is common (Blane and Jaakson, 1994). In Bristol Bay, Alaska, beluga whales continued to feed when surrounded by fishing vessels and resisted dispersal even when purposefully harassed (Fish and Vania, 1971).

In reviewing more than 25 years of whale observation data, Watkins (1986) concluded that whale reactions to vessel traffic were ''modified by their previous experience and current activity: habituation often occurred rapidly, attention to other stimuli or preoccupation with other activities sometimes overcame their interest or wariness of stimuli.'' Watkins noticed that over the years of exposure to ships in the Cape Cod area, minke whales (*Balaenoptera acutorostrata*) changed from frequent positive (such as approaching vessels) interest to generally uninterested reactions; finback whales (*B. physalus*) changed from mostly negative (such as avoidance) to uninterested reactions; right whales (*Eubalaena glacialis*) apparently continued the same variety of responses (negative, uninterested, and positive responses) with little change; and humpbacks (*Megaptera novaeangliae*) dramatically changed from mixed responses that were often negative to often strongly positive reactions. Watkins (1986) summarized that ''whales near shore, even in regions with low vessel traffic, generally have become less wary of boats and their noises, and they have appeared to be less easily disturbed than previously. In particular locations with intense shipping and repeated approaches by boats (such as the whale-watching areas of Stellwagen Bank), more and more whales had P [positive] reactions to familiar vessels, and they also occasionally approached other boats and yachts in the same ways.''

In the case of the VACAPES Range Complex, naval vessel traffic is expected to be much lower than in areas where there are large shipping lanes and large numbers of fishing vessels and/or recreational vessels. Nevertheless, the proposed action area is well traveled by a variety of commercial and recreational vessels, so marine mammals in the area are expected to be habituated to vessel noise.

As described in the proposed rule, operations involving vessel movements occur intermittently and are variable in duration, ranging from a few hours up to 2 weeks. These operations are widely dispersed throughout the VACAPES Range Complex OPAREA, which is a vast area encompassing 27,661 square nautical miles (nm^2) (an area approximately the size of Indiana). The Navy logs about 1,400 total vessel days within the Study Area during a typical year. Consequently, the density of ships within the Study Area at any given time is extremely low (*i.e.,* less than 0.0004 ships/nm^2).

Moreover, naval vessels transiting the study area or engaging in the training exercises will not actively or intentionally approach a marine mammal or change speed drastically. Except under certain mitigation measures that protect right whales and other marine mammals from vessel strike, all vessels transit to, from, and within the range complexes will be traveling at speeds generally ranging from 10 to 14 knots.

The final rule contains additional mitigation measures requiring Navy vessels to keep at least 500 yards (460 m) away from any observed whale and at least 200 yards (183 m) from marine mammals other than whales, and avoid approaching animals head-on. Although the radiated sound from the vessels will be audible to marine mammals over a large distance, it is unlikely that animals will respond behaviorally to low-level distant shipping noise as the animals in the area are likely to be habituated to such noises (Nowacek *et al.,* 2004). In light of these facts, NMFS does not expect the Navy's vessel movements to result in Level B harassment.

Mitigation

In order to issue an incidental take authorization (ITA) under Section 101(a)(5)(A) of the MMPA, NMFS must prescribe regulations setting forth the

''permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.'' The NDAA amended the MMPA as it relates to military readiness activities and the incidental take authorization process such that ''least practicable adverse impact'' shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the ''military readiness activity.'' The VACAPES Range Complex training activities described in the proposed rule are considered military readiness activities.

NMFS reviewed the Navy's proposed VACAPES Range Complex training activities and the proposed VACAPES Range Complex mitigation measures presented in the Navy's application to determine whether the activities and mitigation measures were capable of achieving the least practicable adverse effect on marine mammals.

Any mitigation measure prescribed by NMFS should be known to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed below:

(1) Avoidance or minimization of injury or death of marine mammals wherever possible (goals b, c, and d may contribute to this goal).

(2) A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to underwater detonations or other activities expected to result in the take of marine mammals (this goal may contribute to a, above, or to reducing harassment takes only).

(3) A reduction in the number of times (total number or number at biologically important time or location) individuals would be exposed to underwater detonations or other activities expected to result in the take of marine mammals (this goal may contribute to a, above, or to reducing harassment takes only).

(4) A reduction in the intensity of exposures (either total number or number at biologically important time or location) to underwater detonations or other activities expected to result in the take of marine mammals (this goal may contribute to a, above, or to reducing the severity of harassment takes only).

(5) A reduction in adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.

(6) For monitoring directly related to mitigation—an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation (shut-down zone, etc.).

NMFS reviewed the Navy's proposed mitigation measures, which included a careful balancing of the likely benefit of any particular measure to the marine mammals with the likely effect of that measure on personnel safety, practicality of implementation, and impact on the ''military-readiness activity.''

The Navy's proposed mitigation measures were described in detail in the proposed rule (73 FR 75631, pages 75646–75649). The Navy's measures address personnel training, lookout and watchstander responsibilities, operating procedures for training activities using underwater detonations of explosives and firing exercises, and mitigation related to vessel traffic and the North Atlantic right whale. No changes have been made to the mitigation measures described in the proposed rule except as noted below.

Regarding nighttime monitoring in the Personnel Training Lookouts section (73 FR 25631, page 25647), slight wording changes have been made for Bullet 6 to read: ''At night, to increase effectiveness, lookouts would not continuously sweep the horizon with their eyes. Instead, lookouts would scan the horizon in a series of movements that would allow their eyes to come to periodic rests as they scan the sector. When visually searching at night, they would look a little to one side and out of the corners of their eyes, paying attention to the things on the outer edges of their field of vision. Lookouts will also have night vision devices available for use.''

For mitigation measures under FIREX (73 FR 25631, page 25648), corrections were made to reduce the buffer zone from 640 yards (585 m) to 600 yards (548 m). Therefore, Bullets 3 and 4 of the FIREX mitigation measure read as:

3. ''Big Eyes'' on the ship will be used to monitor a 600 yd (548 m) buffer zone around the target area for marine mammals during naval-gunfire events. Due to the distance between the firing position and the buffer zone, lookouts are only expected to visually detect breaching whales, whale blows, and large pods of dolphins and porpoises.

4. Ships will not fire on the target if marine mammals are detected within or approaching the 600 yd (548 m) buffer zone. If marine mammals are present, operations would be suspended. Visual observation will occur for approximately 45 minutes, or until the animal has been observed to have cleared the area and is heading away from the buffer zone.

For mitigation measures under MINEX (73 FR 25631, page 25649), corrections were made to increase the buffer zone from 656 yards (600 m) to 700 yards (640 m). Therefore, Bullet 2 of the MINEX mitigation measure reads as:

2. Observers will survey the Zone of Influence (ZOI), a 700 yd (640 m) radius from detonation location, for marine mammals from all participating vessels during the entire operation. A survey of the ZOI (minimum of 3 parallel tracklines 219 yd [200 m] apart) using support craft will be conducted at the detonation location 30 minutes prior through 30 minutes post detonation. Aerial survey support will be utilized whenever assets are available.

The buffer zones for FIREX and MINEX activities were incorrectly noticed in the proposed rule for the VACAPES Range Complex. NMFS has consulted with the Navy and the Navy has stated that the buffer zones should be corrected to ensure consistency for all Navy FIREX and MINEX activities across multiple range complexes. The buffer zones identified in this final rule are consistent with those established in the Southern California Range Complex final rule (74 FR 2882; January 21, 2009). NMFS does not believe that a decrease in the FIREX buffer zone of 40 yards would affect, in any significant way, the Navy's ability to detect marine mammals or provide adequate protection to marine mammals that may be in the vicinity of a FIREX activity. Moreover, an increase in the MINEX buffer zone will further minimize any adverse effects that marine mammals could experience as a result of the MINEX activity.

In response to a comment from the Marine Mammal Commission, NMFS will require the Navy to suspend its activities immediately if a marine mammal is injured or killed as a result of the proposed Navy training activities (*e.g.,* instances in which it is clear that munitions explosions caused the injury or death), the Navy shall suspend its activities immediately and report such incident to NMFS.

In addition, regarding the North Atlantic right whale (NARW) vessel collision measures, NMFS expanded the final rule to include vessel collision avoidance measures for the South Atlantic and the Northeast Atlantic to be consistent with the U.S. Navy's Atlantic Fleet Active Sonar Training (AFAST) rule. Although the VACAPES Range Complex is outside the South Atlantic

and the Northeast Atlantic region, the Navy is required to comply with the same ship collision measures while transiting and conducting exercises within specific NARW areas along the East Coast. The specific vessel collision measures in the Northeast Atlantic region are listed in the regulatory text of the final rule.

NMFS has determined that these mitigation measures (which include a suite of measures that specifically address vessel transit and the NARW) are adequate means of effecting the least practicable adverse impacts on marine mammal species or stocks and their habitat while also considering personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Monitoring

In order to issue an ITA for an activity, Section 101(a)(5)(A) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking.'' The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for LOAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present.

Monitoring measures prescribed by NMFS should accomplish one or more of the following general goals:

(1) An increase in the probability of detecting marine mammals, both within the safety zone (thus allowing for more effective implementation of the mitigation) and in general to generate more data to contribute to the effects analyses.

(2) An increase in our understanding of how many marine mammals are likely to be exposed to levels of underwater detonations or other stimuli that we associate with specific adverse effects, such as behavioral harassment, temporary threshold shift of hearing sensitivity (TTS), or permanent threshold shift of hearing sensitivity (PTS).

(3) An increase in our understanding of how marine mammals respond (behaviorally or physiologically) to underwater detonations or other stimuli expected to result in take and how anticipated adverse effects on individuals (in different ways and to varying degrees) may impact the population, species, or stock (specifically through effects on annual rates of recruitment or survival).

(4) An increased knowledge of the affected species.

(5) An increase in our understanding of the effectiveness of certain mitigation and monitoring measures.

(6) A better understanding and record of the manner in which the authorized entity complies with the incidental take authorization.

Proposed Monitoring Plan for the VACAPES Range Complex Study Area

As NMFS indicated in the proposed rule, the Navy has (with input from NMFS) fleshed out the details of and made improvements to the VACAPES Range Complex Monitoring Plan. Additionally, NMFS and the Navy have incorporated a suggestion from the public, which recommended the Navy hold a peer review workshop to discuss the Navy's Monitoring Plans for the multiple range complexes and training exercises in which the Navy would receive ITAs (see Monitoring Workshop section). The final VACAPES Range Complex Monitoring Plan, which is summarized below, may be viewed at *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.* The Navy plans to implement all of the components of the Monitoring Plan; however, only the marine mammal components (not the sea turtle components) will be required by the MMPA regulations and associated LOAs.

A summary of the monitoring methods required for use during training events in the VACAPES Range Complex are described below. These methods include a combination of individual elements that are designed to allow a comprehensive assessment.

I. Vessel or Aerial Surveys

(A) The Holder of this Authorization shall visually survey a minimum of 2 explosive events per year, one of which shall be a multiple detonation event. One of the vessel or aerial surveys should involve professionally trained marine mammal observers (MMOs).

(B) If operationally feasible, for specified training events, aerial or vessel surveys shall be used 1–2 days prior to, during (if reasonably safe), and 1–5 days post detonation.

(C) Surveys shall include any specified exclusion zone around a particular detonation point plus 2,000 yards beyond the border of the exclusion zone (i.e., the circumference of the area from the border of the exclusion zone extending 2,000 yards outwards). For vessel based surveys a passive acoustic system (hydrophone or towed array) could be used to determine if marine mammals are in the area before and/or after a detonation event.

(D) When conducting a particular survey, the survey team shall collect:

- Location of sighting;
- Species (if not possible, indicate whale, dolphin or pinniped);
- Number of individuals;
- Whether calves were observed;
- Initial detection sensor;
- Length of time observers maintained visual contact with marine mammal;
- Wave height;
- Visibility;
- Whether sighting was before, during, or after detonations/exercise, and how many minutes before or after;
- Distance of marine mammal from actual detonations (or target spot if not yet detonated);
- Observed behavior—Watchstanders will report, in plain language and without trying to categorize in any way, the observed behavior of the animal(s) (such as animal closing to bow ride, paralleling course/speed, floating on surface and not swimming etc.), including speed and direction;
- Resulting mitigation implementation—Indicate whether explosive detonations were delayed, ceased, modified, or not modified due to marine mammal presence and for how long; and
- If observation occurs while explosives are detonating in the water, indicate munition type in use at time of marine mammal detection (e.g., were the 5-inch guns actually firing when the animals were sighted? Did animals enter an area 2 minutes after a huge explosion went off?).

II. Passive Acoustic Monitoring

The Navy is required to conduct passive acoustic monitoring when operationally feasible.

(A) Any time a towed hydrophone array is employed during shipboard surveys the towed array shall be deployed during daylight hours for each of the days the ship is at sea.

(B) The towed hydrophone array shall be used to supplement the ship-based systematic line-transect surveys (particularly for species such as beaked whales that are rarely seen).

III. Marine Mammal Observers on Navy Platforms

(A) Marine mammal observers (MMOs) selected for aerial or vessel survey shall be placed on a Navy platform during one of the exercises being monitored per year. The remaining designated exercise(s) shall be monitored by the Navy lookouts/watchstanders.

(B) The MMO must possess expertise in species identification of regional marine mammal species and experience collecting behavioral data.

(C) MMOs shall not be placed aboard Navy platforms for every Navy training event or major exercise, but during specifically identified opportunities deemed appropriate for data collection efforts. The events selected for MMO participation shall take into account safety, logistics, and operational concerns.

(D) MMOs shall observe from the same height above water as the lookouts.

(E) The MMOs shall not be part of the Navy's formal reporting chain of command during their data collection efforts; Navy lookouts shall continue to serve as the primary reporting means within the Navy chain of command for marine mammal sightings. The only exception is that if an animal is observed within the shutdown zone that has not been observed by the lookout, the MMO shall inform the lookout of the sighting, and the lookout shall take the appropriate action through the chain of command.

(F) The MMOs shall collect species identification, behavior, direction of travel relative to the Navy platform, and distance first observed. All MMO sightings shall be conducted according to a standard operating procedure. Information collected by MMOs should be the same as those collected by Navy lookout/watchstanders described above.

The Monitoring Plan for VACAPES Range Complex has been designed as a collection of focused ''studies'' (described fully in the VACAPES Monitoring Plan) to gather data that will allow the Navy to address the following questions:

(a) What are the behavioral responses of marine mammals and sea turtles that are exposed to explosives?

(b) Is the Navy's suite of mitigation measures effective at avoiding injury and mortality of marine mammals and sea turtles?

Data gathered in these studies will be collected by qualified, professional marine mammal biologists or trained Navy lookouts/watchstanders that are experts in their field. This monitoring plan has been designed to gather data on all species of marine mammals that are observed in the VACAPES Range Complex study area.

Monitoring Workshop

During the public comment period on past proposed rules for Navy actions (such as the Hawaii Range Complex (HRC), and Southern California Range Complex (SOCAL) proposed rules), NMFS received a recommendation that a workshop or panel be convened to solicit input on the monitoring plan from researchers, experts, and other interested parties. The VACAPES Range Complex proposed rule included an adaptive management component and both NMFS and the Navy believe that a workshop would provide a means for Navy and NMFS to consider input from participants in determining whether (and if so, how) to modify monitoring techniques to more effectively accomplish the goals of monitoring set forth earlier in the document. NMFS and the Navy believe that this workshop concept is valuable in relation to all of the Range Complexes and major training exercise rules and LOAs that NMFS is working on with the Navy at this time, and consequently this single Monitoring Workshop will be included as a component of all of the rules and LOAs that NMFS will be processing for the Navy in the next year or so.

The Navy, with guidance and support from NMFS, will convene a Monitoring Workshop, including marine mammal and acoustic experts as well as other interested parties, in 2011. The Monitoring Workshop participants will review the monitoring results from the previous two years of monitoring pursuant to the VACAPES Range Complex rule as well as monitoring results from other Navy rules and LOAs (*e.g.,* AFAST, SOCAL, HRC, and other rules). The Monitoring Workshop participants would provide their individual recommendations to the Navy and NMFS on the monitoring plan(s) after also considering the current science (including Navy research and development) and working within the framework of available resources and feasibility of implementation. NMFS and the Navy would then analyze the input from the Monitoring Workshop participants and determine the best way forward from a national perspective. Subsequent to the Monitoring Workshop, modifications would be applied to monitoring plans as appropriate.

Integrated Comprehensive Monitoring Program

In addition to the site-specific Monitoring Plan for the VACAPES Range Complex, the Navy will complete the Integrated Comprehensive Monitoring Program (ICMP) Plan by the end of 2009. The ICMP is currently in development by the Navy, with Chief of Naval Operations Environmental Readiness Division (CNO–N45) having the lead. The program does not duplicate the monitoring plans for individual areas (*e.g.* AFAST, HRC, SOCAL); instead it is intended to provide the overarching coordination that will support compilation of data from both range-specific monitoring plans as well as Navy funded research and development (R&D) studies. The ICMP will coordinate the monitoring program's progress towards meeting its goals and developing a data management plan. A program review board is also being considered to provide additional guidance. The ICMP will be evaluated annually to provide a matrix for progress and goals for the following year, and will make recommendations on adaptive management for refinement and analysis of the monitoring methods.

The primary objectives of the ICMP are to:

- Monitor and assess the effects of Navy activities on protected species;
- Ensure that data collected at multiple locations is collected in a manner that allows comparison between and among different geographic locations;
- Assess the efficacy and practicality of the monitoring and mitigation techniques;
- Add to the overall knowledge-base of marine species and the effects of Navy activities on marine species.

The ICMP will be used both as: (1) A planning tool to focus Navy monitoring priorities (pursuant to ESA/MMPA requirements) across Navy Range Complexes and Exercises; and (2) an adaptive management tool, through the consolidation and analysis of the Navy's monitoring and watchstander data, as well as new information from other Navy programs (*e.g.,* R&D), and other appropriate newly published information.

In combination with the 2011 Monitoring Workshop and the adaptive management component of the VACAPES Range Complex rule and the other planned Navy rules (*e.g.* Jacksonville Range Complex, Cherry Point Range Complex, etc.), the ICMP could potentially provide a framework for restructuring the monitoring plans and allocating monitoring effort based on the value of particular specific monitoring proposals (in terms of the degree to which results would likely contribute to stated monitoring goals, as well as the likely technical success of the monitoring based on a review of past monitoring results) that have been developed through the ICMP framework, instead of allocating based on maintaining an equal (or commensurate to effects) distribution of monitoring effort across range complexes. For example, if careful prioritization and planning through the

ICMP (which would include a review of both past monitoring results and current scientific developments) were to show that a large, intense monitoring effort in Hawaii would likely provide extensive, robust and much-needed data that could be used to understand the effects of sonar throughout different geographical areas, it may be appropriate to have other range complexes dedicate money, resources, or staff to the specific monitoring proposal identified as ''high priority'' by the Navy and NMFS, in lieu of focusing on smaller, lower priority projects divided throughout their home range complexes.

The ICMP will identify:

• A means by which NMFS and the Navy would jointly consider prior years' monitoring results and advancing science to determine if modifications are needed in mitigation or monitoring measures to better effect the goals laid out in the Mitigation and Monitoring sections of the VACAPES Range Complex rule.

• Guidelines for prioritizing monitoring projects

• If, as a result of the workshop and similar to the example described in the paragraph above, the Navy and NMFS decide it is appropriate to restructure the monitoring plans for multiple ranges such that they are no longer evenly allocated (by rule), but rather focused on priority monitoring projects that are not necessarily tied to the geographic area addressed in the rule, the ICMP will be modified to include a very clear and unclassified record-keeping system that will allow NMFS and the public to see how each range complex/project is contributing to all of the ongoing monitoring programs (resources, effort, money, etc.).

Adaptive Management

The final regulations governing the take of marine mammals incidental to Navy's VACAPES Range Complex exercises contain an adaptive management component. The use of adaptive management will give NMFS the ability to consider new data from different sources to determine (in coordination with the Navy) on an annual basis if mitigation or monitoring measures should be modified or added (or deleted) if new data suggests that such modifications are appropriate (or are not appropriate) for subsequent annual LOAs.

The following are some of the possible sources of applicable data:

• Results from the Navy's monitoring from the previous year (either from VACAPES Range Complex or other locations)

• Findings of the Workshop that the Navy will convene in 2011 to analyze monitoring results to date, review current science, and recommend modifications, as appropriate to the monitoring protocols to increase monitoring effectiveness.

• Compiled results of Navy funded research and development (R&D) studies (presented pursuant to the ICMP, which is discussed elsewhere in this document)

• Results from specific stranding investigations (either from VACAPES Range Complex or other locations)

• Results from general marine mammal and sound research (funded by the Navy or otherwise)

• Any information which reveals that marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent Letters of Authorization

Mitigation measures could be modified or added (or deleted) if new data suggests that such modifications would have (or do not have) a reasonable likelihood of accomplishing the goals of mitigation laid out in this final rule and if the measures are practicable. NMFS would also coordinate with the Navy to modify or add to (or delete) the existing monitoring requirements if the new data suggest that the addition of (or deletion of) a particular measure would more effectively accomplish the goals of monitoring laid out in this final rule. The reporting requirements associated with this rule are designed to provide NMFS with monitoring data from the previous year to allow NMFS to consider the data and issue annual LOAs. NMFS and the Navy will meet annually, prior to LOA issuance, to discuss the monitoring reports, Navy R&D developments, and current science and whether mitigation or monitoring modifications are appropriate.

Reporting

In order to issue an ITA for an activity, Section 101(a)(5)(A) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking''. Effective reporting is critical to ensure compliance with the terms and conditions of a LOA, and to provide NMFS and the Navy with data of the highest quality based on the required monitoring. As NMFS noted in its proposed rule, additional detail has been added to the reporting requirements since they were outlined in the proposed rule. The updated reporting requirements are all included below. A subset of the information provided in the monitoring reports may be classified and not releasable to the public.

NMFS will work with the Navy to develop tables that allow for efficient submission of the information required below.

General Notification of Injured or Dead Marine Mammals

Navy personnel will ensure that NMFS (regional stranding coordinator) is notified immediately (or as soon as operational security allows) if an injured or dead marine mammal is found during or shortly after, and in the vicinity of, any Navy training exercise utilizing underwater explosive detonations or other activities. The Navy will provide NMFS with species or description of the animal(s), the condition of the animal(s) (including carcass condition if the animal is dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available).

Annual VACAPES Range Complex Monitoring Plan Report

The Navy shall submit a report annually on March 1 describing the implementation and results (through January 1 of the same year) of the VACAPES Range Complex Monitoring Plan, described above. Data collection methods will be standardized across range complexes to allow for comparison in different geographic locations. Although additional information will also be gathered, the marine mammal observers (MMOs) collecting marine mammal data pursuant to the VACAPES Range Complex Monitoring Plan shall, at a minimum, provide the same marine mammal observation data required in the major range complex training exercises section of the Annual VACAPES Range Complex Exercise Report referenced below.

The VACAPES Range Complex Monitoring Plan Report may be provided to NMFS within a larger report that includes the required Monitoring Plan Reports from multiple Range Complexes.

Annual VACAPES Range Complex Exercise Report

The Navy is in the process of improving the methods used to track explosives used to provide increased granularity. The Navy will provide the information described below for all of their explosive exercises. Until the Navy is able to report in full the information below, they will provide an annual update on the Navy's explosive tracking methods, including improvements from the previous year.

(i) Total annual number of each type of explosive exercise (of those identified as part of the ''specified activity'' in this final rule) conducted in the VACAPES Range Complex.

(ii) Total annual expended/detonated rounds (missiles, bombs, etc.) for each explosive type.

VACAPES Range Complex 5-yr Comprehensive Report

The Navy shall submit to NMFS a draft report that analyzes and summarizes all of the multi-year marine mammal information gathered during the VACAPES Range Complex exercises for which annual reports are required (Annual VACAPES Range Complex Exercise Reports and VACAPES Range Complex Monitoring Plan Reports). This report will be submitted at the end of the fourth year of the rule (May 2013), covering activities that have occurred through December 1, 2012.

Comments and Responses

On December 12, 2008, NMFS published a proposed rule (73 FR 75631) in response to the Navy's request to take marine mammals incidental to military readiness training in the VACAPES Range Complex study area and requested comments, information and suggestions concerning the request. During the 30-day public comment period, NMFS received comments from 1 private citizen, comments from the Marine Mammal Commission (Commission), comments from the Commonwealth of Virginia Department of Environmental Quality (Virginia DEQ, including the Department of Game and Inland Fisheries (VDGIF) and the Department of Conservation and Recreation), comments from the International Fund for Animal Welfare, and comments from the Natural Resources Defense Council (on behalf of itself, The Humane Society of the United States, Whale and Dolphin Conservation Society, Cetacean Society International, Ocean Futures Society, Jean-Michel Cousteau). The comments are summarized and sorted into general topic areas and are addressed below. Full copies of the comment letters may be accessed at *http://www.regulations.gov.*

MMPA Concerns

Comment 1: The Commission and IFAW point out that there are differences between the Navy's and NMFS' estimates of maximum annual takes for the proposed exercises in the VACAPES range complex and that these differences should be reconciled.

Response: NMFS does not believe there are differences between the Navy's and NMFS' estimates of maximum annual takes for the VACAPES Range Complex training exercises. The perceived differences the Commission raised may be the differences between the Navy's initial LOA application and its subsequent addendum. The Navy states that further analyses on the impacts from the proposed action and the reduction of BOMBEX exercises are the reason for the change of take estimates. Specifically, the Navy states that ''HARM missile explodes no less than 30 ft above the water, it is assumed the amount of acoustic energy entering the water would be negligible, so exposures from that weapon should be removed from the MISSILEX totals. Secondly, the size of the BOMBEX location was reduced to avoid important fishing areas, the North Atlantic Right Whale migratory corridor, and the Norfolk Canyon area which lowered potential exposures for certain species.'' The amendment is posted on NMFS incident take Web site at *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.*

Comment 2: The Commission recommends that NMFS include in its authorization the number of lethal takes and takes by Level A harassment requested by the Navy and regularly confer with the Navy to monitor the actual number of such takes to ensure that they do not exceed the authorized number.

Response: NMFS agrees with the Commission. NMFS has, through this final rule, included the authorized numbers of marine mammal takes and the manner of take (*i.e.,* lethal, Level A or Level B). In addition, monitoring and reporting measures are prescribed to ensure that all takes as a result of the training activities are accounted for and documented. The MMOs and Navy's lookouts/watchstanders will report any sightings of marine mammals in the take zone through the chain of command. Furthermore, the Navy is required to submit an Annual VACAPES Range Complex Monitoring Plan Report. Prior to issuing any subsequent LOAs, NMFS will review the Navy's monitoring efforts and data from the previous year to determine whether any new measures will be necessary or a modification to prior year's measures.

Comment 3: The Virginia DEQ recommends that NMFS develop the regulations to reflect harbor seal, harp seal, and gray seal as their occurrence in the inshore and nearshore waters of the mid-Atlantic region are becoming more frequent in the fall and winter months.

Response: Based on the analyses by the Navy and NMFS, there are 34 marine mammal species with possible or confirmed occurrence in the VACAPES Range Complex. As indicated in the proposed rule, there are 33 cetacean species and one pinniped species (harbor seal). Harp and gray seals occur primarily in the North Atlantic, with the former species found mostly in the Arctic region. Although there have been increased anecdotal sightings of these species in the mid-Atlantic coastal waters, their presence in the mid-Atlantic region is still very rare (Waring *et al.,* 2008).

Comment 4: The VDGIF states that the species take list appears to be accurate; however, the number of animals predicted to be affected for both Level A and Level B harassment are probably underestimated, because the species density data from which take estimates are derived are based on too few data. Therefore, no marine mammal species should be considered unlikely to be affected just because there are no density data available (*e.g.,* beaked whales). Since all of the species on the list exist in the Virginia and North Carolina Outer Banks stranding records, collected and kept by the Virginia Aquarium Stranding Response Program, the VDGIF recommends that all species on the take list should be considered susceptible to Level B harassment year round. The IFAW states that if one of these animals not included in the incidental take list is present in the area of testing, there is a higher probability that the animal will be struck, and that the assumption that one third of the cetacean species in the area will not be exposed nor affected by noise represents an oversight in the analysis of potential takes.

Response: NMFS does not agree with the VDGIF and IFAW's assessment. The most current stock assessment reports (Waring *et al.,* 2008) were used to calculate density estimates. As summarized in the proposed rule and described more fully in the Navy's FEIS, the Navy used the best data and methods available to calculate density, including other literature as well as habitat modeling that considered bathymetry, distance from shelf break, sea surface temperature, and Chlorophyll a concentration. All spatial models and density estimates were reviewed by NMFS technical staff. The Navy's model utilizes uniform density, but it also divides the east coast into meaningful sections, such as on-shelf and off-shelf and the different OPAREAS.

Although stranding records indicate that certain species may be found dead or injured in the Virginia area, this does not mean that these species are normally distributed in this area.

Rather, certain stranded species are likely more common in other geographic regions and due to their death or injury in those areas, they may drift and wash ashore in the Virginia area.

NMFS does not agree that all species identified in a stranding list would be affected by the proposed activity. As noted above, NMFS relied on the best available data to ascertain density estimates. There are certain species for which estimates are unavailable because their presence in the VACAPES Range Complex Study Area is rare (*e.g.,* Bryde's whale and false killer whale are not reported in NMFS stock assessment reports (SARs) for the U.S. Atlantic and Gulf of Mexico regions for the stock assessment). NMFS considers it unlikely that species whose presence in the action area is rare would be affected by the proposed activities.

For species in which NMFS possesses density data, the Navy conducted modeling to calculate the potential takes of these marine mammals. As described in the proposed rule, estimating the take that could result from the proposed activities entails the following four steps: propagation model estimates animals exposed to sources at different levels; further modeling determines the number of exposures to levels indicated in the criteria above (*i.e.,* number of takes); post-modeling corrections refine estimates to make them more accurate; mitigation is taken into consideration. Detailed analyses regarding the models used, the assumptions used in the models, and the process of estimating take is available in Appendix J of the Navy's EIS for the VACAPES Range Complex. The Navy's model revealed that species such as blue whale, sei whale, spinner dolphin, Fraser's dolphin, Atlantic white-sided dolphin, harbor porpoise, and harbor seals would not be taken by the proposed activities because their presence in the VACAPES Range Complex Study Area is rare.

Acoustic Impacts

Comment 5: The IFAW states that the Navy failed to cite any scientific data to support the claim that ''explosive ordnance and underwater detonations would result in only short-term effects to most individuals exposed.'' The IFAW also states that FIREX and BOMBEX yield a novel situation for impact analysis since they employ multiple explosions, and that there is no existing data on the impacts of multiple explosions and therefore potential impacts had to be extrapolated from single explosion testing. The IFAW further states that although a detailed modeling system was developed, the cumulative effect of multiple explosions may far exceed the sum of its parts. Further research is needed before claims can be made as to the impacts of multiple explosions on marine mammals.

Response: NMFS does not agree with the IFAW's assessment. Although few scientific data are currently available on the behavioral effects of explosive ordnance on marine mammals, studies of marine mammal reactions to intense underwater sounds (Finneran *et al.,* 2000; Schlundt *et al.,* 2000; Finneran and Schlundt, 2004), studies of underwater detonations on human divers and territorial mammals (Gaspin, 1983; Goertner, 1982), studies on the auditory anatomy of marine mammals (Ketten, 1998), and studies on source characterization of underwater explosions (Cole, 1948; Gaspin and Shuler, 1971; Rogers, 1977; Urick, 1983) were reviewed. Based on the conclusions of these studies in terms of the impact ranges and levels from different explosives and their acoustic impacts, NMFS and the Navy determined the use of explosive ordnance and underwater detonations in the Navy's VACAPES Range Complex (including implementation of mitigation and monitoring measures), would result in only short-term effects to most individuals exposed. These analyses, including the impact analyses on multiple explosions, were described in detail in Appendix A ''Draft Technical Risk Assessment for the Use of Underwater Explosives in the Virginia Capes (VACAPES) Range Complex'' in the Navy's LOA application and were referenced in the proposed rule (73 FR 75631; December 12, 2008).

Mitigation

Comment 6: The Commission recommends that NMFS include in the final rule a requirement that, in all but emergency situations or where the need for realistic training requires greater speed or maneuverability, the Navy abide by the seasonal restrictions applicable to other vessels under NMFS' ship-speed regulations (50 CFR 224.105) to reduce the risk of ship collisions with right whales.

Response: NMFS does not agree with the Commission recommendation. NMFS' final rule on ship speed restriction does not apply to vessels operated by U.S. Federal agencies. NMFS, in consultation with other Federal agencies, has determined that the national security, navigational, and human safety missions of some agencies may be compromised by mandatory vessel speed restrictions. However, this exemption will not relieve the Navy of its obligations to consult, under section 7 of the ESA, on how their activities may affect listed species. NMFS acknowledges that the Navy already provides guidance to vessel operators and fleets with regard to conservation measures to protect right whales and other endangered species, as well as contribute to conservation efforts generally.

For the proposed VACAPES Range Complex training activities, the Navy has developed a series of mitigation measures that closely follow NMFS' ship strike rule. These mitigation measures are described in the Proposed Mitigation Measures section of the proposed rule (73 FR 76578; December 17, 2008). In addition, NMFS worked with the Navy regarding their vessel operations to determine where ESA section 7 consultations would be appropriate.

Comment 7: The Commission recommends that if a serious injury or death occurs and that injury or death could have resulted from the authorized Navy operations, NMFS and Navy jointly investigate the circumstances and steps needed to avoid similar occurrences.

Response: NMFS concurs with the Commission's recommendation and will work with the Navy to address such an occurrence if and when it arises.

Comment 8: The Virginia DEQ and IFAW state that they note that mitigation measures for most training exercises are largely comprised of maintaining lookouts or watchstanders to look for marine mammals, sea turtles, rafts of sargassum grass and other indicators of biological activity in the buffer zones or zones of impact. As such, most mitigation measures rely entirely on the observers' ability to detect sea turtles, marine mammals, and indicators of their presence such as sargassum grass under all conditions (*e.g.,* high seas, after dark, storms, etc.). The IFAW states that this mitigation strategy is insufficient for detecting right whales in the vicinity of Navy training exercises.

Response: NMFS does not agree with the Virginia DEQ and IFAW's assessment. Although visual monitoring by lookouts or watchstanders is an important component of monitoring measures for the Navy's VACAPES Complex Range training exercises, it is not the only mitigation measure for most training exercises. Other mitigation and monitoring measures are also proposed to reduce any potential impacts to marine mammals that would result from the proposed training activities. These include establishing safety zones for all exercises involving underwater detonations (FIREX,

BOMBEX, MINEX, and MISSILEX), aerial surveys of the action area, limiting certain exercises (BOMBEX, FIREX, and MINEX) to daylight hours, etc. In addition, Navy lookouts or watchstanders are specifically trained to detect anomalies in the water around the ship and both the safety of Navy personnel and success in the training exercise depend on the lookout being able to detect objects (*e.g.,* marine mammals) effectively around the ship.

Additionally, NMFS has identified ports located in the western Atlantic Ocean, offshore of the southeastern United States, where vessel transit during right whale migration is of highest concern for potential ship strike. These ports include the Hampton Roads entrance to the Chesapeake Bay, which includes the concentration of Atlantic Fleet vessels in Norfolk, Virginia. Navy vessels are required to use extreme caution and operate at a slow, safe speed consistent with mission and safety during the months of right whale migration and within a 20 nm (37 km) arc (except as noted) of the specified reference points.

Comment 9: The VDGIF recommends NMFS expand the ''elevated time of awareness'' for right whales (Table 14 in the proposed FR notice for the proposed rule, 73 FR 75631; December 12, 2008) to Oct–April (without excluding January) or, at a minimum, Nov-March (without excluding January) based on strandings that have occurred in our region throughout these months. The VDGIF states that recent observations have been made of new mothers as far north as Wilmington, North Carolina during the winter calving season (*i.e.,* Nov. 15–April 15), which provides further justification for expanding the period of elevated awareness for Virginia area and North Carolina.

Response: The ''elevated time of awareness'' for right whales already covers the months between October–April in South Carolina and December–April in North Carolina. Although certain months were not covered in areas north of North Carolina such as the Chesapeake Bay, Delaware Bay, off the coast of New York and New Jersey, this is because right whales are extremely rare in these waters during those months. Regarding the recent sighting (January 2009) of right whale cows as far north as Wilmington, North Carolina, this location and month are covered under the current ''elevated time of awareness'' for right whales.

Comment 10: The VDGIF states that the proposed mitigation measures and reporting requirement of the proposed rule are acceptable. Therefore, the VDGIF has no comments on them.

Response: Comments noted.

Monitoring and Reporting

Comment 11: The Commission recommends that NMFS work with the Navy to design studies to collect and analyze data necessary to characterize the risk of collisions with right whales by Navy vessels.

Response: Comment noted. The reporting conditions for the Navy's training activities require the Navy to report all marine mammal (right whale included) sighting information during exercises. This information includes the location of sightings, species, number of individuals, and calves observed, etc. These data can later be analyzed to characterize the risk of collisions with marine mammals by Navy vessels. To the extent resources exist, NMFS will endeavor to work with the Navy to develop more formal studies that would allow each agency to obtain the necessary data to characterize the risk of Navy vessel collisions with right whales and to take further steps to minimize the probability of a vessel strike.

Comment 12: The Commission recommends that NMFS work with the Navy to sponsor a peer review of existing risk analysis procedures and the interpretation and use of survey or other data in those analyses, and work with the Navy to validate the effectiveness of monitoring and mitigation measures, preferably before beginning or, if that is infeasible, in conjunction with the Navy operations subject to this incidental take authorization.

Response: At this time, NMFS concludes that the risk analyses for naval activities and MMPA rulemakings are appropriate. If necessary, NMFS and the Navy will coordinate at some future date to determine whether additional consideration of the risk analysis procedure is warranted. Regarding the effectiveness of monitoring and mitigation measures, this final rule includes a requirement for the Navy to convene a Monitoring Workshop in 2011 in which the participants will be asked to review the Navy's Monitoring Plans and monitoring results and make individual recommendations (to the Navy and NMFS) of ways of improving the Monitoring Plans. NMFS believes that this type of workshop, with participants including the Navy, NMFS, researchers, invited experts, and other interested parties, in combination with an adaptive management plan that allows for modification would provide a means for the Navy to adjust the Monitoring Plan as needed to more effectively accomplish the goals of monitoring set forth earlier. NMFS would incorporate any changes into future LOAs and future rules as necessary. NMFS has statutory responsibility to prescribe regulations pertaining to mitigation, monitoring, and reporting, and will, in coordination with the Navy, develop the most effective and appropriate mitigation, monitoring, and reporting protocols for future authorizations.

In addition, NMFS has been working with the Navy throughout the rulemaking process to develop a series of mitigation, monitoring, and reporting protocols. NMFS believes that the measures prescribed in this final rule are practicable, effective and will afford the necessary protection to marine mammals.

NEPA

Comment 13: The Virginia DEQ requests that the final Integrated Comprehensive Monitoring Program (ICMP) be included in the EIS if possible.

Response: The ICMP will not be completed until the summer of 2009, therefore, it is not possible to include the ICMP in the FEIS. However, the Navy will include a comprehensive monitoring plan and a summary of the ICMP in the FEIS. In addition, the site specific comprehensive monitoring plan and a summary of the ICMP are included in the Navy's VACAPES Range Complex final rule.

Miscellaneous Issues

Comment 14: The Virginia DEQ requests that NMFS consider in the final regulations that NMFS (1) coordinate with the Virginia Department of Game and Inland Fisheries and the U.S. Fish and Wildlife Service for information regarding the possible impacts to protected species and to ensure compliance with protected species legislation, and (2) contact Rene Hypes of the Virginia Department of Conservation and Recreation Division of Natural Heritage at (804) 371–2708 for an update on natural heritage information if a significant amount of time passes before the proposed activities are initiated since new and updated information is continually added to Biotics.

Response: NMFS published a proposed rule for the VACAPES Range Complex training exercises (73 FR 75631; December 12, 2008) that included a detailed description of protected marine mammal species within the Range Complex. NMFS will work with Virginia as necessary and advise the State if there is any change to the proposed action and updates on natural resources information. With

respect to other protected species such as ESA listed turtles or fish, the Navy is conducting a Section 7 consultation with NMFS. The Navy has completed consultation with Delaware, Maryland, Virginia, and North Carolina under the Coastal Zone Management Act. In addition, NMFS is working to ensure that the final rule for the proposed action and the LOAs issued to the Navy is in compliance with protected species legislation through the ESA consultation and the MMPA permitting review.

NMFS does not expect there will be a significant amount of time that passes between finalization of rule and the commencement of naval exercises. To the extent there is, NMFS will coordinate, as appropriate, with the State and FWS.

Comment 15: The NRDC commented on the proposed rule with its earlier comments on the NMFS' proposed rule for the Navy's Atlantic Fleet Active Sonar Training (AFAST) and the Navy's AFAST DEIS. Specifically, the NRDC states that neither NMFS in its proposed rule, nor the Navy in its EIS offers sufficient measures to mitigate the harmful impacts of high intensity sonar. The NRDC further states that NMFS and the Navy's analysis substantially understates the potential effects of sonar on marine wildlife.

Response: NRDC's comments are inapplicable to the proposed Navy training activities in the VACAPES Range Complex. The Navy does not intend, as part of its proposed action, to conduct training with MFAS, HFAS, and Improved Extended Echo Ranging (IEER)/Advanced Extended Echo Ranging (AEER). The Navy's request for a LOA for sonar related training was addressed in the Final Rule and LOA for AFAST which was issued by NMFS on January 22, 2009, and published in the **Federal Register** on February 19, 2009 (74 FR 4844).

Comment 16: One private citizen expressed general opposition to Navy activities and NMFS' issuance of an MMPA authorization because of the danger of killing marine life.

Response: NMFS appreciates the commenter's concern for the marine mammals that live in the area of the proposed activities. However, the MMPA allows individuals to take marine mammals incidental to specified activities if NMFS can make the necessary findings required by law (*i.e.,* negligible impact, unmitigable adverse impact on subsistence users, etc.). As explained throughout this rulemaking, NMFS has made the necessary findings under 16 U.S.C. 1371(a)(5)(A) to support our issuance of the final rule.

Estimated Take of Marine Mammals

As mentioned previously, with respect to the MMPA, NMFS' effects assessments serve four primary purposes: (1) To prescribe the permissible methods of taking (*i.e.,* Level B Harassment (behavioral harassment), Level A Harassment (injury), or mortality, including an identification of the number and types of take that could occur by Level A or B harassment or mortality)) and to prescribe other means of effecting the least practicable adverse impact on such species or stock and its habitat (*i.e.,* mitigation); (2) to determine whether the specified activity will have a negligible impact on the affected species or stocks of marine mammals (based on the likelihood that the activity will adversely affect the species or stock through effects on annual rates of recruitment or survival); (3) to determine whether the specified activity will have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (however, there are no subsistence communities in the VACAPES Range Complex; thus, there would be no affect to any subsistence user); and (4) to prescribe requirements pertaining to monitoring and reporting.

In the Estimated Take of Marine Mammals section of the proposed rule, NMFS related the potential effects to marine mammals from underwater detonation of explosives to the MMPA regulatory definitions of Level A and Level B Harassment and assessed the effects to marine mammals that could result from the specific activities that the Navy intends to conduct. The subsections of this analysis are discussed in the proposed rule (73 FR 75631; December 12, 2008) and have not changed.

Acoustic Take Criteria

In the Acoustic Take Criteria section of the proposed rule, NMFS described the development and application of the acoustic criteria for explosive detonations (73 FR 76531; December 12, 2008). No changes have been made to the discussion contained in this section of the proposed rule.

Take Calculations

In the Take Calculation section of the proposed rule, NMFS described in detail how the take estimates were calculated through modeling (73 FR 76531). No changes have been made to the discussion contained in this section of the proposed rule.

A summary of potential exposures from ordnance (per year) for marine mammals in the VACAPES Range Complex is listed in Table 4 (these exposure estimates are similar to those presented in the proposed rule).

TABLE 4—SUMMARY OF POTENTIAL TAKES FROM EXPLOSIVE ORDNANCE (PER YEAR) FOR MARINE MAMMALS IN THE VACAPES RANGE COMPLEX

Species	Level B harassment	Level A harassment	Mortality
Fin whale	2	0	0
Humpback whale	2	0	0
North Atlantic right whale	0	0	0
Sperm whale	2	0	0
Atlantic spotted dolphin	43	1	0
Beaked whales	0	0	0
Bottlenose dolphin	29	0	0
Clymene dolphin	33	0	0
Common dolphin	2,193	20	0
Kogia sp.	3	0	0
Pantropical spotted dolphin	70	1	0
Pilot whale	10	0	0
Risso's dolphin	16	0	0
Rough-toothed dolphin	1	0	0
Striped dolphin	68	3	0

Effects on Marine Mammal Habitat

NMFS' VACAPES Range Complex proposed rule included a section that addressed the effects of the Navy's activities on marine mammal habitat (73 FR 75631, page 75654). The Navy's proposed training exercises could potentially affect marine mammal habitat through underwater detonation and the introduction of explosive sound into the water column, and impacts to the prey species of marine mammals. These potential impacts are considered in the VACAPES FEIS and were determined by the Navy to have no effect on marine mammal habitat. Based on the information below and the supporting information included in the Navy's FEIS, NMFS has determined that the VACAPES Range Complex training activities will not have adverse or long-term impacts on marine mammal habitat.

Unless the sound source or explosive detonation is stationary and/or continuous over a long duration in one area, the effects of underwater detonation and its associated sound are generally considered to have a less severe impact on marine mammal habitat than the physical alteration of the habitat. Marine mammals may be temporarily displaced from areas where Navy training is occurring, but the area will be utilized again after the activities have ceased.

Effects on Food Resources

There are currently no well established thresholds for estimating effects to fish from explosives other than mortality models. Fish that are located in the water column, in proximity to the source of detonation could be injured, killed, or disturbed by the impulsive sound and possibly temporarily leave the area. Continental Shelf Inc. (2004) summarized a few studies conducted to determine effects associated with removal of offshore structures (*e.g.*, oil rigs) in the Gulf of Mexico. Their findings revealed that at very close range, underwater explosions are lethal to most fish species regardless of size, shape, or internal anatomy. For most situations, cause of death in fishes has been massive organ and tissue damage and internal bleeding. At longer range, species with gas-filled swimbladders (*e.g.,* snapper, cod, and striped bass) are more susceptible than those without swimbladders (*e.g.,* flounders, eels).

Studies also suggest that larger fishes are generally less susceptible to death or injury than small fishes. Moreover, elongated forms that are round in cross section are less at risk than deep-bodied forms; and orientation of fish relative to the shock wave may affect the extent of injury. Open water pelagic fish (*e.g.,* mackerel) also seem to be less affected than reef fishes. The results of most studies are dependent upon specific biological, environmental, explosive, and data recording factors.

The huge variations in the fish population, including numbers, species, sizes, and orientation and range from the detonation point, make it very difficult to accurately predict mortalities at any specific site of detonation. However, most fish species experience a large number of natural mortalities, especially during early life-stages, and any small level of mortality caused by the VACAPES Range Complex training exercises involving explosives will likely be insignificant to the population as a whole.

Therefore, potential impacts to marine mammal food resources within the VACAPES Range Complex is negligible given both the very geographic and spatially limited scope of most Navy at sea activities including underwater detonations, and the high biological productivity of these resources. No short or long term effects to marine mammal food resources from Navy activities are anticipated within the VACAPES Range Complex. There is no critical habitat for marine mammals in the proposed VACAPES Range Complex Study Area.

Analysis and Negligible Impact Determination

Pursuant to NMFS' regulations implementing the MMPA, an applicant is required to estimate the number of animals that will be ''taken'' by the specified activities (*i.e.,* takes by harassment only, or takes by harassment, injury, and/or death). This estimate informs the analysis that NMFS must perform to determine whether the activity will have a ''negligible impact'' on the species or stock. Level B (behavioral) harassment occurs at the level of the individual(s) and does not assume any resulting population-level consequences, though there are known avenues through which behavioral disturbance of individuals can result in population-level effects. A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of Level B harassment takes alone, is not enough information on which to base an impact determination.

In addition to considering estimates of the number of marine mammals that might be ''taken'' through behavioral harassment, NMFS must consider other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), as well as the number and nature of estimated Level A takes, the number of estimated mortalities, and effects on habitat.

The Navy's specified activities have been described based on best estimates of the planned detonation events the Navy would conduct for the proposed VACAPES Range Complex training activities. The events are generally short in duration, including a total of 115 1–1.5–hour events and 46 6–8-hour events. Taking the above into account, along with the fact that NMFS anticipates no mortalities (and few injuries) to result from the action, the fact that there are no specific areas of reproductive importance for marine mammals recognized within VACAPES, the sections discussed below, and dependent upon the implementation of the proposed mitigation measures, NMFS has determined that Navy training exercises utilizing underwater detonations will have a negligible impact on the affected marine mammal species and stocks present in the VACAPES Range Complex Study Area.

NMFS' analysis of potential behavioral harassment, temporary threshold shifts, permanent threshold shifts, injury, and mortality to marine mammals as a result of the VACAPES Range Complex training activities was provided in the proposed rule (73 FR 75631, pages 75636–75646) and is described in more detail below.

Behavioral Harassment

The Navy plans a total of 80 MISSILEX training events (each lasting for 1 hour), 22 FIREX training events (each lasting for 8 hours), 5 BOMBEX training events (each lasting for 1 hour), 30 MH–60S MINEX training events (each lasting for 1.5 hours), and 24 EOD MINEX training events (each lasting for 6–8 hours) annually. The total training exercises proposed by the Navy in the VACAPES Range Complex amount to under 500 hours per year. These detonation events are widely dispersed throughout several of the designated sites within the VACAPES Range Complex Study Area. The probability that detonation events will overlap in time and space with marine mammals is low, particularly given the densities of marine mammals in the VACAPES Range Complex Study Area and the implementation of monitoring and mitigation measures. Moreover, NMFS does not expect animals to experience repeat exposures to the same sound source as animals will likely move away from the source after being exposed. In addition, these isolated exposures,

when received at distances of Level B behavioral harassment (*i.e.,* 177 dB re 1 microPa^2-sec), are expected to cause brief startle reactions or short-term behavioral modification by the animals. These brief reactions and behavioral changes are expected to disappear when the exposures cease. Therefore, these levels of received impulse noise from detonation are not expected to affect annual rates or recruitment or survival.

TTS

NMFS and the Navy have estimated that individuals of some species of marine mammals may sustain some level of temporarily threshold shift TTS from underwater detonations. TTS can last from a few minutes to days, be of varying degree, and occur across various frequency bandwidths. The TTS sustained by an animal is primarily classified by three characteristics:

• Frequency—Available data (of mid-frequency hearing specialists exposed to mid to high frequency sounds—Southall *et al.,* 2007) suggest that most TTS occurs in the frequency range of the source up to one octave higher than the source (with the maximum TTS at ½ octave above).

• Degree of the shift (*i.e.,* how many dB is the sensitivity of the hearing reduced by)—generally, both the degree of TTS and the duration of TTS will be greater if the marine mammal is exposed to a higher level of energy (which would occur when the peak dB level is higher or the duration is longer). Since the impulse from detonation is extremely brief, an animal would have to approach very close to the detonation site to increase the received SEL. The threshold for the onset of TTS for detonations is a dual criteria: 182 dB re 1 microPa^2-sec or 23 psi, which might be received at distances from 345–2,863 m from the centers of detonation based on the types of NEW involved to receive the SEL that causes TTS compared to similar source level with longer durations (such as sonar signals).

• Duration of TTS (Recovery time)—Of all TTS laboratory studies, some using exposures of almost an hour in duration or up to 217 SEL, almost all recovered within 1 day (or less, often in minutes), though in one study (Finneran *et al.,* 2007), recovery took 4 days.

• Although the degree of TTS depends on the received noise levels and exposure time, all studies show that TTS is reversible and animals' sensitivity is expected to recover fully in minutes to hours. Therefore, NMFS expects that TTS would not affect annual rates of recruitment or survival.

Acoustic Masking or Communication Impairment

As discussed above, it is also possible that anthropogenic sound could result in masking of marine mammal communication and navigation signals. However, masking only occurs during the time of the signal (and potential secondary arrivals of indirect rays), versus TTS, which occurs continuously for its duration. Impulse sounds from underwater detonation are extremely brief and the majority of most animals' vocalizations would not be masked. Therefore, masking effects from underwater detonation are expected to be minimal and unlikely. If masking or communication impairment were to occur briefly, it would be in the frequency ranges below 100 Hz, which overlaps with some mysticete vocalizations; however, it would likely not mask the entirety of any particular vocalization or communication series because of the short impulse.

PTS, Injury, or Mortality

The Navy's model estimated that 1 Atlantic spotted dolphin, 20 common dolphins, 1 pantropical spotted dolphin, and 3 striped dolphins could experience 50% tympanic membrane rupture or slight lung injury (Level A harassment) as a result of the training activities utilizing underwater detonation in the VACAPES Range Complex Study Area. However, these estimates do not take into consideration the proposed mitigation and monitoring measures. For underwater detonations, the animals have to be within an area between certain injury zones of influence (ZOI) to experience Level A harassment. Such injury ZOI varies from 0.02 km^2 to 6.39 km^2 (or at distances between 80 m to 1,426 m from the center of detonation) depending on the types of munition used and the season of the action. Though it is possible that Navy observers could fail to detect an animal at a distance of more than 1 km (an injury ZOI during BOMEX, which is planned to have 5 events annually), all injury ZOIs from other detonation activities (FIREX, MISSILEX, and MINEX) are smaller than 0.165 km^2 (230 m in radius) and NMFS believes it is unlikely that any marine mammal could be detected by lookouts/watchstanders or MMOs. As discussed previously, the Navy plans to utilize aerial or vessel surveys to detect marine mammals for mitigation implementation and indicated that they are capable of effectively monitoring safety zones.

Based on these assessments, NMFS determined that approximately 2 humpback whales, 2 fin whales, 2 sperm whales, 3 dwarf or pygmy sperm whales, 1 rough-toothed dolphin, 29 bottlenose dolphins, 70 pantropical spotted dolphins, 68 stripped dolphins, 33 Clymene dolphins, 43 Atlantic spotted dolphins, 2,193 common dolphins, 16 Risso's dolphins, and 10 pilot whales could be affected by Level B harassment (TTS and sub-TTS) as a result of the proposed VACAPES Range Complex training activities. These numbers represent approximately 0.24%, 0.09%, 0.04%, 0.76%, 0.04%, 1.58%, 0.07%, 0.08%, 1.82%, 0.08%, and 0.03% of humpback whales, fin whales, sperm whales, dwarf or pygmy sperm whales, bottlenose dolphins, pantropical spotted dolphins, striped dolphins, Clymene dolphins, Atlantic spotted dolphins, common dolphins, Risso's dolphins, and pilot whales, respectively in the vicinity of the proposed VACAPES Range Complex Study Area (calculation based on NMFS 2007 US Atlantic and Gulf of Mexico Marine Mammal Stock Assessment). Although the population estimates of Clymene dolphins and rough-toothed dolphins are unknown in the proposed action area, NMFS believes that the take of 33 individuals of Clymene dolphins and 1 individual of rough-toothed dolphin by Level B harassment would have a negligible impact to this species because most of their population exists beyond the project area and because they are widely distributed species in the North Atlantic (Jefferson *et al.,* 1993; Reeves *et al.,* 2002).

In addition, the Level A takes of 1 Atlantic spotted dolphin, 20 common dolphins, 1 pantropical spotted dolphin, and 3 striped dolphins represent 0.002%, 0.0166%, 0.0225%, and 0.0032% of these species, respectively, in the vicinity of the proposed VACAPES Range Complex Study Area (calculation based on NMFS 2007 US Atlantic and Gulf of Mexico Marine Mammal Stock Assessment). Given these very small percentages, NMFS does not expect there to be any long-term adverse effect on the populations of the aforementioned dolphin species. No marine mammals are expected to be killed as a result of these activities.

Additionally, the aforementioned take estimates do not account for the implementation of mitigation measures. With the implementation of mitigation and monitoring measures, NMFS expects that the takes would be reduced further. Coupled with the fact that these impacts will likely not occur in areas and times critical to reproduction, NMFS has determined that the total taking over the 5-year period of the regulations and subsequent LOAs from the Navy's VACAPES Range Complex

training activities will have a negligible impact on the marine mammal species and stocks present in the VACAPES Range Complex Study Area.

Subsistence Harvest of Marine Mammals

NMFS has determined that the issuance of 5-year regulations and subsequent LOAs (as warranted) for Navy training exercises in the VACAPES Range Complex would not have an unmitigable adverse impact on the availability of the affected species or stocks for subsistence use since there are no such uses in the specified area.

ESA

There are five marine mammal species, three sea turtle species, and a fish species that are listed as endangered under the ESA with confirmed or possible occurrence in the study area and could be impacted by the proposed action: Humpback whale, North Atlantic right whale, blue whale, fin whale, sperm whale, loggerhead sea turtle, leatherback sea turtle, the Kemp's ridley sea turtle, and the shortnose sturgeon.

Pursuant to Section 7 of the ESA, the Navy has consulted with NMFS on this action. NMFS has also consulted internally on the issuance of regulations under section 101(a)(5)(A) of the MMPA for this activity. The Biological Opinion concludes that the proposed training activities are likely to adversely affect but are not likely to jeopardize the continued existence of these threatened and endangered species under NMFS jurisdiction.

NEPA

NMFS participated as a cooperating agency on the Navy's Final Environmental Impact Statement (FEIS) for the VACAPES Range Complex. NMFS subsequently adopted the Navy's EIS for the purpose of complying with the MMPA.

Determination

Based on the analysis contained herein and in the proposed rule (and other related documents) of the likely effects of the specified activity on marine mammals and their habitat and dependent upon the implementation of the mitigation measures, NMFS finds that the total taking from Navy VACAPES Range Complex training exercises utilizing underwater explosives over the 5 year period will have a negligible impact on the affected species or stocks and will not result in an unmitigable adverse impact on the availability of marine mammal species or stocks for taking for subsistence uses because no subsistence uses exist in the VACAPES Range Complex study area. NMFS has issued regulations for these exercises that prescribe the means of effecting the least practicable adverse impact on marine mammals and their habitat and set forth requirements pertaining to the monitoring and reporting of that taking.

Classification

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

Pursuant to Executive Order 12866, the Office of Management and Budget has determined that this rule is not significant.

The Chief Counsel for Regulation of the Department of Commerce certified at the Proposed Rule stage that this action will not have a significant economic impact on a substantial number of small entities. The Navy is the entity that will be affected by this rulemaking, not a small governmental jurisdiction, small organization or small business, as defined by the RFA. This rulemaking authorizes the take of marine mammals incidental to a specified activity. The specified activity defined in the proposed rule includes the use of underwater detonations, which are only used by the U.S. military, during training activities that are only conducted by the U.S. Navy. Additionally, any requirements imposed by a Letter of Authorization issued pursuant to these regulations, and any monitoring or reporting requirements imposed by these regulations, will be applicable only to the Navy. Because this action, if adopted, would directly affect the Navy and not a small entity, NMFS concludes the action would not result in a significant economic impact on a substantial number of small entities.

The Assistant Administrator for Fisheries has determined that there is good cause under the Administrative Procedure Act (5 U.S.C. 553(d)(3)) to waive the 30-day delay in effective date of the measures contained in the final rule. The U.S Navy has a compelling national policy reason to continue military readiness activities without interruption in its East Coast Operating Areas, i.e., the VACAPES Range Complex. As discussed below, suspension/interruption of the Navy's ability to train, for even a small number of days, disrupts vital sequential training and certification processes essential to our national security.

In order to meet its national security objectives, the Navy must continually maintain its ability to operate in a challenging at-sea environment, conduct military operations, control strategic maritime transit routes and international straits, and protect sea lines of communications that support international commerce. To meet these objectives, the Navy must continually train. Timely training is critical because individual Navy units and Strike Groups/Amphibious Readiness Groups (ARG) currently operate in, or need to quickly deploy to high risk geographic areas. In addition, a Strike Group/ARG is built around an aircraft carrier with typically 5,300 personnel on board and an amphibious assault ship that carries a Marine Corps Expeditionary Unit, so failure to adequately train risks thousands of lives.

The training necessary to protect American interests and the lives of sailors and marines is complex. It involves ensuring the warfighter can accurately identify potential threats in a variety of marine environments and conditions, and it involves the coordination of different vessels and aircraft so that the group's capabilities are employed in the most tactically effective manner. As with any complicated coordinated effort, this challenge requires routine practice, as these skills are perishable.

In 10 U.S.C. 5062, Congress mandated that the Chief of Naval Operations (CNO) organize, train, and equip all Naval forces for combat. In response, the Fleet Response Training Plan (FRTP) is a major initiative designed to ensure Naval units receive required training before they deploy. The FRTP is an arduous sequential training cycle in which unit level training (ULT) and combat certification are followed by major exercises that bring together various warfare components so they have the opportunity to practice as an integrated whole and attain certification. Accordingly, any delay in coordinated training creates a significant and unreasonable risk which could result in a unit's and/or Strike Group's inability to train, certify and report as directed to an overseas theater of operations.

A deployment certification exercise is currently scheduled for June 2009 that will encompass areas of the VACAPES Range Complex. Lack of the appropriate environmental regulatory coverage for even a single day imperils completion of this exercise, and risks deployment certification. Essential ULT also occurs in these OPAREAs. There is limited unit level underway (at-sea) time available in the FRTP to adjust the training dates. These ULT training periods are driven by sequential certification processes for both inport and at-sea training.

Scheduling constraints are further complicated by the availability of Afloat Training Groups (ATGs) that are responsible for training all individual units. ATGs have a limited number of trainers available at any given time, and their schedules must also be de-conflicted, compounding the problem if training schedules are not adhered to. Waiver of the 30-day delay of the effective date of the Final Rule will allow Navy to finalize operational procedures to ensure compliance with required mitigation, monitoring, and reporting requirements, and have MMPA authorization in place prior to Navy's vital June 2009 exercise.

List of Subjects in 50 CFR Part 218

Exports, Fish, Imports, Incidental take, Indians, Labeling, Marine mammals, Navy, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation.

Dated: June 5, 2009.

Samuel D. Rauch III,

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

■ For reasons set forth in the preamble, 50 CFR Chapter II is amended by adding part 218 to read as follows:

■ 1. Part 218 is added to read as follows:

PART 218—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

Subpart A—Taking Marine Mammals Incidental to U.S. Navy Training in the Virginia Capes Range Complex (VACAPES Range Complex)

Sec.
218.1 Specified activity, specified geographical area and effective dates.
218.2 Permissible methods of taking.
218.3 Prohibitions.
218.4 Mitigation.
218.5 Requirements for monitoring and reporting.
218.6 Applications for Letters of Authorization.
218.7 Letters of Authorization.
218.8 Renewal of Letters of Authorization and adaptive management.
218.9 Modifications to Letters of Authorization.

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

Subpart A—Taking Marine Mammals Incidental to U.S. Navy Training in the Virginia Capes Range Complex (VACAPES Range Complex)

§ 218.1 Specified activity, specified geographical area and effective dates.

(a) Regulations in this subpart apply only to the U.S. Navy for the taking of marine mammals that occurs in the area outlined in paragraph (b) of this section and that occur incidental to the activities described in paragraph (c) of this section.

(b) The taking of marine mammals by the Navy is only authorized if it occurs within the VACAPES Range Complex Operation Area (OPAREA), which is located in the coastal and offshore waters of the western North Atlantic Ocean adjacent to Delaware, Maryland, Virginia, and North Carolina. The northernmost boundary of the VACAPES Range Complex OPAREA is located 37 nautical miles (nm) off the entrance to Delaware Bay at latitude 38°45′ N, the farthest point of the eastern boundary is 184 nm east of Chesapeake Bay at longitude 72°41′ W, and the southernmost point is 105 nm southeast of Cape Hatteras, North Carolina, at latitude of 34°19′ N. The western boundary of the VACAPES Range Complex OPAREA lies 3 nm from the shoreline at the boundary separating state and Federal waters.

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the following activities within the designated amounts of use:

(1) The detonation of the underwater explosives indicated in paragraph (c)(1)(i) of this section conducted as part of the training events indicated in paragraph (c)(1)(ii) of this section:

(i) Underwater Explosives:

(A) AGM–114 (Hellfire missile)

(B) AGM–65 E/F (Maverick missile)

(C) MK–83/GBU–32 (1,000 lb High Explosive bomb)

(D) Airgorne Mine Neutralization system (AMNS)

(E) 20 lb NEW charges

(F) AGM–88 (HARM)

(G) 5″ Naval Gunfire

(ii) Training Events:

(A) Mine Exercise (MINEX) (Mine Neutralization [AMNS])—up to 150 exercises over the course of 5 years (an average of 30 per year);

(B) Mine Exercise (MINEX) (Mine Neutralization [20 lb NEW charges])—up to 120 exercises over the course of 5 years (an average of 24 per year);

(C) Bombing Exercise (BOMBEX) (Air-to-Surface)—up to 100 exercises over the course of 5 years (an average of 20 per year);

(D) Missile Exercise (MISSILEX) (Air-to-Surface; Hellfire missile)—up to 300 exercises over the course of 5 years (an average of 60 per year);

(E) Missile Exercise (MISSILEX) (Air-to-Surface; Maverick, HE)—up to 100 exercises over the course of 5 years (an average of 20 per year); and

(F) FIREX with IMPASS—up to 110 exercises over the course of 5 years (an average of 22 per year).

(2) [Reserved]

(d) Regulations are effective June 8, 2009 and are applicable to the Navy on June 5, 2009 through June 4, 2014.

§ 218.2 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to § 216.106 of this chapter and § 218.7, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals within the area described in § 218.1(b), provided the activity is in compliance with all terms, conditions, and requirements of this subpart and the appropriate Letter of Authorization.

(b) The activities identified in § 218.1(c) must be conducted in a manner that minimizes, to the greatest extent practicable, any adverse impacts on marine mammals and their habitat.

(c) The incidental take of marine mammals under the activities identified in § 218.1(c) is limited to the following species, by the indicated method of take and the indicated number of times:

(1) Level B Harassment:

(i) Mysticetes:

(A) Humpback whale (*Megaptera novaeangliae*)—10 (an average of 2 annually); and

(B) Fin whale (*Balaenoptera physalus*)—10 (an average of 2 annually).

(ii) Odontocetes:

(A) Sperm whale (*Physeter macrocephalus*)—10 (an average of 2 annually);

(B) Pygmy or dwarf sperm whales (*Kogia* sp.)—15 (an average of 3 annually);

(C) Rough-toothed dolphin (*Steno bredanensis*)—5 (an average of 1 annually);

(D) Bottlenose dolphin (*Tursiops truncatus*)—145 (an average of 29 annually);

(E) Pantropical spotted dolphin (*Stenella attenuata)*—350 (an average of 70 annually);

(F) Striped dolphin (*S. coeruleoalba*)—340 (an average of 68 annually);

(G) Clymene dolphin (*S. clymene*)—165 (an average of 33 annually);

(H) Atlantic spotted dolphin (*S. frontalis*)—215 (an average of 43 annually);

(I) Common dolphin (*Delphinus delphis)*—10,965 (an average of 2,193 annually);

(J) Risso's dolphin (*Grampus griseus*)—80 (an average of 16 annually); and

(K) Pilot whales (*Globicephala* sp.)—50 (an average of 10 annually).

(2) Level A Harassment (injury):

(i) Atlantic spotted dolphin—5 (an average of 1 annually);

(ii) Common dolphin—100 (an average of 20 annually);

(iii) Pantropical spotted dolphin—5 (an average of 1 annually); and

(iv) Striped dolphin—15 (an average of 3 annually).

§ 218.3 Prohibitions.

Notwithstanding takings contemplated in § 218.2 and authorized by a Letter of Authorization issued under § 216.106 of this chapter and § 218.7, no person in connection with the activities described in § 218.1 may:

(a) Take any marine mammal not specified in § 218.2(c);

(b) Take any marine mammal specified in § 218.2(c) other than by incidental take as specified in § 218.2(c)(1) and (2);

(c) Take a marine mammal specified in § 218.2(c) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of this Subpart or a Letter of Authorization issued under § 216.106 of this chapter and § 218.7.

§ 218.4 Mitigation.

(a) When conducting training activities identified in § 218.1(c), the mitigation measures contained in the Letter of Authorization issued under § 216.106 of this chapter and § 218.7 must be implemented. These mitigation measures include, but are not limited to:

(1) *General Maritime Measures:*

(i) Personnel Training—Lookouts

(A) All bridge personnel, Commanding Officers, Executive Officers, officers standing watch on the bridge, maritime patrol aircraft aircrews, and Mine Warfare (MIW) helicopter crews shall complete Marine Species Awareness Training (MSAT).

(B) Navy lookouts shall undertake extensive training to qualify as a watchstander in accordance with the Lookout Training Handbook (NAVEDTRA 12968–D).

(C) Lookout training shall include on-the-job instruction under the supervision of a qualified, experienced watchstander. Following successful completion of this supervised training period, lookouts shall complete the Personal Qualification Standard Program, certifying that they have demonstrated the necessary skills (such as detection and reporting of partially submerged objects).

(D) Lookouts shall be trained in the most effective means to ensure quick and effective communication within the command structure to facilitate implementation of protective measures if marine species are spotted.

(E) Surface lookouts shall scan the water from the ship to the horizon and be responsible for all contacts in their sector. In searching the assigned sector, the lookout shall always start at the forward part of the sector and search aft (toward the back). To search and scan, the lookout shall hold the binoculars steady so the horizon is in the top third of the field of vision and direct the eyes just below the horizon. The lookout shall scan for approximately five seconds in as many small steps as possible across the field seen through the binoculars. They shall search the entire sector in approximately five-degree steps, pausing between steps for approximately five seconds to scan the field of view. At the end of the sector search, the glasses shall be lowered to allow the eyes to rest for a few seconds, and then the lookout shall search back across the sector with the naked eye.

(F) At night, lookouts shall scan the horizon in a series of movements that would allow their eyes to come to periodic rests as they scan the sector. When visually searching at night, they shall look a little to one side and out of the corners of their eyes, paying attention to the things on the outer edges of their field of vision. Lookouts shall also have night vision devices available for use.

(ii) Operating Procedures and Collision Avoidance:

(A) Prior to major exercises, a Letter of Instruction, Mitigation Measures Message or Environmental Annex to the Operational Order shall be issued to further disseminate the personnel training requirement and general marine species mitigation measures.

(B) Commanding Officers shall make use of marine species detection cues and information to limit interaction with marine species to the maximum extent possible consistent with safety of the ship.

(C) While underway, surface vessels shall have at least two lookouts with binoculars; surfaced submarines shall have at least one lookout with binoculars. Lookouts already posted for safety of navigation and man-overboard precautions may be used to fill this requirement. As part of their regular duties, lookouts shall watch for and report to the OOD the presence of marine mammals.

(D) Personnel on lookout shall employ visual search procedures employing a scanning method in accordance with the Lookout Training Handbook (NAVEDTRA 12968–D).

(E) After sunset and prior to sunrise, lookouts shall employ Night Lookouts Techniques in accordance with the Lookout Training Handbook (NAVEDTRA 12968–D).

(F) While in transit, naval vessels shall be alert at all times, use extreme caution, and proceed at a ''safe speed'' so that the vessel can take proper and effective action to avoid a collision with any marine animal and can be stopped within a distance appropriate to the prevailing circumstances and conditions.

(G) When whales have been sighted in the area, Navy vessels shall increase vigilance and implement measures to avoid collisions with marine mammals and avoid activities that might result in close interaction of naval assets and marine mammals. Such measures shall include changing speed and/or direction and would be dictated by environmental and other conditions (*e.g.,* safety or weather).

(H) Naval vessels shall maneuver to keep at least 500 yds (460 m) away from any observed whale and avoid approaching whales head-on. This requirement does not apply if a vessel's safety is threatened, such as when change of course will create an imminent and serious threat to a person, vessel, or aircraft, and to the extent vessels are restricted in their ability to maneuver. Vessels shall take reasonable steps to alert other vessels in the vicinity of the whale.

(I) Where feasible and consistent with mission and safety, vessels shall avoid closing to within 200-yd (183 m) of marine mammals other than whales (whales addressed above).

(J) Navy aircraft participating in exercises at sea shall conduct and maintain, when operationally feasible and safe, surveillance for marine species of concern as long as it does not violate safety constraints or interfere with the accomplishment of primary operational duties. Marine mammal detections shall be immediately reported to assigned Aircraft Control Unit for further dissemination to ships in the vicinity of the marine species as appropriate where it is reasonable to conclude that the course of the ship will likely result in a closing of the distance to the detected marine mammal.

(K) All vessels shall maintain logs and records documenting training operations should they be required for event reconstruction purposes. Logs and records shall be kept for a period of 30 days following completion of a major training exercise.

(2) Coordination and Reporting Requirements. (i) The Navy shall coordinate with the local NMFS Stranding Coordinator for any unusual marine mammal behavior and any stranding, beached live/dead, or floating

marine mammals that may occur at any time during or within 24 hours after completion of training activities.

(ii) The Navy shall follow internal chain of command reporting procedures as promulgated through Navy instructions and orders.

(3) Mitigation Measures Applicable to Vessel Transit in the Mid-Atlantic during North Atlantic Right Whale Migration: The mitigation measures apply to all Navy vessel transits, including those vessels that would transit to and from East Coast ports and the VACAPES Range Complex.

(i) Mid-Atlantic, Offshore of the Eastern United States:

(A) All Navy vessels are required to use extreme caution and operate at a slow, safe speed consistent with mission and safety (at a speed that does not compromise safety of navigation) during the months indicated below and within a 37 km (20 nm) arc (except as noted) of the specified associated reference points:

(*1*) South and East of Block Island (37 km (20 NM) seaward of line between 41–4.49° N. lat. 071–51.15° W. long. and 41–18.58° N. lat. 070–50.23° W. long): Sept–Oct and Mar–Apr

(*2*) New York/New Jersey (40–30.64° N. lat. 073–57.76° W. long.): Sep–Oct and Feb–Apr.

(*3*) Delaware Bay (Philadelphia) (38–52.13° N. lat. 075–1.93° W. long.): Oct–Dec and Feb–Mar.

(*4*) Chesapeake Bay (Hampton Roads and Baltimore) (37–1.11° N. lat. 075–57.56° W. long.): Nov–Dec and Feb–Apr.

(*5*) North Carolina (34–41.54° N. lat. 076–40.20° W. long.): Dec–Apr.

(*6*) South Carolina (33–11.84° N. lat. 079–8.99° W. long. and 32–43.39° N. lat. 079–48.72° W. long.): Oct–Apr.

(B) During the months indicated in paragraph (a)(3)(i)(A) of this section, Navy vessels shall practice increased vigilance with respect to avoidance of vessel-whale interactions along the mid-Atlantic coast, including transits to and from any mid-Atlantic ports not specifically identified in paragraph (a)(3)(i)(A) of this section.

(C) All surface units transiting within 56 km (30 NM) of the coast in the mid-Atlantic shall ensure at least two watchstanders are posted, including at least one lookout who has completed required MSAT training.

(D) Navy vessels shall not knowingly approach any whale head on and shall maneuver to keep at least 457 m (1,500 ft) away from any observed whale, consistent with vessel safety.

(ii) Southeast Atlantic, Offshore of the Eastern United States—for the purposes of the measures below (paragraphs (a)(3)(ii)(A) & (B) of this section), the ''southeast'' encompasses sea space from Charleston, South Carolina, southward to Sebastian Inlet, Florida, and from the coast seaward to 148 km (80 NM) from shore. North Atlantic right whale critical habitat is the area from 31–15° N. lat. to 30–15° N. lat. extending from the coast out to 28 km (15 NM), and the area from 28–00° N. lat. to 30–15° N. lat. from the coast out to 9 km (5 NM). All mitigation measures described here that apply to the critical habitat apply from November 15–April 15 and also apply to an associated area of concern which extends 9 km (5 NM) seaward of the designated critical habitat boundaries.

(A) Prior to transiting or training in the critical habitat or associated area of concern, ships shall contact Fleet Area Control and Surveillance Facility, Jacksonville, to obtain latest whale sighting and other information needed to make informed decisions regarding safe speed (the minimum speed at which mission goals or safety will not be compromised) and path of intended movement. Subs shall contact Commander, Submarine Group Ten for similar information.

(B) The following specific mitigation measures apply to activities occurring within the North Atlantic right whale critical habitat and an associated area of concern which extends 9 km (5 NM) seaward of the designated critical habitat boundaries:

(*1*) When transiting within the critical habitat or associated area of concern, vessels shall exercise extreme caution and proceed at a slow safe speed. The speed shall be the slowest safe speed that is consistent with mission, training and operations.

(*2*) Speed reductions (adjustments) are required when a whale is sighted by a vessel or when the vessel is within 9 km (5 NM) of a reported new sighting less than 12 hours old. Circumstances could arise where, in order to avoid North Atlantic right whale(s), speed reductions could mean vessels must reduce speed to a minimum at which it can safely keep on course or vessels could come to an all stop.

(*3*) Vessels shall avoid head-on approaches to North Atlantic right whale(s) and shall maneuver to maintain at least 457 m (500 yd) of separation from any observed whale if deemed safe to do so. These requirements do not apply if a vessel's safety is threatened, such as when a change of course would create an imminent and serious threat to a person, vessel, or aircraft, and to the extent vessels are restricted in the ability to maneuver.

(*4*) During the North Atlantic right whale calving season, north-south transits through the critical habitat are prohibited.

(*5*) Ships, surfaced subs, and aircraft shall report any whale sightings to Fleet Area Control and Surveillance Facility, Jacksonville, by the quickest and most practicable means. The sighting report shall include the time, latitude/longitude, direction of movement and number and description of whale (*i.e.,* adult/calf).

(iii) Northeast Atlantic, Offshore of the Eastern United States:

(A) Prior to transiting the Great South Channel or Cape Cod Bay critical habitat areas, ships shall obtain the latest North Atlantic right whale sightings and other information needed to make informed decisions regarding safe speed (the minimum speed at which mission goals or safety will not be compromised). The Great South Channel critical habitat is defined by the following coordinates: 41–00° N. lat., 69–05° W. long.; 41–45° N. lat, 69–45° W. long; 42–10° N. lat., 68–31° W. long.; 41–38° N. lat., 68–13° W. long. The Cape Cod Bay critical habitat is defined by the following coordinates: 42–04.8° N. lat., 70–10° W. long.; 42–12° N. lat., 70–15° W. long.; 42–12° N. lat., 70–30° W. long.; 41–46.8° N. lat., 70–30° W. long.

(B) Ships, surfaced subs, and aircraft shall report any North Atlantic right whale sightings (if the whale is identifiable as a right whale) off the northeastern U.S. to Patrol and Reconnaissance Wing (COMPATRECONWING). The report shall include the time of sighting, lat/long, direction of movement (if apparent) and number and description of the whale(s).

(C) Vessels or aircraft that observe whale carcasses shall record the location and time of the sighting and report this information as soon as possible to the cognizant regional environmental coordinator. All whale strikes must be reported. This report shall include the date, time, and location of the strike; vessel course and speed; operations being conducted by the vessel; weather conditions, visibility, and sea state; description of the whale; narrative of incident; and indication of whether photos/videos were taken. Navy personnel are encouraged to take photos whenever possible.

(D) Specific mitigation measures related to activities occurring within the critical habitat include the following:

(*1*) Vessels shall avoid head-on approaches to North Atlantic right whale(s) and shall maneuver to maintain at least 457 m (500 yd) of

separation from any observed whale if deemed safe to do so. These requirements do not apply if a vessel's safety is threatened, such as when change of course would create an imminent and serious threat to person, vessel, or aircraft, and to the extent vessels are restricted in the ability to maneuver.

(*2*) When transiting within the critical habitat or associated area of concern, vessels shall use extreme caution and operate at a safe speed (the minimum speed at which mission goals or safety will not be compromised) so as to be able to avoid collisions with North Atlantic right whales and other marine mammals, and stop within a distance appropriate to the circumstances and conditions.

(*3*) Speed reductions (adjustments) are required when a whale is sighted by a vessel or when the vessel is within 9 km (5 NM) of a reported new sighting less than one week old.

(*4*) Ships transiting in the Cape Cod Bay and Great South Channel critical habitats shall obtain information on recent whale sightings in the vicinity of the critical habitat. Any vessel operating in the vicinity of a North Atlantic right whale shall consider additional speed reductions per Rule 6 of International Navigational Rules.

(4) Mitigation Measures for Specific At-sea Training Events—If a marine mammal is killed as a result of the proposed Navy training activities (e.g., instances in which it is clear that munitions explosions caused the death), the Navy shall suspend its activities immediately and report the incident to NMFS.

(i) Firing Exercise (FIREX) Using the Integrated Maritime Portable Acoustic Scoring System (IMPASS) (5-in. Explosive Rounds):

(A) FIREX using IMPASS would only be conducted in the four designated areas specified in the Navy's LOA application in the VACAPES Range Complex.

(B) Pre-exercise monitoring of the target area shall be conducted with ''Big Eyes'' prior to the event, during deployment of the IMPASS sonobuoy array, and during return to the firing position. Ships shall be required to maintain a lookout dedicated to visually searching for marine mammals 180° along the ship track line and 360° at each buoy drop-off location.

(C) ''Big Eyes'' on the ship shall be used to monitor a 600 yd (548 m) buffer zone around the target area for marine mammals during naval-gunfire events.

(D) Ships shall not fire on the target if any marine mammals are detected within or approaching the 600 yd (548 m) buffer zone until the area is cleared. If marine mammals are present, operations shall be suspended. Visual observation shall occur for approximately 45 minutes, or until the animal has been observed to have cleared the area and is heading away from the buffer zone.

(E) Post-exercise monitoring of the entire target area shall take place with ''Big Eyes'' and the naked eye during the retrieval of the IMPASS sonobuoy array following each firing exercise.

(F) FIREX with IMPASS shall take place during daylight hours only.

(G) FIREX with IMPASS shall only be used in Beaufort Sea State three (3) or less.

(H) The visibility must be such that the fall of shot is visible from the firing ship during the exercise.

(I) No firing shall occur if marine mammals are detected within 70 yd (64 m) of the vessel.

(ii) Air-to-Surface At-Sea Bombing Exercises (250-lbs to 2,000-lbs explosive bombs):

(A) Aircraft shall visually survey the target and buffer zone for marine mammals prior to and during the exercise. The survey of the impact area shall be made by flying at 1,500 ft (457 m) altitude or lower, if safe to do so, and at the slowest safe speed.

(B) A buffer zone of 5,100-yd (4,663 m) radius shall be established around the intended target zone. The exercises shall be conducted only when marine mammals are observed to be outside the buffer zone.

(C) At-sea BOMBEXs using live ordnance shall occur during daylight hours only.

(iii) Air-to-Surface Missile Exercises (Explosive):

(A) Aircraft shall initially survey the intended ordnance impact area for marine mammals.

(B) During the actual firing of the weapon, the aircraft involved must be able to observe the intended ordnance impact area to ensure the area is free of marine mammal transiting the range.

(C) Visual inspection of the target area shall be made by flying at 1,500 ft (457 m) altitude or lower, if safe to do so, and at slowest safe speed.

(D) Explosive ordnance shall not be targeted to impact within 1,800 yd (1,646 m) of sighted marine mammals.

(iv) Mine Neutralization Training Involving Underwater Detonations (up to 20-lb charges):

(A) This activity shall only occur in W–50 of the VACAPES Range Complex.

(B) Observers shall survey the Zone of Influence (ZOI), a 700 yd (640 m) radius from detonation location for marine mammals from all participating vessels during the entire operation. A survey of the ZOI (minimum of 3 parallel tracklines 219 yd [200 m] apart) using support craft shall be conducted at the detonation location 30 minutes prior through 30 minutes post detonation. Aerial survey support shall be utilized whenever assets are available.

(C) Detonation operations shall be conducted during daylight hours only.

(D) If a marine mammal is sighted within the ZOI, the animal shall be allowed to leave of its own volition. The Navy shall suspend detonation exercises and ensure the area is clear of marine mammals for a full 30 minutes prior to detonation.

(E) Divers placing the charges on mines and dive support vessel personnel shall survey the area for marine mammals and shall report any sightings to the surface observers. These animals shall be allowed to leave of their own volition and the ZOI shall be clear of marine mammals for 30 minutes prior to detonation.

(F) No detonations shall take place within 3.2 nm (6 km) of an estuarine inlet (Chesapeake Bay Inlets).

(G) No detonations shall take place within 1.6 nm (3 km) of shoreline.

(H) Personnel shall record any protected species observations during the exercise as well as measures taken if species are detected within the ZOI.

(b) [Reserved]

§ 218.5 Requirements for monitoring and reporting.

(a) The Holder of the Letter of Authorization issued pursuant to § 216.106 of this chapter and § 218.7 for activities described in § 218.1(c) is required to cooperate with the NMFS when monitoring the impacts of the activity on marine mammals.

(b) The Holder of the Authorization must notify NMFS immediately (or as soon as clearance procedures allow) if the specified activity identified in § 218.1(c) is thought to have resulted in the mortality or serious injury of any marine mammals, or in any take of marine mammals not identified in § 218.2(c).

(c) The Navy must conduct all monitoring and required reporting under the Letter of Authorization, including abiding by the VACAPES Range Complex Monitoring Plan, which is incorporated herein by reference, and which requires the Navy to implement, at a minimum, the monitoring activities summarized below.

(1) *Vessel or aerial surveys.* (i) The Holder of this Authorization shall visually survey a minimum of 2 explosive events per year, one of which shall be a multiple detonation event.

One of the vessel or aerial surveys should involve professionally trained marine mammal observers (MMOs).

(ii) Where operationally feasible, for specified training events, aerial or vessel surveys shall be used 1–2 days prior to, during (if reasonably safe), and 1–5 days post detonation.

(iii) Surveys shall include any specified exclusion zone around a particular detonation point plus 2,000 yards beyond the border of the exclusion zone (*i.e.,* the circumference of the area from the border of the exclusion zone extending 2,000 yards outwards). For vessel based surveys a passive acoustic system (hydrophone or towed array) could be used to determine if marine mammals are in the area before and/or after a detonation event.

(iv) When conducting a particular survey, the survey team shall collect:

(A) Location of sighting;

(B) Species (if not possible, indicate whale, dolphin or pinniped);

(C) Number of individuals;

(D) Whether calves were observed;

(E) Initial detection sensor;

(F) Length of time observers maintained visual contact with marine mammal;

(G) Wave height;

(H) Visibility;

(I) Whether sighting was before, during, or after detonations/exercise, and how many minutes before or after;

(J) Distance of marine mammal from actual detonations (or target spot if not yet detonated);

(K) Observed behavior—Watchstanders shall report, in plain language and without trying to categorize in any way, the observed behavior of the animal(s) (such as animal closing to bow ride, paralleling course/speed, floating on surface and not swimming etc.), including speed and direction;

(L) Resulting mitigation implementation—Indicate whether explosive detonations were delayed, ceased, modified, or not modified due to marine mammal presence and for how long; and

(M) If observation occurs while explosives are detonating in the water, indicate munition type in use at time of marine mammal detection.

(2) Passive acoustic monitoring—the Navy shall conduct passive acoustic monitoring when operationally feasible.

(i) Any time a towed hydrophone array is employed during shipboard surveys the towed array shall be deployed during daylight hours for each of the days the ship is at sea.

(ii) The towed hydrophone array shall be used to supplement the ship-based systematic line-transect surveys (particularly for species such as beaked whales that are rarely seen).

(iii) The array shall have the capability of detecting low frequency vocalizations (<1,000 Hz) for baleen whales and relatively high frequency (up to 30 kHz) for odontocetes. The use of two simultaneously deployed arrays can also allow more accurate localization and determination of diving patterns.

(3) Marine mammal observers on Navy platforms. (i) As required in § 218.5(c)(1), MMOs selected for aerial or vessel survey shall be placed on a Navy platform during one of the explosive exercises being monitored per year, the other designated exercise shall be monitored by the Navy lookouts/watchstanders.

(ii) The MMO must possess expertise in species identification of regional marine mammal species and experience collecting behavioral data.

(iii) MMOs shall not be placed aboard Navy platforms for every Navy training event or major exercise, but during specifically identified opportunities deemed appropriate for data collection efforts. The events selected for MMO participation shall take into account safety, logistics, and operational concerns.

(iv) MMOs shall observe from the same height above water as the lookouts.

(v) The MMOs shall not be part of the Navy's formal reporting chain of command during their data collection efforts; Navy lookouts shall continue to serve as the primary reporting means within the Navy chain of command for marine mammal sightings. The only exception is that if an animal is observed within the shutdown zone that has not been observed by the lookout, the MMO shall inform the lookout of the sighting and the lookout shall take the appropriate action through the chain of command.

(vi) The MMOs shall collect species identification, behavior, direction of travel relative to the Navy platform, and distance first observed. Information collected by MMOs be the same as those collected by Navy lookout/watchstanders described in § 218.5(c)(1)(iv).

(d) The Navy shall complete an Integrated Comprehensive Monitoring Program (ICMP) Plan in 2009. This planning and adaptive management tool shall include:

(1) A method for prioritizing monitoring projects that clearly describes the characteristics of a proposal that factor into its priority.

(2) A method for annually reviewing, with NMFS, monitoring results, Navy R&D, and current science to use for potential modification of mitigation or monitoring methods.

(3) A detailed description of the Monitoring Workshop to be convened in 2011 and how and when Navy/NMFS will subsequently utilize the findings of the Monitoring Workshop to potentially modify subsequent monitoring and mitigation.

(4) An adaptive management plan.

(5) A method for standardizing data collection for VACAPES Range Complex and across range complexes.

(e) General Notification of Injured or Dead Marine Mammals—Navy personnel shall ensure that NMFS (regional stranding coordinator) is notified immediately (or as soon as clearance procedures allow) if an injured or dead marine mammal is found during or shortly after, and in the vicinity of, any Navy training exercise utilizing underwater explosive detonations. The Navy shall provide NMFS with species or description of the animal(s), the condition of the animal(s) (including carcass condition if the animal is dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available).

(f) Annual VACAPES Range Complex Monitoring Plan Report—The Navy shall submit a report annually on March 1 describing the implementation and results (through January 1 of the same year) of the VACAPES Range Complex Monitoring Plan. Data collection methods shall be standardized across range complexes to allow for comparison in different geographic locations. Although additional information will also be gathered, the MMOs collecting marine mammal data pursuant to the VACAPES Range Complex Monitoring Plan shall, at a minimum, provide the same marine mammal observation data required in the data required in § 218.5(g). The VACAPES Range Complex Monitoring Plan Report may be provided to NMFS within a larger report that includes the required Monitoring Plan Reports from VACAPES Range Complex and multiple range complexes.

(g) Annual VACAPES Range Complex Exercise Report—The Navy shall provide the information described below for all of their explosive exercises. Until the Navy is able to report in full the information below, they shall provide an annual update on the Navy's explosive tracking methods, including improvements from the previous year.

(1) Total annual number of each type of explosive exercise (of those identified as part of the ''specified activity'' in this

final rule) conducted in the VACAPES Range Complex.

(2) Total annual expended/detonated rounds (missiles, bombs, etc.) for each explosive type.

(h) VACAPES Range Complex 5-yr Comprehensive Report—The Navy shall submit to NMFS a draft report that analyzes and summarizes all of the multi-year marine mammal information gathered during the VACAPES Range Complex exercises for which annual reports are required (Annual VACAPES Range Complex Exercise Reports and VACAPES Range Complex Monitoring Plan Reports). This report shall be submitted at the end of the fourth year of the rule (May 2013), covering activities that have occurred through December 1, 2012.

(i) The Navy shall respond to NMFS' comments and requests for additional information or clarification on the VACAPES Range Complex Comprehensive Report, the Annual VACAPES Range Complex Exercise Report, or the Annual VACAPES Range Complex Monitoring Plan Report (or the multi-Range Complex Annual Monitoring Plan Report, if that is how the Navy chooses to submit the information) if submitted within 3 months of receipt. These reports shall be considered final after the Navy has addressed NMFS' comments or provided the requested information, or three months after the submittal of the draft if NMFS does not comment by then.

(j) In 2011, the Navy shall convene a Monitoring Workshop in which the Monitoring Workshop participants will be asked to review the Navy's Monitoring Plans and monitoring results and make individual recommendations (to the Navy and NMFS) of ways of improving the Monitoring Plans. The recommendations shall be reviewed by the Navy, in consultation with NMFS, and modifications to the Monitoring Plan shall be made, as appropriate.

§ 218.6 Applications for Letters of Authorization.

To incidentally take marine mammals pursuant to these regulations in this subpart, the U.S. citizen (as defined by § 216.103) conducting the activity identified in § 218.1(c) (the U.S. Navy) must apply for and obtain either an initial Letter of Authorization in accordance with § 218.7 or a renewal under § 218.8.

§ 218.7 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the period of validity of this subpart, but must be renewed annually subject to annual renewal conditions in § 218.8.

(b) Each Letter of Authorization will set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact on the species, its habitat, and on the availability of the species for subsistence uses (i.e., mitigation); and

(3) Requirements for mitigation, monitoring and reporting.

(c) Issuance and renewal of the Letter of Authorization will be based on a determination that the total number of marine mammals taken by the activity as a whole will have no more than a negligible impact on the affected species or stock of marine mammal(s).

§ 218.8 Renewal of Letters of Authorization and adaptive management.

(a) A Letter of Authorization issued under § 216.106 of this chapter and § 218.7 for the activity identified in § 218.1(c) will be renewed annually upon:

(1) Notification to NMFS that the activity described in the application submitted under § 218.6 will be undertaken and that there will not be a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming 12 months;

(2) Timely receipt of the monitoring reports required under § 218.5(c) through (i); and

(3) A determination by NMFS that the mitigation, monitoring and reporting measures required under § 218.4 and the Letter of Authorization issued under § 216.106 of this chapter and § 218.7, were undertaken and will be undertaken during the upcoming annual period of validity of a renewed Letter of Authorization.

(b) If a request for a renewal of a Letter of Authorization issued under § 216.106 of this chapter and § 218.8 indicates that a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming season will occur, NMFS will provide the public a period of 30 days for review and comment on the request. Review and comment on renewals of Letters of Authorization are restricted to:

(1) New cited information and data indicating that the determinations made in this document are in need of reconsideration, and

(2) Proposed changes to the mitigation and monitoring requirements contained in these regulations or in the current Letter of Authorization.

(c) A notice of issuance or denial of a renewal of a Letter of Authorization will be published in the **Federal Register.**

(d) NMFS, in response to new information and in consultation with the Navy, may modify the mitigation or monitoring measures in subsequent LOAs if doing so creates a reasonable likelihood of more effectively accomplishing the goals of mitigation and monitoring set forth in the preamble of these regulations. Below are some of the possible sources of new data that could contribute to the decision to modify the mitigation or monitoring measures:

(1) Results from the Navy's monitoring from the previous year (either from VACAPES Range Complex or other locations).

(2) Findings of the Monitoring Workshop that the Navy will convene in 2011 (§ 218.5(j)).

(3) Compiled results of Navy funded research and development (R&D) studies (presented pursuant to the ICMP (§ 218.5(d)).

(4) Results from specific stranding investigations (either from the VACAPE Range Complex Study Area or other locations, and involving coincident explosives training or not involving coincident use).

(5) Results from general marine mammal and sound research (funded by the Navy or otherwise).

(6) Any information which reveals that marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent Letters of Authorization.

§ 218.9 Modifications to Letters of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the Letter of Authorization by NMFS, issued pursuant to § 216.106 of this chapter and § 218.7 and subject to the provisions of this subpart shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under § 218.8, without modification (except for the period of validity), is not considered a substantive modification.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 218.2(c), a Letter of Authorization issued pursuant to § 216.106 of this chapter and § 218.7 may be substantively modified without prior notification and an opportunity for public comment. Notification will be

published in the **Federal Register** within 30 days subsequent to the action.

[FR Doc. E9–13697 Filed 6–8–09; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 218

RIN 0648–AW79

Taking and Importing Marine Mammals; U.S. Navy Training in the Jacksonville Range Complex

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

ACTION: Final rule.

SUMMARY: NMFS, upon application from the U.S. Navy (Navy), is issuing regulations to govern the unintentional taking of marine mammals incidental to activities conducted off the Charleston/Jacksonville (JAX) Range Complex for the period of June 2009 through June 2014. The Navy's activities are considered military readiness activities pursuant to the Marine Mammal Protection Act (MMPA), as amended by the National Defense Authorization Act for Fiscal Year 2004 (NDAA). These regulations, which allow for the issuance of ''Letters of Authorization'' (LOAs) for the incidental take of marine mammals during the described activities and specified timeframes, prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species and their habitat, as well as requirements pertaining to the monitoring and reporting of such taking.

DATES: Effective June 8, 2009 and is applicable to the Navy on June 5, 2009 through June 4, 2014.

ADDRESSES: A copy of the Navy's application (which contains a list of the references used in this document), NMFS' Record of Decision (ROD), and other documents cited herein may be obtained by writing to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225 or by telephone via the contact listed here (*see* **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS, (301) 713–2289, ext. 137.

SUPPLEMENTARY INFORMATION: Extensive supplementary information was provided in the proposed rule for this activity, which was published in the **Federal Register** on Wednesday, December 17, 2008 (73 FR 76578). This information will not be reprinted here in its entirety; rather, all sections from the proposed rule will be represented herein and will contain either a summary of the material presented in the proposed rule or a note referencing the page(s) in the proposed rule where the information may be found. Any information that has changed since the proposed rule was published will be addressed herein. Additionally, this final rule contains a section that responds to the comments received during the public comment period.

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) during periods of not more than five consecutive years each if certain findings are made and regulations are issued or, if the taking is limited to harassment and of no more than 1 year, the Secretary shall issue a notice of proposed authorization for public review.

Authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as:

> An impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The NDAA (Pub. L. 108–136) removed the ''small numbers'' and ''specified geographical region'' limitations and amended the definition of ''harassment'' as it applies to a ''military readiness activity'' to read as follows (Section 3(18)(B) of the MMPA):

> (i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].

Summary of Request

On March 17, 2008, NMFS received an application from the Navy requesting authorization for the take of six species of cetaceans incidental to the proposed training activities in the JAX Range Complex over the course of 5 years. On November 7, 2008, the Navy submitted an Addendum with some modifications and additional information to its original request. These training activities are classified as military readiness activities. The Navy states that these training activities may cause various impacts to marine mammal species in the proposed JAX Range Complex area. The Navy requests an authorization to take individuals of these cetacean species by Level B Harassment. Further, the Navy requests authorization to take 2 individual Atlantic spotted dolphins per year by injury incidental to the proposed training activities in the JAX Range Complex. Please refer to Table 5 of this document for detailed information of the potential exposures from explosive ordnance (per year) for marine mammals in the JAX Range Complex. However, due to the proposed mitigation and monitoring measures, NMFS does not expect the proposed action would result in any marine mammal mortality. Therefore, no mortality would be authorized for the Navy's JAX Range Complex training activities.

Background of Navy Request

The proposed rule contains a description of the Navy's mission, their responsibilities pursuant to Title 10 of the United States Code, and the specific purpose and need for the activities for which they requested incidental take authorization. The description contained in the proposed rule has not changed (73 FR 76578; December 17, 2008).

Description of the Specified Activities

The proposed rule contains a complete description of the Navy's specified activities that are covered by these final regulations, and for which the associated incidental take of marine mammals will be authorized in the related LOAs. The proposed rule describes the nature and number of the training activities. These training activities consist of surface warfare [Missile Exercise (MISSILEX)], mine warfare [Mine Exercises (MINEX)], amphibious warfare [Firing Exercise

(FIREX)], small arms training (explosive hand grenades), and vessel movement to, from, and within the JAX Range Complex Study Area. The description of the action contained in the proposed rule has not changed (73 FR 76578, pages 76579–76581). Table 1 summarizes the nature and level of these planned activities.

The Navy provided the following additional information regarding the anti-swimmer grenade training. Any single event using the MK3A2 grenades could consist of up to 10 high explosive (HE) grenades being used. The total number of HE grenades used per year will not exceed 80. Non-explosive practice grenades may also be used in these training events. For modeling purposes, and to account for the highest number of grenades that may potentially be used during an individual event, it was assumed that there would be 8 events (up to 10 grenades per event), or a total of 80 grenades, per year.

TABLE 1—TRAINING EVENTS INVOLVING EXPLOSIVES PLANNED IN THE JAX RANGE COMPLEX PER YEAR

Operation	Platform	System/ordnance	Number of events	Event duration
Missile Exercise (MISSILEX) (Air to Surface).	MH–60R/S, SH–60B, HH–60H.	AGM–114 (Hellfire missile)	70 sorties (70 missiles)	1 hour.
	P–3C, and P–8A	AGM–65 (Maverick missile)	3 sorties (3 missiles)	1 hour.
Mine Neutralization	EOD	20 lb charges	12 events	6–8 hours.
FIREX with IMPASS	CG, DDG	5″ gun (IMPASS)	10 events (390 rounds)	8 hours.
Small Arms Training (explosive hand grenades).	Maritime Expeditionary Support Group (Various Small Boats).	MK3A2 anti-swimmer grenades (HE).	8 events (10 grenades per event).	1 hour.

JAX Range Complex

The JAX Range Complex proposed rule contains a description of the JAX Range Complex Study Area along with a description of the areas in which certain types of activities will occur. Table 2, included here, summarizes the areas in which explosive events will occur and their frequency of occurrence. The description of the JAX Range Complex Study Area in the proposed rule has not changed.

TABLE 2—NUMBER OF EVENTS UTILIZING EXPLOSIVE MUNITIONS WITHIN THE JAX RANGE COMPLEX

Sub-area*	Ordnance	Winter	Spring	Summer	Fall	Annual total events
	MISSILEX					73
MLTR	Hellfire	17.5	17.5	17.5	17.5	70
MLTR	Maverick	0.75	0.75	0.75	0.75	3
	FIREX					10
BB, CC	5″ rounds	**0	**0	5	5	10
	MINEX					12
UNDET North	20 LB	1.25	1.25	2.25	1.25	6
UNDET South	20 LB	1.25	1.25	2.25	1.25	6
	Small Arms Training					*** 8
UNDET North	MK3A2 anti-swimmer concussion grenade (0.5 lbs NEW).	1	1	1	1	4
UNDET Sorth	MK3A2 anti-swimmer concussion grenade (0.5 lbs NEW).	1	1	1	1	4

* See Figure 1 of the LOA application for the location of sub-areas.
** In accordance with the current biological opinion for the Southeast, no live FIREX is conducted during North Atlantic right whale calving season (December 1–March 31) and therefore no modeling was completed for the winter and spring season.
*** (10 grenades per event)

Description of Marine Mammals in the Area of the Specified Activities

There are 29 marine mammal species with possible or confirmed occurrence in the JAX Range Complex. As indicated in Table 3, all of the marine mammals are cetacean species (7 mysticetes and 22 odontocetes). Table 6 also includes the Federal status of these marine mammal species. Six marine mammal species listed as Federally endangered under the Endangered Species Act (ESA) occur in the JAX Range Complex: the humpback whale, North Atlantic right whale, sei whale, fin whale, blue whale, and sperm whale. The proposed rule also includes a discussion of the methods used to estimate marine mammal density in the JAX Study Area. The Description of Marine Mammals in the Area of the Specified Activities section has not changed from what was in the proposed rule (73 FR 75631, pages 76581–76582).

TABLE 3—MARINE MAMMAL SPECIES FOUND IN THE JAX RANGE COMPLEX

Family and scientific name	Common name	Federal status
Order Cetacea		
Suborder Mysticeti (baleen whales)		
Eubalaena glacialis	North Atlantic right whale	Endangered.

TABLE 3—MARINE MAMMAL SPECIES FOUND IN THE JAX RANGE COMPLEX—Continued

Family and scientific name	Common name	Federal status
Megaptera novaeangliae	Humpback whale	Endangered.
Balaenoptera acutorostrata	Minke whale.	
B. brydei	Bryde's whale.	
B. borealis	Sei whale	Endangered.
B. physalus	Fin whale	Endangered.
B. musculus	Blue whale	Endangered.
Suborder Odontoceti (toothed whales)		
Physeter macrocephalus	Sperm whale	Endangered.
Kogia breviceps	Pygmy sperm whale.	
K. sima	Dwarf sperm whale.	
Ziphius cavirostris	Cuvier's beaked whale.	
Mesoplodon minus	True's beaked whale.	
M. europaeus	Gervais' beaked whale.	
M. densirostris	Blainville's beaked whale.	
Steno bredanensis	Rough-toothed dolphin.	
Tursiops truncatus	Bottlenose dolphin.	
Stenella attenuate	Pantropical spotted dolphin.	
S. frontalis	Atlantic spotted dolphin.	
S. longirostris	Spinner dolphin.	
S. clymene	Clymene dolphin.	
S. coeruleoalba	Striped dolphin.	
Delphinus delphis	Common dolphin.	
Lagenodephis hosei	Fraser's dolphin.	
Grampus griseus	Risso's dolphin.	
Peponocephala electra	Melon-headed whale.	
Feresa attenuate	Pygmy killer whale.	
Pseudorca crassidens	False killer whale.	
Orcinus orca	Killer whale.	
G. macrorhynchus	Short-finned pilot whale.	

Potential Impacts to Marine Mammal Species

With respect to the MMPA, NMFS' effects assessment serves four primary purposes: (1) To prescribe the permissible methods of taking (*i.e.,* Level B Harassment (behavioral harassment), Level A Harassment (injury), or mortality, including an identification of the number and types of take that could occur by Level A or B harassment or mortality) and to prescribe other means of effecting the least practicable adverse impact on such species or stock and its habitat (*i.e.,* mitigation); (2) to determine whether the specified activity will have a negligible impact on the affected species or stocks of marine mammals (based on the likelihood that the activity will adversely affect the species or stock through effects on annual rates of recruitment or survival); (3) to determine whether the specified activity will have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (however, there are no subsistence communities in the JAX Range Complex Study Area); and (4) to prescribe requirements pertaining to monitoring and reporting.

In the Potential Impacts to Marine Mammal Species section of the proposed rule NMFS included a qualitative discussion of the different ways that vessel strikes and underwater explosive detonations from MISSILEX, MINEX, and FIREX may potentially affect marine mammals (some of which NMFS would not classify as harassment)—*see* 73 FR 76578, pages 76582–76587. Marine mammals may experience direct physiological effects such as threshold shift, acoustic masking, impaired communications, stress responses, and behavioral disturbance. The information contained in Potential Impacts to Marine Mammal Species section from the proposed rule has not changed.

The Navy provided additional information concerning potential impacts from MK3A2 anti-swimmer concussion grenades during small arms training. Modeling was completed for the MK3A2 explosive source, which assumed a 6 ft (1.8 m) detonation depth. The net explosive weight (NEW) of the MK3A2 grenade is 0.5 lb.

Determining the zone of influence (ZOI) of different thresholds from MK3A2 explosives in terms of total energy flux density (EFD), impulse, peak pressure and 1/3-octave bands EFD must treat the sequential explosions differently than the single detonations. For the MK3A2, two factors are involved for the sequential explosives that deal with the spatial and temporal distribution of the detonations as well as the effective accumulation of the resultant acoustics. In view of the ZOI determinations, the sequential detonations are modeled as a single point event with only the EFD summed incoherently:

$$Total\ EFD_{dB} = 10\log_{10}\sum_{i=1}^{n} 10^{(EFD_i/10)}$$

The multiple explosion energy criteria were used to determine the ZOI for the non-injurious behavioral (without TTS) exposure analysis.

Table 4 shows the ZOI results of the model estimation for MK3A2 grenade in the JAX Range Complex. The ZOI, when multiplied by the animal densities and total number of events, provides the exposure estimates for that species. In addition to other mitigation measures, lookouts will visually survey the target area for marine mammals. The exercise will not be conducted until the area is clear of protected species and will be suspended if any enter the buffer area.

TABLE 4—ESTIMATED ZOIS (KM^2) FOR SMALL ARMS TRAINING (ANTI-SWIMMER GRENADES) IN THE JAX RANGE COMPLEX

Area*	Ordnance	Estimated ZOI @ 177 dB re 1 μPa^2-sec (multiple detonations only)				Estimated ZOI @ 205 dB re 1 μPa^2-sec or 13 psi				Mortality ZOI @ 30.5 psi			
		Win	Spr	Sum	Fall	Win	Spr	Sum	Fall	Win	Spr	Sum	Fall
UNDET North.	MK3A2 grenade.	4.25	4.30	3.97	3.97	0.09	0.09	0.09	0.09	<0.01	<0.01	<0.01	<0.01
UNDET South.	MK3A2 grenade.	4.67	4.72	4.24	4.59	0.09	0.09	0.09	0.09	<0.01	<0.01	<0.01	<0.01

Note: ZOIs for the MK3A2 grenades are modeled as multiple detonations (10 grenades being used during each event).
* See Figure 1 of the LOA application for the location of sub-areas.

Later, in the Estimated Take of Marine Mammals Section, NMFS relates and quantifies the potential effects to marine mammals from underwater detonation of explosives discussed here to the MMPA definitions of Level A and Level B Harassment.

Additional analyses on potential impacts to marine mammals from vessel movement within the JAX Range Complex Study Area are added below.

Vessel Movement: There are limited data concerning marine mammal behavioral responses to vessel traffic and vessel noise, and a lack of consensus among scientists with respect to what these responses mean or whether they result in short-term or long-term adverse effects. In those cases where there is a busy shipping lane or where there is large amount of vessel traffic, marine mammals may experience acoustic masking (Hildebrand, 2005) if they are present in the area (*e.g.,* killer whales in Puget Sound; Foote *et al.,* 2004; Holt *et al.,* 2008). In cases where vessels actively approach marine mammals (*e.g.,* whale watching or dolphin watching boats), scientists have documented that animals exhibit altered behavior such as increased swimming speed, erratic movement, and active avoidance behavior (Bursk, 1983; Acevedo, 1991; Baker and MacGibbon, 1991; Trites and Bain, 2000; Williams *et al.,* 2002; Constantine *et al.,* 2003), reduced blow interval (Ritcher *et al.,* 2003), disruption of normal social behaviors (Lusseau, 2003; 2006), and the shift of behavioral activities which may increase energetic costs (Constantine *et al.,* 2003; 2004). A detailed review of marine mammal reactions to ships and boats is available in Richardson *et al.* (1995). For each of the marine mammals taxonomy groups, Richardson *et al.* (1995) provided the following assessment regarding cetacean reactions to vessel traffic:

Toothed whales: ''In summary, toothed whales sometimes show no avoidance reaction to vessels, or even approach them. However, avoidance can occur, especially in response to vessels of types used to chase or hunt the animals. This may cause temporary displacement, but we know of no clear evidence that toothed whales have abandoned significant parts of their range because of vessel traffic.''

Baleen whales: ''When baleen whales receive low-level sounds from distant or stationary vessels, the sounds often seem to be ignored. Some whales approach the sources of these sounds. When vessels approach whales slowly and nonaggressively, whales often exhibit slow and inconspicuous avoidance maneuvers. In response to strong or rapidly changing vessel noise, baleen whales often interrupt their normal behavior and swim rapidly away. Avoidance is especially strong when a boat heads directly toward the whale.''

It is important to recognize that behavioral responses to stimuli are complex and influenced to varying degrees by a number of factors such as species, behavioral contexts, geographical regions, source characteristics (moving or stationary, speed, direction, *etc.*), prior experience of the animal, and physical status of the animal. For example, studies have shown that beluga whales reacted differently when exposed to vessel noise and traffic. In some cases, naïve beluga whales exhibited rapid swimming from ice-breaking vessels up to 80 km away, and showed changes in surfacing, breathing, diving, and group composition in the Canadian high Arctic where vessel traffic is rare (Finley *et al.,* 1990). In other cases, beluga whales were more tolerant of vessels, but differentially responsive by reducing their calling rates, to certain vessels and operating characteristics (especially older animals) in the St. Lawrence River where vessel traffic is common (Blane and Jaakson, 1994). In Bristol Bay, Alaska, beluga whales continued to feed when surrounded by fishing vessels and resisted dispersal even when purposefully harassed (Fish and Vania, 1971).

In reviewing more than 25 years of whale observation data, Watkins (1986) concluded that whale reactions to vessel traffic were ''modified by their previous experience and current activity: habituation often occurred rapidly, attention to other stimuli or preoccupation with other activities sometimes overcame their interest or wariness of stimuli.'' Watkins noticed that over the years of exposure to ships in the Cape Cod area, minke whales (*Balaenoptera acutorostrata*) changed from frequent positive (such as approaching vessels) interest to generally uninterested reactions; finback whales (*B. physalus*) changed from mostly negative (such as avoidance) to uninterested reactions; right whales (*Eubalaena glacialis*) apparently continued the same variety of responses (negative, uninterested, and positive responses) with little change; and humpbacks (*Megaptera novaeangliae*) dramatically changed from mixed responses that were often negative to often strongly positive reactions. Watkins (1986) summarized that ''whales near shore, even in regions with low vessel traffic, generally have become less wary of boats and their noises, and they have appeared to be less easily disturbed than previously. In particular locations with intense shipping and repeated approaches by boats (such as the whale-watching areas of Stellwagen Bank), more and more whales had P [positive] reactions to familiar vessels, and they also occasionally approached other boats and yachts in the same ways.''

In the case of the JAX Range Complex, naval vessel traffic is expected to be much lower than in areas where there are large shipping lanes and large numbers of fishing vessels and/or recreational vessels. Nevertheless, the proposed action area is well traveled by a variety of commercial and recreational vessels, so marine mammals in the area are expected to be habituated to vessel noise.

As described in the proposed rule, operations involving vessel movements

occur intermittently and are variable in duration, ranging from a few hours up to 2 weeks. These operations are widely dispersed throughout the JAX Range Complex OPAREA, which is a vast area encompassing 50,090 square nautical miles (nm^2). The Navy logs about 1,000 total vessel days within the Study Area during a typical year. Consequently, the density of ships within the Study Area at any given time is extremely low (*i.e.,* less than 0.00005 ships/nm^2).

Moreover, naval vessels transiting the study area or engaging in the training exercises will not actively or intentionally approach a marine mammal or change speed drastically. Except under certain mitigation measures that protect right whales and other marine mammals from vessel strike, all vessels transit to, from, and within the range complexes will be traveling at speeds generally ranging from 10 to 14 knots.

The final rule contains additional mitigation measures requiring Navy vessels to keep at least 500 yards (460 m) away from any observed whale and at least 200 yards (183 m) from marine mammals other than whales, and avoid approaching animals head-on. Although the radiated sound from the vessels will be audible to marine mammals over a large distance, it is unlikely that animals will respond behaviorally to low-level distant shipping noise as the animals in the area are likely to be habituated to such noises (Nowacek *et al.,* 2004). In light of these facts, NMFS does not expect the Navy's vessel movements to result in Level B harassment.

Mitigation

In order to issue an incidental take authorization (ITA) under Section 101(a)(5)(A) of the MMPA, NMFS must prescribe regulations setting forth the ''permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.'' The NDAA amended the MMPA as it relates to military readiness activities and the incidental take authorization process such that ''least practicable adverse impact'' shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the ''military readiness activity.'' The JAX Range Complex training activities described in the proposed rule are considered military readiness activities.

NMFS reviewed the Navy's proposed JAX Range Complex training activities and the proposed JAX Range Complex mitigation measures presented in the Navy's application to determine whether the activities and mitigation measures were capable of achieving the least practicable adverse effect on marine mammals.

Any mitigation measure prescribed by NMFS should be known to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed below:

(a) Avoidance or minimization of injury or death of marine mammals wherever possible (goals b, c, and d may contribute to this goal).

(b) A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to underwater detonations or other activities expected to result in the take of marine mammals (this goal may contribute to a, above, or to reducing harassment takes only).

(c) A reduction in the number of times (total number or number at biologically important time or location) individuals would be exposed to underwater detonations or other activities expected to result in the take of marine mammals (this goal may contribute to a, above, or to reducing harassment takes only).

(d) A reduction in the intensity of exposures (either total number or number at biologically important time or location) to underwater detonations or other activities expected to result in the take of marine mammals (this goal may contribute to a, above, or to reducing the severity of harassment takes only).

(e) A reduction in adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.

(f) For monitoring directly related to mitigation—an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation (shut-down zone, *etc.*).

NMFS reviewed the Navy's proposed mitigation measures, which included a careful balancing of the likely benefits of any particular measure to the marine mammals with the likely effect of that measure on personnel safety, practicality of implementation, and impact on the ''military-readiness activity.''

The Navy's proposed mitigation measures were described in detail in the proposed rule (73 FR 76578; December 17, 2008; pages 76592–76595). Slight wording changes have been made to the Personnel Training Lookouts section as presented in the Proposed Rule (page 76592). Bullet 6 of that section is modified to read: ''At night, to increase effectiveness, lookouts would not continuously sweep the horizon with their eyes. Instead, lookouts would scan the horizon in a series of movements that would allow their eyes to come to periodic rests as they scan the sector. When visually searching at night, they would look a little to one side and out of the corners of their eyes, paying attention to the things on the outer edges of their field of vision. Lookouts will also have night vision devices available for use.''

The Navy's measures addressing operating procedures for training activities using underwater detonation of explosives and firing exercises, and mitigation related to vessel traffic and the North Atlantic right whale (NARW) were described in the proposed rule. No changes have been made to the mitigation measures described in the proposed rule except the following requirements.

During specific at-sea training events, if a marine mammal is injured or killed as a result of the proposed Navy training activities (*e.g.,* instances in which it is clear that munitions explosions caused the injury or death), the Navy shall suspend its activities immediately and report such incident to NMFS.

Regarding the NARW vessel collision measures, NMFS expanded the final rule to include vessel collision avoidance measures for the South Atlantic and the Northeast Atlantic to be consistent with the U.S. Navy's Atlantic Fleet Active Sonar Training (AFAST) rule. The Navy is required to comply with the same ship collision measures while transiting and conducting exercises within specific NARW areas along the East Coast. The specific vessel collision measures in the Northeast and Southeast Atlantic regions are listed in the regulatory text of the final rule.

NMFS has determined that these mitigation measures (which include a suite of measures that specifically address vessel transit and the NARW) are adequate means of effecting the least practicable adverse impacts on marine mammal species or stocks and their habitat while also considering personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Monitoring

In order to issue an ITA for an activity, Section 101(a)(5)(A) of the MMPA states that NMFS must set forth ''requirements pertaining to the

monitoring and reporting of such taking.'' The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for LOAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present.

Monitoring measures prescribed by NMFS should accomplish one or more of the following general goals:

(1) An increase in the probability of detecting marine mammals, both within the safety zone (thus allowing for more effective implementation of the mitigation) and in general to generate more data to contribute to the effects analyses.

(2) An increase in our understanding of how many marine mammals are likely to be exposed to levels of underwater detonations or other stimuli that we associate with specific adverse effects, such as behavioral harassment, temporary threshold shift of hearing sensitivity (TTS), or permanent threshold shift of hearing sensitivity (PTS).

(3) An increase in our understanding of how marine mammals respond (behaviorally or physiologically) to underwater detonations or other stimuli expected to result in take and how anticipated adverse effects on individuals (in different ways and to varying degrees) may impact the population, species, or stock (specifically through effects on annual rates of recruitment or survival).

(4) An increased knowledge of the affected species.

(5) An increase in our understanding of the effectiveness of certain mitigation and monitoring measures.

(6) A better understanding and record of the manner in which the authorized entity complies with the incidental take authorization.

Proposed Monitoring Plan for the JAX Range Complex Study Area

As NMFS indicated in the proposed rule, the Navy has (with input from NMFS) fleshed out the details of and made improvements to the JAX Range Complex Monitoring Plan. Additionally, NMFS and the Navy have incorporated a suggestion from the public, which recommended the Navy hold a peer review workshop to discuss the Navy's Monitoring Plans for the multiple range complexes and training exercises in which the Navy would receive ITAs (*see* Monitoring Workshop section). The final JAX Range Complex Monitoring Plan, which is summarized below, may be viewed at *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.* The Navy plans to implement all of the components of the Monitoring Plan; however, only the marine mammal components (not the sea turtle components) will be required by the MMPA regulations and associated LOAs.

A summary of the monitoring methods required for use during training events in the JAX Range Complex are described below. These methods include a combination of individual elements that are designed to allow a comprehensive assessment.

I. Vessel or Aerial Surveys

(A) The Holder of this Authorization shall visually survey a minimum of 2 explosive events per year, one of which shall be a multiple detonation event. One of the vessel or aerial surveys should involve professionally trained marine mammal observers (MMOs).

(B) When operationally feasible, for specified training events, aerial or vessel surveys shall be used 1–2 days prior to, during (if reasonably safe), and 1–5 days post detonation.

(C) Surveys shall include any specified exclusion zone around a particular detonation point plus 2,000 yards beyond the border of the exclusion zone (*i.e.,* the circumference of the area from the border of the exclusion zone extending 2,000 yards outwards). For vessel-based surveys a passive acoustic system (hydrophone or towed array) would be used to determine if marine mammals are in the area before and/or after a detonation event.

(D) When conducting a particular survey, the survey team shall collect:

- Location of sighting;
- Species (if not possible, indicate whale, dolphin or pinniped);
- Number of individuals;
- Whether calves were observed;
- Initial detection sensor;
- Length of time observers maintained visual contact with marine mammal;
- Wave height;
- Visibility;
- Whether sighting was before, during, or after detonations/exercise, and how many minutes before or after;
- Distance of marine mammal from actual detonations (or target spot if not yet detonated);
- *Observed behavior*—Watchstanders will report, in plain language and without trying to categorize in any way, the observed behavior of the animal(s) (such as animal closing to bow ride, paralleling course/speed, floating on surface and not swimming *etc.*), including speed and direction;
- Resulting mitigation implementation—Indicate whether explosive detonations were delayed, ceased, modified, or not modified due to marine mammal presence and for how long; and
- If observation occurs while explosives are detonating in the water, indicate munition type in use at time of marine mammal detection (*e.g.,* were the 5-inch guns actually firing when the animals were sighted? Did animals enter an area 2 minutes after a huge explosion went off?).

II. Passive Acoustic Monitoring

The Navy shall conduct passive acoustic monitoring when operationally feasible:

(A) Any time a towed hydrophone array is employed during shipboard surveys the towed array shall be deployed during daylight hours for each of the days the ship is at sea.

(B) The towed hydrophone array shall be used to supplement the ship-based systematic line-transect surveys (particularly for species such as beaked whales that are rarely seen).

III. Marine Mammal Observers on Navy Platforms

(A) Marine mammal observers (MMOs) selected for aerial or vessel survey shall be placed on a Navy platform during one of the exercises being monitored per year. The remaining designated exercise(s) shall be monitored by the Navy lookouts/watchstanders.

(B) The MMO must possess expertise in species identification of regional marine mammal species and experience collecting behavioral data.

(C) MMOs shall not be placed aboard Navy platforms for every Navy training event or major exercise, but during specifically identified opportunities deemed appropriate for data collection efforts. The events selected for MMO participation shall take into account safety, logistics, and operational concerns.

(D) MMOs shall observe from the same height above water as the lookouts.

(E) The MMOs shall not be part of the Navy's formal reporting chain of command during their data collection efforts; Navy lookouts shall continue to serve as the primary reporting means within the Navy chain of command for marine mammal sightings. The only exception is that if an animal is observed within the shutdown zone that has not been observed by the lookout, the MMO shall inform the lookout of the sighting, and the lookout shall take the

appropriate action through the chain of command.

(F) The MMOs shall collect species identification, behavior, direction of travel relative to the Navy platform, and distance first observed. All MMO sightings shall be conducted according to a standard operating procedure. Information collected by MMOs should be the same as those collected by Navy lookout/watchstanders described above.

The Monitoring Plan for JAX Range Complex has been designed as a collection of focused ''studies'' (described fully in the JAX Monitoring Plan) to gather data that will allow the Navy to address the following questions:

(a) What are the behavioral responses of marine mammals and sea turtles that are exposed to explosives?

(b) Is the Navy's suite of mitigation measures effective at avoiding injury and mortality of marine mammals and sea turtles?

Data gathered in these studies will be collected by qualified, professional marine mammal biologists or trained Navy lookouts/watchstanders that are experts in their field. This monitoring plan has been designed to gather data on all species of marine mammals that are observed in the JAX Range Complex study area.

Monitoring Workshop

During the public comment period on past proposed rules for Navy actions (such as the Hawaii Range Complex (HRC), and Southern California Range Complex (SOCAL) proposed rules), NMFS received a recommendation that a workshop or panel be convened to solicit input on the monitoring plan from researchers, experts, and other interested parties. The JAX Range Complex proposed rule included an adaptive management component and both NMFS and the Navy believe that a workshop would provide a means for Navy and NMFS to consider input from participants in determining whether (and if so, how) to modify monitoring techniques to more effectively accomplish the goals of monitoring set forth earlier in the document. NMFS and the Navy believe that this workshop concept is valuable in relation to all of the Range Complexes and major training exercise rules and LOAs that NMFS is working on with the Navy at this time, and consequently this single Monitoring Workshop will be included as a component of all of the rules and LOAs that NMFS will be processing for the Navy in the next year or so.

The Navy, with guidance and support from NMFS, will convene a Monitoring Workshop, including marine mammal and acoustic experts as well as other interested parties, in 2011. The Monitoring Workshop participants will review the monitoring results from the previous two years of monitoring pursuant to the JAX Range Complex rule as well as monitoring results from other Navy rules and LOAs (*e.g.,* VACAPES, AFAST, SOCAL, HRC, and other rules). The Monitoring Workshop participants would provide their individual recommendations to the Navy and NMFS on the monitoring plan(s) after also considering the current science (including Navy research and development) and working within the framework of available resources and feasibility of implementation. NMFS and the Navy would then analyze the input from the Monitoring Workshop participants and determine the best way forward from a national perspective. Subsequent to the Monitoring Workshop, modifications would be applied to monitoring plans as appropriate.

Integrated Comprehensive Monitoring Program

In addition to the site-specific Monitoring Plan for the JAX Range Complex, the Navy will complete the Integrated Comprehensive Monitoring Program (ICMP) Plan by the end of 2009. The ICMP will provide the overarching coordination that will support compilation of data from project-specific monitoring plans (*e.g.,* JAX Monitoring Plan) as well as Navy funded research and development (R&D) studies. The ICMP will coordinate the monitoring program's progress towards meeting its goals and developing a data management plan. The ICMP will be evaluated annually to provide a matrix for progress and goals for the following year, and will make recommendations on adaptive management for refinement and analysis of the monitoring methods.

The primary objectives of the ICMP are to:

- Monitor and assess the effects of Navy activities on protected species;
- Ensure that data collected at multiple locations is collected in a manner that allows comparison between and among different geographic locations;
- Assess the efficacy and practicality of the monitoring and mitigation techniques;
- Add to the overall knowledge-base of marine species and the effects of Navy activities on marine species.

The ICMP will be used both as: (1) A planning tool to focus Navy monitoring priorities (pursuant to ESA/MMPA requirements) across Navy Range Complexes and Exercises; and (2) an adaptive management tool, through the consolidation and analysis of the Navy's monitoring and watchstander data, as well as new information from other Navy programs (*e.g.,* R&D), and other appropriate newly published information.

In combination with the 2011 Monitoring Workshop and the adaptive management component of the JAX Range Complex rule and the other planned Navy rules (*e.g.* VACAPES Range Complex, Cherry Point Range Complex, *etc.*), the ICMP could potentially provide a framework for restructuring the monitoring plans and allocating monitoring effort based on the value of particular specific monitoring proposals (in terms of the degree to which results would likely contribute to stated monitoring goals, as well the likely technical success of the monitoring based on a review of past monitoring results) that have been developed through the ICMP framework, instead of allocating based on maintaining an equal (or commensurate to effects) distribution of monitoring effort across range complexes. For example, if careful prioritization and planning through the ICMP (which would include a review of both past monitoring results and current scientific developments) were to show that a large, intense monitoring effort in Hawaii would likely provide extensive, robust and much-needed data that could be used to understand the effects of sonar throughout different geographical areas, it may be appropriate to have other range complexes dedicate money, resources, or staff to the specific monitoring proposal identified as ''high priority'' by the Navy and NMFS, in lieu of focusing on smaller, lower priority projects divided throughout their home range complexes.

The ICMP will identify:

- A means by which NMFS and the Navy would jointly consider prior years monitoring results and advancing science to determine if modifications are needed in mitigation or monitoring measures to better effect the goals laid out in the Mitigation and Monitoring sections of the JAX Range Complex rule.
- Guidelines for prioritizing monitoring projects.
- If, as a result of the workshop and similar to the example described in the paragraph above, the Navy and NMFS decide it is appropriate to restructure the monitoring plans for multiple ranges such that they are no longer evenly allocated (by rule), but rather focused on priority monitoring projects that are not necessarily tied to the geographic area addressed in the rule, the ICMP will be modified to include a very clear and unclassified record-keeping system that

will allow NMFS and the public to see how each range complex/project is contributing to all of the ongoing monitoring programs (resources, effort, money, *etc.*).

Adaptive Management

The final regulations governing the take of marine mammals incidental to Navy's JAX Range Complex exercises contain an adaptive management component. The use of adaptive management will give NMFS the ability to consider new data from different sources to determine (in coordination with the Navy) on an annual basis if mitigation or monitoring measures should be modified or added (or deleted) if new data suggests that such modifications are appropriate (or are not appropriate) for subsequent annual LOAs.

Following are some of the possible sources of applicable data:

- Results from the Navy's monitoring from the previous year (either from JAX Range Complex or other locations).
- Findings of the Workshop that the Navy will convene in 2011 to analyze monitoring results to date, review current science, and recommend modifications, as appropriate to the monitoring protocols to increase monitoring effectiveness.
- Compiled results of Navy funded research and development (R&D) studies (presented pursuant to the ICMP, which is discussed elsewhere in this document).
- Results from specific stranding investigations (either from JAX Range Complex or other locations).
- Results from general marine mammal and sound research (funded by the Navy or otherwise).
- Any information which reveals that marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent Letters of Authorization.

Mitigation measures could be modified or added (or deleted) if new data suggest that such modifications would have (or would not have) a reasonable likelihood of accomplishing the goals of mitigation laid out in this final rule and if the measures are practicable. NMFS would also coordinate with the Navy to modify or add to (or delete) the existing monitoring requirements if the new data suggest that the addition of (or deletion of) a particular measure would more effectively accomplish the goals of monitoring laid out in this final rule. The reporting requirements associated with this rule are designed to provide NMFS with monitoring data from the previous year to allow NMFS to consider the data and issue annual LOAs. NMFS and the Navy will meet annually, prior to LOA issuance, to discuss the monitoring reports, Navy R&D developments, and current science and whether mitigation or monitoring modifications are appropriate.

Reporting

In order to issue an ITA for an activity, Section 101(a)(5)(A) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking.'' Effective reporting is critical to ensure compliance with the terms and conditions of a LOA, and to provide NMFS and the Navy with data of the highest quality based on the required monitoring. As NMFS noted in its proposed rule, additional detail has been added to the reporting requirements since they were outlined in the proposed rule. The updated reporting requirements are all included below. A subset of the information provided in the monitoring reports may be classified and not releasable to the public.

NMFS will work with the Navy to develop tables that allow for efficient submission of the information required below.

General Notification of Injured or Dead Marine Mammals

Navy personnel will ensure that NMFS (regional stranding coordinator) is notified immediately (or as soon as operational security allows) if an injured or dead marine mammal is found during or shortly after, and in the vicinity of, any Navy training exercise utilizing underwater explosives or other activities. The Navy will provide NMFS with species or description of the animal(s), the condition of the animal(s) (including carcass condition if the animal is dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available).

Annual JAX Range Complex Monitoring Plan Report

The Navy shall submit a report annually on March 1 describing the implementation and results (through January 1 of the same year) of the JAX Range Complex Monitoring Plan described above. Data collection methods will be standardized across range complexes to allow for comparison in different geographic locations. Although additional information will also be gathered, the marine mammal observers (MMOs) collecting marine mammal data pursuant to the JAX Range Complex Monitoring Plan shall, at a minimum, provide the same marine mammal observation data required in major range complex training exercises section of the Annual JAX Range Complex Exercise Report referenced below.

The JAX Range Complex Monitoring Plan Report may be provided to NMFS within a larger report that includes the required Monitoring Plan Reports from multiple Range Complexes.

Annual JAX Range Complex Exercise Report

The Navy is in the process of improving the methods used to track explosives use to provide increased granularity. The Navy will provide the information described below for all of their explosive exercises. Until the Navy is able to report in full the information below, they will provide an annual update on the Navy's explosive tracking methods, including improvements from the previous year.

(1) Total annual number of each type of explosive exercise (of those identified as part of the ''specified activity'' in this final rule) conducted in the JAX Range Complex.

(2) Total annual expended/detonated rounds (missiles, bombs, *etc.*) for each explosive type.

JAX Range Complex 5-yr Comprehensive Report

The Navy shall submit to NMFS a draft report that analyzes and summarizes all of the multi-year marine mammal information gathered during the JAX Range Complex exercises for which annual reports are required (Annual JAX Range Complex Exercise Reports and JAX Range Complex Monitoring Plan Reports). This report will be submitted at the end of the fourth year of the rule (May 2013), covering activities that have occurred through December 1, 2012.

Comments and Responses

On December 17, 2008, NMFS published a proposed rule (73 FR 76578) in response to the Navy's request to take marine mammals incidental to military readiness training in the JAX Range Complex study area and requested comments, information and suggestions concerning the request. During the 30-day public comment period, NMFS received comments from 1 private citizen, comments from the Marine Mammal Commission (Commission), comments from the International Fund for Animal Welfare (IFAW), and comments from the Natural Resources Defense Council (on behalf of itself, The Humane Society of the United States, Defenders of Wildlife, International Fund for Animal Welfare,

Whale and Dolphin Conservation Society, Cetacean Society International, Ocean Futures Society, and Jean-Michel Cousteau). The comments are summarized and sorted into general topic areas and are addressed below. Full copies of the comment letters may be accessed at *http://www.regulations.gov.*

NMFS worked with the Navy to develop MMPA rules and LOAs for the JAX Range Complex. Many of the issues raised in the public comments for this rule were also raised for the VACAPES Range Complex rulemaking and NMFS considered many of the broader issues in the context of these two Navy actions when determining how to address the comments. To the extent necessary, the public may refer to the response to comments section in the VACAPES final rule (addressing similar issues identified in the JAX Range Complex final rule).

MMPA Concerns

Comment 1: The Commission recommends that NMFS consult with the Navy regarding the possible need to expand the proposed authorization to include additional species that might be taken unexpectedly and a more realistic number of takes for species that occur in groups, including Clymene dolphins, pantropical spotted dolphins, pilot whales, and Risso's dolphins.

Response: NMFS has consulted with the Navy regarding the possibility of additional species that might be taken unexpectedly and a more realistic number of takes for species that occur in groups. A more detailed analysis is provided in the Estimated Take of Marine Mammals section. These additional species include minke whale, common dolphin, pygmy/dwarf sperm whales, and several species of beaked whales.

Comment 2: The Commission recommends that NMFS revise section 218.11 of the proposed regulation to clarify that the authorized numbers of takes are annual limits that would be applicable over a five-year period.

Response: NMFS has revised this section in the final rule to clarify that the authorized numbers of takes are annual limits that will be applicable over a five-year period.

Comment 3: The IFAW states that it is concerned with the possibility of Navy ships striking North Atlantic right whales (NARW) in the JAX Range Complex Study Area, and states that NMFS mistakenly concludes that take permits are unnecessary despite the fact that the proposed exercise area overlaps right whale critical habitat. The IFAW observes that the mitigation measures described in the proposed rule represent a strong effort by the U.S. Navy and NMFS to mitigate potential harm to critically endangered NARW, but they do not accomplish that goal. The IFAW further states that the Navy has been involved in ship strikes in the past (specifically, a female NARW and her near-term calf in the mid-Atlantic in 2004).

Response: NMFS appreciates the IFAW's concern regarding the possibility of Navy ships striking North Atlantic right whales and other marine mammal species in the JAX Range Complex Study Area but does not agree with the IFAW's assessment that NMFS mistakenly reached its conclusion that take of NARW is unlikely.

Regarding ship strikes, the Navy's EIS concluded that based on the implementation of Navy mitigation measures, especially during times of anticipated NARW occurrence, and the relatively low density of Navy ships in the Study Area, the likelihood that a vessel strike would occur is very low. In addition to the standard operating procedures to reduce the likelihood of collisions, which include: (1) Use of lookouts trained to detect all objects on the surface of the water (including marine mammals); (2) a requirement to avoid the close interaction of Navy assets and marine mammals; and (3) maneuvering to keep away from any observed marine mammal, the Navy has issued extensive North Atlantic right whale protective measures for all Fleet Forces training activities. These measures, which were developed with input from NMFS, include additional training requirements, designated areas of caution (where caution includes speed or direction adjustments and avoidance of known groups of right whales when feasible) and additional reporting requirements. NMFS and the Navy believe that the required measures will allow the Navy to avoid colliding with large whales during their specified activities. The Navy neither requested, nor did NMFS grant, authorization for take of right whales from ship strikes incidental to the specified activities.

Regarding the right whale strike in 2004, the commenter is most likely referring to an event that took place on November 17, 2004. On November 17 at about 10:30 a.m. a Navy amphibious assault ship struck a large whale off the Chesapeake Light House. A few hours later, around noon, a fisherman contacted the Virginia Aquarium stranding hotline and reported a live injured large whale with a fresh wound on the tail where the left fluke lobe was missing. On November 24, a dead right whale was necropsied at Ocean Sands, NC. The right whale was a pregnant female and the cause of death was determined to be blood loss owing to a traumatic wound to the left fluke lobe, which was missing, and damage to surrounding tissue and bone. The wound was consistent with that caused by a ship strike. Neither NMFS nor the Navy can confirm or deny that the dead right whale necropsied on November 24 was the same whale struck by the Navy on November 17.

The USCG and Navy have standing orders to report sightings or collisions. Although the NMFS ship strike database reflects a disproportionately high number of ship strikes attributable to USCG and Navy vessels over the years, this is likely due to the high reporting rate by those agencies relative to other mariners and vessels, rather than a higher incidence of right whale ship strikes by Federal agency vessels. These two Federal agencies are actively involved in large whale protection programs and reporting struck or dead whales to NMFS is part of their standard operating procedures.

Comment 4: Citing Nowacek *et al.* (2004) that North Atlantic right whales exposed to alarm stimuli ''abandoned their current foraging dive prematurely, * * * executed a shallow-angled, high power * * * ascent, remained at or near the surface'' for an ''abnormally long'' period of time, and ''spent significantly more time at subsurface depths (1–10 m) compared with normal surfacing periods when whales normally stay within 1 m of the surface,'' the IFAW states that NARW calves are most vulnerable to impacts from collisions and noise from ships, helicopters, bombs and missiles. The IFAW further concludes that alarm stimuli were a poor option in attempts to mitigate vessel collisions because the whale's reaction actually makes ship strikes more likely. The IFAW also notes NMFS' previous conclusion on North Atlantic right whales that the ''loss of even a single individual right whale may contribute to the extinction of the species,'' and that ''preventing the mortality of one adult female alters the projected outcome.''

Response: NMFS is aware of the Nowacek *et al.* (2004) study on the North Atlantic right whale response to strong anthropogenic noise. The study consisted of a controlled sound exposure on right whales and concluded that the whales reacted strongly to the alarm signal, but failed to respond to sounds of approaching vessels or the vessels themselves. In addition, the data revealed that the whales responded to the alarm stimuli by swimming strongly to the surface, a response likely to

increase the probability of a vessel/whale collision. However, alarm stimuli are not a concern for this particular rulemaking. The Navy has neither proposed using, nor is NMFS requiring alarm stimuli to minimize vessel strikes associated with activities in the JAX Range Complex. Therefore, in the context of this rulemaking, alarm stimuli are not a concern.

As the IFAW suggests, the loss of even one right whale would have serious effects on the population; however, as discussed in the proposed rule and above, NMFS does not expect a NARW to be taken by naval exercises in the JAX Range Complex, including the southern right whale critical habitat. Additionally, this zero take estimate does not account for the mitigation measures that will be implemented for the JAX Range Complex training activities, which include a prohibition of approaching right whales within 500 yards and not conducting training within the vicinity of recently sighted whales. NMFS was able to determine that the Navy's JAX Range Complex training activities would not result in a take of NARWs.

Comment 5: The IFAW states that the Navy's and NMFS's distribution assumptions may be flawed in that they are likely to overestimate the number of marine mammals in some areas while underestimating the number in others. The Commission recommends NMFS defer promulgation of a final rule until it and/or the Navy conducts an independent peer review of the methods used to derive marine mammal density estimates in the Navy OPAREA Density Estimates (NODE) report.

Response: NMFS does not agree with the IFAW's statement that the Navy and NMFS have used flawed data in estimating the number of takes of marine mammals. Though it is a fair assessment that animal distributions in the water column are often uneven, the marine mammal information contained in the analyses relies heavily on the data gathered in the Marine Resource Assessments (MRAs). The Navy MRA Program was implemented by the Commander, Fleet Forces Command, to initiate collection of data and information concerning the protected and commercial marine resources found in the Navy's OPAREAs. Specifically, the goal of the MRA program is to describe and document the marine resources present in each of the Navy's OPAREAs. The MRA for the JAX OPAREA was recently updated in 2008 (DoN, 2008).

The MRA data were used to provide a regional context for each species. The MRA represents a compilation and synthesis of available scientific literature (*e.g.,* journals, periodicals, theses, dissertations, project reports, and other technical reports published by government agencies, private businesses, or consulting firms), and NMFS reports including stock assessment reports, recovery plans, and survey reports.

As far as the Commission's recommendation regarding peer-review of the NODE data, the density estimates that were used in previous Navy environmental documents have been recently updated to provide a compilation of the most recent data and information on the occurrence, distribution, and density of marine mammals. The updated density estimates used for the analyses are derived from the Navy OPAREA Density Estimates (NODE) for the Southeast OPAREAS report (DON, 2007).

Density estimates for cetaceans were either modeled using available line-transect survey data or derived using available data in order of preference: (1) Through spatial models using line-transect survey data provided by NMFS; (2) using abundance estimates from Mullin and Fulling (2003); (3) or based on the cetacean abundance estimates found in the most current NMFS stock assessment report (SAR) (Waring *et al.,* 2007), which can be viewed at: *http://www.nefsc.noaa.gov/publications/tm/tm210/.*

For the model-based approach, density estimates were calculated for each species within areas containing survey effort. A relationship between these density estimates and the associated environmental parameters such as depth, slope, distance from the shelf break, sea surface temperature, and chlorophyll a concentration was formulated using generalized additive models. This relationship was then used to generate a two-dimensional density surface for the region by predicting densities in areas where no survey data exist.

The analyses for cetaceans were based on sighting data collected through shipboard surveys conducted by NMFS Northeast Fisheries Science Center (NEFSC) and Southeast Fisheries Science Center (SEFSC) between 1998 and 2005. Species-specific density estimates derived through spatial modeling were compared with abundance estimates found in the most current NMFS SAR to ensure consistency. All spatial models and density estimates were reviewed by and coordinated with NMFS Science Center technical staff and scientists with the University of St. Andrews, Scotland, Centre for Environmental and Ecological Modeling (CREEM). Draft models and preliminary results were reviewed during a joint workshop attended by Navy, NMFS Science Center, and CREEM representatives. Subsequent revisions and draft reports were reviewed by these same parties. Therefore, NMFS considers that the NODE has already gone through an independent review process.

Comment 6: The IFAW points out that even taking for granted the Navy's and NMFS' distribution information, NMFS ignores the Navy's request for take permits for 2 Atlantic spotted dolphins, instead deciding that take will be less than estimated due to mitigation and monitoring measures. IFAW concludes that NMFS' determination is incorrect where Atlantic spotted dolphins are likely to suffer physical injury resulting from exposure to noise in excess of 205 dB. The IFAW considers that the Atlantic spotted dolphins' small size and ability to move quickly will make them difficult to detect by Navy's lookouts or other detection systems. Therefore, the IFAW states NMFS' proposal to not grant take permits is arbitrary and capricious.

Response: NMFS does not agree with the IFAW comment. NMFS did not ignore the Navy's request for take of two Atlantic spotted dolphins by Level A harassment. As shown in Table 11 of the proposed rule for the JAX Range Complex training activities (73 FR 76578; December 17, 2008), and in Table 5 of this final rule, the Navy modeled take estimates for various cetacean species, including Atlantic spotted dolphins, and NMFS has adopted the Navy's estimates for this rulemaking. Please refer to the proposed rule (73 FR 76578; December 17, 2008) for clarification. NMFS has, through this final rule, established a framework that would allow the Navy to take a specified number of Atlantic spotted dolphins by Level A harassment incidental to naval exercises in the JAX Range Complex.

Comment 7: The IFAW points out that the U.S. Navy and NMFS fail to address the impact of stress on marine mammals. Stress has been shown to cause physical harm, including weakening of the immune system, in marine mammals. It is safe to assume that marine mammals in the JAX Range Complex would be subjected to stress resulting from single or multiple explosive concussions. Yet, despite this potential, NMFS assumes that stress would have a negligible impact on marine mammals in the JAX Range.

Response: NMFS does not agree with the IFAW's assessment. It is true that intense acoustic exposure from

explosives can be considered a potential stressor if, by its action on the animal, via auditory or non-auditory means, it may produce a stress response in the animal. The term ''stress'' has taken on an ambiguous meaning in the scientific literature, but in general, the stress response refers to an increase in energetic expenditure which results from exposure to the stressor and which is predominantly characterized by either the stimulation of the sympathetic nervous system or the hypothalamic-pituitary-adrenal axis (Reeder and Kramer, 2005).

The stress response may or may not occur depending on the characteristics of the exposed animal. However, provided a stress response occurs, we assume that some contribution is made to the animal's allostatic load. Perturbations to an animal that may occur with the presence of a stressor, either biological (*e.g.,* predator) or anthropogenic (*e.g.,* construction), can contribute to the allostatic load (Wingfield, 2003). Additional costs are cumulative and additions to the allostatic load over time may contribute to reductions in the probability of achieving ultimate life history functions (*e.g.,* survival, maturation, reproductive effort and success) by producing pathophysiological states. The contribution to the allostatic load from a stressor requires estimating the magnitude and duration of the stress response, as well as any secondary contributions that might result from a change in behavior.

Since the detonation events are widely dispersed throughout several of the designated sites within the JAX Range Complex Study Area, the probability that detonation events will overlap in time and space with marine mammals is low, particularly given the densities of marine mammals in the JAX Range Complex Study Area and the implementation of monitoring and mitigation measures. Moreover, NMFS does not expect animals to experience repeated exposures to the same sound source as animals will likely move away from the source after being exposed. In addition, these isolated exposures, when received at distances of Level B behavioral harassment (*i.e.,* 177 dB re 1 microPa^2-sec), are expected to cause brief startle reactions or short-term behavioral modification by the animals. These brief reactions and behavioral changes are expected to disappear when the exposures cease. Therefore, it is highly unlikely that the animals will be exposed to the repeated stressors (*i.e.,* detonations) to suffer increased allostatic load.

Based on the analyses in the proposed rule and subsequent analyses contained herein, NMFS has determined that the issuance of 5-year regulations is appropriate for Navy training exercises utilizing underwater detonations since it will have a negligible impact on the marine mammal species and stocks present in the JAX Range Complex.

Mitigation

Comment 8: The Commission recommends that NMFS require the Navy to abide by the restrictions specified in NMFS' final rule implementing speed restrictions to reduce the risk of ship collisions with right whales (50 CFR 224.105) in all but emergency situations or where the need for realistic training requires greater speed or maneuverability.

Response: NMFS does not agree with the Commission's recommendation. NMFS' final rule on ship speed restriction does not apply to vessels operated by U.S. Federal agencies. NMFS, in consultation with other Federal agencies, has determined that the national security, navigational, and human safety missions of some agencies may be compromised by mandatory vessel speed restrictions. However, this exemption will not relieve the Navy of its obligations to consult, under section 7 of the ESA, on how their activities may affect listed species. NMFS acknowledges that the Navy already provides guidance to vessel operators and fleets with regard to conservation measures to protect right whales and other endangered species, as well as contribute to conservation efforts generally.

For the proposed JAX Range Complex training activities, the Navy has developed a series of mitigation measures that closely follow the NMFS' ship strike rule. These mitigation measures are described in the Proposed Mitigation Measures section of the proposed rule (73 FR 76578; December 17, 2008). In addition, NMFS worked with the Navy regarding their vessel operations to determine where ESA section 7 consultations would be appropriate.

Comment 9: The IFAW points out that the proposed rule requires the Navy to ''practice increased vigilance'' when passing through seasonal right whale habitat. The IFWC states that requiring the Navy to practice increased vigilance is an abdication of NMFS' duties to independently analyze potential takes of North Atlantic right whales. Further, if NMFS is to allow Navy to mitigate harm through ''increased vigilance,'' that term should be defined in the proposed rule.

Response: NMFS does not agree with the IFAW's statement. Within the context of this rulemaking, the term ''increased vigilance'' means to be on heightened alert to avoid vessel-whale interactions especially when operating in areas where/when NARWs are known to be migrating/present. For example, if NARWs are known to be in a particular area, instead of routine scanning through the sea surface for marine mammals that may or may not be in the vicinity, the lookouts/watchstanders or MMOs will be actively searching for the NARW that is potentially in the area.

During times of ''increased vigilance'' the Navy will rely on the NARW Early Warning System (EWS). Language from the JAX EIS pertaining to EWS is provided below:

''The coastal waters off the Southeast United States (SEUS) support the only known calving ground for the North Atlantic Right Whale (NARW). In the mid 1990's, the United States (U.S.) Navy, U.S. Coast Guard (USCG), U.S. Army Corps of Engineers (USACE), and National Marine Fisheries Service (NMFS) entered into a Memorandum of Agreement pursuant to the Endangered Species Act. The Early Warning System (EWS) is a result of that agreement and is a collaborative effort which involves comprehensive aerial surveys conducted during the North Atlantic Right Whale calving season. Surveys are flown daily, weather permitting, from December 1st through March 31st.''

''East/west transects are flown from shoreline to approximately 30–35 nm offshore. Aerial surveys are conducted to locate NARW and provide whale detection and reporting information to mariners in the NARW calving ground in an effort to avoid collisions with this endangered species. When a NARW is sighted, information from the aerial survey aircraft is passed to a ground contact. The ground contact e-mails the sighting information to a wide network distribution which includes Fleet Area Control and Surveillance Facility (FACSFAC) JAX, the USCG, the USACE and non-profit and commercial interests. Additionally, the ground contact will follow up with a call to FACSFAC JAX to provide further information if necessary. FACSFAC JAX records this valuable information and disseminates to all navy vessels and aircraft operating in the consultation area via the Secret Internet Protocol Router Network (SIPRNET) system.''

''General sighting information and reporting procedures are broadcasted over the following methods: the NOAA weather radio; USCG NAVTEX system and a Broadcast Notice to Mariners over VHF marine-band radio channel 16. The

EWS is a wide communication effort to ensure all vessels in the area are aware of the most recent right whale sightings as an avoidance measure.''

Comment 10: The IFAW points out that NMFS approves a number of other, more specific mitigation measures applicable to the Navy during right whale calving season in the ''Consultation Area''—a zone overlapping established right whale critical habitat. The IFAW points out that the condition in the proposed rule is that all of the measures qualified by the Navy will only be followed if ''consistent with essential mission, training, and operations.'' The IFAW states that these measures do not adequately address the potential harm to breeding right whales or mother/calf pairs.

Response: NMFS does not agree with IFAW's statement. NMFS recognizes the significance of the NARW calving area and has explored ways of effecting the least practicable impact (which includes a consideration of practicality of implementation, safety of personnel and impacts to training fidelity) to right whales. Navy units will incorporate data from the Early Warning System (EWS) into exercise pre-planning efforts. Fleet Area Control and Surveillance Facility, Jacksonville (FACSFACJAX) houses the Whale Fusion Center, which disseminates the latest right whale sighting information to Navy ships, submarines, and aircraft. Through the Fusion Center, FACSFACJAX coordinates ship and aircraft movement into the right whale critical habitat and the surrounding operating areas based on season, water temperature, weather conditions, and frequency of whale sightings and provides right whale reports to ships, submarines and aircraft, including coast guard vessels and civilian shipping. All sighting data is maintained on a Web site, *http://www.facsfacjax.navy.mil.*

In addition, the following list of comprehensive mitigation measures will be implemented in the ''Consultation Area'' during North Atlantic right whale calving season:

1. Naval vessels operating within North Atlantic right whale critical habitat and the Associated Area of Concern (AAOC) will exercise extreme caution and use slow safe speed, that is, the slowest speed that is consistent with essential mission, training, and operations.

2. Exercise extreme caution and use slow, safe speed when a whale is sighted by a vessel or when the vessel is within 5 nm of a reported new sighting less than 12 hours old.

3. Circumstances could arise where, in order to avoid North Atlantic right whale(s), speed reductions could mean vessels must reduce speed to a minimum at which it can safely keep on course (bare steerageway) or vessels could come to an all stop.

4. During the North Atlantic right whale calving season north-south transits through the critical habitat are prohibited. Naval vessel transits through the area shall be in an east-west direction, and shall use the most direct route available during the calving season.

5. Naval vessel operations (*i.e.,* precision anchorage drills) in the North Atlantic right whale critical habitat and AAOC during the calving season will be undertaken during daylight and periods of good visibility, to the extent practicable and consistent with mission, training, and operation. When operating in the critical habitat and AAOC at night or during periods of poor visibility, vessels will operate as if in the vicinity of a recently reported NARW sighting.

6. *Command, Control and Communication:*

- FACSFAC JAX shall coordinate ship/aircraft clearance into the operating area based on prevailing conditions, including water temperature, weather conditions, whale sighting data, mission or event to be conducted and other pertinent information. Commander Submarine Atlantic (COMSUBLANT) will coordinate any submarine operations that may require clearance with FACSFAC JAX. FASFAC JAX will provide data to ships and aircraft, including USCG if requested, and will recommend modifying, moving or canceling events as needed to prevent whale encounters. Commander Submarine Group Ten (COMSUBGRU TEN) will provide same information/guidance to subs.
- Prior to transiting or training in the critical habitat, ships will contact FASFAC JAX to obtain latest whale sighting and other information needed to make informed decisions regarding safe speed and path of their intended movement. Subs shall contact COMSUBGRU TEN for similar information. Ships and aircraft desiring to train/operate inside the critical habitat or within the warning/operating area shall coordinate clearance with FACSFAC JAX. Subs shall follow the same clearance procedures as ships and obtain clearance from CTF–82 (COMSUBLANT).
- FACSFAC JAX will coordinate local procedures for whale data entry, update, retrieval and dissemination using joint maritime command information system. Ships, including those operated by USCG, not yet Officer in Tactical Command Information Exchange subsystem capable, will communicate via satellite communication, telephone system or international marine/maritime satellite.

7. The only type of exercise that may be conducted inside the critical habitat and AAOC in calving season is precision anchorage drills and swept channel exercises. These exercises do not involve in detonations and do not introduce intense sound that is likely to result a take into the water column. Therefore, they are not expected to result in a take of marine mammals. In addition, use of the Shipboard Electronic System Evaluation Facility range is authorized with clearance and advice from FACSFAC JAX.

NMFS believes that these measures can adequately protect the North Atlantic right whales in the ''Consultation Area'' during calving season.

Miscellaneous Issues

Comment 11: The NRDC commented on the proposed rule with its earlier comments on the NMFS's proposed rule for the Navy's Atlantic Fleet Active Sonar Training (AFAST) and the Navy's AFAST DEIS. Specifically, the NRDC states that neither NMFS in its proposed rule nor the Navy in its EIS offers sufficient measures to mitigate the harmful impacts of high intensity sonar. The NRDC further states that NMFS and the Navy's analysis substantially understates the potential effects of sonar on marine wildlife.

Response: NRDC's comments are inapplicable to the proposed Navy training activities in the JAX Range Complex. The Navy does not intend, as part of its proposed action, to conduct training with MFAS, HFAS, and Improved Extended Echo Ranging (IEER)/Advanced Extended Echo Ranging (AEER). The Navy's request for a LOA for sonar related training was addressed in the Final Rule and LOA for AFAST which was issued by NMFS on January 22, 2009, and published in the **Federal Register** on February 19, 2009 (74 FR 4844).

Comment 12: The IFAW and one private citizen expressed general opposition to Navy activities and NMFS's issuance of an MMPA authorization because of the danger of killing marine life.

Response: NMFS appreciates the commenters' concern for the marine mammals that live in the area of the proposed activities. However, the MMPA allows individuals to take marine mammals incidental to specified

activities if NMFS can make the necessary findings required by law (*i.e.,* negligible impact, unmitigable adverse impact on subsistence users, *etc.*). As explained throughout this rulemaking, NMFS has made the necessary findings under 16 U.S.C. 1371(a)(5)(A) to support our issuance of the final rule.

Estimated Take of Marine Mammals

As mentioned previously, with respect to the MMPA, NMFS's effects assessments serve three primary purposes: (1) To prescribe the permissible methods of taking (*i.e.,* Level B Harassment (behavioral harassment), Level A Harassment (injury), or mortality, including an identification of the number and types of take that could occur by Level A or B harassment or mortality) and to prescribe other means of effecting the least practicable adverse impact on such species or stock and its habitat (*i.e.,* mitigation); (2) to determine whether the specified activity will have a negligible impact on the affected species or stocks of marine mammals (based on the likelihood that the activity will adversely affect the species or stock through effects on annual rates of recruitment or survival); (3) to determine whether the specified activity will have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (however, there are no subsistence communities in the JAX Range Complex; thus, there would be no effect on any subsistence user); and (4) to prescribe requirements pertaining to monitoring and reporting.

In the Estimated Take of Marine Mammals section of the proposed rule, NMFS related the potential effects to marine mammals from underwater detonation of explosives to the MMPA regulatory definitions of Level A and Level B Harassment and assessed the effects to marine mammals that could result from the specific activities that the Navy intends to conduct. These analyses are discussed in the proposed rule (73 FR 76578; pages 76596–76597) and have not changed.

Acoustic Take Criteria

In the Acoustic Take Criteria section of the proposed rule, NMFS described the development and application of the acoustic criteria for explosive detonations (73 FR 76578; pages 76597–76599). No changes to the modeling have been made except for those outlined in the Potential Impacts to Marine Mammal Species section of this document.

Take Calculations

An overview of the Navy's modeling methods to determine the number of exposures of MMPA-protected species to sound likely to result in mortality, Level A harassment (injury), or Level B harassment is provided in the **Federal Register** notice for the proposed rule (73 FR 76578; pages 76599–76600). No changes have been made to the modeling methods in the section of the proposed rule.

As noticed in the proposed rule, the Navy's modeling revealed that only six marine mammal species (very few individuals of each) would be taken by Level A and Level B harassment. However, after further evaluation, NMFS concluded that because of the relatively high abundance of several species in the action area (*e.g.,* Atlantic spotted dolphins, bottlenose dolphins, common dolphins, striped dolphins, Risso's dolphins, and pilot whales, minke whales, pantropical spotted dolphins, *Kogia* sp., and several species of beaked whales—Waring *et al.,* 2008), and because some of these species tend to aggregate in relatively large groups, there is a reasonable probability that these species could be taken by Level B harassment. In addition, NMFS has increased the take estimates because of the aggregate social behavior of these species in large groups. Therefore, NMFS has included these species in our take estimates for the 5-year regulations. Revised estimates of potential takes from the proposed JAX Range Complex training activities are listed in Table 5.

TABLE 5—SUMMARY OF POTENTIAL TAKES FROM EXPLOSIVE ORDNANCE (PER YEAR) FOR MARINE MAMMALS IN THE JAX RANGE COMPLEX

Species	Level B harassment	Level A harassment	Mortality
Minke whale	3	0	0
Beaked whales	20	0	0
Kogia sp.	3	0	0
Pilot whale	20	0	0
Atlantic spotted dolphin	62	2	0
Bottlenose dolphin	30	0	0
Common dolphin	30	0	0
Striped dolphin	20	0	0
Clymene dolphin	20	0	0
Pantropical spotted dolphin	20	0	0
Risso's dolphin	30	0	0

Effects on Marine Mammal Habitat

NMFS's JAX Range Complex proposed rule included a section that addressed the effects of the Navy's activities on marine mammal habitat (73 FR 76578, page 76600). Marine mammal habitat and prey species could be affected by the explosive ordnance testing and the sound generated by such activities. Based on the analysis contained in the Navy's FEIS and the information below, NMFS has determined that the JAX Range Complex training activities will not have adverse or long-term impacts on marine mammal habitat or prey species.

Unless the sound source or explosive detonation is stationary and/or continuous over a long duration in one area, the effects of underwater detonation and its associated sound are generally considered to have a less severe impact on marine mammal habitat than the physical alteration of the habitat. Marine mammals may be temporarily displaced from areas where Navy training is occurring, but the area will be utilized again after the activities have ceased.

Effects on Food Resources

There are currently no well established thresholds for estimating effects to fish from explosives other than mortality models. Fish that are located in the water column, in proximity to the source of detonation could be injured, killed, or disturbed by the impulsive sound and could leave the area temporarily. Continental Shelf Inc. (2004) summarized a few studies

conducted to determine effects associated with removal of offshore structures (*e.g.,* oil rigs) in the Gulf of Mexico. Their findings revealed that at very close range, underwater explosions are lethal to most fish species regardless of size, shape, or internal anatomy. In most situations, cause of death in fish has been massive organ and tissue damage and internal bleeding. At longer range, species with gas-filled swimbladders (*e.g.,* snapper, cod, and striped bass) are more susceptible than those without swimbladders (*e.g.,* flounders, eels).

Studies also suggest that larger fish are generally less susceptible to death or injury than small fish. Moreover, elongated forms that are round in cross section are less at risk than deep-bodied forms. Orientation of fish relative to the shock wave may also affect the extent of injury. Open water pelagic fish (*e.g.,* mackerel) seem to be less affected than reef fishes. The results of most studies are dependent upon specific biological, environmental, explosive, and data recording factors.

The huge variation in fish populations, including numbers, species, sizes, and orientation and range from the detonation point, makes it very difficult to accurately predict mortalities at any specific site of detonation. A total of 250 hours of explosive detonation events, each lasting approximately 1–8 hours, will be widely dispersed in the large JAX study area over the calendar year. Most fish species experience a large number of natural mortalities, especially during early life-stages, and any small level of mortality caused by the JAX Range Complex training exercises involving explosives will likely be insignificant to the population as a whole.

Therefore, potential impacts to marine mammal food resources within the JAX Range Complex are expected to be minimal given both the very geographic and spatially limited scope of most Navy at-sea activities including underwater detonations, and the high biological productivity of these resources. No short or long term effects to marine mammal food resources from Navy activities are anticipated within the JAX Range Complex.

Effects on North Atlantic Right Whale Critical Habitat

The coastal waters off Georgia and northern Florida within the JAX Range Complex Study Area are the only known calving ground for the North Atlantic right whale. Designated critical habitat, which encompasses the core of the calving ground, is essential to the conservation of this species. The Navy has proposed to largely avoid conducting any training in critical habitat, and only non-explosive activities will be conducted in the right whale critical habitat. The only training activity that would occur in the NARW critical habitat is the precision anchorage drill, which is a non-explosive event. This exercise requires the use of specially trained bridge watch teams (Sea Anchor Detail) and slow speeds. The objective is to drop anchor and stop the vessel at a precise geographic point. This exercise is typically done 3 to 8 miles from shore. The duration of this exercise is typically less than 1 hour. Therefore, NMFS believes that this training exercise will not adversely affect NARW critical habitat.

In addition, FACSFACJAX coordinates Navy ship and aircraft clearance into the Northern Right Whale Critical Habitat and the surrounding Operating Area (OPAREA) based on season, water temperature, weather conditions, and frequency of whale sightings, and provides North Atlantic right whale sighting reports to ships, submarines and aircraft. Through coordination with the Florida Fish and Wildlife Conservation Commission (FWCC), Georgia Department of Natural Resources (GDNR), New England Aquarium Early Warning System (EWS) and others, FACSFACJAX organized a communications network and reporting system that ensures the widest possible exchange and dissemination of North Atlantic right whale sighting information to Department of Defense and civilian shipping.

Conclusion

Based on the analyses and the aforementioned mitigation and monitoring measures for vessel transit in the North Atlantic right whale critical habitat in place, NMFS concluded that the Navy's activities would have minimal effects on marine mammal habitat, including the North Atlantic right whale critical habitat.

Analysis and Negligible Impact Determination

Pursuant to NMFS's regulations implementing the MMPA, an applicant is required to estimate the number of animals that will be ''taken'' by the specified activities (*i.e.,* takes by harassment only, or takes by harassment, injury, and/or death). This estimate informs the analysis that NMFS must perform to determine whether the activity will have a ''negligible impact'' on the species or stock. Level B (behavioral) harassment occurs at the level of the individual(s) and does not assume any resulting population-level consequences, though there are known avenues through which behavioral disturbance of individuals can result in population-level effects. A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of Level B harassment takes alone, is not enough information on which to base an impact determination.

In addition to considering estimates of the number of marine mammals that might be ''taken'' through behavioral harassment, NMFS must consider other factors, such as the likely nature of any responses (their intensity, duration, *etc.*), the context of any responses (critical reproductive time or location, migration, *etc.*), and the number and nature of estimated Level A takes, the number of estimated mortalities, and effects on habitat.

The Navy's specified activities have been described based on best estimates of the planned detonation events the Navy would conduct for the proposed JAX Range Complex training activities. Taking the above into account, considering the sections discussed below, and dependent upon the implementation of the proposed mitigation measures, NMFS has determined that Navy training exercises utilizing underwater explosives will have a negligible impact on the affected marine mammal species and stocks present in the JAX Range Complex Study Area.

NMFS's analysis of potential behavioral harassment, temporary threshold shifts, permanent threshold shifts, injury, and mortality to marine mammals as a result of the JAX Range Complex training activities was provided in the proposed rule (73 FR 76578, pages 76585–76591) and is described in more detail below.

Behavioral Harassment

The Navy plans a total of 73 MISSILEX training events (each lasting for 1 hour), 10 FIREX training events (each lasting for 8 hours), 12 MINEX training events (each lasting for 6–8 hours), and 8 small arms exercises events (each lasting for 1 hour) annually. The total training exercises proposed by the Navy in the JAX Range Complex amount to approximate 250 hours per year. These detonation events are widely dispersed throughout several of the designated sites within the JAX Range Complex Study Area. The probability that detonation events will overlap in time and space with marine mammals is low, particularly given the densities of marine mammals in the JAX

Range Complex Study Area and the implementation of monitoring and mitigation measures. Moreover, NMFS does not expect animals to experience repeated exposures to the same sound source as animals will likely move away from the source after being exposed. In addition, these isolated exposures, when received at distances of Level B behavioral harassment (*i.e.,* 177 dB re 1 microPa^2-sec), are expected to cause brief startle reactions or short-term behavioral modification by the animals. These brief reactions and behavioral changes are expected to disappear when the exposures cease. Therefore, these levels of received impulse noise from detonation are not expected to affect annual rates or recruitment or survival.

TTS

NMFS and the Navy have estimated that individuals of some species of marine mammals may sustain some level of temporarily threshold shift TTS from underwater detonations. TTS can last from a few minutes to days, be of varying degree, and occur across various frequency bandwidths. The TTS sustained by an animal is primarily classified by three characteristics:

• *Frequency*—Available data (of mid-frequency hearing specialists exposed to mid to high frequency sounds- Southall *et al.,* 2007) suggest that most TTS occurs in the frequency range of the source up to one octave higher than the source (with the maximum TTS at ½ octave above).

• *Degree of the shift (i.e., how many dB is the sensitivity of the hearing reduced by)*—generally, both the degree of TTS and the duration of TTS will be greater if the marine mammal is exposed to a higher level of energy (which would occur when the peak dB level is higher or the duration is longer). Since the impulse from detonation is extremely brief, an animal would have to approach very close to the detonation site to increase the received SEL. The threshold for the onset of TTS for detonations is a dual criteria: 182 dB re 1 microPa^2-sec or 23 psi, which might be received at distances from 252–1,096 m from the centers of detonation based on the types of NEW involved to receive the SEL that causes TTS compared to similar source level with longer durations (such as sonar signals).

• *Duration of TTS (Recovery time)*—Of all TTS laboratory studies, some using exposures of almost an hour in duration or up to 217 SEL, almost all recovered within 1 day (or less, often in minutes), though in one study (Finneran *et al.,* 2007), recovery took 4 days.

• Although the degree of TTS depends on the received noise levels and exposure time, all studies show that TTS are reversible and animals' sensitivity is expected to be fully recovered in minutes to hours. Therefore, NMFS expects that TTS would not affect annual rates of recruitment or survival.

Acoustic Masking or Communication Impairment

As discussed above, it is also possible that anthropogenic sound could result in masking of marine mammal communication and navigation signals. However, masking only occurs during the time of the signal (and potential secondary arrivals of indirect rays), versus TTS, which occurs continuously for its duration. Impulse sounds from underwater detonations are extremely brief and the majority of most animals' vocalizations would not be masked. Therefore, masking effects from underwater detonations are expected to be minimal and unlikely. If masking or communication impairment were to occur briefly, it would be in the frequency ranges below 100 Hz, which overlaps with some mysticete vocalizations; however, it would likely not mask the entirety of any particular vocalization or communication series because of the short impulse.

PTS, Injury, or Mortality

The Navy's model estimated that 2 Atlantic spotted dolphins could experience 50 percent tympanic membrane rupture or slight lung injury (Level A harassment) as a result of the training activities utilizing underwater detonation in the JAX Range Complex Study Area. However, these estimates do not take into consideration the proposed mitigation and monitoring measures. For underwater detonations, the animals have to be within pre-defined zones of influence (ZOI) to experience Level A harassment. The injury zones vary from 0.02 km^2 to 0.165 km^2 (or at distances between 80 m to 230 m from the center of detonation) depending on the types of munition used and the season of the action. NMFS believes it is unlikely that any marine mammal could be undetected by lookouts/watchstanders or MMOs within such a small area during pre-testing surveys. As discussed previously, the Navy plans to utilize aerial or vessel surveys to detect marine mammals for mitigation implementation and indicated that they are capable of effectively monitoring safety zones.

Based on these assessments, NMFS determined that approximately 3 minke whales, 3 dwarf or pygmy sperm whales, 20 beaked whales, 20 pilot whales, 62 Atlantic spotted dolphins, 30 bottlenose dolphins, 20 Clymene dolphins, 30 common dolphins, 20 pantropical spotted dolphins, 30 Risso's dolphins, and 20 striped dolphins could be affected by Level B harassment (TTS and sub-TTS) as a result of the proposed JAX Range Complex training activities. These numbers represent approximately 0.09%, 0.76%, 0.06%, 0.12%, 0.04%, 0.02%, 0.45%, 0.02%, 0.15%, and 0.57% of minke whales, dwarf or pygmy sperm whales, pilot whales, Atlantic spotted dolphins, bottlenose dolphins, common dolphins, pantropical spotted dolphins, striped dolphins, Risso's dolphins, and beaked whales, respectively in the vicinity of the proposed JAX Range Complex Study Area (calculation based on NMFS 2007 U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessment). Although the population estimate of Clymene dolphins is unknown in the proposed action area, NMFS considers the take of 20 individuals of this species by Level B harassment would have a negligible impact to this species because most of its population exists beyond the project area and because they are widely distributed species in the North Atlantic (Jefferson *et al.,* 1993; Reeves *et al.,* 2002).

In addition, the estimated Level A takes of 2 Atlantic spotted dolphins represent 0.0039% of this species in the vicinity of the proposed JAX Range Complex Study Area (calculation based on NMFS 2007 U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessment). Given these very small percentages, NMFS does not expect there to be any long-term adverse effect on the populations of the aforementioned dolphin species. No marine mammals are expected to be killed as a result of these activities.

Additionally, the aforementioned take estimates do not account for the implementation of mitigation measures. With the implementation of mitigation and monitoring measures, NMFS expects that the takes would be reduced further. Coupled with the fact that these impacts will likely not occur in areas and times critical to reproduction, NMFS has determined that the total taking over the 5-year period of the regulations and subsequent LOAs from the Navy's JAX Range Complex training activities will have a negligible impact on the marine mammal species and stocks present in the JAX Range Complex Study Area.

Subsistence Harvest of Marine Mammals

NMFS has determined that the issuance of 5-year regulations and subsequent LOAs (as warranted) for

Navy training exercises in the JAX Range Complex would not have an unmitigable adverse impact on the availability of the affected species or stocks for subsistence use since there are no such uses in the specified area.

ESA

There are six marine mammal species that are listed as endangered under the ESA with confirmed or possible occurrence in the study area and could be impacted by the proposed action: blue whale, fin whale, sei whale, humpback whale, North Atlantic right whale, and sperm whale.

Pursuant to Section 7 of the ESA, the Navy has consulted with NMFS on this action. NMFS has also consulted internally on the issuance of regulations under section 101(a)(5)(A) of the MMPA for this activity. The Biological Opinion concludes that the proposed training activities are likely to adversely affect but are not likely to jeopardize the continued existence of these threatened and endangered species under NMFS jurisdiction.

NEPA

NMFS participated as a cooperating agency on the Navy's Final Environmental Impact Statement (FEIS) for the JAX Range Complex. NMFS subsequently adopted the Navy's EIS for the purpose of complying with the MMPA.

Determination

Based on the analysis contained herein and in the proposed rule (and other related documents) of the likely effects of the specified activity on marine mammals and their habitat and dependent upon the implementation of the mitigation measures, NMFS finds that the total taking from Navy JAX Range Complex training exercises utilizing underwater explosives over the 5 year period will have a negligible impact on the affected species or stocks and will not result in an unmitigable adverse impact on the availability of marine mammal species or stocks for taking for subsistence uses because no subsistence uses exist in the JAX Range Complex study area. NMFS has issued regulations for these exercises that prescribe the means of effecting the least practicable adverse impact on marine mammals and their habitat and set forth requirements pertaining to the monitoring and reporting of that taking.

Classification

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

The Regulatory Flexibility Act (RFA) requires Federal agencies to prepare an analysis of a rule's impact on small entities whenever the agency is required to publish a notice of proposed rulemaking. However, a Federal agency may certify, pursuant to 5 U.S.C. 605(b), that the action will not have a significant economic impact on a substantial number of small entities. The Chief Counsel for Regulation of the Department of Commerce certified at the Proposed Rule stage. The Navy is the entity that will be affected by this rulemaking, not a small governmental jurisdiction, small organization or small business, as defined by the RFA. This rulemaking authorizes the take of marine mammals incidental to a specified activity. The specified activity defined in the final rule includes the use of underwater detonations, which are only used by the U.S. military, during training activities that are only conducted by the U.S. Navy. Additionally, any requirements imposed by a Letter of Authorization issued pursuant to these regulations, and any monitoring or reporting requirements imposed by these regulations, will be applicable only to the Navy. Because this action, if adopted, would directly affect the Navy and not a small entity, NMFS concludes the action would not result in a significant economic impact on a substantial number of small entities.

The Assistant Administrator for Fisheries has determined that there is good cause under the Administrative Procedure Act (5 U.S.C. 553(d)(3)) to waive the 30-day delay in effective date of the measures contained in the final rule. The U.S Navy has a compelling national policy reason to continue military readiness activities without interruption in its East Coast Operating Areas, *i.e.,* the JAX Range Complex. As discussed below, suspension/interruption of the Navy's ability to train, for even a small number of days, disrupts vital sequential training and certification processes essential to our national security.

In order to meet its national security objectives, the Navy must continually maintain its ability to operate in a challenging at-sea environment, conduct military operations, control strategic maritime transit routes and international straits, and protect sea lines of communications that support international commerce. To meet these objectives, the Navy must continually train. Timely training is critical because individual Navy units and Strike Groups/Amphibious Readiness Groups (ARG) currently operate in, or need to quickly deploy to high risk geographic areas. In addition, a Strike Group/ARG is built around an aircraft carrier with typically 5,300 personnel on board and an amphibious assault ship that carries a Marine Corps Expeditionary Unit, so failure to adequately train risks thousands of lives.

The training necessary to protect American interests and the lives of sailors and marines is complex. It involves ensuring the warfighter can accurately identify potential threats in a variety of marine environments and conditions, and it involves the coordination of different vessels and aircraft so that the group's capabilities are employed in the most tactically effective manner. As with any complicated coordinated effort, this challenge requires routine practice, as these skills are perishable.

In 10 U.S.C. 5062, Congress mandated that the Chief of Naval Operations organize, train, and equip all Naval forces for combat. In response, the Fleet Response Training Plan (FRTP) is a major initiative designed to ensure Naval units receive required training before they deploy. The FRTP is an arduous sequential training cycle in which unit level training (ULT) and combat certification is followed by major exercises that bring together various warfare components so they have the opportunity to practice as an integrated whole and attain certification. Accordingly, any delay in coordinated training creates a significant and unreasonable risk which could result in a unit's and/or Strike Group's inability to train, certify and report as directed to an overseas theater of operations.

A deployment certification exercise is currently scheduled for June 2009 that will encompass areas of the JAX Range Complex. Lack of the appropriate environmental regulatory coverage for even a single day imperils completion of this exercise, and risks deployment certification. Essential ULT also occurs in these OPAREAs. There is limited unit level underway (at-sea) time available in the FRTP to adjust the training dates. These ULT training periods are driven by sequential certification processes for both in port and at-sea training. Scheduling constraints are further complicated by the availability of Afloat Training Groups (ATGs) that are responsible for training all individual units. ATGs have a limited number of trainers available at any given time, and their schedules must also be de-conflicted, compounding the problem if training schedules are not adhered to. Waiver of the 30-day delay of the effective date of the Final Rule will allow Navy to finalize operational

procedures to ensure compliance with required mitigation, monitoring, and reporting requirements, and have MMPA authorization in place prior to Navy's vital June 2009 exercise.

List of Subjects in 50 CFR Part 218

Exports, Fish, Imports, Incidental take, Indians, Labeling, Marine mammals, Navy, Penalties, Reporting and recordkeeping requirements, Seafood, Sonar, Transportation.

Dated: June 5, 2009.

Samuel D. Rauch III,

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

■ For reasons set forth in the preamble, 50 CFR part 218 is amended to read as follows:

PART 218—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

■ 1. The authority citation for part 218 continues to read as follows:

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

■ 2. Subpart B is added to part 218 to read as follows:

Subpart B—Taking Marine Mammals Incidental to U.S. Navy Training in the Jacksonville Range Complex

Sec.
218.10 Specified activity and specified geographical area and effective dates.
218.11 Permissible methods of taking.
218.12 Prohibitions.
218.13 Mitigation.
218.14 Requirements for monitoring and reporting.
218.15 Applications for Letters of Authorization.
218.16 Letters of Authorization.
218.17 Renewal of Letters of Authorization and adaptive management.
218.18 Modifications to Letters of Authorization.

Subpart B—Taking Marine Mammals Incidental to U.S. Navy Training in the Jacksonville Range Complex (JAX Range Complex)

§ 218.10 Specified activity and specified geographical area and effective dates.

(a) Regulations in this subpart apply only to the U.S. Navy for the taking of marine mammals that occurs in the area outlined in paragraph (b) of this section and that occur incidental to the activities described in paragraph (c) of this section.

(b) The taking of marine mammals by the Navy is only authorized if it occurs within the JAX Range Complex Operation Areas (OPAREAs), which are located along the southern east coast of the U.S. The two principal OPAREAs within the JAX Study Area are the Jacksonville OPAREA and the Charleston OPAREA (sometimes referred to collectively as the JAX/CHASN OPAREA, or simply the OPAREA). The northernmost point of the JAX/CHASN OPAREA is located just north of Wilmington, North Carolina (34°37′ N) in waters less than 20 m (65.6 ft) deep, while the easternmost boundary lies 281 nm (518.6 km) offshore of Jacksonville, Florida (77°00′ W in waters with a bottom depth of nearly 2,000 m [1.243 mi]).

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the following activities within the designated amounts of use:

(1) The detonation of the underwater explosives indicated in paragraph (c)(1)(i) of this section conducted as part of the training events indicated in paragraph (c)(1)(ii) of this section:

(i) Underwater Explosives:

(A) AGM–114 (Hellfire missile);

(B) AGM–65 E/F (Maverick missile);

(C) Mine Neutralization (20 lb NEW charges);

(D) 5″ Naval Gunfire;

(E) MK3A2 anti-swimmer concussion grenades.

(ii) Training Events:

(A) Mine Neutralization (20 lb NEW charges)—up to 60 exercises over the course of 5 years (an average of 12 per year);

(B) Missile Exercise (MISSILEX) (Air-to-Surface; Hellfire missile)—up to 350 exercises over the course of 5 years (an average of 70 per year);

(C) Missile Exercise (MISSILEX) (Air-to-Surface; Maverick)—up to 15 exercises over the course of 5 years (an average of 3 per year);

(D) FIREX with IMPASS—up to 50 exercises over the course of 5 years (an average of 10 per year); and

(E) Small Arms Training with MK3A2 anti-swimmer concussion grenade (0.5 lbs NEW)—up to 400 grenades over the course of 5 years (an average of 80 HE grenades used per year).

(2) [Reserved]

(d) Regulations are effective June 8, 2009 and are applicable to the Navy on June 5, 2009 through June 4, 2014.

§ 218.11 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§ 216.106 of this chapter and 218.16, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals within the area described in § 218.10(b), provided the activity is in compliance with all terms, conditions, and requirements of this subpart and the appropriate Letter of Authorization.

(b) The activities identified in § 218.10(c) must be conducted in a manner that minimizes, to the greatest extent practicable, any adverse impacts on marine mammals and their habitat.

(c) The incidental take of marine mammals under the activities identified in § 218.10(c) is limited to the following species, by the indicated method of take and the indicated number of times:

(1) Level B Harassment:

(i) Bottlenose dolphin (*Tursiops truncatus*)—150 (an average of 30 annually);

(ii) Pantropical spotted dolphin (*Stenella attenuata)*—100 (an average of 20 annually);

(iii) Clymene dolphin (*S. clymene*)—100 (an average of 20 annually);

(iv) Atlantic spotted dolphin (*S. frontalis*)—310 (an average of 62 annually);

(v) Striped dolphin (*S. coeruleoalba*)—100 (an average of 20 annually);

(vi) Risso's dolphin (*Grampus griseus*)—150 (an average of 30 annually);

(vii) Common dolphin (*Delphinus delphis*)—150 (an average of 30 annually);

(viii) Pilot whales (*Globicephala* sp.)—100 (an average of 20 annually);

(ix) Dwarf or pygmy sperm whales (*Kogia* sp.)—15 (an average of 3 annually);

(x) Beaked whales—100 (an average of 20 annually);

(xi) Minke whales (*Balaenoptera acutorostrata*)—15 (an average of 3 annually).

(2) Level A Harassment (injury):

(i) Atlantic spotted dolphin—10 (an average of 2 annually).

(ii) [Reserved]

§ 218.12 Prohibitions.

Notwithstanding takings contemplated in § 218.11 and authorized by a Letter of Authorization issued under § 216.106 of this chapter and § 218.16, no person in connection with the activities described in § 218.10 may:

(a) Take any marine mammal not specified in § 218.11(c);

(b) Take any marine mammal specified in § 218.11(c) other than by incidental take as specified in § 218.11(c)(1) and (2);

(c) Take a marine mammal specified in § 218.11(c) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of this Subpart or a Letter of Authorization issued under § 216.106 of this chapter and § 218.16.

§ 218.13 Mitigation.

(a) When conducting training activities identified in § 218.10(c), the mitigation measures contained in the Letter of Authorization issued under § 216.106 of this chapter and § 218.16 must be implemented. These mitigation measures include, but are not limited to:

(1) General Maritime Measures:

(i) Personnel Training—Lookouts:

(A) All bridge personnel, Commanding Officers, Executive Officers, officers standing watch on the bridge, maritime patrol aircraft aircrews, and Mine Warfare (MIW) helicopter crews shall complete Marine Species Awareness Training (MSAT).

(B) Navy lookouts shall undertake extensive training to qualify as a watchstander in accordance with the Lookout Training Handbook (NAVEDTRA 12968–D).

(C) Lookout training shall include on-the-job instruction under the supervision of a qualified, experienced watchstander. Following successful completion of this supervised training period, lookouts shall complete the Personal Qualification Standard Program, certifying that they have demonstrated the necessary skills (such as detection and reporting of partially submerged objects).

(D) Lookouts shall be trained in the most effective means to ensure quick and effective communication within the command structure to facilitate implementation of protective measures if marine species are spotted.

(E) Surface lookouts shall scan the water from the ship to the horizon and be responsible for all contacts in their sector. In searching the assigned sector, the lookout shall always start at the forward part of the sector and search aft (toward the back). To search and scan, the lookout shall hold the binoculars steady so the horizon is in the top third of the field of vision and direct the eyes just below the horizon. The lookout shall scan for approximately five seconds in as many small steps as possible across the field seen through the binoculars. They shall search the entire sector in approximately five-degree steps, pausing between steps for approximately five seconds to scan the field of view. At the end of the sector search, the glasses shall be lowered to allow the eyes to rest for a few seconds, and then the lookout shall search back across the sector with the naked eye.

(F) At night, lookouts shall scan the horizon in a series of movements that would allow their eyes to come to periodic rests as they scan the sector. When visually searching at night, they shall look a little to one side and out of the corners of their eyes, paying attention to the things on the outer edges of their field of vision. Lookouts shall also have night vision devices available for use.

(ii) Operating Procedures & Collision Avoidance:

(A) Prior to major exercises, a Letter of Instruction, Mitigation Measures Message or Environmental Annex to the Operational Order shall be issued to further disseminate the personnel training requirement and general marine species mitigation measures.

(B) Commanding Officers shall make use of marine species detection cues and information to limit interaction with marine species to the maximum extent possible consistent with safety of the ship.

(C) While underway, surface vessels shall have at least two lookouts with binoculars; surfaced submarines shall have at least one lookout with binoculars. Lookouts already posted for safety of navigation and man-overboard precautions may be used to fill this requirement. As part of their regular duties, lookouts shall watch for and report to the OOD the presence of marine mammals.

(D) Personnel on lookout shall employ visual search procedures employing a scanning method in accordance with the Lookout Training Handbook (NAVEDTRA 12968–D).

(E) After sunset and prior to sunrise, lookouts shall employ Night Lookouts Techniques in accordance with the Lookout Training Handbook (NAVEDTRA 12968–D).

(F) While in transit, naval vessels shall be alert at all times, use extreme caution, and proceed at a ''safe speed'' (the minimum speed at which mission goals or safety will not be compromised) so that the vessel can take proper and effective action to avoid a collision with any marine animal and can be stopped within a distance appropriate to the prevailing circumstances and conditions.

(G) When marine mammals have been sighted in the area, Navy vessels shall increase vigilance and implement measures to avoid collisions with marine mammals and avoid activities that might result in close interaction of naval assets and marine mammals. Such measures shall include changing speed and/or course direction and would be dictated by environmental and other conditions (*e.g.*, safety or weather).

(H) Naval vessels shall maneuver to keep at least 500 yds (460 m) away from any observed whale and avoid approaching whales head-on. This requirement does not apply if a vessel's safety is threatened, such as when change of course will create an imminent and serious threat to a person, vessel, or aircraft, and to the extent vessels are restricted in their ability to maneuver. Vessels shall take reasonable steps to alert other vessels in the vicinity of the whale.

(I) Where feasible and consistent with mission and safety, vessels shall avoid closing to within 200 yds (183 m) of marine mammals other than whales (whales addressed above).

(J) Navy aircraft participating in exercises at sea shall conduct and maintain, when operationally feasible and safe, surveillance for marine species of concern as long as it does not violate safety constraints or interfere with the accomplishment of primary operational duties. Marine mammal detections shall be immediately reported to assigned Aircraft Control Unit for further dissemination to ships in the vicinity of the marine species as appropriate where it is reasonable to conclude that the course of the ship will likely result in a closing of the distance to the detected marine mammal.

(K) All vessels shall maintain logs and records documenting training operations should they be required for event reconstruction purposes. Logs and records shall be kept for a period of 30 days following completion of a major training exercise.

(2) Coordination and Reporting Requirements:

(i) The Navy shall coordinate with the local NMFS Stranding Coordinator for any unusual marine mammal behavior and any stranding, beached live/dead, or floating marine mammals that may occur at any time during or within 24 hours after completion of training activities.

(ii) The Navy shall follow internal chain of command reporting procedures as promulgated through Navy instructions and orders.

(3) Mitigation Measures Applicable to Vessel Transit in the Mid-Atlantic during North Atlantic Right Whale Migration: The mitigation measures apply to all Navy vessel transits, including those vessels that would transit to and from East Coast ports and the JAX Range Complex OPAREA.

(i) Mid-Atlantic, Offshore of the Eastern United States:

(A) All Navy vessels are required to use extreme caution and operate at a slow, safe speed consistent with mission and safety during the months indicated below and within a 37 km (20 nm) arc (except as noted) of the specified associated reference points:

(*1*) South and East of Block Island (37 km (20 NM) seaward of line between 41–4.49° N. lat. 071–51.15° W. long. and

41–18.58° N. lat. 070–50.23° W. long): Sept-Oct and Mar-Apr

(*2*) New York/New Jersey (40–30.64° N. lat. 073–57.76° W. long.): Sep–Oct and Feb-Apr.

(*3*) Delaware Bay (Philadelphia) (38–52.13° N. lat. 075–1.93° W. long.): Oct–Dec and Feb–Mar.

(*4*) Chesapeake Bay (Hampton Roads and Baltimore) (37–1.11° N. lat. 075–57.56° W. long.): Nov-Dec and Feb–Apr.

(*5*) North Carolina (34–41.54° N. lat. 076–40.20° W. long.): Dec-Apr

(*6*) South Carolina (33–11.84° N. lat. 079–8.99° W. long. and 32–43.39° N. lat. 079–48.72° W. long.): Oct-Apr

(B) During the months indicated in paragraph (a)(3)(i)(A) of this section, Navy vessels shall practice increased vigilance with respect to avoidance of vessel-whale interactions along the mid-Atlantic coast, including transits to and from any mid-Atlantic ports not specifically identified in paragraph (a)(3)(i)(A) of this section.

(C) All surface units transiting within 56 km (30 NM) of the coast in the mid-Atlantic shall ensure at least two watchstanders are posted, including at least one lookout who has completed required MSAT training.

(D) Navy vessels shall not knowingly approach any whale head on and shall maneuver to keep at least 457 m (1,500 ft) away from any observed whale, consistent with vessel safety.

(ii) Southeast Atlantic, Offshore of the Eastern United States—for the purposes of the measures below (paragraphs (a)(3)(ii)(A) & (B) of this section), the ''southeast'' encompasses sea space from Charleston, South Carolina, southward to Sebastian Inlet, Florida, and from the coast seaward to 148 km (80 NM) from shore. North Atlantic right whale critical habitat is the area from 31–15° N. lat. to 30–15° N. lat. extending from the coast out to 28 km (15 NM), and the area from 28–00° N. lat. to 30–15° N. lat. from the coast out to 9 km (5 NM). All mitigation measures described here that apply to the critical habitat apply from November 15—April 15 and also apply to an associated area of concern which extends 9 km (5 NM) seaward of the designated critical habitat boundaries.

(A) Prior to transiting or training in the critical habitat or associated area of concern, ships shall contact Fleet Area Control and Surveillance Facility, Jacksonville, to obtain latest whale sighting and other information needed to make informed decisions regarding safe speed (the minimum speed at which mission goals or safety will not be compromised) and path of intended movement. Subs shall contact Commander, Submarine Group Ten for similar information.

(B) The following specific mitigation measures apply to activities occurring within the North Atlantic right whale critical habitat and an associated area of concern which extends 9 km (5 NM) seaward of the designated critical habitat boundaries:

(*1*) When transiting within the critical habitat or associated area of concern, vessels shall exercise extreme caution and proceed at a slow safe speed. The speed shall be the slowest safe speed that is consistent with mission, training and operations.

(*2*) Speed reductions (adjustments) are required when a whale is sighted by a vessel or when the vessel is within 9 km (5 NM) of a reported new sighting less than 12 hours old. Circumstances could arise where, in order to avoid North Atlantic right whale(s), speed reductions could mean vessels must reduce speed to a minimum at which it can safely keep on course or vessels could come to an all stop.

(*3*) Vessels shall avoid head-on approaches to North Atlantic right whale(s) and shall maneuver to maintain at least 457 m (500 yd) of separation from any observed whale if deemed safe to do so. These requirements do not apply if a vessel's safety is threatened, such as when a change of course would create an imminent and serious threat to a person, vessel, or aircraft, and to the extent vessels are restricted in the ability to maneuver.

(*4*) During the North Atlantic right whale calving season, north-south transits through the critical habitat are prohibited, except for Precision Anchoring drills and the Shipboard Electronic System Evaluation Facility range that necessarily operate at slow, safe speed.

(*5*) Ships, surfaced subs, and aircraft shall report any whale sightings to Fleet Area Control and Surveillance Facility, Jacksonville, by the quickest and most practicable means. The sighting report shall include the time, latitude/longitude, direction of movement and number and description of whale (*i.e.*, adult/calf).

(*6*) Naval vessel operations in the North Atlantic right whale critical habitat and AAOC during the calving season shall be undertaken during daylight and periods of good visibility, to the extent practicable and consistent with mission, training, and operation. When operating in the critical habitat and AAOC at night or during periods of poor visibility, vessels shall operate as if in the vicinity of a recently reported NARW sighting.

(iii) Northeast Atlantic, Offshore of the Eastern United States:

(A) Prior to transiting the Great South Channel or Cape Cod Bay critical habitat areas, ships shall obtain the latest North Atlantic right whale sightings and other information needed to make informed decisions regarding safe speed (the minimum speed at which mission goals or safety will not be compromised). The Great South Channel critical habitat is defined by the following coordinates: 41–00° N. lat., 69–05° W. long.; 41–45° N. lat, 69–45° W. long; 42–10° N. lat., 68–31° W. long.; 41–38° N. lat., 68–13° W. long. The Cape Cod Bay critical habitat is defined by the following coordinates: 42–04.8° N. lat., 70–10° W. long.; 42–12° N. lat., 70–15° W. long.; 42–12° N. lat., 70–30° W. long.; 41–46.8° N. lat., 70–30° W. long.

(B) Ships, surfaced subs, and aircraft shall report any North Atlantic right whale sightings (if the whale is identifiable as a right whale) off the northeastern U.S. to Patrol and Reconnaissance Wing (COMPATRECONWING). The report shall include the time of sighting, lat/long, direction of movement (if apparent) and number and description of the whale(s).

(C) Vessels or aircraft that observe whale carcasses shall record the location and time of the sighting and report this information as soon as possible to the cognizant regional environmental coordinator. All whale strikes must be reported immediately. This report shall include the date, time, and location of the strike; vessel course and speed; operations being conducted by the vessel; weather conditions, visibility, and sea state; description of the whale; narrative of incident; and indication of whether photos/videos were taken. Navy personnel are encouraged to take photos whenever possible.

(D) Specific mitigation measures related to activities occurring within the critical habitat include the following:

(*1*) Vessels shall avoid head-on approaches to North Atlantic right whale(s) and shall maneuver to maintain at least 457 m (500 yd) of separation from any observed whale if deemed safe to do so. These requirements do not apply if a vessel's safety is threatened, such as when change of course would create an imminent and serious threat to person, vessel, or aircraft, and to the extent vessels are restricted in the ability to maneuver.

(*2*) When transiting within the critical habitat or associated area of concern, vessels shall use extreme caution and operate at a safe speed (the minimum

speed at which mission goals or safety will not be compromised) so as to be able to avoid collisions with North Atlantic right whales and other marine mammals, and stop within a distance appropriate to the circumstances and conditions.

(*3*) Speed reductions (adjustments) are required when a whale is sighted by a vessel or when the vessel is within 9 km (5 NM) of a reported new sighting less than one week old.

(*4*) Ships transiting in the Cape Cod Bay and Great South Channel critical habitats shall obtain information on recent whale sightings in the vicinity of the critical habitat. Any vessel operating in the vicinity of a North Atlantic right whale shall consider additional speed reductions as per Rule 6 of International Navigational Rules.

(4) Mitigation Measures for Specific At-sea Training Events—If a marine mammal is injured or killed as a result of the proposed Navy training activities (*e.g.*, instances in which it is clear that munitions explosions caused death), the Navy shall suspend its activities immediately and report such incident to NMFS.

(i) Firing Exercise (FIREX) Using the Integrated Maritime Portable Acoustic Scoring System (IMPASS) (5-in Explosive Rounds):

(A) This activity shall only occur in Areas BB and CC, as specified in the Navy's LOA application, in the JAX Range Complex.

(B) During North Atlantic right whale calving season no explosive ordnance shall be used.

(C) Pre-exercise monitoring of the target area shall be conducted with ''Big Eyes'' prior to the event, during deployment of the IMPASS sonobuoy array, and during return to the firing position. Ships shall maintain a lookout dedicated to visually searching for marine mammals 180° along the ship track line and 360° at each buoy drop-off location.

(D) ''Big Eyes'' on the ship shall be used to monitor a 600 yard (548 m) buffer zone for marine mammals during naval-gunfire events.

(E) Ships shall not fire on the target if any marine mammals are detected within or approaching the 600 yd (548 m) buffer zone until the area is cleared. If marine mammals are present, operations shall be suspended. Visual observation shall occur for approximately 45 minutes, or until the animal has been observed to have cleared the area and is heading away from the buffer zone.

(F) Post-exercise monitoring of the entire target area shall take place with ''Big Eyes'' and the naked eye during the retrieval of the IMPASS sonobuoy array following each firing exercise.

(G) FIREX with IMPASS shall take place during daylight hours only.

(H) FIREX with IMPASS shall only be used in Beaufort Sea State three (3) or less.

(I) The visibility must be such that the fall of shot is visible from the firing ship during the exercise.

(J) No firing shall occur if marine mammals are detected within 70 yards (64 m) of the vessel.

(ii) Air-to-Surface Missile Exercises (Explosive):

(A) Aircraft shall initially survey the intended ordnance impact area for marine mammals.

(B) During the actual firing of the weapon, the aircraft involved must be able to observe the intended ordnance impact area to ensure the area is free of marine mammals transiting the range.

(C) Visual inspection of the target area shall be made by flying at 1,500 ft (457 m) altitude or lower, if safe to do so, and at slowest safe speed.

(D) Explosive ordnance shall not be targeted to impact within 1,800 yd (1,646 m) of sighted marine mammals.

(iii) Mine Neutralization Training Involving Underwater Detonations (up to and including 20-lb charges):

(A) This activity shall only occur in Undet North and Undet South of the JAX Range Complex.

(B) Observers shall survey the Zone of Influence (ZOI), a 700 yd (640 m) radius from detonation location for marine mammals from all participating vessels during the entire operation. A survey of the ZOI (minimum of 3 parallel tracklines 219 yd [200 m] apart) using support craft shall be conducted at the detonation location 30 minutes prior through 30 minutes post detonation. Aerial survey support shall be utilized whenever assets are available.

(C) Detonation operations shall be conducted during daylight hours only.

(D) If a marine mammal is sighted within the ZOI, the animal shall be allowed to leave of its own volition. The Navy shall suspend detonation exercises and ensure the area is clear of marine mammals for a full 30 minutes prior to detonation.

(E) Divers placing the charges on mines and dive support vessel personnel shall survey the area for marine mammals and shall report any sightings to the surface observers. These animals shall be allowed to leave of their own volition and the ZOI shall be clear of marine mammals for 30 minutes prior to detonation.

(F) No detonations shall take place within 3.2 nm (6 km) of an estuarine inlet.

(G) No detonations shall take place within 1.6 nm (3 km) of shoreline.

(H) Personnel shall record any protected species observations during the exercise as well as measures taken if species are detected within the ZOI.

(iv) Small Arms Training—Explosive hand grenades (such as the MK3A2 grenades):

(A) Lookouts shall visually survey for marine mammals prior to and during exercise.

(B) A 200 yd (182 m) radius buffer zone shall be established around the intended target. The exercises shall be conducted only if the buffer zone is clear of marine mammals.

§ 218.14 Requirements for monitoring and reporting.

(a) The Holder of the Letter of Authorization issued pursuant to § 216.106 of this chapter and § 218.16 for activities described in § 218.10(b) is required to cooperate with the NMFS when monitoring the impacts of the activity on marine mammals.

(b) The Holder of the Authorization must notify NMFS immediately (or as soon as clearance procedures allow) if the specified activity identified in § 218.10(b) is thought to have resulted in the mortality or serious injury of any marine mammals, or in any take of marine mammals not identified in § 218.10(c).

(c) The Navy must conduct all monitoring and required reporting under the Letter of Authorization, including abiding by the JAX Range Complex Monitoring Plan, which is incorporated herein by reference, and which requires the Navy to implement, at a minimum, the monitoring activities summarized below:

(1) Vessel or aerial surveys:

(i) The Holder of this Authorization shall visually survey a minimum of 2 explosive events per year, one of which shall be a multiple detonation event. One of the vessel or aerial surveys should involve professionally trained marine mammal observers (MMOs).

(ii) When operationally feasible, for specified training events, aerial or vessel surveys shall be used 1–2 days prior to, during (if reasonably safe), and 1–5 days post detonation.

(iii) Surveys shall include any specified exclusion zone around a particular detonation point plus 2,000 yards beyond the border of the exclusion zone (*i.e.*, the circumference of the area from the border of the exclusion zone extending 2,000 yards outwards). For vessel-based surveys a passive acoustic system (hydrophone or towed array) could be used to determine

if marine mammals are in the area before and/or after a detonation event.

(iv) When conducting a particular survey, the survey team shall collect:

(A) Location of sighting;

(B) Species (if not possible, indicate whale, dolphin or pinniped);

(C) Number of individuals;

(D) Whether calves were observed;

(E) Initial detection sensor;

(F) Length of time observers maintained visual contact with marine mammal;

(G) Wave height;

(H) Visibility;

(I) Whether sighting was before, during, or after detonations/exercise, and how many minutes before or after;

(J) Distance of marine mammal from actual detonations (or target spot if not yet detonated);

(K) Observed behavior—Watchstanders shall report, in plain language and without trying to categorize in any way, the observed behavior of the animal(s) (such as animal closing to bow ride, paralleling course/speed, floating on surface and not swimming *etc.*), including speed and direction;

(L) Resulting mitigation implementation—Indicate whether explosive detonations were delayed, ceased, modified, or not modified due to marine mammal presence and for how long; and

(M) If observation occurs while explosives are detonating in the water, indicate munition type in use at time of marine mammal detection.

(2) Passive acoustic monitoring—the Navy shall conduct passive acoustic monitoring when operationally feasible.

(i) Any time a towed hydrophone array is employed during shipboard surveys, the towed array shall be deployed during daylight hours for each of the days the ship is at sea.

(ii) The towed hydrophone array shall be used to supplement the ship-based systematic line-transect surveys (particularly for species such as beaked whales that are rarely seen).

(iii) The array shall have the capability of detecting low frequency vocalizations (<1,000 Hz) for baleen whales and relatively high frequency (up to 30 kHz) for odontocetes. The use of two simultaneously deployed arrays can also allow more accurate localization and determination of diving patterns.

(3) Marine mammal observers on Navy platforms:

(i) As required in § 218.14(c)(1), MMOs selected for aerial or vessel survey shall be placed on a Navy platform during one of the explosive exercises being monitored per year, the other designated exercise shall be monitored by the Navy lookouts/watchstanders.

(ii) The MMO must possess expertise in species identification of regional marine mammal species and experience collecting behavioral data.

(iii) MMOs shall not be placed aboard Navy platforms for every Navy training event or major exercise, but during specifically identified opportunities deemed appropriate for data collection efforts. The events selected for MMO participation shall take into account safety, logistics, and operational concerns.

(iv) MMOs shall observe from the same height above water as the lookouts.

(v) The MMOs shall not be part of the Navy's formal reporting chain of command during their data collection efforts; Navy lookouts shall continue to serve as the primary reporting means within the Navy chain of command for marine mammal sightings. The only exception is that if an animal is observed within the shutdown zone that has not been observed by the lookout, the MMO shall inform the lookout of the sighting and the lookout shall take the appropriate action through the chain of command.

(vi) The MMOs shall collect species identification, behavior, direction of travel relative to the Navy platform, and distance first observed. Information collected by MMOs shall be the same as those collected by Navy lookout/watchstanders described in § 218.14(c)(1)(iv).

(d) The Navy shall complete an Integrated Comprehensive Monitoring Program (ICMP) Plan in 2009. This planning and adaptive management tool shall include:

(1) A method for prioritizing monitoring projects that clearly describes the characteristics of a proposal that factor into its priority.

(2) A method for annually reviewing, with NMFS, monitoring results, Navy R&D, and current science to use for potential modification of mitigation or monitoring methods.

(3) A detailed description of the Monitoring Workshop to be convened in 2011 and how and when Navy/NMFS will subsequently utilize the findings of the Monitoring Workshop to potentially modify subsequent monitoring and mitigation.

(4) An adaptive management plan.

(5) A method for standardizing data collection for JAX Range Complex and across range complexes.

(e) General Notification of Injured or Dead Marine Mammals—Navy personnel shall ensure that NMFS (regional stranding coordinator) is notified immediately (or as soon as clearance procedures allow) if an injured or dead marine mammal is found during or shortly after, and in the vicinity of, any Navy training exercise utilizing underwater explosive detonations. The Navy shall provide NMFS with species or description of the animal(s), the condition of the animal(s) (including carcass condition if the animal is dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available).

(f) Annual JAX Range Complex Monitoring Plan Report—The Navy shall submit a report annually on March 1 describing the implementation and results (through January 1 of the same year) of the JAX Range Complex Monitoring Plan. Data collection methods will be standardized across range complexes to allow for comparison in different geographic locations. Although additional information will also be gathered, the MMOs collecting marine mammal data pursuant to the JAX Range Complex Monitoring Plan shall, at a minimum, provide the same marine mammal observation data required in § 218.14(g). The JAX Range Complex Monitoring Plan Report may be provided to NMFS within a larger report that includes the required Monitoring Plan Reports from JAX Range Complex and multiple range complexes.

(g) Annual JAX Range Complex Exercise Report—The Navy shall provide the information described below for all of their explosive exercises. Until the Navy is able to report in full the information below, they shall provide an annual update on the Navy's explosive tracking methods, including improvements from the previous year.

(i) Total annual number of each type of explosive exercise (of those identified as part of the ''specified activity'' in this final rule) conducted in the JAX Range Complex.

(ii) Total annual expended/detonated rounds (missiles, bombs, *etc.*) for each explosive type.

(h) JAX Range Complex 5-yr Comprehensive Report—The Navy shall submit to NMFS a draft report that analyzes and summarizes all of the multi-year marine mammal information gathered during the JAX Range Complex exercises for which annual reports are required (Annual JAX Range Complex Exercise Reports and JAX Range Complex Monitoring Plan Reports). This report shall be submitted at the end of the fourth year of the rule (May 2013), covering activities that have occurred through December 1, 2012.

(i) The Navy shall respond to NMFS' comments and requests for additional information or clarification on the JAX Range Complex Comprehensive Report, the Annual JAX Range Complex Exercise Report, or the Annual JAX Range Complex Monitoring Plan Report (or the multi-Range Complex Annual Monitoring Plan Report, if that is how the Navy chooses to submit the information) if submitted within 3 months of receipt. These reports will be considered final after the Navy has addressed NMFS' comments or provided the requested information, or three months after the submittal of the draft if NMFS does not comment by then.

(j) In 2011, the Navy shall convene a Monitoring Workshop in which the Monitoring Workshop participants will be asked to review the Navy's Monitoring Plans and monitoring results and make individual recommendations (to the Navy and NMFS) of ways of improving the Monitoring Plans. The recommendations shall be reviewed by the Navy, in consultation with NMFS, and modifications to the Monitoring Plan shall be made, as appropriate.

§ 218.15 Applications for Letters of Authorization.

To incidentally take marine mammals pursuant to these regulations, the U.S. citizen (as defined by § 216.103 of this chapter) conducting the activity identified in § 218.10(a) (the U.S. Navy) must apply for and obtain either an initial Letter of Authorization in accordance with § 218.16 or a renewal under § 218.17.

§ 218.16 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the period of validity of this subpart, but must be renewed annually subject to annual renewal conditions in § 218.17.

(b) Each Letter of Authorization will set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact on the species, its habitat, and on the availability of the species for subsistence uses (*i.e.,* mitigation); and

(3) Requirements for mitigation, monitoring and reporting.

(c) Issuance and renewal of the Letter of Authorization will be based on a determination that the total number of marine mammals taken by the activity as a whole will have no more than a negligible impact on the affected species or stock of marine mammal(s).

§ 218.17 Renewal of Letters of Authorization and adaptive management.

(a) A Letter of Authorization issued under § 216.106 and § 218.16 of this chapter for the activity identified in § 218.10(c) will be renewed annually upon:

(1) Notification to NMFS that the activity described in the application submitted under § 218.15 shall be undertaken and that there will not be a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming 12 months;

(2) Timely receipt of the monitoring reports required under § 218.14; and

(3) A determination by NMFS that the mitigation, monitoring and reporting measures required under § 218.13 and the Letter of Authorization issued under §§ 216.106 and 218.16 of this chapter were undertaken and will be undertaken during the upcoming annual period of validity of a renewed Letter of Authorization.

(b) If a request for a renewal of a Letter of Authorization issued under §§ 216.106 and 218.17 of this chapter indicates that a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming season will occur, NMFS will provide the public a period of 30 days for review and comment on the request. Review and comment on renewals of Letters of Authorization are restricted to:

(1) New cited information and data indicating that the determinations made in this document are in need of reconsideration, and

(2) Proposed changes to the mitigation and monitoring requirements contained in these regulations or in the current Letter of Authorization.

(c) A notice of issuance or denial of a renewal of a Letter of Authorization will be published in the **Federal Register**.

(d) NMFS, in response to new information and in consultation with the Navy, may modify the mitigation or monitoring measures in subsequent LOAs if doing so creates a reasonable likelihood of more effectively accomplishing the goals of mitigation and monitoring set forth in the preamble of these regulations. Below are some of the possible sources of new data that could contribute to the decision to modify the mitigation or monitoring measures:

(1) Results from the Navy's monitoring from the previous year (either from JAX Study Area or other locations).

(2) Findings of the Monitoring Workshop that the Navy will convene in 2011 (§ 218.14(j)).

(3) Compiled results of Navy funded research and development (R&D) studies (presented pursuant to the ICMP (§ 218.14(d)).

(4) Results from specific stranding investigations (either from the JAX Range Complex Study Area or other locations).

(5) Results from general marine mammal and sound research (funded by the Navy (described below) or otherwise).

(6) Any information which reveals that marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent Letters of Authorization.

§ 218.18 Modifications to Letters of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the Letter of Authorization by NMFS, issued pursuant to § 216.106 of this chapter and § 218.16 and subject to the provisions of this subpart shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under § 218.17, without modification (except for the period of validity), is not considered a substantive modification.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 218.11(b), a Letter of Authorization issued pursuant to § 216.106 of this chapter and § 218.16 may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the **Federal Register** within 30 days subsequent to the action.

[FR Doc. E9–13698 Filed 6–8–09; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 218

RIN 0648–AX10

Taking and Importing Marine Mammals; U.S. Navy Training in the Cherry Point Range Complex

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS, upon application from the U.S. Navy (Navy), is issuing regulations to govern the unintentional taking of marine mammals incidental to activities conducted at the Cherry Point Range Complex for the period of June 2009 through June 2014. The Navy's activities are considered military readiness activities pursuant to the Marine Mammal Protection Act (MMPA), as amended by the National Defense Authorization Act for Fiscal Year 2004 (NDAA). These regulations, which allow for the issuance of ''Letters of Authorization'' (LOAs) for the incidental take of marine mammals during the described activities and specified timeframes, prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species and their habitat, as well as requirements pertaining to the monitoring and reporting of such taking.

DATES: Effective June 8, 2009 and is applicable to the Navy on June 5, 2009 through June 4, 2014.

ADDRESSES: A copy of the Navy's application (which contains a list of the references used in this document), NMFS' Record of Decision (ROD), and other documents cited herein may be obtained by writing to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225 or by telephone via the contact listed here (see **FOR FURTHER INFORMATION CONTACT**). Additionally, the Navy's LOA application may be obtained by visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*.

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS, (301) 713–2289, ext. 137.

SUPPLEMENTARY INFORMATION: Extensive Supplementary Information was provided in the proposed rule for this activity, which was published in the **Federal Register** on Monday, March 16, 2009 (74 FR 11052). This information will not be reprinted here in its entirety; rather, all sections from the proposed rule will be represented herein and will contain either a summary of the material presented in the proposed rule or a note referencing the page(s) in the proposed rule where the information may be found. Any information that has changed since the proposed rule was published will be addressed herein. Additionally, this final rule contains a section that responds to the comments received during the public comment period.

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) during periods of not more than five consecutive years each if certain findings are made and regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as:

> An impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The National Defense Authorization Act of 2004 (NDAA) (Pub. L.108–136) removed the ''small numbers'' and ''specified geographical region'' limitations and amended the definition of ''harassment'' as it applies to a ''military readiness activity'' to read as follows (Section 3(18)(B) of the MMPA):

> (i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].

Summary of Request

On June 5, 2008, NMFS received an application from the Navy requesting authorization for the take of Atlantic spotted dolphin incidental to the proposed training activities in the Cherry Point Range Complex over the course of 5 years. On June 17, 2008, the Navy submitted an Addendum with some modifications and additional information to its original requests. The activities to be conducted in the Cherry Point Range Complex are classified military readiness activities. The Navy states that these training activities may cause various impacts to marine mammal species in the proposed Cherry Point Range Complex area. The Navy requests an authorization to take two individuals of Atlantic spotted dolphins annually by Level B Harassment. The Navy does not anticipate any Level A harassment (injury). Please refer to the take table on page 6 to the Addendum of the LOA application for detailed information of the potential exposures from explosive ordnance (per year) for marine mammals in the Cherry Point Range Complex. Due to the proposed mitigation and monitoring measures, NMFS does not expect the proposed action would result in any marine mammal mortality. Therefore, no mortality would be authorized for the Navy's Cherry Point Range Complex training activities.

Description of the Specified Activities

The proposed rule contains a complete description of the Navy's specified activities that are covered by these final regulations, and for which the associated incidental take of marine mammals will be authorized in the related LOAs. The proposed rule describes the nature and number of the training activities. These training activities consist of surface warfare [Missile Exercise (MISSILEX)], mine warfare [Mine Exercise (MINEX)], amphibious warfare [Firing Exercise (FIREX)], and vessel movement to, from and within the Cherry Point Range Complex Study Area. The descriptions of MISSILEX and vessel movement contained in the proposed rule (74 FR 11052; pages 11052–11053) have not changed. The Navy made subsequent modifications to the description of the MINEX and FIREX activities since the proposed rule was published. The purpose of the modifications is to improve clarity and readability. The change in description of the MINEX and FIREX activities has not affected the analyses originally presented in the proposed rule or contained in this final rule. Revised descriptions of MINEX and FIREX follow:

Mine Warfare/Mine Exercises

Mine Warfare (MIW) includes the strategic, operational, and tactical use of mines and mine countermeasures (MCM). MIW has two basic subdivisions: (a) Laying mines to degrade the enemy's capabilities to wage land, air, and maritime warfare, and (b) countering enemy-laid mines to

permit friendly maneuver or use of selected land or sea areas (DoN, 2007d).

MIW training events are of two types: MCM and mine neutralization.

MCM operations train forces to detect, identify, classify, mark, avoid, and disable (or verify destruction of) underwater mines (bottom or moored) using a variety of methods including air, surface, sub-surface, and ground assets. Mine hunting techniques involve divers, specialized sonar, and unmanned underwater vehicles (UUVs) to locate and classify the mines and then destroy them using one of two methods: Mechanical (explosive cutters) or influence (matching the acoustic, magnetic, or pressure signature of the mine). The MCM systems currently used in Navy Cherry Point Study Area are deployed aboard the MH–53E helicopters. They include mine hunting sonar (AQS–24A), influence mine sweeping systems (MK–105) and mechanical mine sweeping systems (MK–103), none of which result in underwater detonations.

Mine Neutralization Exercises (MINEX) involve the localization, identification, evaluation, rendering safe, and disposal of mines that constitute a threat to ships or personnel. This mission is currently done primarily by Explosive Ordnance Disposal (EOD) divers. They typically deploy from a ship or small boat to relocate and neutralize mines initially located by another source, such as an MCM or coastal minehunter MHC class ship or an MH–53 or MH–60 helicopter. The EOD divers set an explosive charge on a floating or underwater mine which they initiate remotely after clearing the area. The pressure and energy exerted in the water from the relatively smaller EOD explosive charge causes the mine to explode. These operations in the Navy Cherry Point Study Area involve neutralizing inert training mineshapes with charges of up to 20 lbs Net Explosive Weight (NEW). They will occur only during daylight hours in the locations described in Figure 1 of the LOA application.

In addition to the current MIW systems, the Navy will begin training with new Organic Mine Countermeasures (OMCM) systems in the Navy Cherry Point Study Area as they are introduced into the fleet. The OMCM systems will operate from MH–60S helicopters, including mine hunting sonar (AQS–20); influence mine sweeping towed arrays (Organic Airborne and Surface Influence Sweep [OASIS]); mine hunting laser (Airborne Laser Mine Detection System [ALMDS]) that uses a light imaging detecting and ranging (LIDAR) to detect, localize, and classify near-surface moored/floating mines; and anti-mine ordnance systems (Rapid Airborne Mine Clearance System [RAMICS] and Airborne Mine Neutralization System [AMNS]). No OMCM training events will involve underwater detonations.

Amphibious Warfare

Amphibious Warfare (AMW) involves projecting military power ashore with U.S. Marine Corps (USMC) landing forces supported by naval firepower and logistics. AMW encompasses a broad spectrum of operations involving maneuver from the sea to objectives ashore, ranging from shore assaults, boat raids, ship-to-shore maneuver, shore bombardment and other naval fire support, and air strike and close air support. In the Navy Cherry Point Study Area, the Navy and Marine Corps conduct extensive AMW training, but the only events involving underwater detonation are Firing Exercises (FIREX).

During a FIREX, surface ships use their main battery guns to fire from sea at land targets in support of military forces ashore. The east coast has very limited access to land ranges for shore bombardment. To compensate, Atlantic Fleet cruisers and destroyers can create virtual land masses on their fire control consoles. The ships fire at an array of buoys (Integrated Maritime Portable Acoustic Scoring and Simulation System [IMPASS]) that detect where the rounds landed, thereby allowing the ship to score the accuracy of its gunners. A FIREX (IMPASS) event in the Navy Cherry Point Study Area typically involves up to 70 rounds, 39 of which have high explosive warheads and the rest are inert, and occur only during daylight hours in the locations described in Figure 1 of the LOA application.

TABLE 1—LEVELS OF TRAINING EVENTS INVOLVE EXPLOSIVES PLANNED IN THE CHERRY POINT RANGE COMPLEX PER YEAR

Operation	Platform	System/ordnance	Number of events	Time of day	Event duration
MISSILEX (Air to Surface).	AH–1W Helicopter	AGM–114 (Hellfire; 8-lb NEW[1] HE[2] rounds[3]).	6 sorties (6 HE missiles).	Day or Night	1 hour.
		TOW[4] Missile (all 15.33 NEW HE rounds)[3].	8 sorties (8 missiles)		1 hour.
MINEX	EOD[5]	20 lb NEW charges	20 events	Day	8 hours.
FIREX with IMPASS.[6]	CG, DDG[7]	5″ gun (IMPASS)	2 events (78 HE rounds).	Day	12 hours.

[1] NEW: Net explosive weight.
[2] HE: High Explosive.
[3] Uses stationary or towed surface targets; 1 missile/sortie.
[4] TOW: Tube-launched, Optically tracked, Wire-guided.
[5] EOD: Explosive ordnance disposal.
[6] IMPASS: Integrated Maritime Portable Acoustic Scoring and Simulation System.
[7] CG: guided missile cruiser; DDG: guided missile destroyer.

Cherry Point Range Complex

The Cherry Point Range Complex proposed rule contains a description of the Cherry Point Study Area along with a description of the areas in which certain types of activities will occur. Table 2, included here, summarizes the areas in which explosive events will occur and their frequency of occurrence. The description of the Cherry Point Range Complex Study Area in the proposed rule has not changed.

TABLE 2—NUMBER OF EVENTS UTILIZING EXPLOSIVE MUNITIONS WITHIN THE CHERRY POINT RANGE COMPLEX

Sub-area*	Ordnance	Winter	Spring	Summer	Fall	Annual totals
	MISSILEX					14
16 & 17	Hellfire	1.5	1.5	1.5	1.5	6
16 & 17	TOW	2	2	2	2	8
	FIREX with IMPASS					2
13 & 14	5″ rounds	.25	.25	.25	.25	1
4 & 5	5″ rounds	.25	.25	.25	.25	1
	MINEX					20
UNDET	20 LB	5	5	5	5	20

* See Figure 1 of the LOA application for the location of sub-areas.

Description of Marine Mammals in the Area of the Specified Activities

There are 33 cetacean species, 4 pinniped species, and 1 sirenian species that have the potential or are confirmed to occur in the Cherry Point Range Complex (DoN, 2008). However, only 34 of those species are expected to occur regularly in the OPAREA, as indicated in Table 3. The remaining species are considered extralimital in the Study Area, indicating there are one or more records of an animal's presence in the Study Area, but it is considered beyond the normal range of the species. Extralimital species will not be analyzed further in this study. The Description of Marine Mammals in the Area of the Specified Activities section has not changed from what was in the proposed rule (74 FR 11052; pages 11054–11056).

TABLE 3—MARINE MAMMAL SPECIES FOUND IN THE CHERRY POINT RANGE COMPLEX

Family and scientific name	Common name	Federal status
Order Cetacea		
Suborder Mysticeti (baleen whales)		
Eubalaena glacialis	North Atlantic right whale	Endangered.
Megaptera novaeangliae	Humpback whale	Endangered.
Balaenoptera acutorostrata	Minke whale.	
B. brydei	Bryde's whale.	
B. borealis	Sei whale	Endangered.
B. physalus	Fin whale	Endangered.
B. musculus	Blue whale	Endangered.
Suborder Odontoceti (toothed whales)		
Physeter macrocephalus	Sperm whale	Endangered.
Kogia breviceps	Pygmy sperm whale.	
K. sima	Dwarf sperm whale.	
Ziphius cavirostris	Cuvier's beaked whale.	
Mesoplodon minus	True's beaked whale.	
M. europaeus	Gervais' beaked whale.	
M. bidens	Sowerby's beaked whale.	
M. densirostris	Blainville's beaked whale.	
Steno bredanensis	Rough-toothed dolphin.	
Tursiops truncatus	Bottlenose dolphin.	
Stenella attenuata	Pantropical spotted dolphin.	
S. frontalis	Atlantic spotted dolphin.	
S. longirostris	Spinner dolphin.	
S. clymene	Clymene dolphin.	
S. coeruleoalba	Striped dolphin.	
Delphinus delphis	Common dolphin.	
Lagenodephis hosei	Fraser's dolphin.	
Grampus griseus	Risso's dolphin.	
Peponocephala electra	Melon-headed whale.	
Feresa attenuata	Pygmy killer whale.	
Pseudorca crassidens	False killer whale.	
Orcinus orca	Killer whale.	
Globicephala melas	Long-finned pilot whale.	
G. macrorhynchus	Short-finned pilot whale.	
Phocoena phocoena	Harbor porpoise.	
Order Carnivora		
Suborder Pinnipedia (seals, sea lions, walruses)		
Phoca vitulina	Harbor seal	

TABLE 3—MARINE MAMMAL SPECIES FOUND IN THE CHERRY POINT RANGE COMPLEX—Continued

Family and scientific name	Common name	Federal status
Order Sirenia		
Trichechus manatus	West Indian manatee	Endangered.

Potential Impacts to Marine Mammal Species

With respect to the MMPA, NMFS' effects assessment serves four primary purposes: (1) To prescribe the permissible methods of taking (*i.e.,* Level B Harassment (behavioral harassment), Level A Harassment (injury), or mortality, including an identification of the number and types of take that could occur by Level A or B harassment or mortality) and to prescribe other means of effecting the least practicable adverse impact on such species or stock and its habitat (*i.e.,* mitigation); (2) to determine whether the specified activity will have a negligible impact on the affected species or stocks of marine mammals (based on the likelihood that the activity will adversely affect the species or stock through effects on annual rates of recruitment or survival); (3) to determine whether the specified activity will have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (however, there are no subsistence communities in the Cherry Point Range Complex); and (4) to prescribe requirements pertaining to monitoring and reporting.

In the Potential Impacts to Marine Mammal Species section of the proposed rule, NMFS included a qualitative discussion of the different ways that vessel strikes and underwater explosive detonations from MISSILEX, MINEX, and FIREX may potentially affect marine mammals (some of which NMFS would not classify as harassment). See 74 FR 11052, pages 11056–11062. Marine mammals may experience direct physiological effects (such as threshold shift), acoustic masking, impaired communications, stress responses, and behavioral disturbance. The information contained in Potential Impacts to Marine Mammal Species section from the proposed rule has not changed.

Additional analyses on potential impacts to marine mammals from vessel movement within the Cherry Point Range Complex Study Area are added below.

Vessel Movement

There are limited data concerning marine mammal behavioral responses to vessel traffic and vessel noise, and a lack of consensus among scientists with respect to what these responses mean or whether they result in short-term or long-term adverse effects. In those cases where there is a busy shipping lane or where there is large amount of vessel traffic, marine mammals may experience acoustic masking (Hildebrand, 2005) if they are present in the area (*e.g.,* killer whales in Puget Sound; Foote *et al.,* 2004; Holt *et al.,* 2008). In cases where vessels actively approach marine mammals (*e.g.,* whale watching or dolphin watching boats), scientists have documented that animals exhibit altered behavior such as increased swimming speed, erratic movement, and active avoidance behavior (Bursk, 1983; Acevedo, 1991; Baker and MacGibbon, 1991; Trites and Bain, 2000; Williams *et al.,* 2002; Constantine *et al.,* 2003), reduced blow interval (Ritcher *et al.,* 2003), disruption of normal social behaviors (Lusseau, 2003; 2006), and the shift of behavioral activities which may increase energetic costs (Constantine *et al.,* 2003; 2004)). A detailed review of marine mammal reactions to ships and boats is available in Richardson *et al.* (1995). For each of the marine mammals taxonomy groups, Richardson *et al.* (1995) provided the following assessment regarding cetacean reactions to vessel traffic:

Toothed whales: ''In summary, toothed whales sometimes show no avoidance reaction to vessels, or even approach them. However, avoidance can occur, especially in response to vessels of types used to chase or hunt the animals. This may cause temporary displacement, but we know of no clear evidence that toothed whales have abandoned significant parts of their range because of vessel traffic.''

Baleen whales: ''When baleen whales receive low-level sounds from distant or stationary vessels, the sounds often seem to be ignored. Some whales approach the sources of these sounds. When vessels approach whales slowly and nonaggressively, whales often exhibit slow and inconspicuous avoidance maneuvers. In response to strong or rapidly changing vessel noise, baleen whales often interrupt their normal behavior and swim rapidly away. Avoidance is especially strong when a boat heads directly toward the whale.''

It is important to recognize that behavioral responses to stimuli are complex and influenced to varying degrees by a number of factors such as species, behavioral contexts, geographical regions, source characteristics (moving or stationary, speed, direction, *etc.*), prior experience of the animal, and physical status of the animal. For example, studies have shown that beluga whales reacted differently when exposed to vessel noise and traffic. In some cases, naïve beluga whales exhibited rapid swimming from ice-breaking vessels up to 80 km away, and showed changes in surfacing, breathing, diving, and group composition in the Canadian high Arctic where vessel traffic is rare (Finley *et al.,* 1990). In other cases, beluga whales were more tolerant of vessels, but differentially responsive by reducing their calling rates, to certain vessels and operating characteristics (especially older animals) in the St. Lawrence River where vessel traffic is common (Blane and Jaakson, 1994). In Bristol Bay, Alaska, beluga whales continued to feed when surrounded by fishing vessels and resisted dispersal even when purposefully harassed (Fish and Vania, 1971).

In reviewing more than 25 years of whale observation data, Watkins (1986) concluded that whale reactions to vessel traffic were ''modified by their previous experience and current activity: habituation often occurred rapidly, attention to other stimuli or preoccupation with other activities sometimes overcame their interest or wariness of stimuli.'' Watkins noticed that over the years of exposure to ships in the Cape Cod area, minke whales (*Balaenoptera acutorostrata*) changed from frequent positive (such as approaching vessels) interest to generally uninterested reactions; finback whales (*B. physalus*) changed from mostly negative (such as avoidance) to uninterested reactions; right whales (*Eubalaena glacialis*) apparently continued the same variety of responses (negative, uninterested, and positive responses) with little change; and humpbacks (*Megaptera novaeangliae*) dramatically changed from mixed responses that were often negative to

often strongly positive reactions. Watkins (1986) summarized that ''whales near shore, even in regions with low vessel traffic, generally have become less wary of boats and their noises, and they have appeared to be less easily disturbed than previously. In particular locations with intense shipping and repeated approaches by boats (such as the whale-watching areas of Stellwagen Bank), more and more whales had P [positive] reactions to familiar vessels, and they also occasionally approached other boats and yachts in the same ways.''

In the case of the Cherry Point Range Complex, naval vessel traffic is expected to be much lower than in areas where there are large shipping lanes and large numbers of fishing vessels and/or recreational vessels. Nevertheless, the proposed action area is well traveled by a variety of commercial and recreational vessels, so marine mammals in the area are expected to be habituated to vessel noise.

As described in the proposed rule, operations involving vessel movements occur intermittently and are variable in duration, ranging from a few hours up to 2 weeks. These operations are widely dispersed throughout the Cherry Point Range Complex OPAREA, which is a vast area encompassing 18,617 square nautical miles (nm^2) (an area approximately the size of West Virginia). The Navy logs about 950 total vessel days within the Study Area during a typical year. Consequently, the density of ships within the Study Area at any given time is extremely low (*i.e.,* less than 0.005 ships/nm^2).

Moreover, naval vessels transiting the study area or engaging in the training exercises will not actively or intentionally approach a marine mammal or change speed drastically. Except under certain mitigation measures that protect right whales and other marine mammals from vessel strike, all vessels transit to, from, and within the range complexes will be traveling at speeds generally ranging from 10 to 14 knots.

The final rule contains additional mitigation measures requiring Navy vessels to keep at least 500 yards (460 m) away from any observed whale and at least 200 yards (183 m) from marine mammals other than whales, and avoid approaching animals head-on. Although the radiated sound from the vessels will be audible to marine mammals over a large distance, it is unlikely that animals will respond behaviorally to low-level distant shipping noise as the animals in the area are likely to be habituated to such noises (Nowacek *et al.,* 2004). In light of these facts, NMFS does not expect the Navy's vessel movements to result in Level B harassment.

Acoustic Take Criteria

In the Acoustic Take Criteria section of the proposed rule, NMFS described the development and application of the acoustic criteria for explosive detonations (74 FR 11052; pages 11060–11062). No changes to the modeling have been made except for those outlined in Potential Impacts to Marine Mammal Species section of this document.

Mitigation

In order to issue an incidental take authorization (ITA) under Section 101(a)(5)(A) of the MMPA, NMFS must prescribe regulations setting forth the ''permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.'' The NDAA amended the MMPA as it relates to military readiness activities and the incidental take authorization process such that ''least practicable adverse impact'' shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the ''military readiness activity.'' The Cherry Point Range Complex training activities described in this rulemaking are considered military readiness activities.

NMFS reviewed the Navy's proposed Cherry Point Range Complex training activities and the proposed Cherry Point Range Complex mitigation measures presented in the Navy's application to determine whether the activities and mitigation measures were capable of achieving the least practicable adverse effect on marine mammals.

Any mitigation measure prescribed by NMFS should be known to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed below:

(1) Avoidance or minimization of injury or death of marine mammals wherever possible (goals b, c, and d may contribute to this goal).

(2) A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to underwater detonations or other activities expected to result in the take of marine mammals (this goal may contribute to a, above, or to reducing harassment takes only).

(3) A reduction in the number of times (total number or number at biologically important time or location) individuals would be exposed to underwater detonations or other activities expected to result in the take of marine mammals (this goal may contribute to a, above, or to reducing harassment takes only).

(4) A reduction in the intensity of exposures (either total number or number at biologically important time or location) to underwater detonations or other activities expected to result in the take of marine mammals (this goal may contribute to a, above, or to reducing the severity of harassment takes only).

(5) A reduction in adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.

(6) For monitoring directly related to mitigation—an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation (shut-down zone, etc.).

NMFS reviewed the Navy's proposed mitigation measures, which included a careful balancing of the likely benefit of any particular measure to the marine mammals with the likely effect of that measure on personnel safety, practicality of implementation, and impact on the ''military-readiness activity.''

The Navy's proposed mitigation measures were described in detail in the proposed rule (74 FR 11052, pages 11066–11069). Slight wording changes have been made to the Personnel Training—Lookouts section as presented in the Proposed Rule (page 76592). Bullet 6 of that section is added to clarify nighttime monitoring, which reads as: ''At night, to increase effectiveness, lookouts would not continuously sweep the horizon with their eyes. Instead, lookouts would scan the horizon in a series of movements that would allow their eyes to come to periodic rests as they scan the sector. When visually searching at night, they would look a little to one side and out of the corners of their eyes, paying attention to the things on the outer edges of their field of vision. Lookouts will also have night vision devices available for use.''

The Navy's measures addressing operating procedures for training activities using underwater detonations of explosives and firing exercises, and mitigation related to vessel traffic and the North Atlantic right whale were described in the proposed rule. No

changes have been made to the mitigation measures described in the proposed rule except the following.

In response to a comment from the Marine Mammal Commission, NMFS will require the Navy to suspend its activities immediately if a marine mammal is injured or killed as a result of the proposed Navy training activities (*e.g.,* instances in which it is clear that munitions explosions caused the injury or death), and report such incident to NMFS.

NMFS has determined that these mitigation measures (which include a suite of measures that specifically address vessel transit and the NARW) are adequate means of effecting the least practicable adverse impacts on marine mammal species or stocks and their habitat while also considering personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Monitoring

In order to issue an ITA for an activity, Section 101(a)(5)(A) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking.'' The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for LOAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present.

Monitoring measures prescribed by NMFS should accomplish one or more of the following general goals:

(1) An increase in the probability of detecting marine mammals, both within the safety zone (thus allowing for more effective implementation of the mitigation) and in general to generate more data to contribute to the effects analyses.

(2) An increase in our understanding of how many marine mammals are likely to be exposed to levels of underwater detonations or other stimuli that we associate with specific adverse effects, such as behavioral harassment, temporary threshold shift of hearing sensitivity (TTS), or permanent threshold shift of hearing sensitivity (PTS).

(3) An increase in our understanding of how marine mammals respond (behaviorally or physiologically) to underwater detonations or other stimuli expected to result in take and how anticipated adverse effects on individuals (in different ways and to varying degrees) may impact the population, species, or stock (specifically through effects on annual rates of recruitment or survival).

(4) An increased knowledge of the affected species.

(5) An increase in our understanding of the effectiveness of certain mitigation and monitoring measures.

(6) A better understanding and record of the manner in which the authorized entity complies with the incidental take authorization.

Monitoring Plan for the Cherry Point Range Complex Study Area

As NMFS indicated in the proposed rule, the Navy has (with input from NMFS) fleshed out the details of and made improvements to the Cherry Point Range Complex Monitoring Plan. Additionally, NMFS and the Navy have incorporated a suggestion from the public, which recommended the Navy hold a peer review workshop to discuss the Navy's Monitoring Plans for the multiple range complexes and training exercises in which the Navy would receive ITAs (see Monitoring Workshop section). The final Cherry Point Range Complex Monitoring Plan, which is summarized below, may be viewed at *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.* The Navy plans to implement all of the components of the Monitoring Plan; however, only the marine mammal components (not the sea turtle components) will be required by the MMPA regulations and associated LOAs.

A summary of the monitoring methods required for use during training events in the Cherry Point Range Complex are described below. These methods include a combination of individual elements that are designed to allow a comprehensive assessment.

I. Vessel or Aerial Surveys:

(A) The Holder of this Authorization shall visually survey a minimum of 1 explosive event per year. If possible, the event surveyed will be one involving multiple detonations. One of the vessel or aerial surveys should involve professionally trained marine mammal observers (MMOs).

(B) When operationally feasible, for specified training events, aerial or vessel surveys shall be used 1–2 days prior to, during (if reasonably safe), and 1–5 days post detonation.

(C) Surveys shall include any specified exclusion zone around a particular detonation point plus 2,000 yards beyond the border of the exclusion zone (*i.e.,* the circumference of the area from the border of the exclusion zone extending 2,000 yards outwards). For vessel-based surveys a passive acoustic system (hydrophone or towed array) could be used to determine if marine mammals are in the area before and/or after a detonation event.

(D) When conducting a particular survey, the survey team shall collect:

- Location of sighting;
- Species (if not possible, indicate whale, dolphin or pinniped);
- Number of individuals;
- Whether calves were observed;
- Initial detection sensor;
- Length of time observers maintained visual contact with marine mammal;
- Wave height;
- Visibility;
- Whether sighting was before, during, or after detonations/exercise, and how many minutes before or after;
- Distance of marine mammal from actual detonations (or target spot if not yet detonated);
- Observed behavior—Watchstanders will report, in plain language and without trying to categorize in any way, the observed behavior of the animal(s) (such as animal closing to bow ride, paralleling course/speed, floating on surface and not swimming etc.), including speed and direction;
- Resulting mitigation implementation—Indicate whether explosive detonations were delayed, ceased, modified, or not modified due to marine mammal presence and for how long; and
- If observation occurs while explosives are detonating in the water, indicate munitions type in use at time of marine mammal detection (e.g., were the 5-inch guns actually firing when the animals were sighted? Did animals enter an area 2 minutes after a huge explosion went off?).

II. Passive Acoustic Monitoring

The Navy is required to conduct passive acoustic monitoring when operationally feasible.

(A) Any time a towed hydrophone array is employed during shipboard surveys the towed array shall be deployed during daylight hours for each of the days the ship is at sea.

(B) The towed hydrophone array shall be used to supplement the ship-based systematic line-transect surveys (particularly for species such as beaked whales that are rarely seen).

III. Marine Mammal Observers on Navy Platforms

(A) MMOs selected for aerial or vessel surveys shall be placed on a Navy platform during one of the exercises being monitored per year. The remaining designated exercise(s) shall be monitored by the Navy lookouts/watchstanders.

(B) The MMO must possess expertise in species identification of regional marine mammal species and experience collecting behavioral data.

(C) MMOs shall not be placed aboard Navy platforms for every Navy training event or major exercise, but during specifically identified opportunities deemed appropriate for data collection efforts. The events selected for MMO participation shall take into account safety, logistics, and operational concerns.

(D) MMOs shall observe from the same height above water as the lookouts.

(E) The MMOs shall not be part of the Navy's formal reporting chain of command during their data collection efforts; Navy lookouts shall continue to serve as the primary reporting means within the Navy chain of command for marine mammal sightings. The only exception is that if an animal is observed within the shutdown zone that has not been observed by the lookout, the MMO shall inform the lookout of the sighting, and the lookout shall take the appropriate action through the chain of command.

(F) The MMOs shall collect species identification, behavior, direction of travel relative to the Navy platform, and distance first observed. All MMO sightings shall be conducted according to a standard operating procedure. Information collected by MMOs should be the same as those collected by Navy lookout/watchstanders described above.

The Monitoring Plan for the Cherry Point Range Complex has been designed as a collection of focused ''studies'' (described fully in the Cherry Point Monitoring Plan) to gather data that will allow the Navy to address the following questions:

(A) What are the behavioral responses of marine mammals and sea turtles that are exposed to explosives?

(B) Is the Navy's suite of mitigation measures effective at avoiding injury and mortality of marine mammals and sea turtles?

Data gathered in these studies will be collected by qualified, professional marine mammal biologists or trained Navy lookouts/watchstanders that are experts in their field. This monitoring plan has been designed to gather data on all species of marine mammals that are observed in the Cherry Point Range Complex study area.

Monitoring Workshop

During the public comment period on past proposed rules for Navy actions (such as the Hawaii Range Complex (HRC), and Southern California Range Complex (SOCAL) proposed rules), NMFS received a recommendation that a workshop or panel be convened to solicit input on the monitoring plan from researchers, experts, and other interested parties. The Cherry Point Range Complex proposed rule included an adaptive management component and both NMFS and the Navy believe that a workshop would provide a means for Navy and NMFS to consider input from participants in determining whether (and if so, how) to modify monitoring techniques to more effectively accomplish the goals of monitoring set forth earlier in the document. NMFS and the Navy believe that this workshop concept is valuable in relation to all of the Range Complexes and major training exercise rules and LOAs that NMFS is working on with the Navy at this time. Consequently, NMFS has determined that this single Monitoring Workshop will be included as a component of all of the rules and LOAs that NMFS will be processing for the Navy in the next year or so.

The Navy, with guidance and support from NMFS, will convene a Monitoring Workshop, including marine mammal and acoustic experts as well as other interested parties, in 2011. The Monitoring Workshop participants will review the monitoring results from the previous two years of monitoring pursuant to the Cherry Point Range Complex rule as well as monitoring results from other Navy rules and LOAs (*e.g.,* VACAPES, AFAST, SOCAL, HRC, and other rules). The Monitoring Workshop participants would provide their individual recommendations to the Navy and NMFS on the monitoring plan(s) after also considering the current science (including Navy research and development) and working within the framework of available resources and feasibility of implementation. NMFS and the Navy would then analyze the input from the Monitoring Workshop participants and determine the best way forward from a national perspective. Subsequent to the Monitoring Workshop, modifications would be applied to monitoring plans as appropriate.

Integrated Comprehensive Monitoring Program

In addition to the site-specific Monitoring Plan for the Cherry Point Range Complex, the Navy will complete the Integrated Comprehensive Monitoring Program (ICMP) Plan by the end of 2009. The ICMP is currently in development by the Navy, with Chief of Naval Operations Environmental Readiness Division (CNO–N45) having the lead. The program does not duplicate the monitoring plans for individual areas (*e.g.* AFAST, HRC, SOCAL, VACAPES); instead it is intended to provide the overarching coordination that will support compilation of data from both range-specific monitoring plans as well as Navy funded research and development (R&D) studies. The ICMP will coordinate the monitoring programs' progress towards meeting its goals and develop a data management plan. A program review board is also being considered to provide additional guidance. The ICMP will be evaluated annually to provide a matrix for progress and goals for the following year, and will make recommendations on adaptive management for refinement and analysis of the monitoring methods.

The primary objectives of the ICMP are to:

- Monitor and assess the effects of Navy activities on protected species;
- Ensure that data collected at multiple locations is collected in a manner that allows comparison between and among different geographic locations;
- Assess the efficacy and practicality of the monitoring and mitigation techniques;
- Add to the overall knowledge-base of marine species and the effects of Navy activities on marine species.

The ICMP will be used both as: (1) A planning tool to focus Navy monitoring priorities (pursuant to ESA/MMPA requirements) across Navy Range Complexes and Exercises; and (2) an adaptive management tool, through the consolidation and analysis of the Navy's monitoring and watchstander data, as well as new information from other Navy programs (*e.g.,* R&D), and other appropriate newly published information.

In combination with the 2011 Monitoring Workshop and the adaptive management component of the Cherry Point Range Complex rule and the other Navy rules (*e.g.* VACAPES Range Complex, Jacksonville Range Complex, *etc.*), the ICMP could potentially provide a framework for restructuring the monitoring plans and allocating monitoring effort based on the value of particular specific monitoring proposals (in terms of the degree to which results would likely contribute to stated monitoring goals, as well the likely technical success of the monitoring based on a review of past monitoring results) that have been developed through the ICMP framework, instead of allocating based on maintaining an equal (or commensurate to effects) distribution of monitoring effort across range complexes. For example, if careful prioritization and planning through the

ICMP (which would include a review of both past monitoring results and current scientific developments) were to show that a large, intense monitoring effort in Hawaii would likely provide extensive, robust and much-needed data that could be used to understand the effects of sonar throughout different geographical areas, it may be appropriate to have other range complexes dedicate money, resources, or staff to the specific monitoring proposal identified as ''high priority'' by the Navy and NMFS, in lieu of focusing on smaller, lower priority projects divided throughout their home range complexes.

The ICMP will identify:

- A means by which NMFS and the Navy would jointly consider prior years' monitoring results and advancing science to determine if modifications are needed in mitigation or monitoring measures to better effect the goals laid out in the Mitigation and Monitoring sections of the Cherry Point Range Complex rule.
- Guidelines for prioritizing monitoring projects
- If, as a result of the workshop and similar to the example described in the paragraph above, the Navy and NMFS decide it is appropriate to restructure the monitoring plans for multiple ranges such that they are no longer evenly allocated (by rule), but rather focused on priority monitoring projects that are not necessarily tied to the geographic area addressed in the rule, the ICMP will be modified to include a very clear and unclassified record-keeping system that will allow NMFS and the public to see how each range complex/project is contributing to all of the ongoing monitoring programs (resources, effort, money, *etc.*).

Adaptive Management

The final regulations governing the take of marine mammals incidental to Navy's Cherry Point Range Complex exercises contain an adaptive management component. The use of adaptive management will give NMFS the ability to consider new data from different sources to determine (in coordination with the Navy) on an annual basis if mitigation or monitoring measures should be modified or added (or deleted) if new data suggests that such modifications are appropriate (or are not appropriate) for subsequent annual LOAs.

The following are some of the possible sources of applicable data:

- Results from the Navy's monitoring from the previous year (either from Cherry Point Range Complex or other locations).
- Findings of the Workshop that the Navy will convene in 2011 to analyze monitoring results to date, review current science, and recommend modifications, as appropriate to the monitoring protocols to increase monitoring effectiveness.
- Compiled results of Navy funded research and development (R&D) studies (presented pursuant to the ICMP, which is discussed elsewhere in this document).
- Results from specific stranding investigations (either from Cherry Point Range Complex or other locations).
- Results from general marine mammal and sound research (funded by the Navy or otherwise).
- Any information which reveals that marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent Letters of Authorization.

Mitigation measures could be modified or added (or deleted) if new data suggests that such modifications would have (or do not have) a reasonable likelihood of accomplishing the goals of mitigation laid out in this final rule and if the measures are practicable. NMFS would also coordinate with the Navy to modify or add to (or delete) the existing monitoring requirements if the new data suggest that the addition of (or deletion of) a particular measure would more effectively accomplish the goals of monitoring laid out in this final rule. The reporting requirements associated with this rule are designed to provide NMFS with monitoring data from the previous year to allow NMFS to consider the data and issue annual LOAs. NMFS and the Navy will meet annually, prior to LOA issuance, to discuss the monitoring reports, Navy R&D developments, and current science and whether mitigation or monitoring modifications are appropriate.

Reporting

In order to issue an ITA for an activity, Section 101(a)(5)(A) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking''. Effective reporting is critical to ensure compliance with the terms and conditions of a LOA, and to provide NMFS and the Navy with data of the highest quality based on the required monitoring. As NMFS noted in its proposed rule, additional detail has been added to the reporting requirements since they were outlined in the proposed rule. The updated reporting requirements are all included below. A subset of the information provided in the monitoring reports may be classified and not releasable to the public.

NMFS will work with the Navy to develop tables that allow for efficient submission of the information required below.

General Notification of Injured or Dead Marine Mammals

Navy personnel will ensure that NMFS (regional stranding coordinator) is notified immediately (or as soon as operational security allows) if an injured or dead marine mammal is found during or shortly after, and in the vicinity of, any Navy training exercise utilizing underwater explosive detonations or other activities. The Navy will provide NMFS with species or description of the animal(s), the condition of the animal(s) (including carcass condition if the animal is dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available).

Annual Cherry Point Range Complex Monitoring Plan Report

The Navy shall submit a report annually on March 1 describing the implementation and results (through January 1 of the same year) of the Cherry Point Range Complex Monitoring Plan, described above. Data collection methods will be standardized across range complexes to allow for comparison in different geographic locations. Although additional information will also be gathered, the MMOs collecting marine mammal data pursuant to the Cherry Point Range Complex Monitoring Plan shall, at a minimum, provide the same marine mammal observation data required in major range complex training exercises section of the Annual Cherry Point Range Complex Exercise Report referenced below.

The Cherry Point Range Complex Monitoring Plan Report may be provided to NMFS within a larger report that includes the required Monitoring Plan Reports from multiple Range Complexes.

Annual Cherry Point Range Complex Exercise Report

The Navy is in the process of improving the methods used to track explosives used to provide increased granularity. The Navy will provide the information described below for all of their explosive exercises. Until the Navy is able to report in full the information below, they will provide an annual update on the Navy's explosive tracking methods, including improvements from the previous year.

(i) Total annual number of each type of explosive exercise (of those identified as part of the ''specified activity'' in this final rule) conducted in the Cherry Point Range Complex.

(ii) Total annual expended/detonated rounds (missiles, bombs, *etc.*) for each explosive type.

Cherry Point Range Complex 5-yr Comprehensive Report

The Navy shall submit to NMFS a draft report that analyzes and summarizes all of the multi-year marine mammal information gathered during the Cherry Point Range Complex exercises for which annual reports are required (Annual Cherry Point Range Complex Exercise Reports and Cherry Point Range Complex Monitoring Plan Reports). This report will be submitted at the end of the fourth year of the rule (May 2013), covering activities that have occurred through December 1, 2012.

Comments and Responses

On March 16, 2009, NMFS published a proposed rule (74 FR 11052) in response to the Navy's request to take marine mammals incidental to military readiness training in the Cherry Point Range Complex study area and requested comments, information and suggestions concerning the request. During the 28-day public comment period, NMFS received comments from the Marine Mammal Commission (Commission) and from the Natural Resources Defense Council (on behalf of Cetacean Society International, League for Coastal Protection, Ocean Futures Society, Jean-Michel Cousteau). The comments are summarized and sorted into general topic areas and are addressed below.

MMPA Concerns

Comment 1: Noting that NMFS initially provided a shorter than usual public comment period for the proposed rule for the Cherry Point Range Complex training activities, the Commission recommends that NMFS adopt a policy to provide a 60-day comment period for all proposed regulations issued under section 101(a)(5)(A), and in no case less than a 45-day comment period. The Commission argues that such a short comment period is impractical, unnecessary, or contrary to the public interest, as provided for under section 553(b)(3)(B) of the Administrative Procedure Act (APA). The Commission also argues that it was unreasonable for NMFS to afford any less than 30 days, particularly since Congress requires a 30-day public comment period for incidental harassment authorizations (IHA) under section 101(a)(5)(D) of the MMPA.

Response: There is no prescribed minimum timeframe for public comment on proposed rules in the APA or section 101(a)(5)(A) of MMPA. NMFS routinely strives to ensure that the public is afforded at least a 30-day public comment period on all MMPA rules. However, circumstances may make a shorter comment period necessary and reasonable.

As an initial matter, whenever NMFS develops proposed regulations under the MMPA, the agency is required to first publish a notice of receipt of a request for the implementation of regulations and LOAs governing the incidental taking. This process typically affords the public up to 30 days to comment on a requester's application and provide NMFS with information and suggestions that will be considered in developing MMPA regulations. See 50 CFR 216.104. On July 8, 2008, NMFS published its ''Notice; receipt of application for a Letter of Authorization (LOA); request for comments and information'' for the Cherry Point Range Complex and solicited input for 30 days (See 73 FR 38991).

The public was also afforded 28 days to comment on the Cherry Point Range Complex proposed rule. NMFS originally provided the public with 21 days because of: (1) The tight deadline of the training activities identified in the Navy's schedule; and (2) the fact that NMFS anticipated even fewer effects to marine mammals as compared to similar activities to be conducted in the Navy's Virginia Capes (VACAPES) and Jacksonville Range Complexes (JAX) (each of which contained a 30-day comment period). NMFS, at the request of the Commission, extended the public comment period by 7 days to allow additional time for comment (74 FR 15419; April 6, 2009). During the public comment period, the Commission was the only entity that provided relevant comments on the Cherry Point Range Complex proposed rule.

Next, the Commission's reference to section 553(b)(3)(B) of the APA is misplaced. The provision to which the Commission cites applies where an agency, for good cause, dispenses with prior opportunity for notice and comment because it has found that to do so would be impracticable, unnecessary, or contrary to the public interest. As NMFS engaged in APA notice and comment rulemaking, the Commission cannot rely on this provision to support its position.

Finally, NMFS recognizes that section 101(a)(5)(D) of the MMPA prescribes a 30-day public comment period on proposed IHAs. However, this statutory provision is inapplicable as NMFS invoked the rulemaking provision of the MMPA (Section 101(a)(5)(A)), a provision which contains no reference to a minimum timeframe for public comment.

Based on the foregoing, NMFS concluded that the 28-day public comment period was reasonable.

Comment 2: The Commission recommends that NMFS require the Navy to conduct an external peer review of its marine mammal density estimates, including the data upon which those estimates are based and the manner in which those data are collected and used.

Response: As discussed in detail in the proposed rule (74 FR 11052; March 16, 2009), marine mammal density estimates were based on the most recent data and information on the occurrence, distribution, and density of marine mammals. The updated density estimates presented in this assessment are derived from the Navy OPAREA Density Estimates (NODE) for the Southeast OPAREAs report (DoN, 2007).

Density estimates for cetaceans were derived in one of three ways, in order of preference: (1) Through spatial models using line-transect survey data provided by the NMFS (as discussed below); (2) using abundance estimates from Mullin and Fulling (2003); or (3) based on the cetacean abundance estimates found in the NMFS stock assessment reports (SAR; Waring *et al.,* 2007), which can be viewed at *http://www.nmfs.noaa.gov/pr/sars/species.htm.*

For the model-based approach, density estimates were calculated for each species within areas containing survey effort. A relationship between these density estimates and the associated environmental parameters such as depth, slope, distance from the shelf break, sea surface temperature, and chlorophyll concentration was formulated using generalized additive models. This relationship was then used to generate a two-dimensional density surface for the region by predicting densities in areas where no survey data exist.

The analyses for cetaceans were based on sighting data collected through shipboard surveys conducted by NMFS Northeast Fisheries Science Center (NEFSC) and Southeast Fisheries Science Center (SEFSC) between 1998 and 2005. Species-specific density estimates derived through spatial modeling were compared with abundance estimates found in the most current NMFS SAR to ensure consistency. All spatial models and density estimates were reviewed by and

coordinated with NMFS Science Center technical staff and scientists with the University of St. Andrews, Scotland, Centre for Environmental and Ecological Modeling (CREEM). Draft models and preliminary results were reviewed during a joint workshop attended by Navy, NMFS Science Center, and CREEM representatives. Subsequent revisions and draft reports were reviewed by these same parties. Therefore, NMFS considers that the density estimates, including the data upon which those estimates are based and the manner in which those are collected and used, has already gone through an independent review process.

Comment 3: The Commission recommends that NMFS require the Navy to revise its explosive ordnance analysis to provide a more realistic assessment of potential occurrences and outcomes of explosions. The Commission states that the Navy analyzes the effects of infrequent explosive events by assuming that those events will be distributed evenly over four seasons, resulting in fractional quarterly totals. The Commission points out that these discrete events either occur or they do not; they cannot occur in fractions. For that reason, the Commission states that it does not believe that assessing the effect of a 0.25 or 0.5 event per season provides a realistic range of likely outcomes because neither the events, nor the densities of marine mammals may be evenly distributed over those seasons.

Response: NMFS agrees with the Commission that the Navy's training activities, though infrequent, do not occur in fractions. However, since scheduling of these training events is determined by a number of factors, not the least of which includes weather conditions, current surge levels and international events, and requirements of the Fleet Response Training Plan, it is impossible to plan these discrete events for the future 5 years in advance. Therefore, NMFS believes that by assuming that these training activities are evenly distributed over four seasons brings a more realistic view in analyzing the impacts over the years.

Monitoring

Comment 4: The Commission recommends that NMFS require the Navy to complete its Integrated Comprehensive Monitoring Program plan and make the ICMP Plan available to the Commission and other interested parties for review prior to its implementation.

Response: The Navy continues to develop the ICMP Plan and will distribute it to the Commission and other interested parties once it is finalized. However, NMFS does not believe it would be feasible to complete the ICMP Plan prior to the end of 2009 if a public comment period were afforded. Nevertheless, components of the ICMP Plan have already been factored into a number of MMPA final rules for Navy actions, including the Cherry Point Range Complex, and the Navy is continuing to develop the ICMP in cooperation with NMFS. The components of the ICMP Plan that were considered and incorporated into the final rules include:

- A requirement to monitor Navy training exercises, particularly those involving underwater detonations, for compliance with the terms and conditions of ESA Section 7 consultations or MMPA authorizations;
- A requirement to minimize exposure of protected species from sound pressure levels from underwater detonations that result in harassment;
- A requirement to collect data to support estimating the number of individuals exposed to sound levels above current regulatory thresholds;
- A requirement to assess the efficacy of the Navy's current marine species mitigation;
- A requirement to document trends in species distribution and abundance in Navy training areas through monitoring efforts;
- A requirement to compile data that would improve the Navy and NMFS' knowledge of the potential behavioral and physiological effects to marine species from underwater detonations.

The ICMP Plan will be used both as: (1) A planning tool to focus Navy monitoring priorities (pursuant to ESA/MMPA requirements) across Navy Range Complexes and Exercises; and (2) an adaptive management tool, through the consolidation and analysis of the Navy's monitoring and watchstander (lookout) data, as well as new information from other Navy programs (*e.g.,* research and development), and newly published non-Navy information. The ICMP Plan is described in the Navy's EIS and LOA application.

Comment 5: The Commission recommends that NMFS require the Navy to develop and implement a plan to evaluate the effectiveness of monitoring and mitigation measures before beginning or in conjunction with operations covered by the proposed incidental take authorization.

Response: NMFS has been working with the Navy throughout the rulemaking process to develop a series of mitigation, monitoring, and reporting protocols. These mitigation, monitoring and reporting measures include, but are not limited to: (1) The use of trained shipboard lookouts who will conduct marine mammal monitoring to avoid collisions with marine mammals; (2) the use of exclusion zones that avoid exposing marine mammals to levels of sound likely to result in injury or death of marine mammals; (3) several cautionary measures to minimize the likelihood of ship strikes of North Atlantic right whales in certain areas and times of the year; (4) the use of MMOs/lookouts to conduct aerial and vessel-based surveys; and (5) annual monitoring reports and comprehensive reports to provide insights of impacts to marine mammals.

NMFS has evaluated the effectiveness of the measures and has concluded they will achieve the least practicable adverse impact on the affected marine mammal species or stocks and their habitat. For example, operations will be suspended if trained lookouts and/or MMOs detect marine mammals within the vicinity of the exercise, thereby preventing marine mammal injury or mortality (use of specified exclusion zones). In addition, prior to conducting training activities involving underwater explosive detonation, the Navy will be required to carry out monitoring to make sure that the safety zones are clear of marine mammals, and then during the exercise when feasible. These monitoring and mitigation measures will decrease the number of marine mammals exposed to underwater explosions and exposure to intense sounds from the detonations.

Over the course of the 5-year rule, NMFS will evaluate the Navy's training activities annually to validate the effectiveness of the measures. NMFS will, through the established adaptive management process, work with the Navy to determine whether additional mitigation and monitoring measures are necessary. In addition, with the implementation of the ICMP Plan by the end of 2009, and the planned Monitoring Workshop in 2011, NMFS will work with the Navy to further improve its monitoring and mitigation plans for its future activities.

Comment 6: The Commission requests that NMFS reconcile the discrepancy between proposed §§ 218.24(e)(3)(i) and 218.24(e)(3)(iii) on the use of marine mammal observers which require the Navy to specify the circumstances under which marine mammal observers would not be required aboard Navy platforms.

Response: In the proposed rule § 218.24(e)(3)(i) states ''Marine mammal observers (MMOs) shall be placed on a Navy platform during the exercises'' and the proposed rule § 218.24(e)(3)(iii) states ''MMOs shall not be placed

aboard Navy platforms for every Navy training event or major exercise, but during specifically identified opportunities for data collection efforts. The events selected for MMO participation shall take into account safety, logistics, and operational concerns.''

The language has been revised in § 218.24(c)(3)(i) to read as follows: ''Marine mammal observers (MMOs) who are selected for aerial or vessel surveys shall be placed on a Navy platform during one of the explosives exercises'' to make the statement clear.

Regarding the Commission's request to specify the circumstances under which marine mammal observers would not be required aboard Navy platforms, the Navy states that MMO deployment will be based on a number of factors, the first of which will be to support the data needs of the Cherry Point Monitoring Plan and ICMP. MMO efforts should be focused on monitoring the types of events, in the time and place, needed to support the overall goals of the Cherry point Monitoring Plan and ICMP. Next, MMOs will be deployed when safe to do so and if practicable. Many factors will contribute to a decision to place MMOs on Navy platforms, including logistics and MMO safety. MMOs will not be deployed on an exercise if it could result in a hazard to the MMO or exercise participants or an exercise where placing MMOs onboard Navy platforms would not be practicable. An example of an exercise which may not be practicable for MMO deployment would be Air to Surface MISSILEX where the Navy platform is a helicopter with no available space for an MMO.

Comment 7: The Commission requests that NMFS describe, or require the Navy to describe, the alternative measures that the Navy would implement to monitor for the presence of marine mammals when marine mammal observers are not being used.

Response: Regardless of whether MMOs are present, the shipboard lookouts would implement the mitigation measures identified in this rule. Shipboard lookouts are trained to detect objects in the water, which includes items ranging from ships, to periscopes, to marine life. Lookout training includes those measures listed in the Personal Training section of the mitigation measures. The specific measures used by lookouts to monitor for the presence of marine mammals are identified in the Navy's Operating Procedures and Collision Avoidance measures, as well as those measures identified for specific at-sea training events in the Monitoring section of this document.

Mitigation

Comment 8: The Commission recommends that NMFS require the Navy to suspend an activity if a marine mammal is seriously injured or killed and the injury or death could be associated with the activity. Subsequently, the injury or death should be investigated to determine the cause, assess the full impact of the activity, and determine how the activity should be modified to avoid future injuries or deaths.

Response: Though NMFS largely agrees with the Commission, it should be noted that without detailed examination by an expert, it is usually not feasible to determine the cause of injury or mortality when an injured or dead marine mammal is sighted in the field. Therefore, NMFS has required in its final rule that if there is clear evidence that a marine mammal is injured or killed as a result of the proposed Navy training activities (*e.g.,* instances in which it is clear that munitions explosions caused the injury or death) the Naval activities shall be immediately suspended and the situation immediately reported by the participating unit to the Officer in Charge of the Exercise (OCE), who will follow Navy procedures for reporting the incident to NMFS through the Navy's chain-of-command.

For any other sighting of injured or dead marine mammals in the vicinity of any Navy training exercises utilizing underwater explosive detonations for which the cause of injury or mortality cannot be immediately determined, the Navy personnel will ensure that NMFS (regional stranding coordinator) is notified immediately (or as soon as operational security allows). The Navy will provide NMFS with species or description of the animal(s), the condition of the animal(s) (including carcass condition if the animal is dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available).

Comment 9: The Commission recommends that NMFS require the Navy to halt an activity if a marine mammal species other than those covered by the authorization is observed within the operating area.

Response: The final rule for the proposed Cherry Point Range Complex training activities prohibits the take of marine mammals other than those covered by the authorization. Nevertheless, if a marine mammal is sighted in the operating area outside the zone of influence where it could be harassed, NMFS will not require the Navy to suspend an activity since no marine mammal would be taken. As explained in this rulemaking, NMFS does not believe species other than those authorized to be taken will occur in the proposed training area because they are extralimital and rare; thus, it is very unlikely the Navy will need to suspend activities for species not covered by these regulations and future LOAs.

Miscellaneous Issues

Comment 10: The Commission recommends that NMFS work with the Navy to develop a database for storing original records of Navy interactions with marine mammals.

Response: The Navy is required to document all marine mammal sightings through aerial or vessel based survey by MMOs or Navy lookouts/watchstanders. Those records will be used to determine potential Navy interactions with marine mammals and to assess the impacts on marine mammals that may have resulted from the Navy's training activities. Currently there is no plan to develop a database for storing original records of Navy interactions with marine mammals due to limited resources. Nevertheless, NMFS will consider the Commission's recommendation when adequate resources are available to undertake such efforts.

Comment 11: The NRDC commented on the proposed rule with its earlier comments on the NMFS' proposed rule for the Navy's Atlantic Fleet Active Sonar Training (AFAST) and the Navy's AFAST DEIS. Specifically, the NRDC states that neither NMFS in its proposed rule nor the Navy in its EIS offers sufficient measures to mitigate the harmful impacts of high intensity sonar. The NRDC further states that NMFS and the Navy's analysis substantially understates the potential effects of sonar on marine wildlife.

Response: NRDC's comments are inapplicable to the proposed Navy training activities at the Cherry Point Range Complex. The Navy does not intend, as part of its proposed action, to conduct training with MFAS, HFAS, and Improved Extended Echo Ranging (IEER)/Advanced Extended Echo Ranging (AEER). The Navy's request for a LOA for sonar related training was addressed in the Final Rule and LOA for AFAST which was issued by NMFS on January 22, 2009, and published in the **Federal Register** on February 19, 2009 (74 FR 4844).

Estimated Take of Marine Mammals

As mentioned previously, with respect to the MMPA, NMFS' effects assessments serve three primary purposes: (1) To prescribe the

permissible methods of taking (*i.e.,* Level B Harassment (behavioral harassment), Level A Harassment (injury), or mortality, including an identification of the number and types of take that could occur by Level A or B harassment or mortality)) and to prescribe other means of effecting the least practicable adverse impact on such species or stock and its habitat (*i.e.,* mitigation); (2) to determine whether the specified activity will have a negligible impact on the affected species or stocks of marine mammals (based on the likelihood that the activity will adversely affect the species or stock through effects on annual rates of recruitment or survival); (3) to determine whether the specified activity will have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (however, there are no subsistence communities in the Cherry Point Range Complex; thus, there would be no effect on any subsistence user); and (4) to prescribe requirements pertaining to monitoring and reporting.

In the Estimated Take of Marine Mammals section of the proposed rule, NMFS related the potential effects to marine mammals from underwater detonation of explosives to the MMPA regulatory definitions of Level A and Level B Harassment and assessed the effects to marine mammals that could result from the specific activities that the Navy intends to conduct. These analyses are discussed in the proposed rule (74 FR 11052; pages 11070–11071) and have not changed.

Take Calculations

An overview of the Navy's modeling methods to determine the number of exposures of MMPA-protected species to sound likely to result in mortality, Level A harassment (injury), or Level B harassment is provided in the **Federal Register** notice for the proposed rule (74 FR 11052; pages 11070–11071). No changes have been made to the modeling methods in the section of the proposed rule.

Exposure of marine mammals based on the Navy's modeling shows that only two individuals of Atlantic spotted dolphins would be taken by Level B harassment due to the low levels of the proposed training activities. However, after further evaluation, NMFS concluded that because of the relatively high abundance of several species in the action area (Clymene dolphins, pilot whales, minke whales, pantropical spotted dolphins, *Kogia* sp., and several species of beaked whales (Waring *et al.,* 2008) and because some of these species tend to aggregate in relatively large groups, there is a reasonable probability that these species could be taken by Level B behavioral harassment. Therefore, NMFS has included these species in our take estimates for the 5-year regulations. Revised estimates of potential takes from the proposed Cherry Point Range Complex training activities are listed in Table 4.

TABLE 4—SUMMARY OF POTENTIAL TAKES FROM EXPLOSIVE ORDNANCE (PER YEAR) FOR MARINE MAMMALS IN THE CHERRY POINT RANGE COMPLEX

Species	Level B harassment	Level A harassment	Mortality
Minke whale	3	0	0
Beaked whales	20	0	0
Kogia sp	3	0	0
Pilot whale	20	0	0
Atlantic spotted dolphin	20	0	0
Bottlenose dolphin	30	0	0
Clymene dolphin	30	0	0
Common dolphin	20	0	0
Striped dolphin	20	0	0
Pantropical spotted dolphin	20	0	0
Risso's dolphin	30	0	0
Atlantic white-sided dolphin	20	0	0
Spinner dolphin	3	0	0
Fraser's dolphin	3	0	0
Melon-headed whale	3	0	0
Pygmy killer whale	3	0	0
Killer whale	3	0	0

Effects on Marine Mammal Habitat

NMFS' Cherry Point Complex proposed rule included a section that addressed the effects of the Navy's activities on marine mammal habitat (74 FR 11052, page 11071). Marine mammal habitat and prey species could be affected by the explosive ordnance testing and the sound generated by such activities. Based on the analysis contained in the Navy's FEIS and the information below, NMFS has determined that the Cherry Point Range Complex training activities will not have adverse or long-term impacts on marine mammal habitat or prey species.

Unless the sound source or explosive detonation is stationary and/or continuous over a long duration in one area, the effects of underwater detonation and its associated sound are generally considered to have a less severe impact on marine mammal habitat than the physical alteration of the habitat. Marine mammals may be temporarily displaced from areas where Navy training is occurring, but the area will be utilized again after the activities have ceased.

Effects on Food Resources

There are currently no well-established thresholds for estimating effects to fish from explosives other than mortality models. Fish that are located in the water column, in proximity to the source of detonation could be injured, killed, or disturbed by the impulsive sound and could leave the area temporarily. Continental Shelf Inc. (2004) summarized a few studies conducted to determine effects associated with removal of offshore structures (*e.g.,* oil rigs) in the Gulf of Mexico. Their findings revealed that at very close range, underwater explosions are lethal to most fish species regardless of size, shape, or internal anatomy. In most situations, cause of death in fish has been massive organ and tissue damage and internal bleeding. At longer range, species with gas-filled swimbladders (*e.g.,* snapper, cod, and striped bass) are more susceptible than

those without swimbladders (*e.g.,* flounders, eels).

Studies also suggest that larger fish are generally less susceptible to death or injury than small fish. Moreover, elongated forms that are round in cross section are less at risk than deep-bodied forms. Orientation of fish relative to the shock wave may also affect the extent of injury. Open water pelagic fish (*e.g.,* mackerel) seem to be less affected than reef fishes. The results of most studies are dependent upon specific biological, environmental, explosive, and data recording factors.

The huge variation in fish populations, including numbers, species, sizes, and orientation and range from the detonation point, makes it very difficult to accurately predict mortalities at any specific site of detonation. A total of 200 hours explosive detonation events, with each event lasting for 1–12 hours, are widely dispersed in the large Cherry Point study area over the seasons for each year. Most fish species experience a large number of natural mortalities, especially during early life-stages, and any small level of mortality caused by the Cherry Point Range Complex training exercises involving explosives will likely be insignificant to the population as a whole.

Therefore, potential impacts to marine mammal food resources within the Cherry Point Range Complex are expected to be minimal given both the very geographic and spatially limited scope of most Navy at-sea activities including underwater detonations, and the high biological productivity of these resources. No short or long term effects to marine mammal food resources from Navy activities are anticipated within the Cherry Point Range Complex.

Analysis and Negligible Impact Determination

Pursuant to NMFS' regulations implementing the MMPA, an applicant is required to estimate the number of animals that will be ''taken'' by the specified activities (*i.e.,* takes by harassment only, or takes by harassment, injury, and/or death). This estimate informs the analysis that NMFS must perform to determine whether the activity will have a ''negligible impact'' on the species or stock. Level B (behavioral) harassment occurs at the level of the individual(s) and does not assume any resulting population-level consequences, though there are known avenues through which behavioral disturbance of individuals can result in population-level effects. A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of Level B harassment takes alone, is not enough information on which to base an impact determination.

In addition to considering estimates of the number of marine mammals that might be ''taken'' through behavioral harassment, NMFS must consider other factors, such as the likely nature of any responses (their intensity, duration, *etc.*), the context of any responses (critical reproductive time or location, migration, *etc.*), as well as the number and nature of estimated Level A takes, the number of estimated mortalities, and effects on habitat.

The Navy's specified activities have been described based on best estimates of the planned detonation events the Navy would conduct for the proposed Cherry Point Range Complex training activities. The events are generally short in duration, including a total of 14, 1-hour events and 14, 8–12-hour events. Taking the above into account, along with the fact that NMFS anticipates no mortalities and injuries to result from the action, the fact that there are no specific areas of reproductive importance for marine mammals recognized within the Cherry Point Range Complex study area, the sections discussed below, and dependent upon the implementation of the proposed mitigation measures, NMFS has determined that Navy training exercises utilizing underwater detonations will have a negligible impact on the affected marine mammal species and stocks present in the Cherry Point Range Complex Study Area.

NMFS' analysis of potential behavioral harassment, temporary threshold shifts, permanent threshold shifts, injury, and mortality to marine mammals as a result of the Cherry Point Range Complex training activities was provided in the proposed rule (74 FR 11052, pages 11056–11066) and is described in more detail below.

Behavioral Harassment

The Navy plans a total of 14 MISSILEX training events (each lasting for 1 hour), 20 MINEX training events (each lasting for 8 hours), and 2 FIREX training events (each lasting for 12 hours) annually. The total training exercises proposed by the Navy in the Cherry Point Range Complex amount to under 200 hours per year. These detonation events are widely dispersed throughout several of the designated sites within the Cherry Point Range Complex Study Area. The probability that detonation events will overlap in time and space with marine mammals is low, particularly given the densities of marine mammals in the Cherry Point Range Complex Study Area and the implementation of monitoring and mitigation measures. Moreover, NMFS does not expect animals to experience repeated exposures to the same sound source as animals will likely move away from the source after being exposed. In addition, these isolated exposures, when received at distances of Level B behavioral harassment (*i.e.,* 177 dB re 1 microPa^2-sec), are expected to cause brief startle reactions or short-term behavioral modification by the animals. These brief reactions and behavioral changes are expected to disappear when the exposures cease. Therefore, these levels of received impulse noise from detonation are not expected to affect annual rates or recruitment or survival.

TTS

NMFS and the Navy have estimated that individuals of some species of marine mammals may sustain some level of temporarily threshold shift TTS from underwater detonations. TTS can last from a few minutes to days, be of varying degree, and occur across various frequency bandwidths. The TTS sustained by an animal is primarily classified by three characteristics:

- Frequency—Available data (of mid-frequency hearing specialists exposed to mid to high frequency sounds—Southall *et al.,* 2007) suggest that most TTS occurs in the frequency range of the source up to one octave higher than the source (with the maximum TTS at ½ octave above).
- Degree of the shift (*i.e.,* how many dB is the sensitivity of the hearing reduced by)—generally, both the degree of TTS and the duration of TTS will be greater if the marine mammal is exposed to a higher level of energy (which would occur when the peak dB level is higher or the duration is longer). Since the impulse from detonation is extremely brief, an animal would have to approach very close to the detonation site to increase the received SEL. The threshold for the onset of TTS for detonations is a dual criteria: 182 dB re 1 microPa^2-sec or 23 psi, which might be received at distances from 314–1,091 m from the centers of detonation based on the types of NEW involved to receive the SEL that causes TTS compared to similar source level with longer durations (such as sonar signals).
- Duration of TTS (Recovery time)—Of all TTS laboratory studies, some using exposures of almost an hour in duration or up to 217 SEL, almost all recovered within 1 day (or less, often in minutes), though in one study (Finneran *et al.,* 2007), recovery took 4 days.
- Although the degree of TTS depends on the received noise levels

and exposure time, all studies show that TTS is reversible and animals' sensitivity is expected to recover fully in minutes to hours. Therefore, NMFS expects that TTS would not affect annual rates of recruitment or survival.

Acoustic Masking or Communication Impairment

As discussed above, it is also possible that anthropogenic sound could result in masking of marine mammal communication and navigation signals. However, masking only occurs during the time of the signal (and potential secondary arrivals of indirect rays), versus TTS, which occurs continuously for its duration. Impulse sounds from underwater detonation are extremely brief and the majority of most animals' vocalizations would not be masked. Therefore, masking effects from underwater detonation are expected to be minimal and unlikely. If masking or communication impairment were to occur briefly, it would be in the frequency ranges below 100 Hz, which overlaps with some mysticete vocalizations; however, it would likely not mask the entirety of any particular vocalization or communication series because of the short impulse.

PTS, Injury, or Mortality

The Navy's model estimated that no marine mammal would experience 50 percent tympanic membrane rupture or slight lung injury (Level A harassment) as a result of the training activities utilizing underwater detonation in the Cherry Point Range Complex Study Area. For underwater detonations, the animals have to be within pre-defined zones of influence (ZOI) to experience Level A harassment. The injury zones vary from 0.04 km^2 to 0.185 km^2 (or at distances between 113 m to 243 m from the center of detonation) depending on the types of munitions used and the season of the action. NMFS believes it is unlikely that any marine mammal could be undetected by lookouts/watchstanders or MMOs within such a small area during pre-testing surveys. As discussed previously, the Navy plans to utilize aerial or vessel surveys to detect marine mammals for mitigation implementation and indicated that they are capable of effectively monitoring safety zones.

Based on these assessments, NMFS determined that approximately 3 minke whales, 3 dwarf or pygmy sperm whales, 20 beaked whales, 20 pilot whales, 20 Atlantic spotted dolphins, 30 bottlenose dolphins, 30 Clymene dolphins, 20 common dolphins, 20 striped dolphins, 20 pantropical spotted dolphins, 30 Risso's dolphins, 20 Atlantic white-sided dolphins, 3 spinner dolphins, 3 Fraser's dolphins, 3 melon-headed whales, 3 pygmy killer whales, and 3 killer whales could be affected by Level B harassment (TTS and sub-TTS) per year as a result of the proposed Cherry Point Range Complex training activities. These numbers represent approximately 0.09%, 0.76%, 0.06%, 0.04%, 0.04%, 0.02%, 0.02%, 0.45%, 0.15%, 0.03%, and 0.57% of minke whales, dwarf or pygmy sperm whales, pilot whales, Atlantic spotted dolphins, bottlenose dolphins, common dolphins, striped dolphins, pantropical spotted dolphins, Risso's dolphins, Atlantic white-sided dolphins, and beaked whales, respectively in the vicinity of the proposed Cherry Point Range Complex Study Area (calculation based on NMFS 2007 U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessment). Although the population estimates of Clymene dolphins, spinner dolphins, Fraser's dolphins, melon-headed whales, pygmy killer whales, and killer whales are unknown in the proposed action area, NMFS considers the take of 30 individuals of Clymene dolphins and 3 individuals each of other 5 species by Level B harassment would have a negligible impact to these species because most of their population exists beyond the project area and because they are widely distributed species in the North Atlantic (Jefferson *et al.,* 1993; Reeves *et al.,* 2002).

No Level A take or mortality is expected as a result of the proposed Cherry Point Range Complex training activities.

Additionally, these aforementioned take estimates do not consider the implementation of mitigation measures. With the implementation of mitigation and monitoring measures, NMFS expects that the takes would be further reduced. Coupled with the fact that these impacts will likely not occur in areas and times critical to reproduction, NMFS has determined that the total taking over the 5-year period of the regulations and subsequent LOAs from the Navy's Cherry Point Range Complex training activities will have a negligible impact on the marine mammal species and stocks present in the Cherry Point Range Complex Study Area.

Subsistence Harvest of Marine Mammals

NMFS has determined that the issuance of 5-year regulations and subsequent LOAs (as warranted) for Navy training exercises in the Cherry Point Range Complex would not have an unmitigable adverse impact on the availability of the affected species or stocks for subsistence use, since there are no such uses in the specified area.

ESA

There are six marine mammal species, three sea turtle species, and a fish species that are listed as endangered under the ESA with confirmed or possible occurrence in the study area and could be impacted by the proposed action: Humpback whale, North Atlantic right whale, blue whale, fin whale, sei whale, sperm whale, loggerhead sea turtle, leatherback sea turtle, the Kemp's ridley sea turtle, and the shortnose sturgeon.

Pursuant to Section 7 of the ESA, the Navy has consulted with NMFS on this action. NMFS has also consulted internally on the issuance of regulations under section 101(a)(5)(A) of the MMPA for this activity. The Biological Opinion concludes that the proposed training activities are likely to adversely affect but are not likely to jeopardize the continued existence of these threatened and endangered species under NMFS jurisdiction.

NEPA

NMFS participated as a cooperating agency on the Navy's Final Environmental Impact Statement (FEIS) for the Cherry Point Range Complex. NMFS subsequently adopted the Navy's EIS for the purpose of complying with the MMPA.

Determination

Based on the analysis contained herein and in the proposed rule (and other related documents) of the likely effects of the specified activity on marine mammals and their habitat and dependent upon the implementation of the mitigation measures, NMFS finds that the total taking from Navy Cherry Point Range Complex training exercises utilizing underwater explosives over the 5 year period will have a negligible impact on the affected species or stocks and will not result in an unmitigable adverse impact on the availability of marine mammal species or stocks for taking for subsistence uses because no subsistence uses exist in the Cherry Point Range Complex study area. NMFS has issued regulations for these exercises that prescribe the means of effecting the least practicable adverse impact on marine mammals and their habitat and set forth requirements pertaining to the monitoring and reporting of that taking.

Classification

This action does not contain a collection of information requirement

for purposes of the Paperwork Reduction Act.

The Regulatory Flexibility Act (RFA) requires Federal agencies to prepare an analysis of a rule's impact on small entities whenever the agency is required to publish a notice of proposed rulemaking. However, a Federal agency may certify, pursuant to 5 U.S.C. 605(b), that the action will not have a significant economic impact on a substantial number of small entities. The Chief Counsel for Regulation of the Department of Commerce certified at the Proposed Rule stage. The Navy is the entity that will be affected by this rulemaking, not a small governmental jurisdiction, small organization or small business, as defined by the RFA. This rulemaking authorizes the take of marine mammals incidental to a specified activity. The specified activity defined in the final rule includes the use of underwater detonations, which are only used by the U.S. military, during training activities that are only conducted by the U.S. Navy. Additionally, any requirements imposed by a Letter of Authorization issued pursuant to these regulations, and any monitoring or reporting requirements imposed by these regulations, will be applicable only to the Navy. Because this action, if adopted, would directly affect the Navy and not a small entity, NMFS concludes the action would not result in a significant economic impact on a substantial number of small entities.

The Assistant Administrator for Fisheries has determined that there is good cause under the Administrative Procedure Act (5 U.S.C. 553(d)(3)) to waive the 30-day delay in effective date of the measures contained in the final rule. The U.S. Navy has a compelling national policy reason to continue military readiness activities without interruption in its East Coast Operating Areas, *i.e.,* the Cherry Point Range Complex. As discussed below, suspension/interruption of the Navy's ability to train, for even a small number of days, disrupts vital sequential training and certification processes essential to our national security.

In order to meet its national security objectives, the Navy must continually maintain its ability to operate in a challenging at-sea environment, conduct military operations, control strategic maritime transit routes and international straits, and protect sea lines of communications that support international commerce. To meet these objectives, the Navy must continually train. Timely training is critical because individual Navy units and Strike Groups/Amphibious Readiness Groups (ARG) currently operate in, or need to quickly deploy to high risk geographic areas. In addition, a Strike Group/ARG is built around an aircraft carrier with typically 5,300 personnel on board and an amphibious assault ship that carries a Marine Corps Expeditionary Unit, so failure to adequately train risks thousands of lives.

The training necessary to protect American interests and the lives of sailors and marines is complex. It involves ensuring the warfighter can accurately identify potential threats in a variety of marine environments and conditions, and it involves the coordination of different vessels and aircraft so that the group's capabilities are employed in the most tactically effective manner. As with any complicated coordinated effort, this challenge requires routine practice, as these skills are perishable.

In 10 U.S.C. 5062, Congress mandated that the Chief of Naval Operations (CNO) organize, train, and equip all Naval forces for combat. In response, the Fleet Response Training Plan (FRTP) is a major initiative designed to ensure Naval units receive required training before they deploy. The FRTP is an arduous sequential training cycle in which unit level training (ULT) and combat certification is followed by major exercises that bring together various warfare components so they have the opportunity to practice as an integrated whole and attain certification. Accordingly, any delay in coordinated training creates a significant and unreasonable risk which could result in a unit's and/or Strike Group's inability to train, certify and report as directed to an overseas theater of operations.

A deployment certification exercise is currently scheduled for June 2009 that will encompass areas of the Cherry Point Range Complex. Lack of the appropriate environmental regulatory coverage for even a single day imperils completion of this exercise, and risks deployment certification. Essential ULT also occurs in these OPAREAs. There is limited unit level underway (at-sea) time available in the FRTP to adjust the training dates. These ULT training periods are driven by sequential certification processes for both inport and at-sea training. Scheduling constraints are further complicated by the availability of Afloat Training Groups (ATGs) that are responsible for training all individual units. ATGs have a limited number of trainers available at any given time, and their schedules must also be de-conflicted, compounding the problem if training schedules are not adhered to. Waiver of the 30-day delay of the effective date of the Final Rule will allow Navy to finalize operational procedures to ensure compliance with required mitigation, monitoring, and reporting requirements, and have MMPA authorization in place prior to Navy's vital June 2009 exercise.

List of Subjects in 50 CFR Part 218

Exports, Fish, Imports, Incidental take, Indians, Labeling, Marine mammals, Navy, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation.

Dated: June 5, 2009.

Samuel D. Rauch III,

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

■ For the reasons set forth in the preamble, 50 CFR part 218 is amended to read as follows:

PART 218—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

■ 1. The authority citation for part 218 continues to read as follows:

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

■ 2. Subpart C is added to part 218 to read as follows:

Subpart C—Taking Marine Mammals Incidental to U.S. Navy Training in the Cherry Point Range Complex

Sec.
218.20 Specified activity and specified geographical area and effective dates.
218.21 Permissible methods of taking.
218.22 Prohibitions.
218.23 Mitigation.
218.24 Requirements for monitoring and reporting.
218.25 Applications for Letters of Authorization.
218.26 Letters of Authorization.
218.27 Renewal of Letters of Authorization and adaptive management.
218.28 Modifications to Letters of Authorization.

Subpart C—Taking Marine Mammals Incidental to U.S. Navy Training in the Cherry Point Range Complex

§ 218.20 Specified activity and specified geographical area and effective dates.

(a) Regulations in this subpart apply only to the U.S. Navy for the taking of marine mammals that occurs in the area outlined in paragraph (b) of this section and that occur incidental to the activities described in paragraph (c) of this section.

(b) The taking of marine mammals by the Navy is only authorized if it occurs within the Cherry Point Range Complex Operation Area (OPAREA), which is

located along the southern east coast of the U.S., as stated in the Navy's letter of authorization application. The coordinates of the Cherry Point Range Complex OPAREA are: 35°30′ N, 75°25′ W; 34°14′ N, 73°57′ W; 32°12′ N, 76°49′ W; 32°20′ N, 77°20′ W; 33°10′ N, 77°31′ W; and 34°23′30″ N, 77°30′ W; then along the 3 nm from and parallel to the shoreline.

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the following activities within the designated amounts of use:

(1) The detonation of the underwater explosives indicated in paragraph (c)(1)(i) of this section conducted as part of the training events indicated in paragraph (c)(1)(ii) of this section:

(i) Underwater Explosives:

(A) AGM–114 (Hellfire missile);

(B) Tube-launched Optically tracked Wire-guided (TOW) missile;

(C) Mine Neutralization (20 lb NEW charges); and

(D) 5″ Naval Gunfire.

(ii) Training Exercises:

(A) Mine Neutralization (20 lb NEW charges)—up to 100 exercises over the course of 5 years (an average of 20 per year);

(B) Missile Exercise (MISSILEX) (Air-to-Surface; Hellfire missile)—up to 40 exercises over the course of 5 years (an average of 8 per year);

(C) Missile Exercise (MISSILEX) (Air-to-Surface; TOW)—up to 40 exercises over the course of 5 years (an average of 8 per year); and

(D) FIREX with IMPASS—up to 10 exercises over the course of 5 years (an average of 2 per year).

(2) [Reserved]

(d) Regulations are effective [June 8, 2009] and are applicable to the Navy on June 5, 2009 through June 4, 2014.

§ 218.21 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§ 216.106 of this chapter and 218.26, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals within the area described in § 218.20(b), provided the activity is in compliance with all terms, conditions, and requirements of this Subpart and the appropriate Letter of Authorization.

(b) The activities identified in § 218.20(c) must be conducted in a manner that minimizes, to the greatest extent practicable, any adverse impacts on marine mammals and their habitat.

(c) The incidental take of marine mammals under the activities identified in § 218.20(c) is limited to the following species, by the indicated method of take and the indicated number of times:

(1) Level B Harassment:

(i) Bottlenose dolphin (*Tursiops truncatus*)—150 (an average of 30 annually);

(ii) Pantropical spotted dolphin (*Stenella attenuata)*—100 (an average of 20 annually);

(iii) Clymene dolphin (*S. clymene*)—150 (an average of 30 annually);

(iv) Atlantic spotted dolphin (*S. frontalis*)—100 (an average of 20 annually);

(v) Striped dolphin (*S. coeruleoalba*)—100 (an average of 20 annually);

(vi) Spinner dolphin (*S. longirostris*)—15 (an average of 3 annually):

(vii) Risso's dolphin (*Grampus griseus*)—150 (an average of 30 annually);

(viii) Common dolphin (*Delphinus delphis*)—100 (an average of 20 annually);

(ix) Atlantic white-sided dolphin (*Lagenorhynchus acutus*)—100 (an average of 20 annually);

(x) Pilot whales (*Globicephala* sp.)—100 (an average of 20 annually);

(xi) Dwarf or pygmy sperm whales (*Kogia* sp.)—15 (an average of 3 annually);

(xii) Beaked whales—100 (an average of 20 annually);

(xiii) Fraser's dolphin (*Lagenodelphis hosei*)—15 (an average of 3 annually);

(xiv) Melon-headed whale (*Peponocephala electra*)—15 (an average of 3 annually);

(xv) Pygmy killer whale (*Feresa attenuate*)—15 (an average of 3 annually);

(xvi) Killer whale (*Orcinus orca*)—15 (an average of 3 annually);

(xvii) Minke whales (*Balaenoptera acutorostrata*)—15 (an average of 3 annually).

(2) [Reserved]

§ 218.22 Prohibitions.

Notwithstanding takings contemplated in § 218.21 and authorized by a Letter of Authorization issued under §§ 216.106 of this chapter and 218.26, no person in connection with the activities described in § 218.20 may:

(a) Take any marine mammal not specified in § 218.21(c);

(b) Take any marine mammal specified in § 218.21(c) other than by incidental take as specified in § 218.21(b)(1) and (2);

(c) Take a marine mammal specified in § 218.21(c) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of this Subpart or a Letter of Authorization issued under §§ 216.106 of this chapter and 218.26.

§ 218.23 Mitigation.

(a) When conducting training activities identified in § 218.20(c), the mitigation measures contained in the Letters of Authorization issued under §§ 216.106 of this chapter and 218.26 must be implemented. These mitigation measures include, but are not limited to:

(1) *General Maritime Measures:*

(i) Personnel Training—Lookouts:

(A) All bridge personnel, Commanding Officers, Executive Officers, officers standing watch on the bridge, maritime patrol aircraft aircrews, and Mine Warfare (MIW) helicopter crews shall complete Marine Species Awareness Training (MSAT).

(B) Navy lookouts shall undertake extensive training to qualify as a watchstander in accordance with the Lookout Training Handbook (NAVEDTRA 12968–D).

(C) Lookout training shall include on-the-job instruction under the supervision of a qualified, experienced watchstander. Following successful completion of this supervised training period, lookouts shall complete the Personal Qualification Standard Program, certifying that they have demonstrated the necessary skills (such as detection and reporting of partially submerged objects).

(D) Lookouts shall be trained in the most effective means to ensure quick and effective communication within the command structure to facilitate implementation of protective measures if marine species are spotted.

(E) Surface lookouts shall scan the water from the ship to the horizon and be responsible for all contacts in their sector. In searching the assigned sector, the lookout shall always start at the forward part of the sector and search aft (toward the back). To search and scan, the lookout shall hold the binoculars steady so the horizon is in the top third of the field of vision and direct the eyes just below the horizon. The lookout shall scan for approximately five seconds in as many small steps as possible across the field seen through the binoculars. They shall search the entire sector in approximately five-degree steps, pausing between steps for approximately five seconds to scan the field of view. At the end of the sector search, the glasses shall be lowered to allow the eyes to rest for a few seconds, and then the lookout shall search back across the sector with the naked eye.

(F) At night, lookouts shall scan the horizon in a series of movements that would allow their eyes to come to

periodic rests as they scan the sector. When visually searching at night, they shall look a little to one side and out of the corners of their eyes, paying attention to the things on the outer edges of their field of vision. Lookouts shall also have night vision devices available for use.

(ii) Operating Procedures and Collision Avoidance:

(A) Prior to major exercises, a Letter of Instruction, Mitigation Measures Message or Environmental Annex to the Operational Order shall be issued to further disseminate the personnel training requirement and general marine species mitigation measures.

(B) Commanding Officers shall make use of marine species detection cues and information to limit interaction with marine species to the maximum extent possible consistent with safety of the ship.

(C) While underway, surface vessels shall have at least two lookouts with binoculars; surfaced submarines shall have at least one lookout with binoculars. Lookouts already posted for safety of navigation and man-overboard precautions may be used to fill this requirement. As part of their regular duties, lookouts shall watch for and report to the OOD the presence of marine mammals.

(D) Personnel on lookout shall employ visual search procedures employing a scanning method in accordance with the Lookout Training Handbook (NAVEDTRA 12968–D).

(E) After sunset and prior to sunrise, lookouts shall employ Night Lookouts Techniques in accordance with the Lookout Training Handbook (NAVEDTRA 12968–D).

(F) While in transit, naval vessels shall be alert at all times, use extreme caution, and proceed at a ''safe speed'' (the minimum speed at which mission goals or safety will not be compromised) so that the vessel can take proper and effective action to avoid a collision with any marine animal and can be stopped within a distance appropriate to the prevailing circumstances and conditions.

(G) When marine mammals have been sighted in the area, Navy vessels shall increase vigilance and implement measures to avoid collisions with marine mammals and avoid activities that might result in close interaction of naval assets and marine mammals. Such measures shall include changing speed and/or course direction and would be dictated by environmental and other conditions (*e.g.,* safety or weather).

(H) Naval vessels shall maneuver to keep at least 500 yds (460 m) away from any observed whale and avoid approaching whales head-on. This requirement does not apply if a vessel's safety is threatened, such as when change of course will create an imminent and serious threat to a person, vessel, or aircraft, and to the extent vessels are restricted in their ability to maneuver. Vessels shall take reasonable steps to alert other vessels in the vicinity of the whale.

(I) Where feasible and consistent with mission and safety, vessels shall avoid closing to within 200-yd (183 m) of marine mammals other than whales (whales addressed above).

(J) Navy aircraft participating in exercises at sea shall conduct and maintain, when operationally feasible and safe, surveillance for marine species of concern as long as it does not violate safety constraints or interfere with the accomplishment of primary operational duties. Marine mammal detections shall be immediately reported to assigned Aircraft Control Unit for further dissemination to ships in the vicinity of the marine species as appropriate where it is reasonable to conclude that the course of the ship will likely result in a closing of the distance to the detected marine mammal.

(K) All vessels shall maintain logs and records documenting training operations should they be required for event reconstruction purposes. Logs and records shall be kept for a period of 30 days following completion of a major training exercise.

(2) Coordination and Reporting Requirements. (i) The Navy shall coordinate with the local NMFS Stranding Coordinator for any unusual marine mammal behavior and any stranding, beached live/dead, or floating marine mammals that may occur at any time during training activities or within 24 hours after completion of training activities.

(ii) The Navy shall follow internal chain of command reporting procedures as promulgated through Navy instructions and orders.

(3) Mitigation Measures Applicable to Vessel Transit in the Mid-Atlantic during North Atlantic Right Whale Migration: The mitigation measures apply to all Navy vessel transits, including those vessels that would transit to and from East Coast ports and the Cherry Point OPAREA.

(i) Mid-Atlantic, Offshore of the Eastern United States:

(A) All Navy vessels are required to use extreme caution and operate at a slow, safe speed (at a speed that does not compromise safety of navigation) consistent with mission and safety during the months indicated below and within a 37 km (20 NM) arc (except as noted) of the specified associated reference points:

(*1*) South and East of Block Island (37 km (20 NM) seaward of line between 41–4.49° N. lat. 071–51.15° W. long. and 41–18.58° N. lat. 070–50.23° W. long): Sept-Oct and Mar-Apr.

(*2*) New York/New Jersey (40–30.64° N. lat. 073–57.76° W. long.): Sep–Oct and Feb-Apr.

(*3*) Delaware Bay (Philadelphia) (38–52.13° N. lat. 075–1.93° W. long.): Oct–Dec and Feb–Mar.

(*4*) Chesapeake Bay (Hampton Roads and Baltimore) (37–1.11° N. lat. 075–57.56° W. long.): Nov-Dec and Feb–Apr.

(*5*) North Carolina (34–41.54° N. lat. 076–40.20° W. long.): Dec-Apr.

(*6*) South Carolina (33–11.84° N. lat. 079–8.99° W. long. and 32–43.39° N. lat. 079–48.72° W. long.): Oct-Apr.

(B) During the months indicated in paragraph (a)(3)(i)(A) of this section, Navy vessels shall practice increased vigilance with respect to avoidance of vessel-whale interactions along the mid-Atlantic coast, including transits to and from any mid-Atlantic ports not specifically identified in paragraph (a)(3)(i)(A) of this section.

(C) All surface units transiting within 56 km (30 NM) of the coast in the mid-Atlantic shall ensure at least two watchstanders are posted, including at least one lookout who has completed required MSAT training.

(D) Navy vessels shall not knowingly approach any whale head on and shall maneuver to keep at least 457 m (1,500 ft) away from any observed whale, consistent with vessel safety.

(ii) Southeast Atlantic, Offshore of the Eastern United States—for the purposes of the measures below (paragraphs (a)(3)(ii)(A) & (B) of this section), the ''southeast'' encompasses sea space from Charleston, South Carolina, southward to Sebastian Inlet, Florida, and from the coast seaward to 148 km (80 NM) from shore. North Atlantic right whale critical habitat is the area from 31–15° N. lat. to 30–15° N. lat. extending from the coast out to 28 km (15 NM), and the area from 28–00° N. lat. to 30–15° N. lat. from the coast out to 9 km (5 NM). All mitigation measures described here that apply to the critical habitat apply from November 15—April 15 and also apply to an associated area of concern which extends 9 km (5 NM) seaward of the designated critical habitat boundaries.

(A) Prior to transiting or training in the critical habitat or associated area of concern (AAOC), ships shall contact Fleet Area Control and Surveillance Facility, Jacksonville, to obtain latest whale sighting and other information needed to make informed decisions

regarding safe speed (the minimum speed at which mission goals or safety will not be compromised) and path of intended movement. Subs shall contact Commander, Submarine Group Ten for similar information.

(B) The following specific mitigation measures apply to activities occurring within the North Atlantic right whale critical habitat and an associated area of concern which extends 9 km (5 NM) seaward of the designated critical habitat boundaries:

(*1*) When transiting within the critical habitat or associated area of concern, vessels shall exercise extreme caution and proceed at a slow safe speed. The speed shall be the slowest safe speed that is consistent with mission, training and operations.

(*2*) Speed reductions (adjustments) are required when a whale is sighted by a vessel or when the vessel is within 9 km (5 NM) of a reported new sighting less than 12 hours old. Circumstances could arise where, in order to avoid North Atlantic right whale(s), speed reductions could mean vessels must reduce speed to a minimum at which it can safely keep on course or vessels could come to an all stop.

(*3*) Vessels shall avoid head-on approaches to North Atlantic right whale(s) and shall maneuver to maintain at least 457 m (500 yd) of separation from any observed whale if deemed safe to do so. These requirements do not apply if a vessel's safety is threatened, such as when a change of course would create an imminent and serious threat to a person, vessel, or aircraft, and to the extent vessels are restricted in the ability to maneuver.

(*4*) During the North Atlantic right whale calving season, north-south transits through the critical habitat are prohibited.

(*5*) Ships, surfaced subs, and aircraft shall report any whale sightings to Fleet Area Control and Surveillance Facility, Jacksonville, by the quickest and most practicable means. The sighting report shall include the time, latitude/longitude, direction of movement and number and description of whale (i.e., adult/calf).

(*6*) Naval vessel operations in the North Atlantic right whale critical habitat and AAOC during the calving season shall be undertaken during daylight and periods of good visibility, to the extent practicable and consistent with mission, training, and operation. When operating in the critical habitat and AAOC at night or during periods of poor visibility, vessels shall operate as if in the vicinity of a recently reported NARW sighting.

(iii) Northeast Atlantic, Offshore of the Eastern United States:

(A) Prior to transiting the Great South Channel or Cape Cod Bay critical habitat areas, ships shall obtain the latest North Atlantic right whale sightings and other information needed to make informed decisions regarding safe speed (the minimum speed at which mission goals or safety will not be compromised). The Great South Channel critical habitat is defined by the following coordinates: 41–00° N. lat., 69–05° W. long.; 41–45° N. lat, 69–45° W. long; 42–10° N. lat., 68–31° W. long.; 41–38° N. lat., 68–13° W. long. The Cape Cod Bay critical habitat is defined by the following coordinates: 42–04.8° N. lat., 70–10° W. long.; 42–12° N. lat., 70–15° W. long.; 42–12° N. lat., 70–30° W. long.; 41–46.8° N. lat., 70–30° W. long.

(B) Ships, surfaced subs, and aircraft shall report any North Atlantic right whale sightings (if the whale is identifiable as a right whale) off the northeastern U.S. to Patrol and Reconnaissance Wing (COMPATRECONWING). The report shall include the time of sighting, lat/long, direction of movement (if apparent) and number and description of the whale(s).

(C) Vessels or aircraft that observe whale carcasses shall record the location and time of the sighting and report this information as soon as possible to the cognizant regional environmental coordinator. All whale strikes must be reported. This report shall include the date, time, and location of the strike; vessel course and speed; operations being conducted by the vessel; weather conditions, visibility, and sea state; description of the whale; narrative of incident; and indication of whether photos/videos of the whale were taken. Navy personnel are encouraged to take photos of the whale whenever possible.

(D) Specific mitigation measures related to activities occurring within the critical habitat include the following:

(*1*) Vessels shall avoid head-on approaches to North Atlantic right whale(s) and shall maneuver to maintain at least 457 m (500 yd) of separation from any observed whale if deemed safe to do so. These requirements do not apply if a vessel's safety is threatened, such as when change of course would create an imminent and serious threat to person, vessel, or aircraft, and to the extent vessels are restricted in the ability to maneuver.

(*2*) When transiting within the critical habitat or associated area of concern, vessels shall use extreme caution and operate at a safe speed (the minimum speed at which mission goals or safety will not be compromised) so as to be able to avoid collisions with North Atlantic right whales and other marine mammals, and stop within a distance appropriate to the circumstances and conditions.

(*3*) Speed reductions (adjustments) are required when a whale is sighted by a vessel or when the vessel is within 9 km (5 NM) of a reported new sighting less than one week old.

(*4*) Ships transiting in the Cape Cod Bay and Great South Channel critical habitats shall obtain information on recent whale sightings in the vicinity of the critical habitat. Any vessel operating in the vicinity of a North Atlantic right whale shall consider additional speed reductions as per Rule 6 of International Navigational Rules.

(4) Mitigation Measures for Specific At-sea Training Events—If a marine mammal is killed as a result of the proposed Navy training activities (e.g., instances in which it is clear that munitions explosions caused the death), the Navy shall suspend its activities immediately and report the incident to NMFS.

(i) Firing Exercise (FIREX) Using the Integrated Maritime Portable Acoustic Scoring System (IMPASS) (5-in Explosive Rounds)

(A) This activity shall only occur in Areas 4/5 and 13/14, as specified in the Navy's LOA application, in the Cherry Point Range Complex.

(B) Pre-exercise monitoring of the target area shall be conducted with ''Big Eyes'' prior to the event, during deployment of the IMPASS sonobuoy array, and during return to the firing position. Ships shall maintain lookouts dedicated to visually searching for marine mammals 180° along the ship track line and 360° at each buoy drop-off location.

(C) ''Big Eyes'' on the ship shall be used to monitor a 600-yd (548-m) buffer zone for marine mammals during naval-gunfire events.

(D) Ships shall not fire on the target if any marine mammals are detected within or approaching the 600-yd (548-m) buffer zone. If marine mammals are present, operations must be suspended. Visual observation shall occur for approximately 45 min, or until the animal has been observed to have cleared the area and is heading away from the buffer zone. At such time as animals have cleared the area and are heading away from the buffer zone, the Navy may begin or resume operations.

(E) Post-exercise monitoring of the entire target area shall take place with ''Big Eyes'' and the naked eye during the

retrieval of the IMPASS sonobuoy array following each firing exercise.

(F) The naval gunfire shall take place during daylight hours only.

(G) FIREX with IMPASS shall only be used in Beaufort Sea State three (3) or less.

(H) The visibility must be such that the fall of shot is visible from the firing ship during the exercise.

(I) No firing shall occur if marine mammals are detected within 70 yd (64 m) of the vessel.

(ii) Air-to-Surface Missile Exercises (Explosive):

(A) Aircraft shall initially survey the intended ordnance impact area for marine mammals.

(B) During the actual firing of the weapon, the aircraft involved must be able to observe the intended ordnance impact area to ensure the area is free of marine mammals transiting the range.

(C) Visual inspection of the target area shall be made by flying at 1,500 ft (457 m) altitude or lower, if safe to do so, and at slowest safe speed.

(D) Explosive ordnance shall not be targeted to impact within 1,800 yd (1,646 m) of sighted marine mammals.

(iii) Mine Neutralization Training Involving Underwater Detonations (up to and including 20-lb charges):

(A) This activity shall only occur in W–15 of the Cherry Point Range Complex.

(B) Observers shall survey the Zone of Influence (ZOI), a 700 yd (640 m) radius from detonation location for marine mammals from all participating vessels during the entire operation. A survey of the ZOI (minimum of 3 parallel tracklines 219 yd [200 m] apart) using support craft shall be conducted at the detonation location 30 minutes prior through 30 minutes post detonation. Aerial survey support shall be utilized whenever operationally feasible.

(C) Detonation operations shall be conducted during daylight hours only.

(D) If a marine mammal is sighted within the ZOI, the animal shall be allowed to leave of its own volition. The Navy shall suspend detonation exercises and ensure the area is clear of marine mammals for a full 30 minutes prior to detonation.

(E) Divers placing the charges on mines and dive support vessel personnel shall survey the area for marine mammals and shall report any sightings to the surface observers. These animals shall be allowed to leave of their own volition and the ZOI shall be clear of marine mammals for 30 minutes prior to detonation.

(F) No detonations shall take place within 3.2 nm (6 km) of an estuarine inlet.

(G) No detonations shall take place within 1.6 nm (3 km) of shoreline.

(H) Personnel shall record any protected species observations during the exercise as well as measures taken if species are detected within the ZOI.

§ 218.24 Requirements for monitoring and reporting.

(a) The Holder of the Letter of Authorization issued pursuant to § 216.106 of this chapter and § 218.26 for activities described in § 218.20(c) is required to cooperate with the NMFS when monitoring the impacts of the activity on marine mammals.

(b) The Holder of the Authorization must notify NMFS immediately (or as soon as clearance procedures allow) if the specified activity identified in § 218.20(c) is thought to have resulted in the mortality or serious injury of any marine mammals, or in any take of marine mammals not identified in § 218.21(c).

(c) The Navy must conduct all monitoring and required reporting under the Letter of Authorization, including abiding by the Cherry Point Range Complex Monitoring Plan, which is incorporated herein by reference, and which requires the Navy to implement, at a minimum, the monitoring activities summarized below.

(1) Vessel or aerial surveys.

(i) The Holder of this Authorization shall visually survey a minimum of 1 explosive event per year. If possible, the event surveyed shall be one involving multiple detonations. One of the vessel or aerial surveys should involve professionally trained marine mammal observers (MMOs). If it is impossible to conduct the required surveys due to lack of training exercises, the missed annual survey requirement shall roll into the subsequent year to ensure that the appropriate number of surveys (i.e., total of five) occurs over the 5-year period of effectiveness of this subject.

(ii) When operationally feasible, for specified training events, aerial or vessel surveys shall be used 1–2 days prior to, during (if reasonably safe), and 1–5 days post detonation.

(iii) Surveys shall include any specified exclusion zone around a particular detonation point plus 2,000 yards beyond the border of the exclusion zone (i.e., the circumference of the area from the border of the exclusion zone extending 2,000 yards outwards). For vessel based surveys, a passive acoustic system (hydrophone or towed array) could be used to determine if marine mammals are in the area before and/or after a detonation event.

(iv) When conducting a particular survey, the survey team shall collect:

(A) Location of sighting;

(B) Species (if not possible, indicate whale, dolphin or pinniped);

(C) Number of individuals;

(D) Whether calves were observed;

(E) Initial detection sensor;

(F) Length of time observers maintained visual contact with marine mammal;

(G) Wave height;

(H) Visibility;

(I) Whether sighting was before, during, or after detonations/exercise, and how many minutes before or after;

(J) Distance of marine mammal from actual detonations (or target spot if not yet detonated);

(K) Observed behavior—Watchstanders shall report, in plain language and without trying to categorize in any way, the observed behavior of the animal(s) (such as animal closing to bow ride, paralleling course/speed, floating on surface and not swimming etc.), including speed and direction;

(L) Resulting mitigation implementation—Indicate whether explosive detonations were delayed, ceased, modified, or not modified due to marine mammal presence and for how long; and

(M) If observation occurs while explosives are detonating in the water, indicate munitions type in use at time of marine mammal detection.

(2) Passive acoustic monitoring—the Navy shall conduct passive acoustic monitoring when operationally feasible.

(i) Any time a towed hydrophone array is employed during shipboard surveys, the towed array shall be deployed during daylight hours for each of the days the ship is at sea.

(ii) The towed hydrophone array shall be used to supplement the ship-based systematic line-transect surveys (particularly for species such as beaked whales that are rarely seen).

(iii) The array should have the capability of detecting low frequency vocalizations (<1,000 Hz) for baleen whales and relatively high frequency (up to 30 kHz) for odontocetes. The use of two simultaneously deployed arrays can also allow more accurate localization and determination of diving patterns.

(3) Marine mammal observers on Navy platforms:

(i) As required in § 218.24(c)(1), MMOs who are selected for aerial or vessel surveys shall be placed on a Navy platform during one of the explosive exercises being monitored per year, the other designated exercise shall be monitored by the Navy lookouts/watchstanders.

(ii) The MMO must possess expertise in species identification of regional

marine mammal species and experience collecting behavioral data.

(iii) MMOs shall not be placed aboard Navy platforms for every Navy training event or major exercise, but during specifically identified opportunities deemed appropriate for data collection efforts. The events selected for MMO participation shall take into account safety, logistics, and operational concerns.

(iv) MMOs shall observe from the same height above water as the lookouts.

(v) The MMOs shall not be part of the Navy's formal reporting chain of command during their data collection efforts; Navy lookouts shall continue to serve as the primary reporting means within the Navy chain of command for marine mammal sightings. The only exception is that if an animal is observed within the shutdown zone that has not been observed by the lookout, the MMO shall inform the lookout of the sighting and the lookout shall take the appropriate action through the chain of command.

(vi) The MMOs shall collect species identification, behavior, direction of travel relative to the Navy platform, and distance first observed. Information collected by MMOs should be the same as those collected by Navy lookout/watchstanders described in § 218.24(c)(1)(iv).

(d) The Navy shall complete an Integrated Comprehensive Monitoring Program (ICMP) Plan in 2009. This planning and adaptive management tool shall include:

(1) A method for prioritizing monitoring projects that clearly describes the characteristics of a proposal that factor into its priority.

(2) A method for annually reviewing, with NMFS, monitoring results, Navy R&D, and current science to use for potential modification of mitigation or monitoring methods.

(3) A detailed description of the Monitoring Workshop to be convened in 2011 and how and when Navy/NMFS will subsequently utilize the findings of the Monitoring Workshop to potentially modify subsequent monitoring and mitigation.

(4) An adaptive management plan,

(5) A method for standardizing data collection for Cherry Point Range Complex and across range complexes,

(e) General Notification of Injured or Dead Marine Mammals—Navy personnel shall ensure that NMFS (regional stranding coordinator) is notified immediately (or as soon as clearance procedures allow) if an injured or dead marine mammal is found during or shortly after, and in the vicinity of, any Navy training exercise utilizing underwater explosive detonations. The Navy shall provide NMFS with species or description of the animal(s), the condition of the animal(s) (including carcass condition if the animal is dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available).

(f) Annual Cherry Point Range Complex Monitoring Plan Report—The Navy shall submit a report annually on March 1 describing the implementation and results (through January 1 of the same year) of the Cherry Point Range Complex Monitoring Plan. Data collection methods shall be standardized across range complexes to allow for comparison in different geographic locations. Although additional information will also be gathered, the MMOs collecting marine mammal data pursuant to the Cherry Point Range Complex Monitoring Plan shall, at a minimum, provide the same marine mammal observation data required in the data required in § 218.24(g). The Cherry Point Range Complex Monitoring Plan Report may be provided to NMFS within a larger report that includes the required Monitoring Plan Reports from Cherry Point Range Complex and multiple range complexes.

(g) Annual Cherry Point Range Complex Exercise Report—The Navy shall provide the information described below for all of their explosive exercises. Until the Navy is able to report in full the information below, they shall provide an annual update on the Navy's explosive tracking methods, including improvements from the previous year.

(1) Total annual number of each type of explosive exercise (of those identified as part of the ''specified activity'' in this final rule) conducted in the Cherry Point Range Complex.

(2) Total annual expended/detonated rounds (missiles, bombs, etc.) for each explosive type.

(h) Cherry Point Range Complex 5-yr Comprehensive Report—The Navy shall submit to NMFS a draft report that analyzes and summarizes all of the multi-year marine mammal information gathered during the Cherry Point Range Complex exercises for which annual reports are required (Annual Cherry Point Range Complex Exercise Reports and Cherry Point Range Complex Monitoring Plan Reports). This report shall be submitted at the end of the fourth year of the rule (May 2013), covering activities that have occurred through December 1, 2012.

(i) The Navy shall respond to NMFS comments and requests for additional information or clarification on the Cherry Point Range Complex Comprehensive Report, the Annual Cherry Point Range Complex Exercise Report, or the Annual Cherry Point Range Complex Monitoring Plan Report (or the multi-Range Complex Annual Monitoring Plan Report, if that is how the Navy chooses to submit the information) if submitted within 3 months of receipt. These reports will be considered final after the Navy has addressed NMFS' comments or provided the requested information, or three months after the submittal of the draft if NMFS does not comment by then.

(j) In 2011, the Navy shall convene a Monitoring Workshop in which the Monitoring Workshop participants will be asked to review the Navy's Monitoring Plans and monitoring results and make individual recommendations (to the Navy and NMFS) of ways of improving the Monitoring Plans. The recommendations shall be reviewed by the Navy, in consultation with NMFS, and modifications to the Monitoring Plan shall be made, as appropriate.

§ 218.25 Applications for Letters of Authorization.

To incidentally take marine mammals pursuant to these regulations, the U.S. citizen (as defined by § 216.103 of this chapter) conducting the activity identified in § 218.20(a) (the U.S. Navy) must apply for and obtain either an initial Letter of Authorization in accordance with § 218.26 or a renewal under § 218.27.

§ 218.26 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the period of validity of this subpart, but must be renewed annually subject to annual renewal conditions in § 218.27.

(b) Each Letter of Authorization will set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact on the species, its habitat, and on the availability of the species for subsistence uses (*i.e.,* mitigation); and

(3) Requirements for mitigation, monitoring and reporting.

(c) Issuance and renewal of the Letter of Authorization will be based on a determination that the total number of marine mammals taken by the activity as a whole will have no more than a negligible impact on the affected species or stock of marine mammal(s).

§ 218.27 Renewal of Letters of Authorization and Adaptive Management.

(a) A Letter of Authorization issued under § 216.106 and § 218.26 of this chapter for the activity identified in § 218.20(c) will be renewed annually upon:

(1) Notification to NMFS that the activity described in the application submitted under § 218.25 shall be undertaken and that there will not be a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming 12 months;

(2) Timely receipt of the monitoring reports required under § 218.24; and

(3) A determination by the NMFS that the mitigation, monitoring and reporting measures required under § 218.23 and the Letter of Authorization issued under §§ 216.106 and 218.26 of this chapter, were undertaken and will be undertaken during the upcoming annual period of validity of a renewed Letter of Authorization.

(b) If a request for a renewal of a Letter of Authorization issued under §§ 216.106 and 218.27 of this chapter indicates that a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming season will occur, the NMFS will provide the public a period of 30 days for review and comment on the request. Review and comment on renewals of Letters of Authorization are restricted to:

(1) New cited information and data indicating that the determinations made in this document are in need of reconsideration, and

(2) Proposed changes to the mitigation and monitoring requirements contained in these regulations or in the current Letter of Authorization.

(c) A notice of issuance or denial of a renewal of a Letter of Authorization will be published in the **Federal Register**.

(d) NMFS, in response to new information and in consultation with the Navy, may modify the mitigation or monitoring measures in subsequent LOAs if doing so creates a reasonable likelihood of more effectively accomplishing the goals of mitigation and monitoring set forth in the preamble of these regulations. Below are some of the possible sources of new data that could contribute to the decision to modify the mitigation or monitoring measures:

(1) Results from the Navy's monitoring from the previous year (either from Cherry Point Study Area or other locations).

(2) Findings of the Monitoring Workshop that the Navy will convene in 2011 (§ 218.24(j)).

(3) Compiled results of Navy funded research and development (R&D) studies (presented pursuant to the ICMP (§ 218.24(d)).

(4) Results from specific stranding investigations (either from the Cherry Point Range Complex Study Area or other locations).

(5) Results from general marine mammal and sound research (funded by the Navy (described below) or otherwise).

(6) Any information which reveals that marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent Letters of Authorization.

§ 218.28 Modifications to Letters of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the Letter of Authorization by NMFS, issued pursuant to §§ 216.106 and 218.26 and subject to the provisions of this subpart shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under § 218.27, without modification (except for the period of validity), is not considered a substantive modification.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 218.20(b), a Letter of Authorization issued pursuant to §§ 216.106 and 218.26 may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the **Federal Register** within 30 days subsequent to the action.

[FR Doc. E9–13696 Filed 6–8–09; 4:15 pm]

BILLING CODE 3510–22–P

Federal Register

Monday,
June 15, 2009

Part III

Department of the Treasury

31 CFR Part 30

TARP Standards for Compensation and Corporate Governance; Interim Final Rule

DEPARTMENT OF THE TREASURY

31 CFR Part 30

RIN 1505–AC09

TARP Standards for Compensation and Corporate Governance

AGENCY: Domestic Finance, Treasury.

ACTION: Interim final rule.

SUMMARY: This interim final rule, promulgated pursuant to sections 101(a)(1), 101(c)(5), and 111 of the Emergency Economic Stabilization Act of 2008 (EESA), as amended by the American Recovery and Reinvestment Act of 2009 (ARRA), provides guidance on the executive compensation and corporate governance provisions of EESA that apply to entities that receive financial assistance under the Troubled Asset Relief Program (TARP). Section 111 of EESA requires entities receiving financial assistance (TARP recipients) from the Department of the Treasury (Treasury) to meet appropriate standards for executive compensation and corporate governance. This interim final rule includes standards for TARP recipients that implement the provisions of section 111 of EESA, as well as certain additional standards adopted pursuant to the authority granted the Treasury under section 111(b)(2) to promulgate such additional standards.

DATES: *Effective Date*: These regulations are effective on June 15, 2009. *Comment due date:* August 14, 2009.

ADDRESSES: Treasury invites comments on the topics addressed in this interim final rule. Comments may be submitted to Treasury by any of the following methods: Submit electronic comments through the Federal government e-rulemaking portal, *http://www.regulations.gov* or by e-mail to *executivecompensation comments@do.treas.gov* or send paper comments in triplicate to Executive Compensation Comments, Office of Financial Institutions Policy, Room 1418, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

In general, Treasury will post all comments to *http://www.regulations.gov* without change, including any business or personal information provided, such as names, addresses, e-mail addresses, or telephone numbers. Treasury will also make such comments available for public inspection and copying in Treasury's Library, Room 1428, Department of the Treasury, 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. All comments, including attachments and other supporting materials, received are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: For further information regarding this interim final rule contact the Office of Domestic Finance, Treasury, at (202) 927–6618.

SUPPLEMENTARY INFORMATION:

Executive Summary

This Interim Final Rule sets forth the following standards, which generally apply to all TARP recipients in the programs under the TARP, subject to certain exceptions for TARP recipients that do not hold outstanding obligations: (1) Limits on compensation that exclude incentives for senior executive officers (SEOs) to take unnecessary and excessive risks that threaten the value of the TARP recipient; (2) provision for the recovery of any bonus, retention award, or incentive compensation paid to a SEO or the next twenty most highly compensated employees based on materially inaccurate statements of earnings, revenues, gains, or other criteria; (3) prohibition on making any golden parachute payment to a SEO or any of the next five most highly compensated employees; (4) prohibition on the payment or accrual of bonus, retention award, or incentive compensation to SEOs or certain highly compensated employees, subject to certain exceptions for payments made in the form of restricted stock; (5) prohibition on employee compensation plans that would encourage manipulation of earnings reported by the TARP recipient to enhance an employee's compensation; (6) establishment of a compensation committee of independent directors to meet semi-annually to review employee compensation plans and the risks posed by these plans to the TARP recipient; (7) adoption of an excessive or luxury expenditures policy; (8) disclosure of perquisites offered to SEOs and certain highly compensated employees; (9) disclosure related to compensation consultant engagement; (10) prohibition on tax gross-ups to SEOs and certain highly compensated employees; (11) compliance with Federal securities rules and regulations regarding the submission of a non-binding resolution on SEO compensation to shareholders; and (12) establishment of the Office of the Special Master for TARP Executive Compensation (Special Master) to address the application of these rules to TARP recipients and their employees. Among the duties and responsibilities of the Special Master with respect to TARP recipients of exceptional assistance is to review and approve compensation payments and compensation structures applicable to the SEOs and certain highly compensated employees, and to review and approve compensation structures applicable to certain additional highly compensated employees. TARP recipients that are not receiving exceptional assistance may apply to the Special Master for an advisory opinion with respect to compensation payments and structures. For further discussion of the Special Master's responsibilities, *see* section III.B of this preamble. Finally, this interim final rule also establishes compliance reporting and recordkeeping requirements regarding the rule's executive compensation and corporate governance standards. This interim final rule generally affects TARP recipients, their SEOs, and certain of their highly compensated employees.

I. Background

In October, 2008, the Department of the Treasury (Treasury) established the Troubled Asset Relief Program (TARP) under the Emergency Economic Stabilization Act of 2008, as amended (12 U.S.C. 5021 *et seq.*) (EESA). EESA provided immediate authority and facilities that the Secretary of the Treasury (Secretary) could use to restore liquidity and stability to the financial system. Section 101(a) of EESA authorizes the Secretary to establish the TARP to ''purchase, and to make and fund commitments to purchase, troubled assets from any financial institution, on such terms and conditions as are determined by the Secretary, and in accordance with this Act and policies and procedures developed and published by the Secretary.''

On February 13, 2009, Congress enacted the American Recovery and Reinvestment Act of 2009 (ARRA), which the President signed into law on February 17, 2009. Title VII of Division B of the ARRA amended in its entirety section 111 of EESA. Section 111 of EESA provides that certain entities that receive financial assistance from Treasury under the TARP (TARP recipients) will be subject to specified executive compensation and corporate governance standards to be established by the Secretary.

II. Previous Rulemaking

A. October 2008 Interim Final Rule

On October 20, 2008, Treasury published in the **Federal Register** an interim final rule (73 FR 62205) adding 31 CFR Part 30 under section 111 of EESA (prior to its later amendment by ARRA) (October 2008 Interim Final Rule). The October 2008 Interim Final Rule established the original executive compensation standards for financial institutions participating in the Capital Purchase Program (CPP), a financial stability program implemented under the TARP in October 2008. These standards generally applied to the senior executive officers (SEOs) of the CPP participant, that is, the principal executive officer (PEO), the principal financial officer (PFO), and the three most highly compensated executive officers in addition to the PEO and the PFO.

Section 111(b)(2)(A) of EESA, prior to the amendment by ARRA, required ''limits on compensation that exclude incentives for senior executive officers of a financial institution to take unnecessary and excessive risks that threaten the value of the financial institution during the period that the Secretary holds an equity or debt position in the financial institution.'' With respect to section 111(b)(2)(A), the October 2008 Interim Final Rule required the financial institution's compensation committee to identify the features in the financial institution's SEO incentive compensation arrangements that could lead SEOs to take unnecessary and excessive risks that could threaten the value of the financial institution. The October 2008 Interim Final Rule required that the compensation committee review (no more than ninety days after the purchase under the CPP and annually thereafter) the SEO incentive compensation arrangements with the financial institution's senior risk officers to ensure that SEOs were not encouraged to take such risks. The compensation committee was then required to certify that it had completed those reviews.

Section 111(b)(2)(B) of EESA required ''a provision for the recovery by the financial institution of any bonus or incentive compensation paid to a senior executive officer based on statements of earnings, gains, or other criteria that are later proven to be materially inaccurate.'' With respect to this section, the October 2008 Interim Final Rule required the SEO bonus and incentive compensation paid while Treasury holds an equity or debt position acquired under the CPP to be subject to a provision for recovery or ''clawback'' by the financial institution if the payments were based on materially inaccurate financial statements or any other materially inaccurate performance metric criteria.

Section 111(b)(2)(C) of EESA required ''a prohibition on the financial institution making any golden parachute payment to its senior executive officer during the period that the Secretary holds an equity or debt position in the financial institution.'' In accordance with this section, the October 2008 Interim Final Rule prohibited a financial institution from making any golden parachute payment to a SEO during the period Treasury holds an equity or debt position acquired under the CPP. The October 2008 Interim Final Rule defined a golden parachute payment as any payment in the nature of compensation to (or for the benefit of) a SEO made on account of an applicable severance from employment to the extent the aggregate present value of such payments equals or exceeds an amount equal to three times the SEO's base amount of compensation.

The October 2008 Interim Final Rule also set forth an additional standard for executive compensation and corporate governance under the authority of section 111(b)(1) of EESA. This standard required the financial institution to forgo any deduction for compensation for Federal income tax purposes in excess of $500,000 for each SEO that would not be deductible if section 162(m)(5) of the Internal Revenue Code (26 U.S.C. 162(m)(5)) applied to the financial institution.

B. Other Guidance

At the same time of the release of the October 2008 Interim Final Rule, Treasury also published guidance relating to other financial stability programs under TARP. Treasury Notice 2008–PSSFI addressed the provisions under section 111(b) of EESA as applicable to financial institutions participating in programs for systemically significant failing institutions. Treasury Notice 2008–PSSFI included the same standards as the October 2008 Interim Final Rule with one exception: It prohibited the financial institution from making any golden parachute payment (defined more strictly under Treasury Notice 2008–PSSFI as any payment made on account of an applicable severance from employment) to a SEO.

In addition, Treasury issued two notices on executive compensation requirements applicable to auction programs for purchasing troubled assets. First, pursuant to section 111(c) of EESA, Notice 2008–TAAP prohibited any financial institution selling more than $300,000,000 in troubled assets through an auction program from entering into a new SEO employment agreement with a golden parachute provision through the length of the program. Second, I.R.S. Notice 2008–94, addressing certain tax provisions in section 302 of EESA applicable to SEO compensation, required financial institutions selling more than $300,000,000 in troubled assets through an auction program to forgo any deduction for compensation for Federal income tax purposes in excess of $500,000 for each SEO under newly added section 162(m)(5) of the Internal Revenue Code (26 U.S.C. 162(m)(5)) and any deduction for certain SEO golden parachute payments under newly added section 280G(e) of the Internal Revenue Code (26 U.S.C. 280G(e)). In addition, I.R.S. Notice 2008–94 subjected SEOs to a 20-percent excise tax on these golden parachute payments.

On January 16, 2009, Treasury announced amendments to the October 2008 Interim Final Rule to include reporting and recordkeeping requirements under the executive compensation standards for the CPP. However, these amendments were returned from the **Federal Register** and never published and, thus, will never be effective.

The provisions of the ARRA and this interim final rule (Interim Final Rule) supersede the October 2008 Interim Final Rule, Notice 2008–PSSFI, and Notice 2008–TAAP, for periods for which the ARRA provisions described in this rule are effective. For a more detailed discussion of the effective dates, including the effective date of this Interim Final Rule, *see* § 30.17 (Q–17) of the Interim Final Rule, and the discussion of § 30.17 (Q–17) in section III.B of this preamble.

In addition, on February 4, 2009, Treasury issued new guidance on the executive compensation restrictions under EESA (February 2009 Treasury Guidance). The February 2009 Treasury Guidance provided financial institutions participating in the TARP with reporting and recordkeeping guidance, including guidance for compensation committees in preparing an explanation of how SEO compensation arrangements do not encourage excessive and unnecessary risk-taking.

For entities participating in an exceptional assistance program under the TARP, the February 2009 Treasury Guidance proposed to (1) limit the annual compensation of senior executives to $500,000 other than

restricted stock or other similar long-term incentive arrangements; (2) require the vesting schedule of this restricted stock to be based on the financial institution's satisfying repayment obligations, protecting taxpayer interests, and meeting lending and stability standards; (3) require full disclosure of executive compensation structure and strategy and a non-binding shareholder resolution approving or disapproving the structure and strategy; (4) require provisions for clawback of bonuses and incentive compensation awarded to SEOs if based on materially inaccurate financial statements or performance metrics; (5) require provisions for the clawback of bonuses and incentive compensation awarded to the next twenty executive officers if based on materially inaccurate financial statements or performance metrics and the executive officers had knowingly engaged in providing inaccurate information relating to those financial statements or performance metrics; (6) limit the payment of any golden parachute payments to the SEOs and the next five executive officers; (7) prohibit the payment of any golden parachute payments greater than one year's compensation to the next twenty-five executive officers; and (8) provide guidance for boards of directors in adopting a luxury expenditures policy.

For entities participating in a generally available capital access program under the TARP, the February 2009 Treasury Guidance proposed to (1) limit SEO annual compensation to $500,000 with any additional pay in the form of restricted stock or other similar long-term incentive arrangements carrying the same restrictions as for entities participating in an exceptional assistance program; (2) allow entities to waive this limitation only by disclosure of SEO compensation and, if requested, a non-binding shareholder resolution on that SEO compensation; (3) require provisions for clawback of bonuses and incentive compensation awarded to SEOs if based on materially inaccurate financial statements or performance metrics; (4) require provisions for clawback of bonuses and incentive compensation awarded to the next twenty executive officers if based on materially inaccurate financial statements or performance metrics and if the executive officers knowingly engaged in providing inaccurate information relating to those financial statements or performance metrics; (5) prohibit the payment of any golden parachute payments greater than one year's compensation to the SEOs; and (6) provide guidance for boards of directors in adopting a luxury expenditures policy.

The February 2009 Treasury Guidance provided that the guidelines would not apply retroactively to existing investments or to previously announced programs. The February 2009 Treasury Guidance also anticipated a public comment period before implementation of the guidelines for generally available capital access programs. Before the full implementation of the February 2009 Treasury Guidance, Congress enacted the ARRA. The ARRA prescribes new executive compensation standards different from the Treasury Guidance (except for the similar provisions with respect to required clawback provisions and excessive or luxury expenditures policies), and requires Treasury to establish these standards by promulgating regulations to implement section 111. This Interim Final Rule complies with this statutory requirement to promulgate standards that implement the ARRA provisions, consolidates all of the executive-compensation-related provisions that are specifically directed at TARP recipients into a single rule (superseding all prior rules and guidance), and utilizes the discretion granted to the Secretary under the ARRA to adopt additional standards, some of which are adapted from principles set forth in the February 2009 Treasury Guidance.

III. The Interim Final Rule

This Interim Final Rule revises in its entirety 31 CFR Part 30, which comprises Treasury's regulations implementing section 111 of EESA.

A. Overview of Statutory Provisions

Generally, section 111 of EESA, as amended by ARRA, imposes corporate governance and executive compensation requirements on TARP recipients and requires Treasury to establish certain corporate governance and executive compensation standards with which TARP recipients must comply. Section 111 outlines several specific standards, and requires Treasury to establish these standards by promulgating regulations. Section 111 also authorizes Treasury to establish additional standards by regulation.

Section 111(b)(1) of EESA provides that a TARP recipient shall be subject to the standards established by the Secretary under that section and the provisions of section 162(m)(5) of the Internal Revenue Code, as applicable. The October 2008 Interim Final Rule required that all TARP recipients forgo any deduction for Federal income tax purposes for compensation that would not be deductible if section 162(m)(5) of the Internal Revenue Code (26 U.S.C. 162(m)(5)) were to apply to the TARP recipient. Thus, TARP recipients generally agreed in their applicable contracts with Treasury under TARP not to claim a deduction for compensation during a taxable year in excess of $500,000 for a SEO. This Interim Final Rule does not impose additional tax related restrictions beyond those that already apply under section 162(m)(5). However, because these contractual terms are not inconsistent with any provisions of this Interim Final Rule, the contractual provisions remain in effect, in accordance with their terms, and accordingly, TARP recipients continue to be required to forgo the applicable deduction. *See* § 30.17 (Q–17), and the discussion of § 30.17 (Q–17) in section III.B of this preamble. In addition, Treasury anticipates requiring this condition in any future agreements to provide TARP assistance.

Section 111(b)(3)(A) requires that Treasury promulgate standards limiting SEO compensation to exclude incentives for SEOs to take unnecessary and excessive risks threatening to the TARP recipient's value.

Section 111(b)(3)(B) requires Treasury to establish standards mandating that TARP recipients institute a provision to recover any bonus, retention award, or incentive compensation paid to a SEO and any of the next twenty most highly compensated employees of the TARP recipient if the compensation was based on materially inaccurate statements of earnings, revenues, gains, or other criteria (a provision sometimes referred to as a ''clawback'').

Section 111(b)(3)(C) requires Treasury to establish standards prohibiting TARP recipients from making golden parachute payments (defined in Section 111(a)(2) as any payment for ''departure from a company for any reason, except for payments for services performed or benefits accrued'') to a SEO or any of the next five most highly compensated employees.

Section 111(b)(3)(D) requires Treasury to establish standards prohibiting TARP recipients from paying or accruing any bonus, retention award, or incentive compensation to certain highly compensated employees or SEOs. This prohibition has two exceptions: (1) TARP recipients can pay or accrue such amounts if the amounts are payable as long-term restricted stock, provided that the stock does not fully vest until the repayment of TARP assistance, has a value that is no greater than one-third of the total annual compensation, and is subject to such other terms and conditions as the Secretary may

determine to be in the public interest; and (2) TARP recipients can make bonus payments required to be paid under written employment contracts executed on or before February 11, 2009 and determined to be valid by the Secretary. The number of employees to which this prohibition applies depends upon the amount of financial assistance provided to the TARP recipient.

Section 111(b)(3)(E) requires Treasury to establish standards prohibiting any employee compensation plan that would encourage manipulation of the reported earnings of the TARP recipient to enhance the compensation of any of its employees.

Section 111(b)(3)(F) and Section 111(c) require Treasury to mandate that the TARP recipient establish a compensation committee of its board of directors comprised entirely of independent members of the board of directors to meet at least semi-annually to review, discuss, and evaluate employee compensation plans in light of any assessment of any risks these plans pose to the TARP recipients. Section 111(c)(3) provides that the board of directors of a TARP recipient that has no common or preferred stock registered pursuant to the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (Exchange Act) and has received $25,000,000 or less in financial assistance is required to carry out the duties of the compensation committee as described above.

Section 111(d) requires a TARP recipient's board of directors to put in place a company-wide policy regarding excessive or luxury expenditures, as identified by the Secretary, and that may include excessive expenditures on entertainment or events, office and facility renovations, aviation or other transportation services, or other activities or events that are not reasonable expenditures for staff development, reasonable performance incentives, or other similar measures conducted in the normal course of the TARP recipient's business operations.

Section 111(e) requires that any proxy or consent or authorization for an annual or other meeting of the TARP recipient shareholders, as long as any obligation arising from TARP assistance remains outstanding, permit a separate nonbinding shareholder vote to approve the compensation of executives, as disclosed pursuant to the compensation disclosure rules of the Securities and Exchange Commission (SEC). Section 111(e)(3) directs the SEC to issue any final rules and regulations necessary to implement this requirement not later than February 17, 2010.

Section 111(b)(4) requires the chief executive officer and the chief financial officer of the TARP recipient (or equivalents thereof) to provide a written certification of compliance with the requirements of section 111 to the SEC, if the TARP recipient has publicly traded securities, or to the Secretary, if the TARP recipient does not have publicly traded securities.

Section 111(f) requires the Secretary to review bonuses, retention awards, and other compensation paid to SEOs and the next 20 most highly compensated employees of each TARP recipient before the date of enactment of the ARRA to determine whether any such payments were inconsistent with the purposes of section 111 of EESA or TARP or were otherwise contrary to the public interest, and if such a determination is made, to seek to negotiate with the TARP recipient and the subject employee for appropriate reimbursement.

Section 111(h) requires the Secretary to promulgate regulations to implement section 111.

B. Description of the Interim Final Rule

The major provisions of the Interim Final Rule, to be codified at 31 CFR Part 30, are as follows:

Section 111 specifies executive compensation and corporate governance standards applicable to TARP recipients. The standards are written in question and answer format.

Definitions used in the Interim Final Rule are set forth in § 30.1 (Q–1) of the Interim Final Rule. The executive compensation and corporate governance requirements under the Interim Final Rule apply to all TARP recipients, defined in section 111(a)(3) as ''any entity that has received or will receive financial assistance under the financial assistance provided under the TARP.'' These restrictions will also generally apply to any entity of which the TARP recipient owns at least 50%, or which owns at least 50% of the TARP recipient, determined using certain provisions of sections 414(b) and (c) of the Internal Revenue Code, 26 U.S.C. 414(b) and (c), if those provisions were applied using a 50% ownership threshold instead of an 80% ownership threshold. In addition, these restrictions may apply to a related entity if the primary purpose for the creation or utilization of such entity is to avoid or evade some or all of the restrictions under section 111. These requirements generally apply for the period during which any obligation arising from financial assistance under the TARP remains outstanding (TARP period), except any period during which the Federal government only holds warrants to purchase common stock of the TARP recipient. For TARP recipients that never hold an obligation, however, the more limited requirements generally apply through the last date of the TARP purchase authority.

The Interim Final Rule defines financial assistance to include direct financial transactions between Treasury and private sector participants in programs under the TARP. Although some determinations may be fact specific, entities that do not engage in financial transactions with Treasury as a counterparty generally will not be deemed to be receiving ''financial assistance.'' As illustration, for purposes of the Interim Final Rule, financial institutions that sell preferred stock to Treasury through the Capital Purchase Program are receiving financial assistance and therefore are TARP recipients subject to the provisions of the Interim Final Rule. By contrast, entities that post collateral to and receive loans from the Federal Reserve Term Asset-Backed Securities Loan Facility (TALF) are not receiving ''financial assistance provided under the TARP'' and, therefore, are not TARP recipients under the Interim Final Rule. In the TALF program, Treasury has posted a subordinated loan to the Federal Reserve Bank of New York special purpose vehicle (SPV), which accepts forfeited collateral from TALF lending. Although the SPV has engaged in a financial transaction with Treasury, Treasury has not interpreted ARRA to require that the Federal Reserve Bank of New York, as a non-profit government instrumentality, be deemed to be receiving financial assistance. Importantly, Federal Reserve banks fulfill their governmental function by returning their annual profits to Treasury, which limits the extent to which a transaction with Treasury could be deemed to be financial assistance.

These requirements apply to SEOs and certain most highly compensated employees, as defined in § 30.1. Section 30.1 (Q–1) of the Interim Final Rule bases the determination of the SEOs on the executive compensation disclosure requirements in Item 402 of Regulation S–K under the Federal securities laws (17 CFR 229.402), which generally applies to the PEO, the PFO, and the three most highly compensated executive officers (other than the PEO and the PFO). Section 30.1 (Q–1) of the Interim Final Rule bases the identification of the three most highly compensated executive officers on annual compensation for the last completed fiscal year and defines annual compensation as it is determined

pursuant to Item 402(a) of Regulation S–K under the Federal securities laws (17 CFR 229.402(a)). To be consistent with the determination of the three most highly compensated executive officers, § 30.1 (Q–1) of the Interim Final Rule also defines the most highly compensated employees according to their annual compensation for the last completed fiscal year, as it is determined pursuant to Item 402(a) of Regulation S–K under the Federal securities laws (17 CFR 229.402(a)). However, a most highly compensated employee may be an employee who is not an executive officer. The Interim Final Rule does not limit application of the requirements to executive officers because the ARRA statutory language refers to most highly compensated employees, rather than most highly compensated executive officers, and therefore does not limit the coverage in this manner. A most highly compensated employee does not include a former employee of the TARP recipient who is not employed by the TARP recipient on the first day of the fiscal year for which the determination is being made (as opposed to the preceding fiscal year), unless such employee is reasonably anticipated to return to employment with the TARP recipient during the fiscal year.

The Interim Final Rule defines annual compensation in this manner for several reasons. Both the ARRA and the original EESA executive compensation provisions require that the senior executive officers be determined according to the compensation disclosure requirements under Federal securities regulations; it would be anomalous to treat the determination of most highly compensated employee compensation in a different manner. In addition, the compensation required to be disclosed under Federal securities regulations more closely reflects the economic reality of the compensation that the employee actually earned during the year by reporting compensation regardless of whether it was includible in income for income tax purposes during that year (for example, including the value of a stock option, deferred salary and bonuses when earned) in contrast to annual compensation reported as Form W–2 compensation, which reflects only compensation that was includible in income for income tax purposes during the calendar year regardless of when that compensation was earned (for example, including income from stock options generally at the time of exercise and including in income deferred salary and bonuses only when those amounts are actually paid in a future year). Finally, public companies and investors are familiar with this SEC total annual compensation measurement, which was developed through an extensive notice and comment process and has been in effect since 2006 as part of the SEC's final revised executive compensation disclosure rule.

Because the most highly compensated employees are determined based on annual compensation earned in the prior year, the issue has been raised that a TARP recipient might be able to intentionally cycle employees in and out of most highly compensated employee status in alternate years to guarantee periods of complete exclusion for certain employees from the executive compensation limitations applicable to most highly compensated employees. Some methods that might mitigate, though not eliminate, this possibility include identifying the most highly compensated employees based on an averaging of the preceding two or three years' annual compensation, or requiring that some or all of the most highly compensated employees identified for one year remain subject to the limitations for a prescribed number of additional years, regardless of their subsequent level of compensation. The Treasury invites comment on this issue, including on the extent to which intentional cycling of most highly compensated employee status is likely to occur given that there is no overall compensation limitation on most highly compensated employees under the Interim Final Rule, potential methods of addressing the issue (including the methods previously mentioned), how such methods would be effective in deterring, eliminating, or limiting intentional cycling, and the extent of any additional administrative burdens that the application of such methods might create.

Section 30.1 (Q–1) of the Interim Final Rule requires that TARP recipients that are smaller reporting companies, as that term is defined in Item 10 of Regulation S–K under the Federal securities laws (17 CFR 229.10), identify five SEOs, even if only three named executive officers are required to be identified pursuant to Item 402(m) of Regulation S–K under the Federal securities laws (17 CFR 229.402(m)). Analogous rules apply to TARP recipients that do not have securities registered with the SEC pursuant to the Federal securities laws.

Prior to the annual identification of the SEOs, who are typically identified in the TARP recipient's annual report on Form 10–K or annual meeting proxy statement, and the most highly compensated employees, § 30.3 (Q–3) of the Interim Final Rule requires that the TARP recipient ensure that a potential SEO or most highly compensated employee comply with the relevant executive compensation and corporate governance standards.

Several requirements under the Interim Final Rule relate to the compensation committee of the TARP recipient's board of directors, and its duties. Pursuant to section 111(b)(3)(A), section 111(b)(3)(E), and section 111(b)(3)(F), § 30.4 (Q–4) of the Interim Final Rule requires the TARP recipient to establish a compensation committee composed of independent members of the board of directors before the later of ninety days after the closing date of the agreement between Treasury and the TARP recipient or ninety days after June 15, 2009 to fulfill a number of duties. Many public company TARP recipients already maintain compensation committees of independent directors pursuant to stock exchange listing standards, and § 30.4 (Q–4) of the Interim Final Rule allows for the continued maintenance of already-established compensation committees. Section 30.4 (Q–4) of the Interim Final Rule also, in accordance with section 111(c)(3), provides an exception for certain private company TARP recipients. Thus, § 30.4 (Q–4) of the Interim Final Rule allows TARP recipients that have no securities registered pursuant to the Exchange Act and have received $25,000,000 or less in financial assistance to either establish a compensation committee of independent directors or to delegate, as appropriate, to the board of directors the duties of the compensation committee as described below.

Each TARP recipient faces different material risks given the unique nature of its business and the markets in which it operates. Thus, § 30.5 (Q–5) of the Interim Final Rule requires the compensation committee to discuss, evaluate, and review at least every six months with senior risk officers SEO compensation plans and employee compensation plans and the risks these plans pose to the TARP recipient; identify and limit the features in the SEO compensation plans that could lead SEOs to take unnecessary and excessive risks that could threaten the value of the TARP recipient; and identify and limit any features in the employee compensation plans that pose risks to the TARP recipient to ensure that the TARP recipient is not unnecessarily exposed to risks, including any features in these SEO compensation plans or the employee compensation plans that would encourage behavior focused on

short-term results rather than long-term value creation. In addition, § 30.6 (Q–6) of the Interim Final Rule requires that the compensation committee discuss, evaluate, and review at least every six months the terms of each employee compensation plan and identify and eliminate the features in the plan that could encourage the manipulation of reported earnings of the TARP recipient to enhance the compensation of an employee.

Sections 30.4 (Q–4) and 30.7 (Q–7) of the Interim Final Rule require the compensation committee to provide annually a narrative description of how it limited the features in (1) SEO compensation plans that could encourage SEOs to take unnecessary and excessive risks that could threaten the value of the TARP recipient, including how these SEO compensation plans do not encourage behavior focused on short-term results rather than long-term value creation, (2) employee compensation plans to ensure that the TARP recipient is not unnecessarily exposed to risks, including how these employee compensation plans do not encourage behavior focused on short-term results rather than long-term value creation, and (3) employee compensation plans that could encourage the manipulation of reported earnings of the TARP recipient to enhance the compensation of an employee.

Sections 30.4 (Q–4) and 30.7 (Q–7) of the Interim Final Rule require that the compensation committee certify annually that it has completed the reviews of the SEO compensation plans and the employee compensation plans as outlined above. Section 30.7 (Q–7) of the Interim Final Rule also provides that TARP recipients with securities registered with the SEC pursuant to the Federal securities laws must provide these disclosures and certifications in the Compensation Committee Report required pursuant to Item 407 of Regulation S–K under the Federal securities laws (17 CFR 229.407) and to Treasury. Section 30.7 (Q–7) of the Interim Final Rule requires that TARP recipients that are smaller reporting companies or do not have securities registered with the SEC pursuant to the Federal securities laws provide the disclosures and certifications to their primary regulatory agency and to Treasury.

Pursuant to section 111(b)(3)(B), § 30.8 (Q–8) of the Interim Final Rule requires a TARP recipient to ensure that any bonus, retention award, or incentive compensation paid or accrued during the TARP period to a SEO or one of the next twenty most highly compensated employees is subject to a provision for recovery or ''clawback'' by the TARP recipient if the payments or accruals were based on materially inaccurate financial statements or any other materially inaccurate performance metric criteria. Section 30.8 (Q–8) of the Interim Final Rule deems that bonuses, retention awards, and incentive compensation are paid or accrued to a SEO or any one of the next twenty most highly compensated employees during the TARP period when the SEO or one of the next twenty most highly compensated employees obtains a legally binding right to that payment during the TARP period.

This clawback provision differs from the clawback provision required under section 304 of the Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley) (Pub. Law No. 107–204). Section 304 of Sarbanes-Oxley requires the forfeiture by a public company's chief executive officer or the chief financial officer of any bonus, incentive-based, or equity-based compensation received during the twelve-month period following a materially non-compliant financial report and any profits from sales of the company's securities during that period. In contrast, the standard established under section 111(b)(3)(B) of EESA applies to the three most highly compensated executive officers and the next twenty most highly compensated employees in addition to the PEO and the PFO; applies to both public and private TARP recipients; applies to retention awards; is not exclusively triggered by a requirement to prepare an accounting restatement due to material noncompliance of the issuer as a result of misconduct; does not limit the recovery period; and covers not only material inaccuracies relating to financial reporting but also material inaccuracies relating to other performance metrics used to calculate bonus payments.

Pursuant to section 111(b)(3)(C), § 30.9 (Q–9) of the Interim Final Rule prohibits a TARP recipient from making a golden parachute payment to a SEO or the next five most highly compensated employees during the TARP period. Under the Interim Final Rule, a golden parachute payment includes a payment for departure from a TARP recipient for any reason, other than a payment for services performed or benefits accrued. Pursuant to the authority granted the Secretary under section 111(b)(2) and section 111(h), the Interim Final Rule also treats as a golden parachute payment and amount due upon a change in control event of the TARP recipient. Section 30.1 (Q–1) of the Interim Final Rule excludes from the definition of golden parachute payment qualified retirement plans and similar foreign retirement plans, as well as payments due to an employee's death or disability and severance payments required by State statute or foreign law. Given the language of the ARRA, there is no longer any exception for any amount of a golden parachute payment, such as was allowed under the October 2008 Interim Final Rule. In addition, a golden parachute payment is treated as paid at the time of the employee's departure, regardless of when the amounts are actually paid. Therefore, TARP recipients and employees may not avoid the restriction by deferring payment of the golden parachute payment past the end of the TARP period.

Pursuant to section 111(b)(3)(D), § 30.10 (Q–10) of the Interim Final Rule prohibits a TARP recipient from paying or accruing any bonus, retention award, or incentive compensation during the TARP period to certain employees. The TARP recipient's amount of financial assistance determines the number of employees subject to this prohibition. This prohibition applies to the most highly compensated employee of any TARP recipient that has received less than $25,000,000 in financial assistance; to at least the five most highly compensated employees of any TARP recipient that has received at least $25,000,000 but less than $250,000,000; the SEOs and at least the ten next most highly compensated employees of any TARP recipient that has received at least $250,000,000 but less than $500,000,000; and the SEOs and at least the twenty next most highly compensated employees of any TARP recipient that has received $500,000,000 or more. Section 30.10 (Q–10) of the Interim Final Rule states that TARP recipients will be subject during the TARP period to the bonus limitation requirements based on the total amount of financial assistance outstanding under the TARP. If additional financial assistance would result in additional employees becoming subject to the prohibition, the prohibition on the additional employees will not be effective until the fiscal year following the year during which the additional financial assistance is received.

Section 30.1 (Q–1) of the Interim Final Rule includes definitions of a bonus, incentive compensation or retention award. A bonus means any payment in addition to any amount payable to an employee for services performed by the employee at a regular hourly, daily, weekly, monthly or similar periodic rate. Generally a bonus would not include a contribution to a

qualified plan, benefits under a broad-based benefit plan, bona fide overtime pay, and bona fide and routine expense reimbursements. Section 30.10 (Q–10) contains rules defining when bonuses will be treated as accruing or paid. Notably, section 30.10 (Q–10) contains an anti-abuse rule, intending to address circumstances in which a bonus that was not permitted to accrue during the year an employee was covered by the bonus limitation is paid to the employee in the subsequent year when the employee is not covered by the bonus limitation, but is designated as some other form of payment such as a salary increase or a stock option grant. In such a case, the payment in the subsequent year may be recharacterized as a payment of the bonus that was not permitted to accrue in the previous year.

Section 30.1 (Q–1) of the Interim Final Rule excepts from the definition of a bonus certain commission compensation for sales to, and investment management services for, unrelated parties. Many TARP recipients have broker-dealer, investment advisory, and insurance divisions, where registered representatives, investment advisors, and agents typically receive commissions based on the amount of sales of financial products or the value of assets under management. In this context, commission payments characteristically are viewed as a component of base salary rather than bonus compensation. However, fees earned from sales to entities within the affiliated group, investment banking, or proprietary trading are not considered commission compensation and the Interim Final Rule does not except these fees from the definition of a bonus or incentive compensation.

Section 30.1 (Q–1) of the Interim Final Rule generally defines an incentive compensation plan by reference to the Federal securities regulations. However, for purposes of this Interim Final Rule, an incentive compensation plan also includes a stock option or stock plan, regardless of whether those plans are subject to performance-based vesting. The inclusion of these arrangements is consistent with the statute's classifying the grant of a limited amount of long-term restricted stock as an exception to the bonus, incentive compensation, and retention award restrictions.

This inclusion of a stock plan in the definition of an incentive compensation plan does not restrict the TARP recipient's ability to pay salary or other permissible payments in the form of stock or other property, even if the stock is issued pursuant to a stock plan. In addition, the payment may be made in stock that is subject to holding periods or transferability restrictions, such as not permitting the stock to be transferred for a specified number of years, until a specified event occurs (such as the employee's retirement, or a specified number of years after an employee's retirement or other termination of employment), or until certain TARP fund repayment hurdles are met. However, the payment must still be payment of salary or another permissible amount. Accordingly, the amount of the future payment must be denominated in dollars, rather than in a number of shares. For example, an employee could be entitled to a salary of $5,000 per week, half payable in cash and half payable in stock valued at $2,500 on each salary payment date. In addition, as salary, the stock or other property cannot be subject to a substantial risk of forfeiture or any requirement of future services (and thus the grant of such stock will not be treated as a retention award either), as distinguished from a restriction on transferability. The same analysis would apply to a grant of a stock unit (such as phantom stock or a restricted stock unit) with similar characteristics to the salary payment arrangement described above, in lieu of a grant of the same number of shares. Accordingly, the stock unit could not be subject to a substantial risk of forfeiture or other requirement of continued services, and would be payable at a fixed date in the future (and the arrangement would otherwise need to comply with the requirements of section 409A of the Internal Revenue Code (26 U.S.C. 409A)). However, such a structure generally will not be feasible during 2009 due to the restrictions under section 409A of the Internal Revenue Code (26 U.S.C. 409A).

Section 30.1 (Q–1) generally defines a retention award as any payment to an employee that is not payable periodically to an employee for service performed by the employee at a regular hourly, daily, weekly, monthly, or similar periodic rate, is contingent on the completion of a period of future service with the TARP recipient or the completion of a specific project or other activity of the TARP recipient, and is not based on the performance of the employee (other than a requirement that the employee not be separated from employment for cause) or the business activities or value of the TARP recipient. Exceptions are provided for a contribution to or payment made from a qualified plan, or a payment from a benefit plan, overtime pay or reasonable expense reimbursement. An exception is also made for amounts accrued under a nonqualified deferred compensation plan, to the extent the amounts are accrued in the normal course of the employee's service at the TARP recipient and are not accrued by reason of a material enhancement of such benefits. An exception is not provided, however, for awards to new hires, including awards as part of a ''make-whole'' agreement intended to provide a newly hired employee a continuation of benefits accruing at a prior employer. Such awards are not structurally materially different from retention awards granted to current employees, which are intended to be subject to these restrictions.

Pursuant to section 111(b)(3)(D)(i), § 30.10 (Q–10) of the Interim Final Rule provides two exclusions from this prohibition on the payment or accrual of bonus, retention award, or incentive compensation. The TARP recipient is permitted to award long-term restricted stock to the employees subject to this prohibition. Because many TARP recipients, especially smaller, family-owned community banks as well as private financial institutions, would be unwilling or unable to award restricted stock, § 30.1 (Q–1) of the Interim Final Rule defines long-term restricted stock to include both restricted stock and restricted stock units, which can be settled in stock or cash, and which may be designed to track a specific unit or division within a TARP recipient.

Section 30.10 (Q–10) of the Interim Final Rule describes the restrictions imposed upon this stock. Pursuant to section 111(b)(3)(D)(i)(I), § 30.11 (Q–11) of the Interim Final Rule states that the value of the long-term restricted stock can be no greater than ⅓ of the employee's total annual compensation. For purposes of determining annual compensation under the long-term restricted stock exception, all equity-based compensation granted will be included in the calculation only in the year in which it is granted, and will be included at its total fair market value on the grant date, so all equity-based compensation granted in fiscal years ending prior to June 15, 2009 will not be included in the calculation of annual compensation. In determining the value of the long-term restricted stock grant, the long-term restricted stock will be included in the calculation only in the year in which the restricted stock is granted, and will be included at its total fair market value on the grant date. This calculation of total annual compensation differs from the calculation used to determine the SEOs and most highly compensated employees each year, which is

determined pursuant to Item 402(a) of Regulation S–K under the Federal securities laws (17 CFR 229.402(a)). This is necessary to avoid a failure to comply with the Interim Final Rule, for instance, if other aspects of the employee's annual compensation decrease in a subsequent year, so that if the grant were included in compensation over multiple years, the one-third annual compensation limit could be exceeded merely due to such decrease.

Pursuant to section 111(b)(3)(D)(i)(II), § 30.10 (Q–10) of the Interim Final Rule states that the excepted long-term restricted stock must not fully vest until the repayment of all financial assistance by the TARP recipient. Section 30.10 (Q–10) of the Interim Final Rule requires that the employee provide services to the TARP recipient for at least two years after the date of the grant of the long-term restricted stock to vest in this stock, and prescribes a schedule under which such stock may become transferable (or in the case of a restricted stock unit, payable). Specifically, Section 30.10 (Q–10) of the Interim Final Rule establishes the following schedule, subject to the further requirements outlined below, for the long-term restricted stock: For each 25% of total financial assistance repaid, 25% of the total long-term restricted stock granted may become transferable, until the final repayment, at which time the remaining long-term restricted stock may become transferable. Because, in the case of restricted stock (but not a restricted stock unit), the fair market value of the stock may be subject to inclusion in income for income tax purposes before the stock becomes transferable, an exception to the transferability restriction is provided to the extent necessary to pay the applicable taxes. Nothing in the Interim Final Rule, however, prohibits vesting based on longer service periods or additional performance-based requirements.

Pursuant to section 111(b)(3)(D)(iii), § 30.10 (Q–10) of the Interim Final Rule also excludes from this prohibition any bonus, retention award, or incentive compensation payment required to be paid under a valid written employment contract executed on or before February 11, 2009 if the employee has a legally binding right under the contract to this payment. For purposes of determining whether an employee had a legally binding right to a payment, the Interim Final Rule uses rules specified in 26 CFR 1.409A–1(b)(1). In addition, the payment must be made in accordance with the terms of the contract as of February 11, 2009, such that any amendment to the contract to increase the amount payable, accelerate any vesting conditions, or otherwise materially enhance the benefit available to the employee under the contract will result in the payment being treated as not made under the employment contract executed on or before February 11, 2009. The waiver by the employee of any benefits available to the employee under the terms of the contract will not result in the payment of other benefits under the contract being treated as made other than under the employment contract executed on or before February 11, 2009.

Whether an employee has accrued bonus, retention award, or incentive compensation is determined based on the facts and circumstances. However, to avoid circumvention of the Interim Final Rule by merely delaying bonus payments until after the employee is no longer subject to the prohibition, or granting retroactive service credits after the employee is no longer subject to the prohibition, if after the employee is no longer a SEO or most highly compensated employee, the employee is paid an amount, or provided a legally binding right to the payment of an amount, based upon services performed or compensation received during the period the employee was a SEO or most highly compensated employee, the employee will be treated as having accrued the amount during the period the employee was a SEO or most highly compensated employee.

Certain bonus, retention award, or incentive compensation may relate to a multi-year service period, during some portion of which the employee is subject to the prohibition and during some portion of which the employee is not subject to the prohibition. In such circumstances, the employee will not be treated as having accrued the bonus, retention award, or incentive compensation during the portion of the service period the employee was subject to the limitation, if the bonus, retention award, or incentive compensation is reduced to reflect at least the portion of the service period that the employee was subject to the prohibition. However, if the employee is subject to the prohibition at the time the amount would otherwise be paid, the amount still may not be paid until the payments to the employee are permitted.

A bonus, a retention award, or incentive compensation that an employee accrues while the employee is not subject to the prohibition on accrual or payment and is payable at a time when the employee has become subject to the prohibition, may not be paid until the employee is no longer subject to the prohibition. In addition, as part of the conditions to a TARP recipient's receiving financial assistance under the TARP set forth in the contract between Treasury and the TARP recipient, the Federal government may require that certain other bonus, retention award, or incentive compensation not be paid during a designated period, such as the period during which the TARP recipient retains any financial assistance provided under TARP, or until some other condition related to the TARP recipient's financial health is satisfied. The issue has arisen as to whether the failure to pay such bonus, retention award, or incentive compensation would be treated as a subsequent deferral election that fails to comply with the requirements of section 409A of the Internal Revenue Code (26 U.S.C. 409A) or whether it would convert a payment that would otherwise be a short-term deferral, within the meaning of 26 CFR 1.409A–1(b)(4), into a payment of deferred compensation that would be subject to the restrictions in section 409A. Treasury and Internal Revenue Service officials have advised that the delay of the payment until such time as the recipient of the payment is no longer subject to the prohibition will not result in a failure to comply with the requirements of section 409A and will not result in a payment that otherwise would have been a short-term deferral being treated as a payment of deferred compensation, so long as the payment is made promptly following the first date upon which the payment could be made without violating the terms of the agreement between the TARP recipient and Treasury and in accordance with the Interim Final Rule. Accordingly, for purposes of the issuance of a restricted stock unit intended to qualify as long-term restricted stock as an exception to the bonus payment limitation, the unit may be structured with a payment date no later than the later of the end of the short-term deferral period or the first date upon which the payment is permissible under these rules and the applicable terms of the agreement between the TARP recipient and Treasury, and the unit will not be subject to section 409A provided the payment terms are satisfied.

Pursuant to section 111(d), § 30.12 (Q–12) of the Interim Final Rule requires that the board of directors of the TARP recipient adopt an excessive or luxury expenditures policy, file this policy with Treasury, and post the text of this policy on its Internet Web site, if the TARP recipient maintains a company Web site, before the later of ninety days after the closing date of the

agreement between Treasury and the TARP recipient or ninety days after June 15, 2009. Section 30.1 (Q–1) of the Interim Final Rule defines an excessive or luxury expenditures policy to require the inclusion of standards to ensure appropriate review and approval of potentially excessive and luxury expenditures. Section 30.1 (Q–1) of the Interim Final Rule requires that the policy (1) Identify the types and categories of expenses prohibited or requiring prior approval; (2) adopt approval procedures for those expenses requiring prior approval; (3) mandate PEO and PFO certification of the prior approval of any expenditures requiring the prior approval of any SEO, other similar executive officers, or the board of directors; (4) mandate prompt internal reporting of any violation of this policy; and (5) mandate accountability for adherence to this policy.

Section 30.12 (Q–12) of the Interim Final Rule requires that the board of directors of each TARP recipient determine what are excessive and luxury expenditures and establish a set of requirements specific to the TARP recipient under this policy. This is similar to the method by which public companies adopted a code of ethics under section 406 of Sarbanes-Oxley. Under the Federal securities regulations promulgated under section 406 of Sarbanes-Oxley (17 CFR 229.406), the SEC presented a general framework for a code of ethics, but the public company itself was required to adopt standards specific to the company using this general framework as a guide.

Pursuant to section 111(e), TARP recipients are required to permit a nonbinding shareholder resolution on SEO compensation as provided pursuant to the compensation disclosure rules under the Federal securities laws. Section 111(e) authorizes the SEC to promulgate any necessary final rules or regulations relating to this requirement. The Interim Final Rule requires TARP recipients to comply with any SEC guidance, rules, or regulations promulgated with respect to section 111(e).

Pursuant to section 111(h), and section 111(b)(2), the Secretary is authorized to establish additional executive compensation and corporate governance standards. The Secretary has determined to adopt four additional standards. First, § 30.11(a) (Q–11) of the Interim Final Rule requires that TARP recipients receiving exceptional financial assistance submit for approval the compensation payments and compensation structures of the SEO and most highly compensated employees subject to the bonus payment limitation, and the compensation structures of all other executive officers and 100 most highly compensated employees, for approval by the Office of the Special Master for TARP Executive Compensation. However, if a TARP recipient limits the annual compensation for any executive who is not a SEO or a most highly compensated employee subject to the bonus limitation provision to $500,000, with any additional compensation in long-term restricted stock, the compensation structure is not required to be submitted for approval. For this purpose, annual compensation and the value of the long-term restricted stock are determined in the same manner as provided in the long-term stock exception in § 30.10 (Q–10) of the Interim Final Rule.

Second, § 30.11(b) (Q–11) of the Interim Final Rule requires a TARP recipient to disclose to Treasury and its primary Federal regulator annually any perquisites whose total value exceeds $25,000 for any employee who is subject to the limitations on bonus payments. TARP recipients are required to identify the amount and nature of the perquisites and disclose a justification for offering these perquisites. Existing Federal securities regulations require public companies only to identify for any of the top five executive officers or members of the boards of directors the type of perquisite if the total value of all perquisites exceeds $10,000 for an individual officer or director; and the value of any perquisite if the value exceeds the greater of $25,000 or 10% of the total amount of perquisites for an individual officer or director.

Third, § 30.11(c) (Q–11) of the Interim Final Rule requires a TARP recipient to disclose to Treasury and its primary Federal regulator annually whether the TARP recipient, the board, or the compensation committee has engaged a compensation consultant and all types of services the compensation consultant or any of its affiliates has provided to the TARP recipient, the board, or the compensation committee during the past three years, including any ''benchmarking'' or comparisons employed to identify certain percentile levels of compensation (for example, other peer group companies used for benchmarking and a justification for using these companies, and the lowest percentile level of other companies' employee compensation considered for compensation proposals). Existing Federal securities regulations require only that public companies identify compensation consultants and their role in setting executive and director compensation; whether the compensation committee directly engages the compensation consultant; the nature and scope of the compensation consultant's assignment; and the material elements of the compensation consultant's duties under the engagement.

Fourth, § 30.11(d) (Q–11) of the Interim Final Rule prohibits TARP recipients from providing tax gross-ups or other reimbursements for the payment of taxes to any of the SEOs and next twenty most highly compensated employees relating to severance payments, perquisites, or any other form of compensation. Existing Federal securities regulations require only that public companies disclose ''gross-ups'' or other reimbursements to the SEOs for the payment of taxes. The Interim Final Rule excludes from this prohibition certain international tax equalization arrangements intended to compensate an employee for certain different taxes on account of an overseas assignment.

Section 30.14 (Q–14) of the Interim Final Rule includes a special rule for cases in which a TARP recipient (target) is acquired by an entity (acquirer) that is not a TARP recipient in an acquisition of any form. Under this rule, the acquirer does not become subject to section 111 of EESA as a result of the acquisition. In addition, the employees of the target who are SEOs or most highly compensated employees subject to section 111 immediately prior to the acquisition who continue employment with the acquirer will no longer be subject to section 111 of EESA after the acquisition. However, if the primary purpose of the acquisition is to avoid or evade application of section 111 of EESA, then the acquirer will be treated as a TARP recipient. For purposes of determining the affected employees, the principal executive officer and the principal financial officer of the post-acquisition acquirer are treated as SEOs. For purposes of identifying the most highly compensated employees, the acquirer employees and the pre-acquisition target employees who are employed at the acquirer (or anticipated to be employed at the acquirer) are aggregated and their most highly compensated employee status determined based upon the compensation earned during the most recently completed fiscal year at either the pre-acquisition acquirer or target, as appropriate.

Pursuant to section 111(b)(4), § 30.15 (Q–15) of the Interim Final Rule establishes a compliance reporting regime relating to the executive compensation requirements set forth in the Interim Final Rule. The Interim Final Rule requires that the PEO and the

PFO of the TARP recipient provide the following certifications within ninety days of the completion of each fiscal year any part of which is a TARP period: (1) The compensation committee has met at least every six months during the prior fiscal year with the senior risk officers of the TARP recipient to discuss and evaluate SEO compensation plans and employee compensation plans and the risks these plans pose to the TARP recipient; (2) the compensation committee has identified and limited the features in the SEO compensation plans that could lead SEOs to take unnecessary or excessive risks that could threaten the value of the TARP recipient, has identified any features in the employee compensation plans that pose risks to the TARP recipient, and has limited those features to ensure that the TARP recipient is not unnecessarily exposed to risks; (3) the compensation committee has reviewed at least every six months the terms of each employee compensation plan and identified and limited the features in the plan that could encourage the manipulation of reported earnings of the TARP recipient to enhance the compensation of an employee; (4) the compensation committee will certify to these reviews; (5) the compensation committee will provide a narrative description of how it limited the features in (i) SEO compensation plans that could lead SEOs to take unnecessary and excessive risks that could threaten the value of the TARP recipient, (ii) employee compensation plans to ensure that the TARP recipient is not unnecessarily exposed to risks, and (iii) employee compensation plans that could encourage the manipulation of reported earnings of the TARP recipient to enhance the compensation of an employee; (6) the TARP recipient has required that all bonuses, retention awards, and incentive compensation of the SEOs and next twenty most highly compensated employees be subject to a provision for recovery or ''clawback'' by the TARP recipient if the payments were based on materially inaccurate financial statements or any other materially inaccurate performance metric criteria; (7) the TARP recipient has prohibited any golden parachute payment to the SEOs and the next five most highly compensated employees; (8) the TARP recipient has limited bonuses, retention awards, and incentive compensation paid to or accrued by employees to whom the bonus payment limitation applies; (9) for a TARP recipient that has securities registered with the SEC under the Federal securities laws, it will permit a non-binding shareholder resolution on the SEO compensation disclosures provided under the Federal securities laws in accordance with any guidance, rules, and regulations promulgated by the SEC; (10) the TARP recipient has adopted and maintains an excessive or luxury expenditures policy and has provided this policy to Treasury in each case in accordance with the requirements under the Interim Final Rule; (11) the TARP recipient will disclose the amount, nature, and justification for the offering of any perquisites whose total value exceeds $25,000 for each of the employees subject to the bonus payment limitations; (12) the TARP recipient will disclose whether the TARP recipient, the board, or the compensation committee has engaged a compensation consultant, and the services the compensation consultant or any affiliate provided; (13) the TARP recipient has prohibited any tax gross-ups on compensation to the SEOs and the next twenty most highly compensated employees; (14) the TARP recipient has substantially complied with any compensation requirements set forth in the agreement between the TARP recipient and the Treasury, as may have been amended; (15) certain employees named in the certification are the SEOs and most highly compensated employees for the current fiscal year based on their compensation during the prior fiscal year; and (16) the officer certifying understands that a knowing and willful false or fraudulent statement made in connection with the certification may be punished by fine, imprisonment, or both (*See,* for example 18 U.S.C. 1001). In addition, the PEO and the PFO of a TARP recipient receiving exceptional financial assistance must certify that the TARP recipient has either limited annual compensation to $500,000 (excluding grants of long-term restricted stock but including certain pension benefits and deferred compensation accruals otherwise excluded from annual compensation) for any executive officer or one of the 100 most highly compensated employees who is not subject to the bonus payment limitations and has or will pay any additional compensation in the form of long-term restricted stock, or to the extent not so limited the TARP recipient has had the compensation structure of those employees approved by the Office of the Special Master for TARP Executive Compensation.

Section 30.15 (Q–15) of the Interim Final Rule requires that TARP recipients that have securities registered with the SEC pursuant to the Federal securities laws provide these certifications on Exhibit 99.1 in their annual report on Form 10–K and to Treasury, and that a TARP recipient that does not have securities registered with the SEC under the Federal securities laws provide these certifications to its primary regulatory agency and to Treasury. The TARP recipient must also preserve appropriate documentation and records to substantiate each certification for no less than six years after the date of the certification, the first two years in an easily accessible place, and must furnish promptly to Treasury any documentation and records requested by Treasury.

Section 30.15 (Q–15) of the Interim Final Rule also affirms that any individual or entity making or providing false information or certifications to Treasury pursuant to the Interim Final Rule or as required pursuant to this part may be subject to the criminal penalties under title 18 of the U.S. Code or other provision of Federal law.

To comply with EESA Section 111 and this Interim Final Rule, TARP recipients generally will need to modify compensation structures. For a small number of TARP recipients—those receiving exceptional assistance—the new compensation structures and compensation payments for SEOs and the most highly paid employees are subject to review and approval by the Office of the Special Master for TARP Executive Compensation (described below). In other instances, TARP recipients may find it helpful to have guidance as to how the rules apply to their particular circumstances, or confirmation that their modified compensation arrangements are compliant. In addition, under section 111(f), the Secretary is charged with reviewing bonuses, retention awards, and other compensation paid before February 17, 2009 to SEOs and the next twenty most highly compensated employees, and is required to determine whether any such payments were inconsistent with the purposes of EESA section 111 or the TARP, or were otherwise contrary to the public interest.

To conduct these reviews most efficiently, and to ensure that the rules are applied consistently and equitably, this Interim Final Rule establishes an Office of the Special Master for TARP Executive Compensation (Special Master). As described in Section 30.16 (Q–16) of the Interim Final Rule, the Special Master will be appointed by, and serve at the pleasure of, the Secretary. The Secretary may remove the Special Master without notice,

without cause, and before the naming of any successor Special Master. The scope of the Special Master's authority and responsibility is limited to compensation and corporate governance matters under section 111 with respect to TARP recipients, and the Special Master has no authority to provide guidance or review any submissions with respect to matters other than compensation and corporate governance matters under section 111, or to provide guidance or review any submissions with respect to compensation or corporate governance matters of employers that are not TARP recipients. The Secretary has delegated to the Special Master the authority to (1) interpret the application of the restrictions on executive compensation and corporate governance requirements for TARP recipient employees under EESA, these regulations, and any other applicable guidance, to specific facts and circumstances; (2) administer section 111(f) of EESA, which requires the Secretary to review bonuses, retention awards, and other compensation paid before February 17, 2009 to employees of each entity receiving TARP assistance, to determine whether any such payments were inconsistent with the purposes of EESA section 111 or the TARP, or otherwise contrary to the public interest, and which further requires that, if the Secretary makes such a determination, the Secretary seek to negotiate with the TARP recipient and the employee for appropriate reimbursements to the Federal Government with respect to compensation or bonuses; (3) approve compensation payments to, and compensation structures for, certain employees of TARP recipients receiving exceptional financial assistance; (4) provide opinions, as requested or otherwise as appropriate, regarding payments to, or compensation structures for, other employees of TARP recipients; and (5) perform such other duties as the Secretary may delegate from time to time to the Special Master relating to executive compensation issues under the TARP, including the specific application of any terms or conditions in a contract between the Treasury and a TARP recipient. Section 30.16 (Q–16) also outlines a set of principles that the Special Master is required to follow in conducting these reviews.

Treasury requests comments on potential procedures and terms under which employees may return compensation to the TARP recipient or the TARP recipient may reimburse Treasury either for compensation paid that the Special Master has determined is inconsistent with the purposes of EESA section 111 or the TARP, or otherwise contrary to the public interest, or for compensation that was paid contrary to the requirements of EESA section 111 and this Interim Final Rule.

Section 30.17 (Q–17) of the Interim Final Rule states that the standards under the Interim Final Rule are effective upon June 15, 2009, except with respect to certain sections of the ARRA amendments that were effective immediately upon enactment of the statute (for example, amended section 111(d) requiring a nonbinding shareholder vote on executive compensation). Accordingly, the bonus payment limitations under the Interim Final Rule will not apply to bonuses, retention awards, and incentive compensation paid or accrued by TARP recipients or their employees prior to June 15, 2009, and the enhanced golden parachute prohibition will not apply to amounts paid prior to June 15, 2009. In addition, as discussed above, the bonus payment limitations under the Interim Final Rule will not apply to bonuses, retention awards, and incentive compensation required to be paid pursuant to a written employment contract executed on or before February 11, 2009 (a grandfathered arrangement), that is paid on or after June 15, 2009. However, the Special Master may provide an advisory opinion on either or both of these categories of payments, stating whether such payments are consistent with ARRA or EESA, or otherwise contrary to the public interest, under the same standards applied to the Special Master's review of compensation paid to certain employees prior to the enactment date of ARRA, and may seek reimbursement of such payments where appropriate. Finally, the Special Master will take into account any payment made prior to June 15, 2009, or any payment made or that may be made pursuant to a grandfathered arrangement, as part of the Special Master's review of the compensation payments and structures required to be approved by the Special Master for certain employees of TARP recipients receiving exceptional assistance, and for any advisory opinion the Special Master may issue with respect to a compensation structure for, or compensation payment to, a TARP recipient employee.

In addition, for the period before June 15, 2009, the provisions of the October 2008 Interim Final Rule, Notice 2008–PSSFI, and Notice 2008–TAAP, remained in effect. Subject to ARRA and this Interim Final Rule, all contractual provisions to which a TARP recipient agreed prior to the enactment of ARRA or the publication of this Interim Final Rule also continue in effect.

IV. Procedural Requirements

Justification for Interim Rulemaking

The Interim Final Rule is promulgated pursuant to EESA, as amended, which immediately provides for authority and facilities that the Secretary can use to restore liquidity and stability to the financial system of the United States. Specifically, the Interim Final Rule implements certain provisions of section 111 of EESA, which directs Treasury to establish executive compensation and corporate governance standards for entities receiving financial assistance under the TARP.

To encourage entities to choose or continue to participate in the TARP, those entities must have timely and reliable information with respect to the applicable executive compensation and corporate governance rules that apply under the TARP. Accordingly, because of exigencies in the financial markets, Treasury finds that it would be contrary to the public interest, pursuant to 5 U.S.C. 553(b)(B), to delay the issuance of the Interim Final Rule pending an opportunity for public comment and good cause exists to dispense with this requirement. For the same reasons, pursuant to 5 U.S.C. 553(d)(3), Treasury has determined that there is good cause for the Interim Final Rule to become effective immediately upon publication. While the Interim Final Rule is effective immediately upon publication, Treasury is inviting public comment on the Interim Final Rule during a sixty-day period and will consider all comments in developing a final rule.

Regulatory Planning and Review

The Interim Final Rule is designated as a ''significant regulatory action'' as defined in Executive Order 12866. The agency has not prepared a regulatory impact analysis consistent with the OMB Circular A–4 that examines the likely benefits and costs associated with this interim rule. The agency plans to prepare such analysis when it promulgates a final rule that will supersede this rulemaking.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the Interim Final Rule is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C chapter 6).

Paperwork Reduction Act

The information collection contained in the Interim Final Rule has been submitted to the Office of Management

and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 35) and OMB approval is pending. Under the Paperwork Reduction Act, an agency may not conduct or sponsor, and an individual is not required to respond to, a collection of information unless it displays a valid OMB control number. Comments on the collection of information should be sent to the Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (or by e-mail to *oira_submission@omb.eop.gov*) with a copy to Executive Compensation Comments, Office of Financial Institutions Policy, Room 1418, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

List of Subjects in 31 CFR Part 30

Executive compensation, Troubled assets.

■ Accordingly, under the authority of 12 U.S.C. 5221, for the reasons set out in the preamble, Treasury amends 31 CFR Subtitle A by revising part 30 to read as follows:

PART 30—TARP STANDARDS FOR COMPENSATION AND CORPORATE GOVERNANCE

Sec.

30.0 Executive compensation and corporate governance.
30.1 Q–1: What definitions apply in this part?
30.2 Q–2: To what entities does this part apply?
30.3 Q–3: How are the SEOs and the most highly compensated employees identified for purposes of compliance with this part?
30.4 Q–4: What actions are necessary for a TARP recipient to comply with the standards established under sections 111(b)(3)(A), 111(b)(3)(E), 111(b)(3)(F) and 111(c) of EESA (evaluation of employee plans and potential to encourage excessive risk or manipulation of earnings)?
30.5 Q–5: How does a TARP recipient comply with the requirements under § 30.4 (Q–4) of this part that the compensation committee discuss, evaluate, and review the SEO compensation plans and other employee compensation plans to ensure that the SEO compensation plans do not encourage the SEOs to take unnecessary and excessive risks that threaten the value of the TARP recipient, or that the employee compensation plans pose unnecessary risks to the TARP recipient?
30.6 Q–6: How does a TARP recipient comply with the requirement under § 30.4 (Q–4) of this part that the compensation committee discuss, evaluate, and review the employee compensation plans to ensure that these plans do not encourage the manipulation of reported earnings of the TARP recipient to enhance the compensation of any of the TARP recipient's employees?
30.7 Q–7: How does a TARP recipient comply with the certification and disclosure requirements under § 30.4 (Q–4) of this part?
30.8 Q–8: What actions are necessary for a TARP recipient to comply with the standards established under section 111(b)(3)(B) of EESA (the ''clawback'' provision requirement)?
30.9 Q–9: What actions are necessary for a TARP recipient to comply with the standards established under section 111(b)(3)(C) of EESA (the prohibition on golden parachute payments)?
30.10 Q–10: What actions are necessary for a TARP recipient to comply with section 111(b)(3)(D) of EESA (the limitation on bonus payments)?
30.11 Q–11: Are TARP recipients required to meet any other standards under the executive compensation and corporate governance standards in section 111 of EESA?
30.12 Q–12: What actions are necessary for a TARP recipient to comply with section 111(d) of EESA (the excessive or luxury expenditures policy requirement)?
30.13 Q–13: What actions are necessary for a TARP recipient to comply with section 111(e) of EESA (the shareholder resolution on executive compensation requirement)?
30.14 Q–14: How does section 111 of EESA operate in connection with an acquisition, merger, or reorganization?
30.15 Q–15: What actions are necessary for a TARP recipient to comply with the certification requirements of section 111(b)(4) of EESA?
30.16 Q–16: What is the Office of the Special Master for TARP Executive Compensation, and what are its powers, duties and responsibilities?
30.17 Q–17: How do the effective date provisions apply with respect to the requirements under section 111 of EESA?

Authority: 12 U.S.C. 5221; 31 U.S.C. 321.

§ 30.0 Executive compensation and corporate governance.

The following questions and answers reflect the executive compensation and corporate governance requirements of section 111 of the Emergency Economic Stabilization Act of 2008, as amended (12 U.S.C. 5221) (EESA), with respect to participation in the Troubled Assets Relief Program (TARP) established by the Department of the Treasury (Treasury) thereunder.

§ 30.1 Q–1: What definitions apply in this part?

Affiliate. The term ''affiliate'' means an ''affiliate'' as that term is defined in Rule 405 of the Securities Act of 1933 (17 CFR 230.405).

Annual compensation. (1) *General rule.* The term ''annual compensation'' means, except as otherwise explicitly provided in this part, the dollar value for total compensation for the applicable fiscal year as determined pursuant to Item 402(a) of Regulation S–K under the Federal securities laws (17 CFR 229.402(a)). Accordingly, for this purpose the amounts required to be disclosed pursuant to paragraph (c)(2)(viii) of Item 402(a) of Regulation S–K (actuarial increases in pension plans and above market earnings on deferred compensation) are not required to be included in annual compensation.

(2) *Application to private TARP recipients.* For purposes of determining annual compensation, a TARP recipient that does not have securities registered with the SEC pursuant to the Federal securities laws must follow the requirements set forth in paragraph (1) of this definition.

ARRA. The term ''ARRA'' means the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5).

Benefit plan. The term ''benefit plan'' means any plan, contract, agreement or other arrangement that is an ''employee welfare benefit plan'' as that term is defined in section 3(1) of the Employee Retirement Income Security Act of 1974, as amended (29 U.S.C. 1002(1)), or other usual and customary plans such as dependent care, tuition reimbursement, group legal services or cafeteria plans; provided, however, that this term does not include:

(1) Any plan that is a deferred compensation plan; or

(2) Any severance pay plan, whether or not nondiscriminatory, or any other arrangement that provides for payment of severance benefits to eligible employees upon voluntary termination for good reason, involuntary termination, or termination under a window program as defined in 26 CFR 1.409A–1(b)(9)(vi).

Bonus. The term ''bonus'' means any payment in addition to any amount payable to an employee for services performed by the employee at a regular hourly, daily, weekly, monthly, or similar periodic rate. Such term generally does not include payments to or on behalf of an employee as contributions to any qualified retirement plan (as defined in section 4974(c) of the Internal Revenue Code (26 U.S.C. 4974(c)), benefits under a broad-based benefit plan, bona fide overtime pay, or bona fide and routine expense reimbursements. In addition, provided that the rate of commission is pre-established and reasonable, and is applied consistently to the sale of substantially similar goods or services, commission compensation will not be treated as a bonus. For this purpose, a

bonus may include a contribution to, or other increase in benefits under, a nonqualified deferred compensation plan, regardless of when the actual payment will be made under the plan. A bonus may also qualify as a retention award or as incentive compensation.

Bonus payment. For purposes of this part, except where otherwise noted, the term ''bonus payment'' includes a payment that is, or is in the nature of, a bonus, incentive compensation, or retention award. Whether a payment is a bonus payment, or whether the right to a payment is a right to a bonus payment, is determined based upon all the facts and circumstances, and a payment may be a bonus payment regardless of the characterization of such payment by the TARP recipient or the employee. For purposes of this part, a bonus payment may include the forgiveness of a loan or other amount that otherwise may be required to be paid by the employee to the employer.

Commission compensation. (1) *Definition.* The term ''commission compensation'' means:

(i) Compensation or portions of compensation earned by an employee consistent with a program in existence for that type of employee as of February 17, 2009, if a substantial portion of the services provided by this employee consists of the direct sale of a product or service to an unrelated customer, these sales occur frequently and in the ordinary course of business of the TARP recipient (but not a specified transaction, such as an initial public offering or sale or acquisition of a specified entity or entities), the compensation paid by the TARP recipient to the employee consists of either a portion of the purchase price for the product or service sold to the unrelated customer or an amount substantially all of which is calculated by reference to the volume of sales to the unrelated customers, and payment of the compensation is either contingent upon the TARP recipient receiving payment from the unrelated customer for the product or service or, if applied consistently to all similarly situated employees, is contingent upon the closing of the sales transaction and such other requirements as may be specified by the TARP recipient before the closing of the sales transaction with the unrelated customer;

(ii) Compensation or portions of compensation earned by an employee that meet the requirements of paragraph (1)(i) of this definition except that the transaction occurs with a related customer, provided that substantial sales from which commission compensation arises are made, or substantial services from which commission compensation arises are provided, to unrelated customers by the service recipient, the sales and service arrangement and the commission arrangement with respect to the related customer are bona fide, arise from the service recipient's ordinary course of business, and are substantially the same, both in term and in practice, as the terms and practices applicable to unrelated customers to which individually or in the aggregate substantial sales are made or substantial services provided by the service recipient; or

(iii) Compensation or portions of compensation earned by an employee consistent with a program in existence for that type of employee as of February 17, 2009, if a substantial portion of the services provided by this employee to the TARP recipient consists of sales of financial products or other direct customer services with respect to unrelated customer assets or unrelated customer asset accounts that are generally intended to be held indefinitely (and not customer assets intended to be used for a specific transaction, such as an initial public offering, or sale or acquisition of a specified entity or entities), the unrelated customer retains the right to terminate the customer relationship and may move or liquidate the assets or asset accounts without undue delay (which may be subject to a reasonable notice period), the compensation consists of a portion of the value of the unrelated customer's overall assets or asset account balance, an amount substantially all of which is calculated by reference to the increase in the value of the overall assets or account balance during a specified period, or both, or is calculated by reference to a contractual benchmark (such as a securities index or peer results), and the value of the overall assets or account balance and commission compensation is determined at least annually. For purposes of this definition, a customer is treated as an unrelated customer if the person would not be treated as related to the TARP recipient under 26 CFR 1.409A–1(f)(2)(ii) and the person would not be treated as providing management services to the TARP recipient under 26 CFR 1.409A–1(f)(2)(iv).

(2) *Examples.* The following examples illustrate the provisions of paragraph (1) of this definition:

Example 1. Employee A is an employee of TARP recipient. Among TARP recipient's businesses is the sale of life insurance policies, and TARP recipient buys and sells such policies frequently as part of its ordinary course of business. Employee A's primary duties consist of selling life insurance policies to customers unrelated to the TARP recipient. Under a commission program existing for all TARP Recipient employees selling life insurance policies as of February 17, 2009, Employee A is entitled to receive an amount equal to 75% of the total first year's premium paid by an unrelated customer to whom Employee A has sold a life insurance policy. The payments to Employee A under the program constitute commission compensation.

Example 2. The same facts as Example 1, except that under the program, the rate of commission increases to 80% of the total first year's premium paid by a customer once Employee A has sold $10 million in policies in a year. Provided that 80% is a reasonable commission, the payments to Employee A under the program constitute commission compensation.

Example 3. Employee B is an employee of TARP recipient. Among TARP recipient's businesses is the investment management of unrelated customer asset accounts, and TARP recipient provides such services routinely and in the ordinary course of business. Employee B's primary duties as an employee consist of managing the investments of the asset accounts of specified unrelated customers who have deposited amounts with the TARP recipient. Under a program in existence on February 17, 2009, Employee B is entitled to receive an amount equal to 1% of the aggregate account balances of the assets under management, as determined each December 31. The payments to Employee B constitute commission compensation.

Example 4. TARP recipient employs Employee C. As part of Employee C's duties, Employee C is responsible for specified aspects of any acquisition of an unrelated entity by TARP Recipient. As part of an acquisition in 2009, Employee C is entitled to 1% of the purchase price if and when the transaction closes. Regardless of whether such an arrangement was customary or established under a specific program as of February 17, 2009, the amount is not commission compensation because the compensation relates to a specified transaction, in this case the purchase of the entity. Accordingly, the compensation is incentive compensation.

Example 5. TARP recipient employs Employee D. As part of Employee D's duties, Employee D is responsible for managing the initial public offerings of securities of unrelated customers of TARP recipient. As part of an initial public offering in 2009, Employee D is entitled to 1% of the purchase price if and when the initial public offering closes. Regardless of whether such an arrangement was customary or established under a specific program as of February 17, 2009, the amount is not commission compensation because the compensation relates to a specified transaction, in this case the initial public offering. Accordingly, the compensation is incentive compensation.

Compensation means all remuneration for employment, including but not limited to salary, commissions, tips, welfare benefits,

retirement benefits, fringe benefits and perquisites.

Compensation committee. (1) *General rule.* The term ''compensation committee'' means a committee of independent directors, whose independence is determined pursuant to Item 407(a) of Regulation S–K under the Federal securities laws (17 CFR 229.407(a)).

(2) *Application to private TARP recipients.* For purposes of determining director independence, a TARP recipient that does not have securities registered with the SEC pursuant to the Federal securities laws must follow the requirements set forth in Item 407(a)(1)(ii) of Regulation S–K under the Federal securities laws (17 CFR 229.407(a)(1)(ii)).

Compensation structure. The term ''compensation structure'' means the characteristics of the various forms of total compensation that an employee receives or may receive, including the amounts of such compensation or potential compensation relative to the amounts of other types of compensation or potential compensation, the amounts of such compensation or potential compensation relative to the total compensation over the relevant period, and how such various forms of compensation interrelate to provide the employee his or her ultimate total compensation. These characteristics include, but are not limited to, whether the compensation is provided as salary, short-term incentive compensation, or long-term incentive compensation, whether the compensation is provided as cash compensation, equity-based compensation, or other types of compensation (such as executive pensions, other benefits or perquisites), and whether the compensation is provided as current compensation or deferred compensation.

Deferred compensation plan. The term ''deferred compensation plan'' means

(1) Any plan, contract, agreement, or other arrangement under which an employee voluntarily elects to defer all or a portion of the reasonable compensation, wages, or fees paid for services rendered which otherwise would have been paid to the employee at the time the services were rendered (including a plan that provides for the crediting of a reasonable investment return on such elective deferrals), provided that the TARP recipient either:

(i) Recognizes a compensation expense and accrues a liability for the benefit payments according to GAAP; or

(ii) Segregates or otherwise sets aside assets in a trust which may only be used to pay plan and other benefits, except that the assets of this trust may be available to satisfy claims of the TARP recipient's creditors in the case of insolvency; or

(2) A nonqualified deferred compensation or supplemental retirement plan, other than an elective deferral plan established by a TARP recipient:

(i) Primarily for the purpose of providing benefits for a select group of directors, management, or highly compensated employees in excess of the limitations on contributions and benefits imposed by sections 415, 401(a)(17), 402(g) or any other applicable provision of the Internal Revenue Code (26 U.S.C. 415, 401(a)(17), 402(g)); or

(ii) Primarily for the purpose for providing supplemental retirement benefits or other deferred compensation for a select group of directors, management or highly compensated employees (excluding severance payments).

EESA. The term ''EESA'' means the Emergency Economic Stabilization Act of 2008, as amended.

Employee. The term ''employee'' means an individual serving as a servant in the conventional master-servant relationship as understood by the common-law agency doctrine. In general, a partner of a partnership, a member of a limited liability company, or other similar owner in a similar type of entity, will not be treated as an employee for this purpose. However, to the extent that the primary purpose for the creation or utilization of such partnership, limited liability company, or other similar type of entity is to avoid or evade any or all of the requirements of section 111 of EESA or these regulations with respect to a partner, member or other similar owner, the partner, member or other similar owner will be treated as an employee. In addition, a personal service corporation or similar intermediary between the TARP recipient and an individual providing services to the TARP recipient will be disregarded for purposes of determining whether such individual is an employee of the TARP recipient.

Employee compensation plan. The term ''employee compensation plan'' means ''plan'' as that term is defined in Item 402(a)(6)(ii) of Regulation S–K under the Federal securities laws (17 CFR 229.402(a)(6)(ii)), but only any employee compensation plan in which two or more employees participate and without regard to whether an executive officer participates in the employee compensation plan.

Exceptional financial assistance. The term ''exceptional financial assistance'' means any financial assistance provided under the Programs for Systemically Significant Failing Institutions, the Targeted Investment Program, the Automotive Industry Financing Program, and any new program designated by the Secretary as providing exceptional financial assistance.

Excessive or luxury expenditures. The term ''excessive or luxury expenditures'' means excessive expenditures on any of the following to the extent such expenditures are not reasonable expenditures for staff development, reasonable performance incentives, or other similar reasonable measures conducted in the normal course of the TARP recipient's business operations:

(1) Entertainment or events;

(2) Office and facility renovations;

(3) Aviation or other transportation services; and

(4) Other similar items, activities, or events for which the TARP recipient may reasonably anticipate incurring expenses, or reimbursing an employee for incurring expenses.

Excessive or luxury expenditures policy. The term ''excessive or luxury expenditures policy'' means written standards applicable to the TARP recipient and its employees that address the four categories of expenses set forth in the definition of ''excessive or luxury expenditures'' (entertainment or events, office and facility renovations, aviation or other transportation services, and other similar items, activities or events), and that are reasonably designed to eliminate excessive and luxury expenditures. Such written standards must:

(1) Identify the types or categories of expenditures which are prohibited (which may include a threshold expenditure amount per item, activity, or event or a threshold expenditure amount per employee receiving the item or participating in the activity or event);

(2) Identify the types or categories of expenditures for which prior approval is required (which may include a threshold expenditure amount per item, activity, or event or a threshold expenditure amount per employee receiving the item or participating in the activity or event);

(3) Provide reasonable approval procedures under which an expenditure requiring prior approval may be approved;

(4) Require PEO and PFO certification that the approval of any expenditure requiring the prior approval of any SEO, any executive officer of a substantially similar level of responsibility, or the TARP recipient's board of directors (or

a committee of such board of directors), was properly obtained with respect to each such expenditure;

(5) Require the prompt internal reporting of violations to an appropriate person or persons identified in this policy; and

(6) Mandate accountability for adherence to this policy.

Executive officer. The term ''executive officer'' means an ''executive officer'' as that term is defined in Rule 3b-7 of the Securities Exchange Act of 1934 (Exchange Act) (17 CFR 240.3b-7).

Financial assistance. (1) *Definition.* The term ''financial assistance'' means any funds or fund commitment provided through the purchase of troubled assets under the authority granted to Treasury under section 101 of EESA or the insurance of troubled assets under the authority granted to Treasury under section 102 of EESA, provided that the term ''financial assistance'' does not include any loan modification under sections 101 and 109 of EESA. A change in the form of previously received financial assistance, such as a conversion of convertible preferred stock to common stock, is not treated as new or additional financial assistance.

(2) *Examples.* The following examples illustrate the provisions of paragraph (1) of this definition:

Example 1. Company A sells $500,000,000 of preferred stock to Treasury through the Capital Purchase Program. Company A has received financial assistance.

Example 2. Company B posts collateral to and receives a loan from the Federal Reserve special purpose vehicle under the Term Asset-Backed Security Loan Facility program. Company B has neither sold troubled assets to Treasury, nor insured troubled assets through Treasury, and therefore has not received financial assistance.

Example 3. LP C is a limited partnership established for the purpose of participating in the Public Private Investment Program. LP C has a general partner (GP) that makes management decisions on behalf of LP C. A limited liability company controlled by an affiliate of GP (LLC partner) raises $55,000,000 from twenty investors, with each investing equal shares, joins LP C as a limited partner, and invests those funds for a 55% equity interest in LP C. LP C sells a $45,000,000 equity interest to Treasury. LP C, at the direction of the GP, will buy and sell securities as investments and manage those investments. LP C will contract for investment advice from an investment advisor that is an affiliate of GP. LP C has received financial assistance. LLC partner has received financial assistance because it is treated as the same employer as LP C according to the standards set forth in paragraph (1)(ii) of the definition of ''TARP recipient''. The investors in the LLC partner have not received financial assistance because they are not treated as the same employer as LP C according to the standards set forth in paragraph (1)(ii) of the definition of ''TARP recipient''. GP is not an employee of LP C pursuant to the definition of ''employee'' in this rule, and is not treated as the same employer as LP C according to the standards set forth in paragraph (1)(ii) of the definition of ''TARP recipient''. The investment advisor-contractor to LP C has not received financial assistance. Entities that sell securities to or buy securities from LP C have neither sold troubled assets to Treasury nor insured troubled assets through Treasury, and therefore have not received financial assistance.

Example 4. Company D, a servicer of mortgage loans or mortgaged-backed securities, issues a financial instrument to Treasury's financial agent in which Company D commits to modify mortgages it is servicing consistent with guidelines established by Treasury under the Home Affordable Modification Program. Treasury, through its financial agent, commits to pay up to $800,000,000 in incentive payments and credit enhancements for Company E's commitment to modify mortgages. Company E has not received financial assistance.

GAAP. The term ''GAAP'' means U.S. generally accepted accounting principles.

Golden parachute payment. (1) *General rule.* The term ''golden parachute payment'' means any payment for the departure from a TARP recipient for any reason, or any payment due to a change in control of the TARP recipient or any entity that is included in a group of entities treated as one TARP recipient, except for payments for services performed or benefits accrued. For this purpose, a change in control includes any event that would qualify as a change in control event as defined in 26 CFR 1.280G–1, Q&A–27 through Q&A–29 or as a change in control event as defined in 26 CFR 1.409A–3(i)(5)(i). For this purpose, a golden parachute payment includes the acceleration of vesting due to the departure or the change in control event, as applicable. A golden parachute payment is treated as paid at the time of departure or change in control event, and is equal to the aggregate present value of all payments made for a departure or a change in control event (including the entire aggregate present value of the payment if the vesting period was not otherwise completed but was accelerated due to departure, regardless of whatever portion of the required vesting period the employee had completed). Thus, a golden parachute payment may include a right to amounts actually payable after the TARP period.

(2) *Exclusions.* For purposes of this part, a golden parachute payment does not include any of the following:

(i) Any payment made pursuant to a pension or retirement plan which is qualified (or is intended within a reasonable period of time to be qualified) under section 401 of the Internal Revenue Code (26 U.S.C. 401) or pursuant to a pension or other retirement plan which is governed by the laws of any foreign country;

(ii) Any payment made by reason of the departure of the employee due to the employee's death or disability; or

(iii) Any severance or similar payment which is required to be made pursuant to a State statute or foreign law (independent of any terms of a contract or other agreement) which is applicable to all employers within the appropriate jurisdiction (with the exception of employers that may be exempt due to their small number of employees or other similar criteria).

(3) *Payments for services performed or benefits accrued.* (i) *General rules.* Except as otherwise provided for payments made under a deferred compensation plan or a benefit plan in paragraph (4) of this definition, a payment made, or a right to a payment arising under a plan, contract, agreement, or other arrangement (including the acceleration of any vesting conditions) is for services performed or benefits accrued only if the payment was made, or the right to the payment arose, for current or prior services to the TARP recipient (except that an appropriate allowance may be made for services for a predecessor employer). Whether a payment is for services performed or benefits accrued is determined based on all the facts and circumstances. However, a payment, or a right to a payment, generally will be treated as a payment for services performed or benefits accrued only if the payment would be made regardless of whether the employee departs or the change in control event occurs, or if the payment is due upon the departure of the employee, regardless of whether the departure is voluntary or involuntary (other than reasonable restrictions, such as the forfeiture of the right to a payment for an involuntary departure for cause, but not restrictions relating to whether the departure was a voluntary departure for good reason or subsequent to a change in control).

(ii) *Examples.* The following examples illustrate the general rules in paragraph (3)(i) of this definition:

Example 1. Employee A is a SEO of Entity B at all relevant times. On September 1, 2007, Employee A received a stock appreciation right granting him the right to appreciation on the underlying shares that would vest 25% for every twelve months of continued services. Under the terms of the grant, the stock appreciation right would be immediately exercised and payable upon termination of employment. Entity B

becomes a TARP recipient in December 2008. On September 1, 2009, Entity B involuntarily terminates Employee A, at which time Employee A receives a payment equal to the post-September 1, 2007 appreciation on 50% of the shares under the stock appreciation right (the portion of the shares that had vested before the termination of employment). The payment is treated as a payment for services performed and does not constitute a golden parachute payment.

Example 2. The facts are the same as the facts in Example 1, except that under Employee A's employment agreement, Employee A is entitled to accelerate vesting if Employee A is terminated involuntarily other than for cause. If Entity B pays Employee A the post-September 1, 2007 appreciation on 100% of the shares under the stock appreciation right, the portion of the payment representing the additional 50% accelerated vesting due to the termination of employment would not be for services performed and would be a golden parachute payment.

(4) *Payments from benefit plans and deferred compensation plans.* A payment from a benefit plan or a deferred compensation plan is treated as a payment for services performed or benefits accrued only if the following conditions are met:

(i) The plan was in effect at least one year prior to the employee's departure;

(ii) The payment is made pursuant to the plan and is made in accordance with the terms of the plan as in effect no later than one year before the departure and in accordance with any amendments to the plan during this one year period that do not increase the benefits payable hereunder;

(iii) The employee has a vested right, as defined under the applicable plan document, at the time of the departure or the change in control event (but not due to the departure or the change in control event) to the payments under the plan;

(iv) Benefits under the plan are accrued each period only for current or prior service rendered to the TARP recipient (except that an appropriate allowance may be made for service for a predecessor employer);

(v) Any payment made pursuant to the plan is not based on any discretionary acceleration of vesting or accrual of benefits which occurs at any time later than one year before the departure or the change in control event; and

(vi) With respect to payments under a deferred compensation plan, the TARP recipient has previously recognized compensation expense and accrued a liability for the benefit payments according to GAAP or segregated or otherwise set aside assets in a trust which may only be used to pay plan benefits, except that the assets of this trust may be available to satisfy claims of the TARP recipient's creditors in the case of insolvency and payments pursuant to the plan are not in excess of the accrued liability computed in accordance with GAAP.

Gross-up. The term ''gross-up'' means any reimbursement of taxes owed with respect to any compensation, provided that a gross-up does not include a payment under a tax equalization agreement, which is an agreement, method, program, or other arrangement that provides payments intended to compensate an employee for some or all of the excess of the taxes actually imposed by a foreign jurisdiction on the compensation paid by the TARP recipient to the employee over the taxes that would be imposed if the compensation were subject solely to U.S. Federal, State, and local income tax, or some or all of the excess of the U.S. Federal, State, and local income tax actually imposed on the compensation paid by the TARP recipient to the employee over the taxes that would be imposed if the compensation were subject solely to taxes in the applicable foreign jurisdiction, provided that the payment made under such agreement, method, program, or other arrangement may not exceed such excess and the amount necessary to compensate for the additional taxes on the amount paid under the agreement, method, program, or other arrangement.

Incentive compensation. The term ''incentive compensation'' means compensation provided under an incentive plan.

Incentive plan. (1) *Definition.* The term ''incentive plan'' means an ''incentive plan'' as that term is defined in Item 402(a)(6)(iii) of Regulation S–K under the Federal securities laws (17 CFR 229.402(a)(6)(iii)), and any plan providing stock or options as defined in Item 402(a)(6)(i) of Regulation S–K under the Federal securities laws (17 CFR 229.402(a)(6)(i)) or other equity-based compensation such as restricted stock units or stock appreciation rights, except for the payment of salary or other permissible payments in stock, stock units, or other property as described in paragraph (2) of this definition. An incentive plan does not include the payment of salary, but does include an arrangement under which an employee would earn compensation in the nature of a commission, unless such compensation qualifies as commission compensation (as defined above). Accordingly, an incentive plan includes an arrangement under which an employee receives compensation only upon the completion of a specified transaction, such as an initial public offering or sale or acquisition of a specified entity or entities, regardless of how such compensation is measured. For examples, *see* the definition of ''commission compensation,'' above. An incentive plan, or a grant under an incentive plan, may also qualify as a bonus or a retention award.

(2) *Salary or other permissible payments paid in property.* The term ''incentive plan'' does not include an arrangement under which an employee receives salary or another permissible payment in property, such as TARP recipient stock, provided that such property is not subject to a substantial risk of forfeiture (as defined in 26 CFR 1.83–3(c)) or other future period of required services, the amount of the payment is determinable as a dollar amount through the date such compensation is earned (for example, an agreement that salary payments will be made in stock equal to the value of the cash payment that would otherwise be due), and the amount of stock or other property accrues at the same time or times as the salary or other permissible payments would otherwise be paid in cash. The term ''incentive plan'' also does not include an arrangement under which an employee receives a restricted stock unit that is analogous to TARP recipient stock, that otherwise meets the requirements of the previous sentence. For this purpose, a unit is analogous to stock if the unit is based upon stock of the TARP recipient, or is applied as if the applicable entity, division, or other unit were a corporation with one class of stock and the number of units of stock granted is determined based on a fixed percentage of the overall value of this corporation, and the term ''TARP recipient stock'' with respect to a particular employee recipient means the stock of a corporation (or the entity, division, or other unit the value of which forms the basis for the unit) that is an ''eligible issuer of service recipient stock'' under 26 CFR 1.409A–1(b)(5)(iii)(E) (applied by analogy to non-corporate entities).

(3) *Examples.* The following examples illustrate the provisions of paragraph (2) of this definition.

Example 1. Employee is an employee of TARP recipient. For 2010, TARP recipient agrees to pay a salary of $15,000, payable monthly. At each salary payment date Employee will receive a $10,000 payment in cash, and be transferred a number of shares of common stock of TARP recipient equal to $5,000 divided by the fair market value of a share of common stock on the salary payment date. The arrangement is for the payment of salary, and is not an incentive plan.

Example 2. Same facts as *Example 1,* except that pursuant to a valid elective deferral election, Employee elects to defer

20% of each salary payment into a nonqualified deferred compensation plan. At each salary payment date Employee will receive an $8,000 payment in cash, be transferred a number of shares of common stock of TARP recipient equal to $4,000 divided by the fair market value of a share of common stock on the salary payment date, and a $3,000 contribution to an account under a nonqualified deferred compensation plan. The arrangement is for the payment of salary, and is not an incentive plan.

Example 3. Employee is an employee of TARP recipient. For 2010, TARP recipient agrees to pay a salary of $15,000, payable monthly. At each salary payment date, Employee will receive a $10,000 payment in cash, and accrue a right to a number of shares of common stock of TARP recipient equal to $5,000 divided by the fair market value of a share of common stock on the salary payment date. At the end of the year, TARP recipient will transfer the total number of accrued shares to Employee, subject to a multi-year holding period (a restriction that the shares may not be transferred or otherwise disposed of by Employee for a specified number of years). If Employee's employment with the TARP recipient terminates during the holding period, the termination will not affect the duration or application of the holding period or Employee's right to retain the shares and to transfer or otherwise dispose of them at the end of the holding period. The arrangement is for the payment of salary, and is not an incentive plan. The arrangement would also be for the payment of salary, and not an incentive plan, if the arrangement provided that the holding period was to last until the later of a specified time period or a specified time following Employee's retirement or other termination of employment.

Example 4. Employee is an employee of TARP recipient. For 2010, TARP recipient agrees to pay a salary of $15,000, payable monthly. At each salary payment date, Employee will receive a $10,000 payment in cash, and accrue a right to a contribution to an account equal to $5,000 divided by the fair market value of a share on the salary payment date. The account balance will be subject to notional gains and losses based on the investment return on TARP recipient common stock. The amount will be payable upon the last day of the second year immediately following the year the services are performed. The arrangement is for the payment of salary, and is not an incentive plan. However, the arrangement generally will provide deferred compensation for purposes of section 409A of the Internal Revenue Code.

Internal Revenue Code. The term ''Internal Revenue Code'' means the Internal Revenue Code of 1986, as amended.

Long-term restricted stock. The term ''long-term restricted stock'' means restricted stock or restricted stock units that include the following features:

(1) The restricted stock or restricted stock units are issued with respect to common stock of the TARP recipient. For this purpose, a restricted stock unit includes a unit that is payable, or may be payable, in cash or stock, provided that the value of the payment is equal to the value of the underlying stock. With respect to a specified division or other unit within a TARP recipient or a TARP recipient that is not a stock corporation, a unit analogous to common stock may be used. For this purpose, a unit is analogous to common stock if applied as if the entity, division, or other unit were a corporation with one class of common stock and the number of units of common stock granted is determined based on a fixed percentage of the overall value of this corporation. Notwithstanding the foregoing, with respect to a particular employee recipient, the corporation the stock of which is utilized (or the entity, division, or other unit the value of which forms the basis for the unit) must be an ''eligible issuer of service recipient stock'' under 26 CFR 1.409A–1(b)(5)(iii)(E) (applied by analogy to non-corporate entities).

(2) The restricted stock or restricted stock unit may not become transferable (as defined in 26 CFR 1.83–3(d)), or payable as applied to a restricted stock unit, at any time earlier than permitted under the following schedule (except as necessary to reflect a merger or acquisition of the TARP recipient):

(i) 25% of the shares or units granted at the time of repayment of 25% of the aggregate financial assistance received.

(ii) An additional 25% of the shares or units granted (for an aggregate total of 50% of the shares or units granted) at the time of repayment of 50% of the aggregate financial assistance received.

(iii) An additional 25% of the shares or units granted (for an aggregate total of 75% of the shares or units granted) at the time of repayment of 75% of the aggregate financial assistance received.

(iv) The remainder of the shares or units granted at the time of repayment of 100% of the aggregate financial assistance received.

(3) Notwithstanding the foregoing, in the case of restricted stock for which the employee does not make an election under section 83(b) of the Internal Revenue Code (26 U.S.C. 83(b)), at any time beginning with the date upon which the stock becomes substantially vested (as defined in 26 CFR 1.83–3(b)) and ending on December 31 of the calendar year including that date, a portion of the restricted stock may be made transferable as may reasonably be required to pay the Federal, State, local, or foreign taxes that are anticipated to apply to the income recognized due to this vesting, and the amounts made transferable for this purpose shall not count toward the percentages in the schedule above.

(4) The employee must be required to forfeit the restricted stock or restricted stock unit if the employee does not continue performing substantial services for the TARP recipient for at least two years from the date of grant, other than due to the employee's death or disability, or a change in control event (as defined in 26 CFR 1.280G–1, Q&A–27 through Q&A–29 or as defined in 26 CFR 1.409A–3(i)(5)(i)) with respect to the TARP recipient before the second anniversary of the date of grant.

(5) Nothing in paragraphs (1), (2), (3), and (4) of this definition is intended to prevent the placement on such restricted stock or restricted stock unit of any additional restrictions, conditions, or limitations that are not inconsistent with the requirements of these paragraphs.

Most highly compensated employee. (1) In general. The term ''most highly compensated employee'' means the employee of the TARP recipient, other than the SEOs of the TARP recipient, whose annual compensation is determined to be the highest among all employees of the TARP recipient, provided that, for this purpose, a former employee who is no longer employed as of the first day of the relevant fiscal year of the TARP recipient is not a most highly compensated employee unless it is reasonably anticipated that such employee will return to employment with the TARP recipient during such fiscal year.

(2) *Application to new entities.* For an entity that is created or organized in the same year that the entity becomes a TARP recipient, a most highly compensated employee for the first year includes the person that the TARP recipient determines will be the most highly compensated employee for the next year based upon a reasonable, good faith determination of the projected annual compensation of such person earned during that year. This determination must be made as of the later of the date the entity is created or organized or the date the entity becomes a TARP recipient, and must be made only once. However, a person need not yet be an employee to be treated as a most highly compensated employee, if it is reasonably anticipated that the person will become an employee of the TARP recipient during the first year.

Obligation. (1) *Definition.* The term ''obligation'' means a requirement for, or an ability of, a TARP recipient to repay financial assistance received from Treasury, as provided in the terms of the applicable financial instrument and related agreements, through the

repayment of a debt obligation or the redemption or repurchase of an equity security, but not including warrants to purchase common stock of the TARP recipient.

(2) *Examples.* The following examples illustrate the provisions of paragraph (1) of this definition.

Example 1. TARP recipient sells $500 million of preferred stock to Treasury, and provides warrants to Treasury for the purchase of $75 million of common stock. The TARP recipient has an ability to redeem the preferred stock and thus maintains an outstanding obligation to Treasury.

Example 2. Same facts as *Example 1,* except that TARP recipient redeems the $500 million of preferred stock, so that Treasury holds only the $75 million of warrants to purchase common stock outstanding. TARP recipient does not maintain an outstanding obligation to Treasury.

Example 3. TARP recipient sells $120 million of securities backed by Small Business Administration-guaranteed loans to Treasury through the Consumer and Business Lending initiative, and provides warrants to Treasury for the purchase of $10 million of common stock. Because the TARP recipient does not as a result of this transaction owe a debt obligation or have a requirement or right to redeem or repurchase an equity security (other than the warrants to purchase common stock provided to the Treasury), the TARP recipient does not have an outstanding obligation to Treasury as a result of this transaction.

PEO. The term ''PEO'' means the principal executive officer or an employee acting in a similar capacity.

Perquisite. The term ''perquisite'' means a ''perquisite or other personal benefit'' the amount of which is required to be included in the amount reported under Item 402(c)(2)(ix)(A) of Regulation S–K under the Federal securities laws (17 CFR 229.402(c)(2)(ix)(A)) (Column (i) of the Summary Compensation Table (All Other Compensation)), modified to also include any such perquisite or other personal benefit provided to a most highly compensated employee subject to § 30.11(b) (Q–11).

PFO. The term ''PFO'' means the principal financial officer or an employee acting in a similar capacity.

Primary regulatory agency. The term ''primary regulatory agency'' means the Federal regulatory agency that has primary supervisory authority over the TARP recipient. For a TARP recipient that is a State-chartered bank that does not have securities registered with the SEC pursuant to the Federal securities laws, the primary regulatory agency is the TARP recipient's primary Federal banking regulator. If a TARP recipient is not subject to the supervision of a Federal regulatory agency, the term ''primary regulatory agency'' means the Treasury.

Repayment. The term ''repayment'' means satisfaction of an obligation.

Retention award. (1) *General definition.* The term ''retention award'' means any payment to an employee, other than a payment of commission compensation, a payment made pursuant to a pension or retirement plan which is qualified (or is intended within a reasonable period of time to be qualified) under section 401 of the Internal Revenue Code (26 U.S.C. 401), a payment made pursuant to a benefit plan, or a payment of a fringe benefit, overtime pay, or reasonable expense reimbursement that:

(i) Is not payable periodically to an employee for services performed by the employee at a regular hourly, daily, weekly, monthly, or similar periodic rate (or would not be payable in such manner absent an elective deferral election);

(ii) Is contingent on the completion of a period of future service with the TARP recipient or the completion of a specific project or other activity of the TARP recipient; and

(iii) Is not based on the performance of the employee (other than a requirement that the employee not be separated from employment for cause) or the business activities or value of the TARP recipient.

(2) *New hires.* With respect to newly hired employees, a payment that will be made only if the new hire continues providing services for a specified period generally constitutes a retention award. For example, a signing bonus that must be repaid unless the newly hired employee completes a certain period of service is a retention award. Similarly, a ''make-whole'' agreement under which a newly hired employee is provided benefits intended to make up for benefits foregone at his former employer, where these new benefits are subject to a continued service period vesting requirement (such as a continuation of the vesting period at the former employer), is a retention award.

(3) *Deferred compensation plans.* Whether a benefit under a deferred compensation plan that is subject to a service vesting period is a retention award depends on all the facts and circumstances. However, to the extent an employee continues to accrue, or becomes eligible to accrue, a benefit under a plan the benefits under which have not been materially enhanced for a significant period of time prior to the employee becoming an SEO or most highly compensated employee (including through expansion of the eligibility for such plan), the benefits accrued generally will not be a retention award. However, to the extent the plan is amended to materially enhance the benefits provided under the plan or to make such employee eligible to participate in such plan, and such benefits are subject to a requirement of a continued period of service, such an amendment generally will be a retention award.

SEC. The term ''SEC'' means the U.S. Securities and Exchange Commission.

Senior executive officer or SEO. (1) *General definition.* The term ''senior executive officer'' or ''SEO'' means a ''named executive officer'' as that term is determined pursuant to Instruction 1 to Item 402(a)(3) of Regulation S–K under the Federal securities laws (17 CFR 229.402(a)) who is an employee of the TARP recipient.

(2) *Application to smaller reporting company.* A TARP recipient that is a smaller reporting company must identify SEOs pursuant to paragraph (1) of this definition. Such a TARP recipient must identify at least five SEOs, even if only three named executive officers are provided in the disclosure pursuant to Item 402(m)(2) of Regulation S–K under the Federal securities laws (17 CFR 229.402(m)(2)), provided that no employee must be identified as a SEO if the employee's total annual compensation does not exceed $100,000 as defined in Item 402(a)(3)(1) of Regulation S–K under the Federal securities laws (17 CFR 229.402(a)(3)(1)).

(3) *Application to private TARP recipients.* A TARP recipient that does not have securities registered with the SEC pursuant to the Federal securities laws must identify SEOs in accordance with rules analogous to the rules in paragraph (1) of this definition.

SEO compensation plan. The term ''SEO compensation plan'' means ''plan'' as that term is defined in Item 402(a)(6)(ii) of Regulation S–K under the Federal securities laws (17 CFR 229.402(a)(6)(ii)), but only with regard to a SEO compensation plan in which a SEO participates.

Senior risk officer. The term ''senior risk officer'' means a senior risk executive officer or employee acting in a similar capacity.

Smaller reporting company. The term ''smaller reporting company'' means a ''smaller reporting company'' as that term is defined in Item 10(f) of Regulation S–K under the Federal securities laws (17 CFR 229.10(f)).

Sunset date. The term ''sunset date'' means the date on which the authorities provided under EESA section 101 and 102 terminate, pursuant to EESA section

120, taking into account any extensions pursuant to EESA section 120(b).

TARP. The term ''TARP'' means the Troubled Asset Relief Program, established pursuant to EESA.

TARP fiscal year. The term ''TARP fiscal year'' means a fiscal year of a TARP recipient, or the portion of a fiscal year of a TARP recipient, that is also a TARP period.

TARP period. The term ''TARP period'' means the period beginning with the TARP recipient's receipt of any financial assistance and ending on the last date upon which any obligation arising from financial assistance remains outstanding (disregarding any warrants to purchase common stock of the TARP recipient that the Treasury may hold).

TARP recipient. (1) *General definition.* The term ''TARP recipient'' means

(i) Any entity that has received or holds a commitment to receive financial assistance; and

(ii) Any entity that would be treated as the same employer as an entity receiving financial assistance based on the rules in sections 414(b) and 414(c) of the Internal Revenue Code (26 U.S.C. 414(b) or (c)), but modified by substituting ''50%'' for ''80%'' in each place it appears in section 414(b) or 414(c) and the accompanying regulations. However, for purposes of applying the aggregation rules to determine the applicable employer, the rules for brother-sister controlled groups and combined groups are disregarded (including disregarding the rules in section 1563(a)(2) and (a)(3) of the Internal Revenue Code (26 U.S.C. 1563(a)(2) and (a)(3)) with respect to corporations and the parallel rules that are in 26 CFR 1.414(c)–2(c) with respect to other organizations conducting trades or businesses).

(2) *Certain excluded entities.* Neither any entity receiving funds under TARP pursuant to section 109 of EESA nor any Federal Reserve bank as that term is used in the Federal Reserve Act (12 U.S.C. 221 *et seq.*) will be treated as a TARP recipient subject to section 111 of EESA and any rules and regulations promulgated thereunder.

(3) *Anti-abuse rule.* Notwithstanding paragraph (1) of this definition, the term ''TARP recipient'' means any entity that has received, or holds a commitment to receive, financial assistance; and any entity related to such TARP recipient to the extent that the primary purpose for the creation or utilization of such entity is to avoid or evade any or all of the requirements of section 111 of EESA or these regulations.

Treasury. The term ''Treasury'' means the U.S. Department of the Treasury.

Valid employment contract. The term ''valid employment contract'' means a written employment contract that is:

(1)(i) A material contract as determined pursuant to Item 601(b)(10)(iii)(A) of Regulation S–K under the Federal securities laws (17 CFR 229.601(b)(10)(iii)(A)); or

(ii) A contract that would be deemed a material contract as determined pursuant to Item 601(b)(10)(iii) of Regulation S–K under the Federal securities laws (17 CFR 229.601(b)(10)(iii)), but for the fact that the material contract relates to one or more employee who is not an executive officer; and

(2) Is enforceable under the law of the applicable jurisdiction.

§ 30.2 Q–2: To what entities does this part apply?

This part applies to any TARP recipient, provided that the requirements of sections 111(b) (portions of § 30.4 (Q–4), § 30.5 (Q–5) and § 30.7 (Q–7), as applicable, § 30.6 (Q–6), and § 30.8 (Q–8) through § 30.11 (Q–11), and § 30.15 (Q–15)), and section 111(e) (§ 30.13 (Q–13)) apply only during the period during which any obligation to the Federal government arising from financial assistance provided under the TARP remains outstanding. The requirements of section 111(c) (including portions of § 30.4 (Q–4), § 30.5 (Q–5) and § 30.7 (Q–7), as applicable) and section 111(d) (§ 30.12 (Q–12)) apply through the later of the last day of the period during which any obligation to the Federal government arising from financial assistance provided under the TARP remains outstanding for TARP recipients with an obligation, or the last day of the TARP recipient's fiscal year including the sunset date for a TARP recipient that has never had an obligation. For this purpose, an obligation includes the ownership by the Federal government of common stock of a TARP recipient.

§ 30.3 Q–3: How are the SEOs and most highly compensated employees identified for purposes of compliance with this part?

(a) *Identification.* The SEOs for a year are the ''named executive officers'' who are employees and are identified in the TARP recipient's annual report on Form 10–K or annual meeting proxy statement for that year (reporting the SEOs' compensation for the immediately preceding year). These employees are considered the SEOs throughout that entire year. For purposes of the standards in this part applicable to the most highly compensated employees, the determination of whether an employee is a most highly compensated employee in a current fiscal year looks back to the annual compensation for the last completed fiscal year without regard to whether the compensation is includible in the employee's gross income for Federal income tax purposes.

(b) *Compliance.* Regardless of when during the current fiscal year the TARP recipient determines the SEOs or the most highly compensated employees, the TARP recipient must ensure that any of the SEOs or employees potentially subject to the requirements in this part for the current fiscal year complies with the requirements in this part as applicable.

§ 30.4 Q–4: What actions are necessary for a TARP recipient to comply with the standards established under sections 111(b)(3)(A), 111(b)(3)(E), 111(b)(3)(F) and 111(c) of EESA (evaluation of employee plans and potential to encourage excessive risk or manipulation of earnings)?

(a) *General rule.* To comply with the standards established under sections 111(b)(3)(A), 111(b)(3)(E), 111(b)(3)(F) and 111(c) of EESA, a TARP recipient must establish a compensation committee by the later of ninety days after the closing date of the agreement between the TARP recipient and Treasury or September 14, 2009, and maintain a compensation committee during the remainder of the TARP period. If a compensation committee is already established before the later of the closing date or September 14, 2009, the TARP recipient must maintain its compensation committee. During the remainder of the TARP period after the later of ninety days after the closing date of the agreement between the TARP recipient and Treasury or September 14, 2009, the compensation committee must:

(1) Discuss, evaluate, and review at least every six months with the TARP recipient's senior risk officers the SEO compensation plans to ensure that the SEO compensation plans do not encourage SEOs to take unnecessary and excessive risks that threaten the value of the TARP recipient;

(2) Discuss, evaluate, and review with senior risk officers at least every six months employee compensation plans in light of the risks posed to the TARP recipient by such plans and how to limit such risks;

(3) Discuss, evaluate, and review at least every six months the employee compensation plans of the TARP recipient to ensure that these plans do not encourage the manipulation of

reported earnings of the TARP recipient to enhance the compensation of any of the TARP recipient's employees;

(4) At least once per TARP recipient fiscal year, provide a narrative description of how the SEO compensation plans do not encourage the SEOs to take unnecessary and excessive risks that threaten the value of the TARP recipient, including how these SEO compensation plans do not encourage behavior focused on short-term results rather than long-term value creation, the risks posed by employee compensation plans and how these risks were limited, including how these employee compensation plans do not encourage behavior focused on short-term results rather than long-term value creation, and how the TARP recipient has ensured that the employee compensation plans do not encourage the manipulation of reported earnings of the TARP recipient to enhance the compensation of any of the TARP recipient's employees; and

(5) Certify the completion of the reviews of the SEO compensation plans and employee compensation plans required under paragraphs (a)(1), (2), and (3) of this section.

(b) *Exclusion of TARP recipients with no employees or no affected employees.* For any period during which a TARP recipient has no employees, or has no SEO or compensation plan subject to the review process, the TARP recipient is not subject to the requirements of paragraph (a) of this section.

(c) *Application to private TARP recipients.* The rules provided in paragraph (a) of this section are also applicable to TARP recipients that do not have securities registered with the SEC pursuant to the Federal securities laws. A TARP recipient that does not have securities registered with the SEC pursuant to the Federal securities laws and has received $25,000,000 or less in financial assistance is subject to paragraph (a) of this section, except that, in lieu of establishing and maintaining a compensation committee, such a TARP recipient is permitted to ensure that all the members of the board of directors carry out the duties of the compensation committee as described in paragraph (a) of this section. However, such a TARP recipient will be required to establish and maintain a compensation committee satisfying the requirements of paragraph (a) of this section for the first fiscal year following a fiscal year during which the TARP recipient either registers securities with the SEC pursuant to the Federal securities laws or has received more than $25,000,000 in financial assistance, and during subsequent years of the TARP period.

(d) *Application to TARP recipients that have never had an outstanding obligation.* For TARP recipients that have never had an outstanding obligation, only paragraphs (a)(2), (a)(4), (a)(5) (but for the narrative and certification requirements of (a)(4) and (a)(5), applied only to the requirements of paragraph (a)(2)), (b) and (c) of this § 30.4 (Q–4) shall apply.

§ 30.5 Q–5: How does a TARP recipient comply with the requirements under § 30.4 (Q–4) of this part that the compensation committee discuss, evaluate, and review the SEO compensation plans and employee compensation plans to ensure that the SEO compensation plans do not encourage the SEOs to take unnecessary and excessive risks that threaten the value of the TARP recipient, or that the employee compensation plans do not pose unnecessary risks to the TARP recipient?

At least every six months, the compensation committee must discuss, evaluate, and review with the TARP recipient's senior risk officers any risks (including long-term as well as short-term risks) that the TARP recipient faces that could threaten the value of the TARP recipient. The compensation committee must identify the features in the TARP recipient's SEO compensation plans that could lead SEOs to take these risks and the features in the employee compensation plans that pose risks to the TARP recipient, including any features in the SEO compensation plans and the employee compensation plans that would encourage behavior focused on short-term results and not on long-term value creation. The compensation committed is required to limit these features to ensure that the SEOs are not encouraged to take risks that are unnecessary or excessive and that the TARP recipient is not unnecessarily exposed to risks.

§ 30.6 Q–6: How does a TARP recipient comply with the requirement under § 30.4 (Q–4) of this part that the compensation committee discuss, evaluate, and review the employee compensation plans to ensure that these plans do not encourage the manipulation of reported earnings of the TARP recipient to enhance the compensation of any of the TARP recipient's employees?

The compensation committee must discuss, evaluate, and review at least every six months the terms of each employee compensation plan and identify and eliminate the features in these plans that could encourage the manipulation of reported earnings of the TARP recipient to enhance the compensation of any employee.

§ 30.7 Q–7: How does a TARP recipient comply with the certification and disclosure requirements under § 30.4 (Q–4) of this part?

(a) *Certification.* The compensation committee must provide the certifications required by § 30.4 (Q–4) of this part stating that it has reviewed, with the TARP recipient's senior risk officers, the SEO compensation plans to ensure that these plans do not encourage SEOs to take unnecessary and excessive risks, the employee compensation plans to limit any unnecessary risks these plans pose to the TARP recipient, and the employee compensation plans to eliminate any features of these plans that would encourage the manipulation of reported earnings of the TARP recipient to enhance the compensation of any employee. For any period during which no obligation arising from financial assistance provided under the TARP remains outstanding, the requirements under this paragraph shall be modified to be consistent with § 30.4(d) (Q–4(d)). Providing a statement similar to the following and in the manner provided in paragraphs (c) and (d) of this section, as applicable, would satisfy this standard: ''The compensation committee certifies that:

(1) It has reviewed with senior risk officers the senior executive officer (SEO) compensation plans and has made all reasonable efforts to ensure that these plans do not encourage SEOs to take unnecessary and excessive risks that threaten the value of [identify TARP recipient];

(2) It has reviewed with senior risk officers the employee compensation plans and has made all reasonable efforts to limit any unnecessary risks these plans pose to the [identify TARP recipient]; and

(3) It has reviewed the employee compensation plans to eliminate any features of these plans that would encourage the manipulation of reported earnings of [identify TARP recipient] to enhance the compensation of any employee.''

(b) *Disclosure.* At least once per TARP recipient fiscal year, the compensation committee must provide a narrative description identifying each SEO compensation plan and explaining how the SEO compensation plan does not encourage the SEOs to take unnecessary and excessive risks that threaten the value of the TARP recipient. The compensation committee must also identify each employee compensation plan, explain how any unnecessary risks posed by the employee compensation plan have been limited, and further explain how the employee

compensation plan does not encourage the manipulation of reported earnings to enhance the compensation of any employee.

(c) *Location.* For TARP recipients with securities registered with the SEC pursuant to the Federal securities law, the compensation committee must provide these certifications and disclosures in the Compensation Committee Report required pursuant to Item 407(e) of Regulation S–K under the Federal securities laws (17 CFR 229.407(e)) and to Treasury. These disclosures must be provided in the Compensation Committee Report for any disclosure pertaining to any fiscal year any portion of which is a TARP period (for a TARP recipient with an obligation), or for any disclosure pertaining to any fiscal year including a date on or before the sunset date (for a TARP recipient that has never had an obligation). Within 120 days of the completion of a fiscal year during any part of which is a TARP period (for a TARP recipient with an obligation), or the completion of a fiscal year including a date on or before the sunset date (for a TARP recipient that has never had an obligation), a TARP recipient that is a smaller reporting company must provide the certifications of the compensation committee to its primary regulatory agency and to Treasury.

(d) *Application to private TARP recipients.* The rules provided in paragraphs (a), (b), and (c) of this section are also applicable to TARP recipients that do not have securities registered with the SEC pursuant to the Federal securities laws. Within 120 days of the completion of the fiscal year during any part of which is a TARP period (for a TARP recipient with an obligation), or the completion of a fiscal year including a date on or before the sunset date (for a TARP recipient that has never had an obligation), a private TARP recipient must provide the certification of the compensation committee (or board of directors, as applicable under § 30.4 (Q–4)) to its primary regulatory agency and to Treasury.

§ 30.8 Q–8: What actions are necessary for a TARP recipient to comply with the standards established under section 111(b)(3)(B) of EESA (the ''clawback'' provision requirement)?

To comply with the standards established under section 111(b)(3)(B) of EESA, a TARP recipient must ensure that any bonus payment made to a SEO or the next twenty most highly compensated employees during the TARP period is subject to a provision for recovery or ''clawback'' by the TARP recipient if the bonus payment was based on materially inaccurate financial statements (which includes, but is not limited to, statements of earnings, revenues, or gains) or any other materially inaccurate performance metric criteria. Whether a financial statement or performance metric criteria is materially inaccurate depends on all the facts and circumstances. However, for this purpose, a financial statement or performance metric criteria shall be treated as materially inaccurate with respect to any employee who knowingly engaged in providing inaccurate information (including knowingly failing to timely correct inaccurate information) relating to those financial statements or performance metrics. Otherwise, with respect to a performance criteria, whether the inaccurate measurement of the performance or inaccurate application of the performance to the performance criteria is material depends on whether the actual performance or accurate application of the actual performance to the performance criteria is materially different from the performance required under the performance criteria or the inaccurate application of the actual performance to the performance criteria. The TARP recipient must exercise its clawback rights except to the extent it demonstrates that it is unreasonable to do so, such as, for example, if the expense of enforcing the rights would exceed the amount recovered. For the purpose of this section, a bonus payment is deemed to be made to an individual when the individual obtains a legally binding right to that payment.

§ 30.9 Q–9: What actions are necessary for a TARP recipient to comply with the standards established under section 111(b)(3)(C) of EESA (the prohibition on golden parachute payments)?

(a) *Prohibition on golden parachute payments.* To comply with the standards established under section 111(b)(3)(C) of EESA, a TARP recipient must prohibit any golden parachute payment to a SEO and any of the next five most highly compensated employees during the TARP period. A golden parachute payment is treated as paid at the time of departure and is equal to the aggregate present value of all payments made for a departure. Thus, a golden parachute payment during the TARP period may include a right to amounts actually payable after the TARP period.

(b) *Examples.* The following examples illustrate the provisions of paragraph (a) of this section:

Example 1. Employee A is a SEO of a TARP recipient. Employee A is entitled to a payment of three times his annual compensation upon an involuntary termination of employment or voluntary termination of employment for good reason, but such amount is not payable unless and until the TARP period expires with respect to TARP recipient. Employee A terminates employment during the TARP period. Because, for purposes of the prohibition on golden parachute payments, the payment is made at the time of departure, Employee A may not obtain the right to the payment upon the termination of employment.

Example 2. Employee B involuntarily terminated employment on July 1, 2008, at which time Employee B was a SEO of a financial institution. Employee B's employment agreement provided that if Employee B were involuntarily terminated or voluntarily terminated employment for good reason, Employee B would be entitled to a series of five equal annual payments. After the first payment, but before any subsequent payment, the entity became a TARP recipient. Because, for purposes of the prohibition on golden parachute payments, all of the five payments are deemed to have occurred at termination of employment and because, in this case, termination of employment occurred before the beginning of the applicable TARP period, the payment of the four remaining payments due under the agreement will not violate the requirements of this section.

§ 30.10 Q–10: What actions are necessary for a TARP recipient to comply with section 111(b)(3)(D) of EESA (the limitations on bonus payments)?

(a) *General rule.* To comply with section 111(b)(3)(D) of EESA, pursuant to the schedule under paragraph (b) of this section and subject to the exclusions under paragraph (e) of this section, a TARP recipient must prohibit the payment or accrual of any bonus payment during the TARP period to or by the employees identified pursuant to paragraph (b) of this section.

(b)(1) *Schedule.* The prohibition required under paragraph (a) of this section applies as follows to:

(i) The most highly compensated employee of any TARP recipient receiving less than $25,000,000 in financial assistance;

(ii) At least the five most highly compensated employees of any TARP recipient receiving $25,000,000 but less than $250,000,000 in financial assistance;

(iii) The SEOs and at least the ten next most highly compensated employees of any TARP recipient receiving $250,000,000 but less than $500,000,000 in financial assistance; and

(iv) The SEOs and at least the twenty next most highly compensated employees of any TARP recipient receiving $500,000,000 or more in financial assistance.

(2) *Changes in level of financial assistance.* The determination of which

schedule in paragraph (b) of this section is applicable to a TARP recipient during the TARP period is determined by the gross amount of all financial assistance provided to the TARP recipient, valued at the time the financial assistance was received. Whether a TARP recipient's financial assistance has increased during a fiscal year to the point in the schedule under paragraph (b) of this section that the SEOs or a greater number of the most highly compensated employees will be subject to the requirements under paragraph (a) of this section is determined as of the last day of the TARP recipient's fiscal year, and the increase in coverage is effective for the subsequent fiscal year.

(3) *Application to first year of financial assistance.* For employers who become TARP recipients after June 15, 2009, the bonus payment limitation provision under this paragraph (b) does not apply to bonus payments paid or accrued by TARP recipients or their employees before the first date of the TARP period. Certain bonus payments may relate to a service period beginning before and ending after the first date of the TARP period. In these circumstances, the employee will not be treated as having accrued the bonus payment on or after the first date of the TARP period if the bonus payment is reduced to reflect at least the portion of the service period that occurs on or after the first date of the TARP period. However, if the employee is a SEO or most highly compensated employee at the time the amount would otherwise be paid, the bonus payment amount as reduced in accordance with the previous sentence still may not be paid until such time as bonus payments to that employee are permitted.

(c) *Accrual.* (1) *General rule.* Whether an employee has accrued a bonus payment is determined based on the facts and circumstances. An accrual may include the granting of service credit (whether toward the calculation of the benefit or any vesting requirement) or credit for the compensation received (or that otherwise would have been received) during the period the employee was subject to the restriction under paragraph (a) of this section. For application of this rule to the fiscal year including June 15, 2009, *see* § 30.17 (Q–17).

(2) *Payments or accruals after the employee is no longer a SEO or most highly compensated employee.* If after the employee is no longer a SEO or most highly compensated employee, the employee is paid a bonus payment or provided a legally binding right to a bonus payment that is based upon services performed or compensation received during the period the employee was a SEO or most highly compensated employee, the employee will be treated as having accrued such bonus payment during the period the employee was a SEO or most highly compensated employee. For example, if the employee is retroactively granted service credit under an incentive plan (whether for vesting or benefit calculation purposes) for the period in which the employee was a SEO or most highly compensated employee, the employee will be treated as having accrued that benefit during the period the employee was a SEO or most highly compensated employee.

(3) *Multi-year service periods.* Certain bonus payments may relate to a multi-year service period, during some portion of which the employee is a SEO or most highly compensated employee subject to paragraph (a) of this section, and during some portion of which the employee is not. In these circumstances, the employee will not be treated as having accrued the bonus payment during the period the employee was a SEO or most highly compensated employee if the bonus payment is at least reduced to reflect the portion of the service period that the employee was a SEO or most highly compensated employee. If the employee is a SEO or most highly compensated employee at the time the net bonus payment amount after such reduction would otherwise be paid, the amount still may not be paid until such time as bonus payments to that employee are permitted.

(d) *Examples.* The following examples illustrate the rules of paragraphs (a) through (c) of this section:

Example 1. Employee A is a SEO of a TARP recipient in 2010, but not in 2011. The TARP recipient maintains an annual bonus program, generally paying bonus payments in March of the following year. Employee A may not be paid a bonus payment in 2010 (for services performed in 2009 or any other year). In addition, Employee A may not be paid a bonus payment in 2011 to the extent such bonus payment is based on services performed in 2010.

Example 2. Same facts as in *Example 1,* provided further that Employee A receives a salary increase for 2011. The salary increase equals the same percentage as similarly situated executive officers, with an additional percentage increase which, over the course of twelve months, equals the bonus that would have been payable to Employee A in 2011 (for services performed in 2010), except for application of paragraph (a) of this section. Under these facts and circumstances, the additional percentage increase will be treated as a bonus payment accrued in 2010 and Employee A may not be paid this bonus payment.

Example 3. Same facts as in *Example 1,* provided further that on March 1, 2011, Employee A is granted a stock option under the TARP recipient stock incentive plan with a value approximately equal to the bonus that would have been payable to Employee A in 2011 (for services performed in 2010), except for application of paragraph (a) of this section. Other similarly situated employee not covered by the bonus limitation for 2010 do not receive such a grant. Under these facts and circumstances, the stock option grant will be treated as a bonus payment accrued in 2010 and will not be permitted to be paid to Employee A.

Example 4. Employee B is not a SEO or a most highly compensated employee of a TARP recipient during 2009. On July 1, 2009, Employee B is granted the right to a bonus payment of $50,000 if Employee B is employed by the TARP recipient through July 1, 2011 (two years). Employee B is a SEO of a TARP recipient during 2010, but is not a SEO or a most highly compensated employee of the TARP recipient during 2011. Employee B is employed by the TARP recipient on July 1, 2011. Thus, Employee B was a SEO or most highly compensated employee during one-half of the two-year required service period. Provided that Employee B is paid not more than half of the otherwise payable bonus payment, or $25,000, Employee B will not be treated as having accrued a bonus payment while Employee B was a SEO or a most highly compensated employee.

(e) *Exclusions*—(1) *Long-term restricted stock*—(i) *General rule.* The TARP recipient is permitted to award long-term restricted stock to the employees whose compensation is limited according to the schedule under paragraph (b) of this section, provided that the value of this grant may not exceed one third of the employee's annual compensation as determined for that fiscal year (that is, not using the look-back method for the prior year). For purposes of this paragraph, in determining an employee's annual compensation, all equity-based compensation granted in fiscal years ending after June 15, 2009 will only be included in the calculation in the year in which it is granted at its total fair market value on the grant date, and all equity-based compensation granted in fiscal years ending prior to June 15, 2009 will not be included in the calculation of annual compensation for any subsequent fiscal year. For purposes of this paragraph, in determining the value of the long-term restricted stock grant, the long-term restricted stock granted in accordance with this paragraph will only be included in the calculation in the year in which the restricted stock is granted at its total fair market value on the grant date.

(ii) Example. During 2008, Employee A receives compensation of $1 million salary and a $1,200,000 long-term restricted stock grant subject to a three-year vesting period. During 2009, Employee A received

compensation of $1 million salary and no grant of long-term restricted stock. During 2010, Employee A receives compensation of $600,000 salary and a $300,000 long-term restricted stock grant subject to a three-year vesting period. Under the general SEC compensation disclosure rules used to define annual compensation in § 30.1 (Q–1) of this part, the compensation related to the long-term restricted stock grants would be allocated over the vesting period. Assume for this purpose, that for 2010, $400,000 of the 2008 long-term restricted stock grant is allocated as compensation, and $100,000 of the 2010 long-term restricted stock grant is allocated as compensation, so that the total annual compensation is $1,100,000 ($600,000 salary + $400,000 + $100,000). However, for purposes of determining Employee A's annual compensation to apply the limit on the value of the long-term restricted stock that may be granted to Employee A in 2010, the entire $300,000 value of the 2010 grant is included but the $400,000 value attributed to the 2008 grant is excluded. Accordingly, Employee A's adjusted annual compensation is $900,000 ($1,100,000 − $100,000 + $300,000 − $400,000). In addition, the entire fair market value of the 2010 long-term restricted stock grant is included for purposes of determining whether the limit has been exceeded. Because the $300,000 adjusted value of the long-term restricted stock grant does not exceed one-third of the $900,000 adjusted annual compensation, the grant complies with paragraph (e)(1)(i).

(2) *Legally binding right under valid employment contracts*—(i) *General rule.* The prohibition under paragraph (a) of this section does not apply to bonus payments required to be paid under a valid employment contract if the employee had a legally binding right under the contract to a bonus payment as of February 11, 2009. For purposes of determining whether an employee had a legally binding right to a bonus payment, *see* 26 CFR 1.409A–1(b)(i). In addition, the bonus payment must be made in accordance with the terms of the contract as of February 11, 2009 (which may include application of an elective deferral election under a qualified retirement plan or a nonqualified deferred compensation plan), such that any subsequent amendment to the contract to increase the amount payable, accelerate any vesting conditions, or otherwise materially enhance the benefit available to the employee under the contract will result in the bonus payment being treated as not made under the employment contract executed on or before February 11, 2009. However, amendment of a valid employment contract executed on or before February 11, 2009 under which an employee has a legally binding right to a bonus payment to reduce the amount of the bonus payment or to enhance or include service-based or performance-based vesting requirements or holding period requirements will not result in this treatment. The amended employment contract would still be deemed a valid employment contract and the employee would still be treated as having a legally binding right to the bonus payment under the original employment contract. The TARP recipient and the employees of the TARP recipient should be cognizant of the restrictions under section 409A of the Internal Revenue Code (26 U.S.C. 409A) in the case of an amendment described in the preceding sentence.

(ii) *Examples.* The following examples illustrate the provisions of this paragraph (2).

Example 1. TARP recipient sponsors a written restricted stock unit plan. Under the plan, restricted stock units are traditionally granted each July 1, and are subject to a three-year vesting requirement. Employee A, a SEO of TARP recipient, received grants on July 1, 2007, July 1, 2008, and July 1, 2009. The July 1, 2007 and July 1, 2008 grants are excluded from the limitation on payments, because although the awards were subject to a continuing service vesting requirement, Employee A retained a legally binding right to the restricted stock units as of February 11, 2009. However, regardless of the fact that the restricted stock unit program was in existence on February 11, 2009, Employee A did not retain a legally binding right to a restricted stock unit for 2009 as of February 11, 2009, but rather obtained the legally binding right only when the restricted stock unit was granted on July 1, 2009. Accordingly, the July 1, 2009 grant is subject to the limitation and is not permitted to be accrued or paid (unless such grant complies with the exception for certain grants of long-term restricted stock).

Example 2. TARP recipient sponsors an annual bonus program documented in a written plan. Under the bonus program, the board of directors retains the discretion to eliminate or reduce the bonus of any employee in the bonus pool. Employees B and C, both SEOs, are in the bonus pool for 2008. On January 15, 2009, the compensation committee determines the bonuses to which the employees of the division in which Employee B works are entitled, and awards Employee B a $10,000 bonus payable on June 1. Employee B has a legally binding right to the bonus as of February 11, 2009 and payment of the bonus is not subject to the limitation. However, as of February 11, 2009, the board of directors has not met to determine which employees of the division in which Employee C works will be entitled to a bonus or the amount of such bonus. Accordingly, Employee C did not have a legally binding right to a bonus as of February 11, 2009 and may be subject to the bonus payment limitation.

Example 3. TARP recipient sponsors a written stock option plan under which stock options may be granted to SEOs designated by the compensation committee. Designations and grants typically occur at a meeting in August of every year, and no meeting occurred in 2009 before August. Regardless of the existence of the general plan, no SEO had a legally binding right to a stock option grant for 2009 as of February 11, 2009 because no grants had been made under the plan. Accordingly, any 2009 grant will be subject to the limitation and is not permitted to be made.

Example 4. Employee D is an SEO of a TARP recipient. Under Employee D's written employment agreement executed before February 11, 2009, Employee D is entitled to the total of whatever bonuses are made available to Employee E and Employee F. As of February 11, 2009, Employee E had a legally binding right to a $100,000 bonus. Employees E and F are never at any time SEOs or highly compensated employees subject to the limitation. As of February 11, 2009, Employee F had no legally binding right to a bonus, but was eligible to participate in a bonus pool and was ultimately awarded a bonus of $50,000. As of February 11, 2009, Employee D had a legally binding right to a $100,000 bonus, so that bonus is not subject to the limitation. However, as of February 11, 2009, Employee D did not have a legally binding right to the additional $50,000 bonus, so that bonus is subject to the bonus payment limitation and, if not paid before June 15, 2009 is not permitted to be paid.

(f) *Application to private TARP recipients.* The rules set forth in this section are also applicable to TARP recipients that do not have securities registered with the SEC pursuant to the Federal securities laws.

§ 30.11 Q–11: Are TARP recipients required to meet any other standards under the executive compensation and corporate governance standards in section 111 of EESA?

(a) *Approval of compensation payments to, and compensation structures for, certain employees of TARP recipients receiving exceptional financial assistance.* For any period during which a TARP recipient is designated as a TARP recipient that has received exceptional financial assistance, the TARP recipient must obtain the approval by the Special Master of all compensation payments to, and compensation structures for, SEOs and most highly compensated employees subject to paragraph (b) of § 30.10 (Q–10). TARP recipients that receive exceptional financial assistance must also receive approval by the Special Master for all compensation structures for other employees who are executive officers (as defined under the Securities and Exchange Act, Rule 3b–7) or one of the 100 most highly compensated employees of a TARP recipient receiving exceptional assistance (or both), who are not subject to the bonus limitations under § 30.10 (Q–10). For this purpose, compensation payments and compensation structures

may include awards or other rights to compensation which an employee has already received but not yet been paid or, in some instances, fully accrued. Accordingly, the Special Master has the authority to require that such compensation payments or compensation structures be altered to meet the standards set forth in § 30.16 (Q–16). However, this approval requirement is not applicable to payments that are not subject to paragraph (a) of § 30.10 (Q–10) due to the application of paragraph (e)(2) of § 30.10 (Q–10) or the effective date provisions of § 30.17 (Q–17), though the Special Master will take such payments into account in reviewing the compensation structure and amounts payable, as applicable, that are subject to review. Notwithstanding any of the foregoing, approval is not required with respect to an employee not subject to the bonus payment limitations to the extent that the employee's annual compensation, as modified in § 30.16 (Q–16) to include certain deferred compensation and pension accruals but to disregard any grant of long-term restricted stock, is limited to $500,000 or less, and any further compensation is provided in the form of long-term restricted stock. For details, *see* § 30.16 (Q–16).

(b) *Perquisite disclosure*—(1) *General rule.* TARP recipients must annually disclose during the TARP period any perquisite whose total value for the TARP recipient's fiscal year exceeds $25,000 for each of the SEOs and most highly compensated employees that are subject to paragraph (a) of § 30.10 (Q–10). TARP recipients must provide a narrative description of the amount and nature of these perquisites, the recipient of these perquisites, and a justification for offering these perquisites (including a justification for offering the perquisite, and not only for offering the perquisite with a value that exceeds $25,000). Such disclosure must be provided within 120 days of the completion of a fiscal year any part of which is a TARP period.

(2) *Location.* A TARP recipient must provide this disclosure to Treasury and to its primary regulatory agency.

(c) *Compensation consultant disclosure*—(1) *General rule.* The compensation committee of the TARP recipient must provide annually a narrative description of whether the TARP recipient, the board of directors of the TARP recipient, or the compensation committee has engaged a compensation consultant; and all types of services, including non-compensation related services, the compensation consultant or any of its affiliates has provided to the TARP recipient, the board, or the compensation committee during the past three years, including any ''benchmarking'' or comparisons employed to identify certain percentile levels of compensation (for example, entities used for benchmarking and a justification for using these entities and the lowest percentile level proposed for compensation). Such disclosure must be provided within 120 days of the completion of a fiscal year any part of which is a TARP period.

(2) *Application to TARP recipients not required to maintain compensation committees.* For those TARP recipients not required to establish and maintain compensation committees under § 30.4(c) (Q–4), the board of directors must provide the disclosure under § 30.4(c)(1).

(3) *Location.* A TARP recipient must provide this disclosure to Treasury and to its primary regulatory agency.

(d) *Prohibition on gross-ups.* Except as explicitly permitted under this part, TARP recipients are prohibited from providing (formally or informally) gross-ups to any of the SEOs and next twenty most highly compensated employees during the TARP period. For this purpose, providing a gross-up includes providing a right to a payment of such a gross-up at a future date, for example a date after the TARP period.

§ 30.12 Q–12: What actions are necessary for a TARP recipient to comply with section 111(d) of EESA (the excessive or luxury expenditures policy requirement)?

To comply with section 111(d) of EESA, by the later of ninety days after the closing date of the agreement between the TARP recipient and Treasury or September 14, 2009, the board of directors of the TARP recipient must adopt an excessive or luxury expenditures policy, provide this policy to Treasury and its primary regulatory agency, and post the text of this policy on its Internet Web site, if the TARP recipient maintains a company Web site. After adoption of the policy, the TARP recipient must maintain the policy during the remaining TARP period (if the TARP recipient has an obligation), or through the last day of the TARP recipient's fiscal year including the sunset date (if the TARP recipient has never had an obligation). If, after adopting an excessive or luxury expenditures policy, the board of directors of the TARP recipient makes any material amendments to this policy, within ninety days of the adoption of the amended policy, the board of directors must provide the amended policy to Treasury and its primary regulatory agency and post the amended policy on its Internet Web site, if the TARP recipient maintains a company Web site. This disclosure must continue through the TARP period (if the TARP recipient has an obligation), or through the last day of the TARP recipient's fiscal year that includes the sunset date (if the TARP recipient has never had an obligation).

§ 30.13 Q–13: What actions are necessary for a TARP recipient to comply with section 111(e) of EESA (the shareholder resolution on executive compensation requirement)?

(a) *General rule.* As provided in section 111(e) of EESA, any proxy or consent or authorization for an annual or other meeting of the shareholders of any TARP recipient that occurs during the TARP period must permit a separate shareholder vote to approve the compensation of executives, as required to be disclosed pursuant to the Federal securities laws (including the compensation discussion and analysis, the compensation tables, and any related material). To meet this standard, a TARP recipient must comply with any rules, regulations, or guidance promulgated by the SEC.

§ 30.14 Q–14: How does section 111 of EESA operate in connection with an acquisition, merger, or reorganization?

(a) *Special rules for acquisitions, mergers, or reorganizations.* In the event that a TARP recipient (target) is acquired by an entity that is not an affiliate of the target (acquirer) in an acquisition of any form, including a purchase of substantially all of the assets of the target, such that the acquirer after the transaction would have been treated as a TARP recipient if the target had received the TARP funds immediately after the transaction, acquirer will not become subject to section 111 of EESA merely as a result of the acquisition. If the acquirer is not subject to section 111 of EESA immediately after the transaction, then any employees of the acquirer immediately after the transaction (including target employees who were SEOs or most highly compensated employees immediately prior to the transaction and became acquirer employees as a result of the transaction) will not be subject to section 111 of EESA.

(b) *Anti-abuse rule.* Notwithstanding the provisions of paragraph (a) of this section, if the primary purpose of a transaction involving the acquisition, in any form, of a TARP recipient is to avoid or evade the application of any of the requirements of section 111 of EESA, the acquirer will be treated as a TARP recipient immediately upon such acquisition. In such a case, the SEOs

and the most highly compensated employees to whom any of the requirements of section 111 of EESA and this Interim Final Rule apply shall be redetermined as of the date of the acquisition. The redetermined SEOs and most highly compensated employees of the post-acquisition acquirer shall consist of the PEO and PFO of the post-acquisition acquirer, plus the applicable number of next most highly compensated employees determined by aggregating the post-acquisition employees of the acquirer (to include the pre-acquisition employees of the target employed by the acquirer, or anticipated to be employed by the acquirer), and ranking such employees in order of compensation for the immediately preceding fiscal year of the pre-acquisition target or pre-acquisition acquirer, as appropriate. In the case of an asset acquisition, the entity or entities to whom the target's assets are transferred shall be treated as the direct recipient of the financial assistance for purposes of determining which other related entities are treated, in the aggregate, as the TARP recipient under the definition of ''TARP recipient'' in § 30.1 (Q–1).

§ 30.15 Q–15: What actions are necessary for a TARP recipient to comply with certification requirements of section 111(b)(4) of EESA?

(a) *Certification Requirements*—(1) *General.* To comply with section 111(b)(4) of EESA, the PEO and the PFO of the TARP recipient must provide the following certifications with respect to the compliance of the TARP recipient with section 111 of EESA as implemented under this part:

(2) *First Fiscal Year Certification.* (i) Within ninety days of the completion of the first annual fiscal year of the TARP recipient any portion of which is a TARP period, the PEO and the PFO of the TARP recipient must provide certifications similar to the model provided in appendix A to this section.

(ii) If the first annual fiscal year of a TARP recipient any portion of which is a TARP period ends within thirty days after the closing date of the applicable agreement between the TARP recipient and Treasury, the TARP recipient shall have an additional sixty days beginning on the day after the end of the fiscal year during which it can establish the compensation committee, if not already established, and during which the compensation committee shall meet with senior risk officers to discuss, review, and evaluate the SEO compensation plans and employee compensation plans in accordance with § 30.4 (Q–4) of this part. The certifications of the PEO and the PFO of the TARP recipient must be amended to reflect the timing of the establishment and reviews of the compensation committee.

(3) *Years Following First Fiscal Year Certification.* Within ninety days of the completion of each TARP fiscal year of the TARP recipient after the first TARP fiscal year, the PEO and the PFO of the TARP recipient must provide a certification similar to the model provided in Appendix B to this section.

(4) *Location.* A TARP recipient with securities registered with the SEC pursuant to the Federal securities law must provide these certifications as an exhibit (pursuant to Item 601(b)(99)(i) of Regulation S–K under the Federal securities laws (17 CFR 229.601(b)(99)(i)) to the TARP recipient's annual report on Form 10–K and to Treasury. To the extent that the PEO or the PFO of the TARP recipient is unable to provide any of these certifications in a timely manner, the PEO or the PFO must provide Treasury an explanation of the reason such certification has not been provided. These certifications are in addition to the compensation committee certifications required by § 30.5 (Q–5) of this part.

(5) *Application to private TARP recipients.* The rules provided in this section are also applicable to TARP recipients that do not have securities registered with the SEC pursuant to the Federal securities laws, except the certifications under paragraphs (a)(2)(x) and (a)(3)(x) of this section are not required. A private TARP recipient must provide these certifications to its primary regulatory agency and to Treasury.

(6) *Application to TARP recipients that have never had an obligation.* For those TARP recipients that have never had an obligation, the PEO and PFO must provide the certifications pursuant to this paragraph (a) only with respect to the requirements applicable to a TARP recipient that has never had an obligation (generally certain compensation committee reviews of employee compensation plans and the issuance of, and compliance with, an excessive or luxury expenses policy).

(b) *Recordkeeping requirements.* The TARP recipient must preserve appropriate documentation and records to substantiate each certification required under paragraph (a) of this section for a period of not less than six years after the date of the certification, the first two years in an easily accessible place. The TARP recipient must furnish promptly to Treasury legible, true, complete, and current copies of the documentation and records that are required to be preserved under paragraph (b) of this section that are requested by any representative of Treasury.

(c) *Penalties for making or providing false or fraudulent Statements.* Any individual or entity that provides information or makes a certification to Treasury pursuant to the Interim Final Rule or as required pursuant to 31 CFR Part 30 may be subject to 18 U.S.C. 1001, which generally prohibits the making of any false or fraudulent statement in a matter within the jurisdiction of the Federal government. Upon receipt of information indicating that any individual or entity has violated any provision of title 18 of the U.S. Code or other provision of Federal law, Treasury shall refer such information to the Department of Justice and the Special Inspector General for the Troubled Asset Relief Program.

Appendix A to § 30.15—Model Certification for First Fiscal Year Certification

''I, [identify certifying individual], certify, based on my knowledge, that:

(i) The compensation committee of [identify TARP recipient] has discussed, reviewed, and evaluated with senior risk officers at least every six months during the period beginning on the later of the closing date of the agreement between the TARP recipient and Treasury or June 15, 2009 and ending with the last day of the TARP recipient's fiscal year containing that date, senior executive officer (SEO) compensation plans and employee compensation plans and the risks these plans pose to [identify TARP recipient];

(ii) The compensation committee of [identify TARP recipient] has identified and limited during the period beginning on the later of the closing date of the agreement between the TARP recipient and Treasury or June 15, 2009 and ending with the last day of the TARP recipient's fiscal year containing that date, the features in the SEO compensation plans that could lead SEOs to take unnecessary and excessive risks that could threaten the value of [identify TARP recipient] and identified any features in the employee compensation plans that pose risks to [identify TARP recipient] and limited those features to ensure that [identify TARP recipient] is not unnecessarily exposed to risks;

(iii) The compensation committee has reviewed at least every six months during the period beginning on the later of the closing date of the agreement between the TARP recipient and Treasury or June 15, 2009 and ending with the last day of the TARP recipient's fiscal year containing that date, the terms of each employee compensation plan and identified the features in the plan that could encourage the manipulation of reported earnings of [identify TARP recipient] to enhance the compensation of an employee and has limited those features;

(iv) The compensation committee of [identify TARP recipient] will certify to the reviews of the SEO compensation plans and employee compensation plans required under (i) and (iii) above;

(v) The compensation committee of [identify TARP recipient] will provide a narrative description of how it limited during any part of the most recently completed fiscal year that included a TARP period the features in

(A) SEO compensation plans that could lead SEOs to take unnecessary and excessive risks that could threaten the value of [identify TARP recipient];

(B) Employee compensation plans that unnecessarily expose [identify TARP recipient] to risks; and

(C) Employee compensation plans that could encourage the manipulation of reported earnings of [identify TARP recipient] to enhance the compensation of an employee;

(vi) [Identify TARP recipient] has required that bonus payments, as defined in the regulations and guidance established under section 111 of EESA (bonus payments), of the SEOs and twenty next most highly compensated employees be subject to a recovery or ''clawback'' provision during any part of the most recently completed fiscal year that was a TARP period if the bonus payments were based on materially inaccurate financial statements or any other materially inaccurate performance metric criteria;

(vii) [Identify TARP recipient] has prohibited any golden parachute payment, as defined in the regulations and guidance established under section 111 of EESA, to an SEO or any of the next five most highly compensated employees during the period beginning on the later of the closing date of the agreement between the TARP recipient and Treasury or June 15, 2009 and ending with the last day of the TARP recipient's fiscal year containing that date;

(viii) [Identify TARP recipient] has limited bonus payments to its applicable employees in accordance with section 111 of EESA and the regulations and guidance established thereunder during the period beginning on the later of the closing date of the agreement between the TARP recipient and Treasury or June 15, 2009 and ending with the last day of the TARP recipient's fiscal year containing that date, [*for recipients of exceptional assistance:* and has received or is in the process of receiving approvals from the Office of the Special Master for TARP Executive Compensation for compensation payments and structures as required under the regulations and guidance established under section 111 of EESA, and has not made any payments inconsistent with those approved payments and structures];

(ix) The board of directors of [identify TARP recipient] has established an excessive or luxury expenditures policy, as defined in the regulations and guidance established under section 111 of EESA, has provided this policy to Treasury and its primary regulatory agency, and [identify TARP recipient] and its employees have complied with this policy during the period beginning on the later of the closing date of the agreement between the TARP recipient and Treasury or June 15, 2009 and ending with the last day of the TARP recipient's fiscal year containing that date, and that any expenses requiring approval of the board of directors, a committee of the board of directors, an SEO, or an executive officer with a similar level of responsibility, were properly approved;

(x) [Identify TARP recipient] will permit a non-binding shareholder resolution in compliance with any applicable Federal securities rules and regulations on the disclosures provided under the Federal securities laws related to SEO compensation paid or accrued during the period beginning on the later of the closing date of the agreement between the TARP recipient and Treasury or June 15, 2009 and ending with the last day of the TARP recipient's fiscal year containing that date;

(xi) [Identify TARP recipient] will disclose the amount, nature, and justification for the offering during the period beginning on the later of the closing date of the agreement between the TARP recipient and Treasury or June 15, 2009 and ending with the last day of the TARP recipient's fiscal year containing that date of any perquisites, as defined in the regulations and guidance established under section 111 of EESA, whose total value exceeds $25,000 for each employee subject to the bonus payment limitations identified in paragraph (vii);

(xii) [Identify TARP recipient] will disclose whether [identify TARP recipient], the board of directors of [identify TARP recipient], or the compensation committee of [TARP recipient] has engaged during the period beginning on the later of the closing date of the agreement between the TARP recipient and Treasury or June 15, 2009 and ending with the last day of the TARP recipient's fiscal year containing that date, a compensation consultant; and the services the compensation consultant or any affiliate of the compensation consultant provided during this period;

(xiii) [Identify TARP recipient] has prohibited the payment of any gross-ups, as defined in the regulations and guidance established under section 111 of EESA, to the SEOs and the next twenty most highly compensated employees during the period beginning on the later of the closing date of the agreement between the TARP recipient and Treasury or June 15, 2009 and ending with the last day of the TARP recipient's fiscal year containing that date;

(xiv) [Identify TARP recipient] has substantially complied with all other requirements related to employee compensation that are provided in the agreement between [identify TARP recipient] and Treasury, including any amendments;

(xv) The following employees are the SEOs and the twenty next most highly compensated employees for the current fiscal year and the most recently completed fiscal year, with the non-SEOs ranked in order of level of annual compensation starting with the greatest amount: [identify name, title, and employer of each SEO and most highly compensated employee]; and

(xvi) I understand that a knowing and willful false or fraudulent statement made in connection with this certification may be punished by fine, imprisonment, or both. (*See,* for example, 18 U.S.C. 1001.)''

Appendix B to § 30.15—Model Certification for Years Following First Fiscal Year Certification

''I, [identify certifying individual], certify, based on my knowledge, that:

(i) The compensation committee of [identify TARP recipient] has discussed, reviewed, and evaluated with senior risk officers at least every six months during any part of the most recently completed fiscal year that was a TARP period, senior executive officer (SEO) compensation plans and employee compensation plans and the risks these plans pose to [identify TARP recipient];

(ii) The compensation committee of [identify TARP recipient] has identified and limited during any part of the most recently completed fiscal year that was a TARP period the features in the SEO compensation plans that could lead SEOs to take unnecessary and excessive risks that could threaten the value of [identify TARP recipient] and identified any features in the employee compensation plans that pose risks to [identify TARP recipient] and limited those features to ensure that [identify TARP recipient] is not unnecessarily exposed to risks;

(iii) The compensation committee has reviewed at least every six months during any part of the most recently completed fiscal year that was a TARP period the terms of each employee compensation plan and identified the features in the plan that could encourage the manipulation of reported earnings of [identify TARP recipient] to enhance the compensation of an employee and has limited these features that would encourage the manipulation of reported earnings of [identify TARP recipient];

(iv) The compensation committee of [identify TARP recipient] will certify to the reviews of the SEO compensation plans and employee compensation plans required under (i) and (iii) above;

(v) The compensation committee of [identify TARP recipient] will provide a narrative description of how it limited during any part of the most recently completed fiscal year that was a TARP period the features in

(A) SEO compensation plans that could lead SEOs to take unnecessary and excessive risks that could threaten the value of [identify TARP recipient];

(B) Employee compensation plans that unnecessarily expose [identify TARP recipient] to risks; and

(C) Employee compensation plans that could encourage the manipulation of reported earnings of [identify TARP recipient] to enhance the compensation of an employee;

(vi) [Identify TARP recipient] has required that bonus payments to SEOs or any of the next twenty most highly compensated employees, as defined in the regulations and guidance established under section 111 of EESA (bonus payments), be subject to a recovery or ''clawback'' provision during any part of the most recently completed fiscal year that was a TARP period if the bonus payments were based on materially inaccurate financial statements or any other

materially inaccurate performance metric criteria;

(vii) [Identify TARP recipient] has prohibited any golden parachute payment, as defined in the regulations and guidance established under section 111 of EESA, to a SEO or any of the next five most highly compensated employees during any part of the most recently completed fiscal year that was a TARP period;

(viii) [Identify TARP recipient] has limited bonus payments to its applicable employees in accordance with section 111 of EESA and the regulations and guidance established thereunder during any part of the most recently completed fiscal year that was a TARP period [*for recipients of exceptional assistance*] and has received or is in the process of receiving approvals from the Office of the Special Master for TARP Executive Compensation for compensation payments and structures as required under the regulations and guidance established under section 111 of EESA, and has not made any payments inconsistent with those approved payments and structures;

(ix) [Identify TARP recipient] and its employees have complied with the excessive or luxury expenditures policy, as defined in the regulations and guidance established under section 111 of EESA, during any part of the most recently completed fiscal year that was a TARP period, and that any expenses requiring approval of the board of directors, a committee of the board of directors, an SEO, or an executive officer with a similar level of responsibility, were properly approved;

(x) [Identify TARP recipient] will permit a non-binding shareholder resolution in compliance with any applicable Federal securities rules and regulations on the disclosures provided under the Federal securities laws related to SEO compensation paid or accrued during any part of the most recently completed fiscal year that was a TARP period;

(xi) [Identify TARP recipient] will disclose the amount, nature, and justification for the offering during any part of the most recently completed fiscal year that was a TARP period of any perquisites, as defined in the regulations and guidance established under section 111 of EESA, whose total value exceeds $25,000 for for each employee subject to the bonus payment limitations identified in paragraph (viii);

(xii) [Identify TARP recipient] will disclose whether [identify TARP recipient], the board of directors of [identify TARP recipient], or the compensation committee of [identify TARP recipient] has engaged during any part of the most recently completed fiscal year that was a TARP period a compensation consultant; and the services the compensation consultant or any affiliate of the compensation consultant provided during this period;

(xiii) [Identify TARP recipient] has prohibited the payment of any gross-ups, as defined in the regulations and guidance established under section 111 of EESA, to the SEOs and the next twenty most highly compensated employees during any part of the most recently completed fiscal year that was a TARP period;

(xiv) [Identify TARP recipient] has substantially complied with all other requirements related to employee compensation that are provided in the agreement between [identify TARP recipient] and Treasury, including any amendments;

(xv) The following employees are the SEOs and the twenty most highly compensated employees for the current fiscal year, with the non-SEOs ranked in order of level of annual compensation starting with the greatest amount: [identify name, title, and employer of each SEO]; and

(xvi) I understand that a knowing and willful false or fraudulent statement made in connection with this certification may be punished by fine, imprisonment, or both. (*See,* for example 18 U.S.C. 1001.)''

§ 30.16 Q–16: What is the Office of the Special Master for TARP Executive Compensation, and what are its powers, duties and responsibilities?

(a) *The Office of the Special Master for TARP Executive Compensation.* The Secretary of the Treasury shall establish the Office of the Special Master for TARP Executive Compensation (Special Master). The Special Master shall serve at the pleasure of the Secretary, and may be removed by the Secretary without notice, without cause, and prior to the naming of any successor Special Master. The Special Master shall have the following powers, duties and responsibilities:

(1) *Interpretative authority.* The Special Master shall have responsibility for interpreting section 111 of EESA, these regulations, and any other applicable guidance, to determine how the requirements under section 111 of EESA, these regulations, and any other applicable guidance, apply to particular facts and circumstances. Accordingly, the Special Master shall make all determinations, as required, as to the meaning of such guidance and whether such requirements have been met in any particular circumstances. In addition, a TARP recipient or a TARP recipient employee may submit a request, in accordance with paragraph (c)(3) of this section, for an advisory opinion with respect to the requirements under section 111 of EESA, these regulations and any other applicable guidance.

(2) *Review of prior payments to employees.* Section 111(f) of EESA provides that the Secretary shall review bonuses, retention awards, and other compensation paid before February 17, 2009, to employees of each entity receiving TARP assistance before February 17, 2009, to determine whether any such payments were inconsistent with the purposes of section 111 of EESA or TARP, or otherwise contrary to the public interest. Section 111(f) of EESA provides that, if the Secretary makes such a determination, the Secretary shall seek to negotiate with the TARP recipient and the subject employee for appropriate reimbursements to the Federal Government with respect to compensation or bonuses. The Special Master shall have the responsibility for administering these provisions, including the identification of the payments that are inconsistent with the purposes of EESA or TARP, or otherwise contrary to the public interest, and the Special Master shall have responsibility for the negotiation with the TARP recipient and the subject employee for appropriate reimbursements to the Federal Government with respect to compensation or bonuses. The Special Master shall make this determination by application of the principles outlined in paragraph (b) of this section. The Special Master's administration of these provisions may provide for the scope of review by the Special Master of a payment, including a limited review or no review, depending on the payment amount, the type of payment, the overall compensation earned by the employee during the relevant period, a combination thereof, or such other factors as the Special Master may determine, where the Special Master determines that such factors demonstrate that such payments are not, or are highly unlikely to be, inconsistent with the purposes of section 111 of EESA or TARP, or otherwise contrary to the public interest, or that renegotiation of such payments is not in the public interest. The Special Master may request in writing any information from TARP recipients necessary to carry out the review of prior compensation required under section 111(f) of EESA. TARP recipients must submit any requested information to the Special Master within 30 days of the request.

(3) *Approval of certain payments to employees of TARP recipients receiving exceptional financial assistance.* (i) *SEOs and most highly compensated employees.* The Special Master shall determine whether the compensation structure for each SEO or most highly compensated employee of a TARP recipient receiving exceptional assistance, including the amounts payable or potentially payable under such compensation structure, will or may result in payments that are inconsistent with the purposes of section 111 of EESA or TARP, or are otherwise contrary to the public interest. The Special Master shall make such determinations by applying the principles outlined in paragraph (b) of this section, subject to the requirement

that the compensation structure and payments satisfy the applicable limitations under § 30.10 (Q–10). This requirement shall apply to any compensation accrued or paid during any period the SEO or most highly compensated employee is subject to the limitations under § 30.10 (Q–10). Initial requests for such approval must be submitted no later than August 14, 2009. The Special Master's administration of these provisions may provide for the Special Master's scope of review, including a limited review or no review, of a portion of a compensation structure or payment depending on the amount of such payments, the type of such payments, the overall compensation earned by the employee during the relevant period, a combination thereof, or such other factors as the Special Master determines, if the Special Master has determined that such factors demonstrate that such payments are not, or are highly unlikely to be, inconsistent with the purposes of section 111 of EESA or TARP, or otherwise contrary to the public interest. The Special Master shall issue a determination within 60 days of the receipt of a substantially complete submission. The TARP recipient must make a further request for approval to the extent the compensation structure for any SEO or most highly compensated employee, including the amounts that are or may be payable, for any SEO or highly compensated employee is materially modified. In reviewing compensation structures and compensation payments for any period subject to Special Master review, the Special Master may take into account other compensation structures and other compensation earned, accrued or paid, including such compensation and compensation structures that are not subject to the restrictions of Section 111 of EESA pursuant to section 111(b)(3)(D)(iii) (*see* § 30.10(e)(2) (Q–30.10(e)(2) (certain legally binding rights under valid written employment contracts)), and amounts that were accrued or paid prior to June 15, 2009 and are therefore not subject to review by the Special Master.

(ii) *Other executive officers and most highly compensated employees.* With respect to any employee who is either an executive officer (as defined under the Securities and Exchange Act Rule 3b–7) or one of the 100 most highly compensated employees of a TARP recipient receiving exceptional assistance (or both), who is not subject to the bonus limitations under § 30.10 (Q–10), the Special Master shall determine whether the compensation structure for such employees will or may result in payments that are inconsistent with the purposes of section 111 of EESA or TARP, or are otherwise contrary to the public interest. The Special Master shall make such determination through application of the principles outlined in paragraph (b) of this section. With respect to the scope of the required review, the Special Master shall determine only whether the compensation arrangements are adequately structured, and is not required to rule with respect to the amounts that are or may be payable thereunder. However, the TARP recipient may also request an advisory opinion with respect to the amounts that are or may be payable, which the Special Master may provide in his sole discretion. Notwithstanding the foregoing, if the total annual compensation to an employee complies with the rules applicable to an SEO under § 30.10 (Q–10) applied without any limits on the grant of long-term restricted stock, and the annual compensation other than long-term restricted stock does not exceed $500,000 (or for 2009, $500,000 prorated to reflect the remaining portion of 2009 after June 15, 2009), the compensation structure will automatically be deemed to meet the requirements and no prior approval by the Special Master will be required. For purposes of the $500,000 limit, in determining annual compensation, all equity-based compensation granted in fiscal years ending after June 15, 2009 will be included in the calculation only in the year in which they are granted at their total fair market value on the grant date and all equity-based compensation granted in fiscal years ending prior to June 15, 2009 will not be included in the calculation of annual compensation. In addition, solely for purposes of applying the limit (and not for purposes of identifying the most highly compensated employees), the term annual compensation includes amounts required to be disclosed under paragraph (viii) of Item 402(a) of Regulation S–K of the Federal securities laws (change in the actuarial present value of benefits under a pension plan and above-market earnings on deferred compensation). The Special Master's administration of these provisions may provide for limited or no review of a portion of a compensation structure by the Special Master depending on the amount of potential payments, the type of such payments, the overall compensation earned by the employee during the relevant period, a combination thereof, or such other factors as the Special Master determines, where the Special Master has determined that such factors demonstrate that such payments are not, or are highly unlikely to be, inconsistent with the purposes of section 111 of EESA or TARP, or otherwise contrary to the public interest. Initial requests for such approval must be submitted no later than 120 days after publication of the final rule. Separate requests need not be submitted for each individual covered employee, but should be submitted for identified groups of employees subject to the same compensation structures to the extent possible as long as sufficient detail regarding individual compensation awards are provided as necessary to evaluate such employee's compensation structure. The Special Master shall issue a determination within 60 days of the receipt of a substantially complete submission. The TARP recipient must make a further request for approval to the extent the compensation structure, including the amounts that are or may be payable, for any executive officer is materially amended. In reviewing compensation structures for any period subject to Special Master review, the Special Master may take into account other compensation structures and other compensation earned, accrued or paid, including such compensation and compensation structures that are not subject to the restrictions of Section 111 of EESA pursuant to section 111(b)(3)(D)(iii) (*see* § 30.10(e)(2) (Q–30.10(e)(2) (certain legally binding rights under valid written employment contracts)), and amounts that were accrued or paid prior to June 15, 2009 and are therefore not subject to review by the Special Master.

(iii) *Period from June 15, 2009 through final determination.* For the period from June 15, 2009 through the date of the Special Master's final determination, the TARP recipient will be treated as complying with this section if, with respect to employees covered by paragraph (a)(3)(i) of this section, the TARP recipient continues to pay compensation to such employees in accordance with the terms of employment as of June 14, 2009 to the extent otherwise permissible under this Interim Final Rule (for example, continued salary payments but not any bonus payments) and if, with respect to employees covered by paragraph (a)(3)(ii) of this section, the TARP recipient continues to pay compensation to such employees under the compensation structure established as of June 14, 2009, and if in addition the TARP recipient promptly complies

with any modifications that may be required by the Special Master's final determination. However, the Special Master may take into account the amounts paid to an employee during such period in determining the appropriate compensation amounts and compensation structures, as applicable, for the remainder of the year.

(4) *Advisory opinions on compensation structures or compensation payments to employees of TARP recipients.* A TARP recipient or TARP recipient employee may request an advisory opinion from the Special Master as to whether a compensation structure is, or will or may result in payments that are, inconsistent with the purposes of EESA or TARP, or otherwise contrary to the public interest. In addition, the Special Master may become aware of compensation structures or payments at any TARP recipient for which it may be useful to provide an advisory opinion as to whether such structure or payments meets this standard. Accordingly, the Special Master shall have the authority to render advisory opinions upon request or at the Special Master's initiative, as to whether a compensation structure is, or will or may result in payments to an employee that are inconsistent with the purposes of section 111 of EESA or TARP, or otherwise contrary to the public interest, or whether a compensation payment made, or to be made, was or will be inconsistent with the purposes of section 111 of EESA or TARP, or otherwise contrary to the public interest. If the Special Master renders an adverse opinion, the Special Master shall have the authority to seek to negotiate with the TARP recipient and the subject employee for appropriate reimbursements to the TARP recipient or the Federal government. Any advisory opinion shall reflect the Special Master's application of the principles outlined in paragraph (b) of this section. The Special Master shall not be required to render an advisory opinion in every instance, but may do so only where the Special Master deems appropriate and feasible in the context of the Special Master's other responsibilities. In any case, the Special Master shall render an opinion, or affirmatively decline to render an advisory opinion, within 60 days of the receipt of a substantially complete submission. The Special Master shall not be required to explain any decision to decline to render an advisory opinion.

(5) *Other designated duties and powers.* The Special Master shall have such other duties and powers related to the application of compensation issues arising in the administration of EESA or TARP as the Secretary or the Secretary's designate may delegate to the Special Master, including, but not limited to, the interpretation or application of contractual provisions between the Federal government and a TARP recipient as those provisions relate to the compensation paid to, or accrued by, an employee of such TARP recipient.

(b) *Determination of whether compensation is inconsistent with the purposes of section 111 of EESA or TARP or is otherwise contrary to the public interest*—(1) *Principles.* In reviewing a compensation structure or a compensation payment to determine whether it is inconsistent with the purposes of section 111 of EESA or TARP or is otherwise contrary to the public interest, the Special Master shall apply the principles enumerated below. The principles are intended to be consistent with sound compensation practices appropriate for TARP recipients, and to advance the purposes and considerations described in EESA sections 2 and 103, including the maximization of overall returns to the taxpayers of the United States and providing stability and preventing disruptions to financial markets. The Special Master has discretion to determine the appropriate weight or relevance of a particular principle depending on the facts and circumstances surrounding the compensation structure or payment under consideration, such as whether a payment occurred in the past or is proposed for the future, the role of the employee within the TARP recipient, the situation of the TARP recipient within the marketplace and the amount and type of financial assistance provided. To the extent that two or more principles may appear inconsistent in a particular situation, the Special Master will determine the relative weight to be accorded each principle. In the case of any review of payments already made under paragraph (c)(2) of this section, or of any rights to bonuses, awards, or other compensation already granted, the Special Master shall apply these principles by considering the facts and circumstances at the time the compensation was granted, earned, or paid, as appropriate.

(i) *Risk.* The compensation structure should avoid incentives to take unnecessary or excessive risks that could threaten the value of the TARP recipient, including incentives that reward employees for short-term or temporary increases in value, performance, or similar measure that may not ultimately be reflected by an increase in the long-term value of the TARP recipient. Accordingly, incentive payments or similar rewards should be structured to be paid over a time horizon that takes into account the risk horizon so that the payment or reward reflects whether the employee's performance over the particular service period has actually contributed to the long-term value of the TARP recipient.

(ii) *Taxpayer return.* The compensation structure, and amount payable where applicable, should reflect the need for the TARP recipient to remain a competitive enterprise, to retain and recruit talented employees who will contribute to the TARP recipient's future success, and ultimately to be able to repay TARP obligations.

(iii) *Appropriate allocation.* The compensation structure should appropriately allocate the components of compensation such as salary, short-term and long-term incentives, as well as the extent to which compensation is provided in cash, equity or other types of compensation such as executive pensions, other benefits, or perquisites, based on the specific role of the employee and other relevant circumstances, including the nature and amount of current compensation, deferred compensation, or other compensation and benefits previously paid or awarded. The appropriate allocation may be different for different positions and for different employees, but generally, in the case of an executive or other senior level position a significant portion of the overall compensation should be long-term compensation that aligns the interest of the employee with the interests of shareholders and taxpayers.

(iv) *Performance-based compensation.* An appropriate portion of the compensation should be performance-based over a relevant performance period. Performance-based compensation should be determined through tailored metrics that encompass individual performance and/or the performance of the TARP recipient or a relevant business unit taking into consideration specific business objectives. Performance metrics may relate to employee compliance with relevant corporate policies. In addition, the likelihood of meeting the performance metrics should not be so great that the arrangement fails to provide an adequate incentive for the employee to perform, and performance metrics should be measurable, enforceable, and actually enforced if not met. The appropriate allocation and the appropriate performance metrics may be

different for different positions and for different employees, but generally a significant portion of total compensation should be performance-based compensation, and generally that portion should be greater for positions that exercise higher levels of responsibility.

(v) *Comparable structures and payments.* The compensation structure, and amount payable where applicable, should be consistent with, and not excessive, taking into account compensation structures and amounts for persons in similar positions or roles at similar entities that are similarly situated, including, as applicable, entities competing in the same markets and similarly situated entities that are financially distressed or that are contemplating or undergoing reorganization.

(vi) *Employee contribution to TARP recipient value.* The compensation structure, and amount payable where applicable, should reflect the current or prospective contributions of an employee to the value of the TARP recipient, taking into account multiple factors such as revenue production, specific expertise, compliance with company policy and regulation (including risk management), and corporate leadership, as well as the role the employee may have had with respect to any change in the financial health or competitive position of the TARP recipient.

(2) *Further guidance.* The Secretary reserves the discretion to modify or amend the foregoing principles through notice, announcement or other generally applicable guidance, provided that such guidance shall apply only prospectively from its date of publication and shall not provide a basis for reconsideration of a determination of the Special Master, except as the Special Master deems appropriate in light of such modification or amendment.

(c) *Special Master determinations*—(1) *Initial determinations.* The Special Master shall provide an initial determination in writing, within 60 days of the receipt of a substantially complete submission, setting forth the facts and analysis that formed the basis for the determination. The TARP recipient shall have 30 days to request in writing that the Special Master reconsider the initial determination. The request for reconsideration must specify a factual error or relevant new information not previously considered, and must demonstrate that such error or lack of information resulted in a material error in the initial determination. The Special Master must provide a final determination in writing within 30 days, setting forth the facts and analysis that formed the basis for the determination. If a TARP recipient does not request reconsideration within 30 days, the initial determination shall be treated as a final determination.

(2) *Final determinations.* In the case of any final determination that the TARP recipient is required to receive, the final determination of the Special Master shall be final and binding and treated as the determination of the Treasury.

(3) *Advisory Opinions.* An advisory opinion of the Special Master shall not be binding upon any TARP recipient or employee, but may be relied upon by a TARP recipient or employee if the advisory opinion applies to the TARP recipient and the employee and the TARP recipient and employee comply in all respects with the advisory opinion.

(d) *Submissions to the Special Master*—(1) *Submission procedures.* Submissions to the Special Master may be made under such procedures as the Special Master shall determine. The Special Master may reserve the right to request further information at any time and a submission shall not be treated as substantially complete unless the Special Master has so designated.

(2) *Disclosure procedures.* Materials submitted to the Special Master and the initial and final determinations of the Special Master are subject to disclosure under the standards provided in the Freedom of Information Act (FOIA, (5 U.S.C. 552 *et seq.*)). In addition, the final determinations of the Special Master shall be disclosed to the public. The Special Master shall promulgate procedures for ensuring that disclosed materials have been subject to appropriate redaction to protect personal privacy, privileged or confidential commercial or financial information or other appropriate redactions permissible under the FOIA, which may include a procedure for the person or entity making the submission to request redactions and to review and request reconsideration of any proposed redactions before such redacted materials are released.

§ 30.17 Q–17: How do the effective date provisions apply with respect to the requirements under section 111 of EESA?

(a) *General rule.* The requirements under this part with respect to sections 111(b), 111(c), 111(d) and 111(f) are effective upon June 15, 2009. The guidance under this part with respect to those sections supersedes any previous guidance applicable to a TARP recipient to the extent that guidance is inconsistent with those requirements, but supersedes that guidance only as of June 15, 2009. To the extent previous contractual provisions are not inconsistent with ARRA or the guidance under this part, those contractual provisions remain in effect and continue to apply in accordance with their terms.

(b) *Bonus payment limitation.* The bonus payment limitation provision under § 30.10 (Q–10) of this part does not apply to bonus payments paid or accrued by TARP recipients or their employees before June 15, 2009. Certain bonus payments may relate to a service period beginning before and ending after June 15, 2009. In these circumstances, the employee will not be treated as having accrued the bonus payment on or after June 15, 2009 if the bonus payment is at least reduced to reflect the portion of the service period that occurs after June 15, 2009. If the employee is an SEO or most highly compensated employee at the time the net bonus payment after such reduction would otherwise be paid, the amount still may not be paid until such time as bonus payments to that employee are permitted.

Andrew Mayock,

Executive Secretary.

[FR Doc. E9–13868 Filed 6–12–09; 8:45 am]

BILLING CODE 4810–25–P

Federal Register

Monday,
June 15, 2009

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Chapter 1; Parts 32, et al.

Federal Acquisition Regulations; Federal Acquisition Circular 2005–33; FAR Case 2008–036, Trade Agreements; Final Rules, Interim Rule, and Small Entity Compliance Guide

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2009–0001, Sequence 4]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–33; Introduction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 2005–33. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at *http://www.regulations.gov*.

DATES: For effective dates and comment dates, see separate documents, which follow.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below in relation to each FAR case. Please cite FAC 2005–33 and the specific FAR case numbers. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

LIST OF RULES IN FAC 2005–33

Item	Subject	FAR case	Analyst
I	Trade Agreements—Costa Rica, Oman, and Peru (Interim)	2008–036	Murphy.
II	Contractor's Request for Progress Payments	2005–032	Murphy.

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2005–33 amends the FAR as specified below:

Item I—Trade Agreements—Costa Rica, Oman, and Peru (FAR Case 2008–036) (Interim)

This interim rule allows contracting officers to purchase the goods and services of Costa Rica, Oman, and Peru without application of the Buy American Act if the acquisition is subject to the applicable trade agreements. The free trade agreements with Costa Rica, Oman, and Peru join the North American Free Trade Agreement (NAFTA), the Australia, Bahrain, Chile, Morocco, and Singapore Free Trade Agreements, and the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA–DR) with respect to the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua, which are already in the FAR.

The threshold for supplies and services is $67,826 for the CAFTA–DR and $194,000 for the Oman and Peru FTAs. The threshold for construction is $7,443,000 for the CAFTA–DR and the Peru FTA and $8,817,449 for the Oman FTA.

Item II—Contractor's Request for Progress Payments (FAR Case 2005–032)

This final rule converts the proposed rule published at 73 FR 19035 on April 8, 2008, to a final rule with one editorial change. This final rule incorporates improvements related to requests for progress payments and the Standard Form (SF) 1443, Contractor's Request for Progress Payments, used to request those progress payments.

Dated: June 9, 2009.

Al Matera,

Director, Office of Acquisition Policy.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2005–33 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005–33 is effective June 15, 2009 except for Item II, which is effective July 15, 2009.

Dated: June 9, 2009.

Shay D. Assad,

Director of Defense Procurement and Acquisition Policy.

Dated: June 5, 2009.

Rodney P. Lantier,

Acting Senior Procurement Executive, Office of the Chief Acquisition Officer, U.S. General Services Administration.

Dated: June 8, 2009.

William P. McNally,

Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. E9–13979 Filed 6–12–09; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 25 and 52

[FAC 2005–33; FAR Case 2008–036; Item I; Docket 2009–0019, Sequence 1]

RIN 9000–AL23

Federal Acquisition Regulation; FAR Case 2008–036, Trade Agreements—Costa Rica, Oman, and Peru

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement the Dominican Republic—Central America—United States Free Trade Agreement with respect to Costa Rica, the United States-Oman Free Trade Agreement, and the United States-Peru Trade Promotion Agreement.

DATES: *Effective Date:* June 15, 2009.

Comment Date: Interested parties should submit written comments to the Regulatory Secretariat on or before August 14, 2009 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–33, FAR case 2008–036, by any of the following methods:

- Regulations.gov: *http://www.regulations.gov*.

Submit comments via the Federal eRulemaking portal by inputting ''FAR Case 2008–036'' under the heading ''Comment or Submission''. Select the link ''Send a Comment or Submission'' that corresponds with FAR Case 2008–036. Follow the instructions provided to complete the ''Public Comment and Submission Form''. Please include your name, company name (if any), and ''FAR Case 2008–036'' on your attached document.

- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, ATTN: Hada Flowers, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005–33, FAR case 2008–036, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Meredith Murphy, Procurement Analyst, at (202) 208–6925. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–33, FAR case 2008–036.

SUPPLEMENTARY INFORMATION:

A. Background

This rule amends FAR Part 25 and the corresponding clauses in Part 52 to implement the Dominican Republic—Central America—United States Free Trade Agreement (CAFTA–DR) with respect to Costa Rica, the United States-Oman Free Trade Agreement, and the United States-Peru Trade Promotion Agreement.

Congress approved these trade agreements in the Dominican Republic—Central America—United States Free Trade Agreement Implementation Act (Pub. L. 109–53), the United States-Oman Free Trade Agreement Implementation Act (Pub. L. 109–283) (19 U.S.C. 3805 note), and the United States-Peru Trade Promotion Agreement Implementation Act (Pub. L. 110–138) (19 U.S.C. 3805 note). These Acts waive the applicability of the Buy American Act for some foreign supplies and construction materials from Costa Rica, Oman, and Peru and specify procurement procedures designed to ensure fairness in the acquisition of supplies and services.

This interim rule adds Costa Rica, Oman, and Peru to the definition of ''Free Trade Agreement country.'' The rule also deletes Costa Rica from the definition of ''Caribbean Basin country'' because, in accordance with Section 201(a)(3) of Pub. L. 109–53, when the CAFTA-DR agreement enters into force with respect to a country, that country is no longer designated as a beneficiary country for purposes of the Caribbean Basin Economic Recovery Act.

The excluded services for the Oman and Peru FTAs are the same as for the Bahrain FTA, CAFTA-DR, Chile FTA, and NAFTA. Costa Rica has the same thresholds as the other CAFTA–DR countries.

The threshold for supply and service contracts of the Oman and Peru FTAs is $194,000. Like the Morocco and Bahrain FTAs, the Oman and Peru FTA thresholds for supplies and services is higher than the thresholds for the other FTAs. Therefore, Omani and Peruvian end products are not covered by the Buy American Act—Free Trade Agreements—Israeli Trade Act provision and clause (FAR 52.225–3 and 52.225–4).

For construction contracts, the Oman FTA threshold is $8,817,449 and the Peru FTA threshold is $7,443,000. Like NAFTA and the Bahrain FTA, the Omani threshold for construction is higher than the thresholds of the other FTAs. Therefore Omani construction material, along with Bahrainian and Mexican construction material, is excluded from coverage under the Buy American Act—Construction Materials under the Trade Agreements provision and clause for acquisitions less than $8,817,449 (52.225–11 Alternate I and 52.225–12 Alternate II, respectively). Canadian construction material is not excluded, because it is covered under the World Trade Organization Government Procurement Agreement.

This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

This interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Although the rule opens up Government procurement to the goods and services of Costa Rica, Oman, and Peru, the Councils do not anticipate any significant economic impact on U.S. small businesses. The Department of Defense only applies the trade agreements to the non-defense items listed at DFARS 225.401–70, and acquisitions that are set aside for small businesses are exempt. Therefore, the Councils have not performed an Initial Regulatory Flexibility Analysis. The Councils invite comments from small business concerns and other interested parties on this issue. The Councils will also consider comments from small entities concerning the affected FAR parts 25 and 52 in accordance with 5 U.S.C. 610. Interested parties should submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR Case 2008–036), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does apply, because the interim rule affects the certification and information collection requirements in the provisions at FAR 52.212–3, 52.225–4, 52.225–6, and 52.225–11 currently approved under OMB clearances 9000–0136 (Commercial Item Acquisition: FAR Sections Affected: Part 12; 52.212–1, and 52.212–3), 9000–0130 (Buy America Act, Trade Agreements Act Certificate: FAR Sections Affected: 52.225–4), 9000–0025 (Buy American Act, Trade Agreements Act Certificate: FAR Sections Affected: 52.225–6), and 9000–0141 (Buy America Act—Construction: FAR Sections Affected: Subpart 25.2, 52.225–9, and 52.225–11) respectively. While the FAR Secretariat believes this impact to be negligible, comments are invited on the burden and number of entities affected as part of this rulemaking.

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General

Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because these free trade agreements all took effect on January 1, 2009. However, pursuant to Pub. L. 98–577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 25 and 52

Government procurement.

Dated: June 9, 2009.

Al Matera,

Director, Office of Acquisition Policy.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 25 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 25 and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 25—FOREIGN ACQUISITION

■ 2. Amend section 25.003 by—

■ a. Removing from the definition ''Caribbean Basin country'' the words ''Costa Rica,'';

■ b. Revising paragraph (2) of the definition ''Designated country''; and removing from paragraph (4) the words ''Costa Rica''; and

■ c. Removing from the definition ''Free Trade Agreement country'' the words ''Chile, Dominican'' and adding ''Chile, Costa Rica, Dominican'' in their place, and removing the word ''Nicaragua, or'' and adding ''Nicaragua, Oman, Peru, or'' in its place.

■ The revised text reads as follows:

25.003 Definitions.

* * * * *

Designated country * * *

(2) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore);

* * * * *

■ 3. Amend section 25.400 by revising paragraphs (a)(2)(iii) through (a)(2)(vii), and adding paragraphs (a)(2)(viii) and (a)(2)(ix) to read as follows:

25.400 Scope of Subpart.

(a) * * *

(2) * * *

(iii) Singapore FTA (the United States-Singapore Free Trade Agreement, as approved by Congress in the United States-Singapore Free Trade Agreement Implementation Act (Pub. L. 108–78) (19 U.S.C. 3805 note));

(iv) Australia FTA (the United States-Australia Free Trade Agreement, as approved by Congress in the United States-Australia Free Trade Agreement Implementation Act (Pub. L. 108–286) (19 U.S.C. 3805 note));

(v) Morocco FTA (The United States—Morocco Free Trade Agreement, as approved by Congress in the United States—Morocco Free Trade Agreement Implementation Act (Pub. L. 108–302) (19 U.S.C. 3805 note));

(vi) CAFTA–DR (The Dominican Republic-Central America-United States Free Trade Agreement, as approved by Congress in the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (Pub. L. 109–53) (19 U.S.C. 4001 note));

(vii) Bahrain FTA (the United States-Bahrain Free Trade Agreement, as approved by Congress in the United States-Bahrain Free Trade Agreement Implementation Act (Pub. L. 109–169) (19 U.S.C. 3805 note));

(viii) Oman FTA (the United States-Oman Free Trade Agreement, as approved by Congress in the United States-Oman Free Trade Agreement Implementation Act (Pub. L. 109–283) (19 U.S.C. 3805 note)); and

(ix) Peru FTA (the United States-Peru Trade Promotion Agreement, as approved by Congress in the United States-Peru Trade Promotion Agreement Implementation Act (Pub. L. 110–138) (19 U.S.C. 3805 note));

* * * * *

25.401 [Amended]

■ 4. Amend section 25.401 in paragraph (b), in the table heading, by removing from the fourth column ''Bahrain, FTA, CAFTA–DR, Chile FTA, and NAFTA'' and adding ''Bahrain FTA, CAFTA–DR, Chile FTA, NAFTA, Oman FTA and Peru FTA'' in its place.

■ 5. Amend section 25.402 by revising the table following paragraph (b) to read as follows:

25.402 General.

* * * * *

(b) * * *

Trade Agreement	Supply Contract (equal to or exceeding)	Service Contract (equal to or exceeding)	Construction Contract (equal to or exceeding)
WTO GPA	$194,000	$194,000	$7,443,000
FTAs			
Australia FTA	67,826	67,826	7,443,000
Bahrain FTA	194,000	194,000	8,817,449
CAFTA–DR (Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua)	67,826	67,826	7,443,000
Chile FTA	67,826	67,826	7,443,000
Morocco FTA	194,000	194,000	7,443,000
NAFTA			
–Canada	25,000	67,826	8,817,449
–Mexico	67,826	67,826	8,817,449
Oman FTA	194,000	194,000	8,817,449
Peru FTA	194,000	194,000	7,443,000
Singapore FTA	67,826	67,826	7,443,000
Israeli Trade Act	50,000	—	—

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.212–3 [Amended]

■ 6. Amend section 52.212–3 by revising the date of the provision to read ''(JUN 2009)''; and by removing from paragraphs (g)(1)(i) and (g)(1)(ii) ''Bahrainian or Moroccan'' and adding ''Bahrainian, Moroccan, Omani, or Peruvian'' in its place each time it appears (three times).

■ 7. Amend section 52.212–5 by revising the date of the clause, and paragraphs (b)(32)(i) and (b)(33) to read as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (JUN 2009)

* * * * *

(b) * * *

____ (32)(i) 52.225–3, Buy American Act—Free Trade Agreements—Israeli Trade Act (JUN 2009) (41 U.S.C. 10a–10d, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note, 19 U.S.C. 3805 note, Pub. L. 108–77, 108–78, 108–286, 108–302, 109–53, 109–169, 109–283, and 110–138).

* * * * *

____ (33) 52.225–5, Trade Agreements (JUN 2009) (19 U.S.C. 2501, *et seq.*, 19 U.S.C. 3301 note).

* * * * *

■ 8. Amend section 52.225–3 by—
■ a. Revising the date of the clause;
■ b. Revising the definitions ''Bahrainian or Moroccan end product'' and ''Free Trade Agreement country''; and
■ c. Removing from paragraph (c) ''the Bahrain and Morocco FTAs'' and adding ''the Bahrain, Morocco, Oman, and Peru FTAs'' in its place, and removing ''other than a Bahrainian or Moroccan'' and adding ''other than a Bahrainian, Moroccan, Omani, or Peruvian'' in its place each time it appears (twice).
■ The revised text reads as follows:

52.225–3 Buy American Act—Free Trade Agreements—Israeli Trade Act.

* * * * *

Buy American Act—Free Trade Agreements—Israeli Trade Act (JUN 2009)

* * * * *

(a) * * *

Bahrainian, Moroccan, Omani, or Peruvian end product means an article that—

(1) Is wholly the growth, product, or manufacture of Bahrain, Morocco, Oman, or Peru ; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain, Morocco, Oman, or Peru into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

* * * * *

Free Trade Agreement country means Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore.

* * * * *

52.225–4 [Amended]

■ 9. Amend section 52.225–4 by—
■ a. Revising the date of the provision to read ''(JUN 2009)''; and
■ b. Removing from paragraphs (a) and (b) ''Bahrainian or Moroccan'' and adding ''Bahrainian, Moroccan, Omani, or Peruvian'' in its place each time it appears (three times).

■ 10. Amend section 52.225–5 by—
■ a. Revising the date of the clause; and
■ b. Revising paragraph (2) in the definition ''Designated country''; and removing from paragraph (4) of that definition the words ''Costa Rica,''.
■ The revised text reads as follows:

52.225–5 Trade Agreements.

* * * * *

Trade Agreements (JUN 2009)

(a) * * *

Designated country * * *

(2) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore);

* * * * *

■ 11. Amend section 52.225–11 by—
■ a. Revising the date of the clause;
■ b. Amending paragraph (a) in the definition ''Designated country'' by—
■ 1. Revising paragraph (2); and
■ 2. Removing from paragraph (4) ''Costa Rica,'';
■ c. Amending Alternate I, by—
■ 1. Revising the date of Alternate I;
■ 2. Removing from the introductory paragraph text and in the definition ''Bahrainian or Mexican construction material'' ''Bahrainian or Mexican'' and adding ''Bahrainian, Mexican, or Omani'' in its place (twice);
■ 3. Removing from the definition ''Bahrainian or Mexican construction material'' in paragraphs (1) and (2) ''Bahrain or Mexico'' and adding ''Bahrain, Mexico, or Oman'' in its place (twice);
■ 4. Revising paragraph (b)(1); and
■ 5. Removing from paragraph (b)(2) ''other than Bahrainian or Mexican'' and adding ''other than Bahrainian, Mexican, or Omani'' in its place.
■ The revised text reads as follows:

52.225–11 Buy American Act—Construction Materials Under Trade Agreements.

* * * * *

Buy American Act—Construction Materials Under Trade Agreements (JUN 2009)

(a) *Definitions.* * * *

* * * * *

Designated country * * *

(2) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore);

* * * * *

Alternate I (JUN 2009). * * *

* * * * *

(b) *Construction materials.* (1) This clause implements the Buy American Act (41 U.S.C. 10a–10d) by providing a preference for domestic construction material. In accordance with 41 U.S.C. 431, the component test of the Buy American Act is waived for construction material that is a COTS item (See FAR 12.505(a)(2)). In addition, the Contracting Officer has determined that the WTO GPA and all the Free Trade Agreements except the Bahrain FTA, NAFTA, and the Oman FTA apply to this acquisition. Therefore, the Buy American Act restrictions are waived for designated country construction materials other than Bahrainian, Mexican, or Omani construction materials.

* * * * *

■ 12. Amend section 52.225–12 in Alternate II by—
■ a. Revising the date of Alternate II;
■ b. Removing from the introductory paragraph text ''Bahrainian or Mexican'' and adding ''Bahrainian, Mexican, or Omani'' in its place;
■ c. Revising paragraph (d)(1); and
■ d. Removing from paragraph (d)(3) ''Bahrainian or Mexican'' and adding ''Bahrainian, Mexican, or Omani'' in its place.

52.225–12 Notice of Buy American Act Requirement—Construction Materials Under Trade Agreements.

* * * * *

Alternate II (JUN 2009) * * *

(d) *Alternate offers.* (1) When an offer includes foreign construction material, except foreign construction material from a designated country other than Bahrain, Mexico, or Oman that is not listed by the Government in this solicitation in paragraph (b)(3) of FAR clause 52.225–11, the offeror also may submit an alternate offer based on

use of equivalent domestic or designated country construction material other than Bahrainian, Mexican, or Omani construction material.

* * * * *

[FR Doc. E9–13978 Filed 6–12–09; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 32, 43, 52, and 53

[FAC 2005–33; FAR Case 2005–032; Item II; Docket 2008–0002; Sequence 1]

RIN 9000–AI47

Federal Acquisition Regulation; FAR Case 2005–032, Contractor's Request for Progress Payments

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to incorporate improvements related to requests for progress payments and the Standard Form (SF) 1443, Contractor's Request for Progress Payments, used to request those progress payments. Changes made to the Standard Form as published in the proposed rule include correction of misspellings, and an editorial change made at Item 4 to better describe the order number.

DATES: *Effective Date:* July 15, 2009.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Meredith Murphy, Procurement Analyst, at (202) 208–6925. For information pertaining to status or publication schedules, contact the Regulatory Secretariat, 1800 F Street, NW, Room 4041, Washington, DC 20405, (202) 501–4755. Please cite FAC 2005–33, FAR case 2005–032.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils published a proposed rule in the **Federal Register** at 73 FR 19035 on April 8, 2008, to (1) address revisions necessary to implement the paid-cost rule and (2) simplify the SF 1443 and related regulations and instructions to improve clarity.

No comments were received by the close of the public comment period on June 9, 2008. Subsequently, one comment was received from one commenter. The commenter specifically took no issue with the proposed FAR changes, but objected to the costs that would be incurred by its member companies to make programming changes that ensue from altering the SF 1443. The commenter reasoned that ''(s)ince DOD's goal is to significantly expand the use of performance based payments, it would appear to be more cost effective not to incur significant expenditures on changes to a form (i.e., SF 1443) that is part of a system (progress payments) that is no longer the preferred system for providing financing payments.''

The Councils were puzzled at the commenter's cost estimate of $87,000 to update software to use the new SF 1443 because the changes incorporated into the SF 1443 by this case were, generally, necessitated by prior changes to the paid-cost rule and other changes to FAR Part 32. These changes had been in effect for some time, so contractors using SF 1443 to request progress payments have already made changes to their software to conform their progress payment requests to the updated FAR text.

The commenter, an association representing large defense aerospace corporations, was requested to provide the cost analysis upon which it based its estimate of the cost to reprogram software in order to enable electronic generation and submittal of the SF 1443 to request a progress payment. The commenter subsequently provided data supporting its estimate of approximately $87,000 per contractor. This estimate and the supporting data were forwarded to the Small Business Administration (SBA) Office of Advocacy for review specifically to determine the impact of modifying the SF 1443 on small businesses. Two independent reviews were conducted, one by the SBA's regulatory economist and one by an outside small business expert selected by the SBA. Neither of these reviews discovered a substantial economic impact on a significant number of small entities.

Further, the Councils did not find the commenter's rationale regarding performance-based payments convincing. While it is the goal of Federal Government agencies, not just DoD, to use performance-based payments wherever possible, there remain many circumstances in which progress payments are an important financing mechanism. Therefore, the Councils approved this case as a final rule.

During a final review by the Councils' Acquisition Finance Team, it was discovered that the last item in the ''INSTRUCTIONS'' section of the form on page 2 was labeled in error as pertaining to ''Item 26.'' However, the instruction actually refers to paragraph (f) of the ''CERTIFICATION'' section. That correction has been made to the form. In addition, a sentence was added to the SF 1443 instructions for Items 14a–14e to clarify that the ''financing payments'' to be included do not include interim payments under a cost reimbursement contract.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the changes are designed to simplify the form and improve clarity. (See also, the Background section above for a thorough discussion of lack of impact on small entities.)

C. Paperwork Reduction Act

The Paperwork Reduction Act does apply; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 9000–0010.

List of Subjects in 48 CFR Parts 32, 43, 52, and 53

Government procurement.

Dated: June 9, 2009.

Al Matera,

Director, Office of Acquisition Policy.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 32, 43, 52, and 53 as set forth below:

■ 1. The authority citation for 48 CFR parts 32, 43, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 32—CONTRACT FINANCING

■ 2. Amend section 32.001 by adding, in alphabetical order, the definition ''Liquidate'' to read as follows:

32.001 Definitions.

* * * * *

Liquidate means to decrease a payment for an accepted supply item or service under a contract for the purpose of recouping financing payments previously paid to the contractor.

* * * * *

■ 3. Amend section 32.501–3 by revising paragraph (a)(1) and the first sentence of paragraph (a)(3) to read as follows:

32.501–3 Contract price.

(a) * * *

(1) Under firm-fixed price contracts, the contract price is the current amount fixed by the contract plus the not-to-exceed amount for any unpriced modifications.

* * * * *

(3) Under a fixed-price incentive contract, the contract price is the target price plus the not-to-exceed amount of unpriced modifications. * * *

* * * * *

32.503–1 [Removed and Reserved]

■ 4. Remove and reserve section 32.503–1.

■ 5. Amend section 32.503–6 by revising paragraphs (a)(3), (f), and (g)(1)(i) to read as follows:

32.503–6 Suspension or reduction of payments.

(a) * * *

(3) In all cases, the contracting officer shall—

(i) Act fairly and reasonably;

(ii) Base decisions on substantial evidence; and

(iii) Document the contract file. Findings made under paragraph (c) of the Progress Payments clause shall be in writing.

* * * * *

(f) *Fair value of undelivered work.* Progress payments must be commensurate with the fair value of work accomplished in accordance with contract requirements. The contracting officer must adjust progress payments when necessary to ensure that the fair value of undelivered work equals or exceeds the amount of unliquidated progress payments. On loss contracts, the application of a loss ratio as provided at paragraph (g) of this subsection constitutes this adjustment.

(g) * * *

(1) * * *

(i) Revise the current contract price used in progress payment computations (the current ceiling price under fixed-price incentive contracts) to include the not-to-exceed amount for any pending change orders and unpriced orders.

* * * * *

PART 43—CONTRACT MODIFICATIONS

43.102 [Amended]

■ 6. Amend section 43.102 by removing from paragraph (b) the word ''maximum'' and adding the word ''ceiling'' in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 7. Amend section 52.232–16 by revising the date of the clause; adding paragraph (a)(9); and revising paragraphs (c)(5) and (g) to read as follows:

52.232–16 Progress Payments.

* * * * *

Progress Payments (JUL 2009)

* * * * *

(a) * * *

(9) The costs applicable to items delivered, invoiced, and accepted shall not include costs in excess of the contract price of the items.

* * * * *

(c) * * *

(5) The fair value of the undelivered work is less than the amount of unliquidated progress payments for that work.

* * * * *

(g) *Reports, forms, and access to records.* (1) The Contractor shall promptly furnish reports, certificates, financial statements, and other pertinent information (including estimates to complete) reasonably requested by the Contracting Officer for the administration of this clause. Also, the Contractor shall give the Government reasonable opportunity to examine and verify the Contractor's books, records, and accounts.

(2) The Contractor shall furnish estimates to complete that have been developed or updated within six months of the date of the progress payment request. The estimates to complete shall represent the Contractor's best estimate of total costs to complete all remaining contract work required under the contract. The estimates shall include sufficient detail to permit Government verification.

(3) Each Contractor request for progress payment shall:

(i) Be submitted on Standard Form 1443, Contractor's Request for Progress Payment, or the electronic equivalent as required by agency regulations, in accordance with the form instructions and the contract terms; and

(ii) Include any additional supporting documentation requested by the Contracting Officer.

* * * * *

PART 53—FORMS

53.232 [Amended]

■ 8. Amend section 53.232 by removing ''(*10/82*)'' and adding ''(JUL 2009)'' in its place; and by removing '', as specified in 32.503.1''.

■ 9. Amend section 53.301–1443 by revising the form to read as follows:

53.301–1443 Contractor's Request for Progress Payment.

BILLING CODE 6820–EP–S

CONTRACTOR'S REQUEST FOR PROGRESS PAYMENT

Form Approved
OMB Number 9000-0010

IMPORTANT: This form is to be completed in accordance with instructions on the reverse.

SECTION I - IDENTIFICATION INFORMATION

1 TO NAME AND ADDRESS OF CONTRACTING OFFICE ADMINISTERING THE CONTRACT *(Include ZIP Code)*	2 FROM NAME AND ADDRESS OF CONTRACTOR *(Include ZIP Code)*
PAYING OFFICE	3 SMALL BUSINESS ☐YES ☐NO 4 CONTRACT NUMBER: A BASIC CONTRACT NUMBER / B TASK OR DELIVERY ORDER NUMBER
	5 CONTRACT PRICE $

6. RATES		7. DATE OF INITIAL AWARD		8A PROGRESS PAYMENT REQUEST NUMBER	8B DATE OF THIS REQUEST
A PROGRESS PAYMENTS	B LIQUIDATION	A YEAR	B MONTH		
0 %	0 %				

SECTION II - STATEMENT OF COSTS UNDER THIS CONTRACT THROUGH _____ *(Date)*

9. RESERVED			
10. RESERVED			
11. COSTS ELIGIBLE FOR PROGRESS PAYMENTS UNDER THE PROGRESS PAYMENTS CLAUSE			
12a. TOTAL CONTRACT COST(S) INCURRED TO DATE			
b. ESTIMATED COST TO COMPLETE		c. TOTAL ESTIMATED COST OF PERFORMANCE	
13. ITEM 11 MULTIPLIED BY ITEM 6a			
14a. FINANCING PAYMENTS PAID TO SUBCONTRACTORS			
b. LIQUIDATED FINANCING PAYMENTS TO SUBCONTRACTORS			
c. UNLIQUIDATED FINANCING PAYMENTS PAID TO SUBCONTRACTORS *(Item 14a less 14b)*			
d. SUBCONTRACT FINANCING PAYMENTS APPROVED FOR CURRENT PAYMENT			
e. ELIGIBLE SUBCONTRACTOR FINANCING PAYMENTS *(Item 14c plus 14d)*			
15. TOTAL DOLLAR AMOUNT *(Item 13 plus 14e)*			
16. ITEM 5 MULTIPLIED BY ITEM 6b			
17. LESSER OF ITEM 15 OR ITEM 16			
18. TOTAL AMOUNT OF PREVIOUS PROGRESS PAYMENTS REQUESTED			
19 MAXIMUM BALANCE ELIGIBLE FOR PROGRESS PAYMENTS *(Item 17 less 18)*			

SECTION III - COMPUTATION OF LIMITS FOR OUTSTANDING PROGRESS PAYMENTS

20. COMPUTATION OF PROGRESS PAYMENT CLAUSE LIMITATION		
a. COSTS INCLUDED IN ITEM 11, APPLICABLE TO ITEMS DELIVERED, INVOICED, AND ACCEPTED TO THE DATE IN HEADING OF SECTION II		
b. COSTS ELIGIBLE FOR PROGRESS PAYMENTS, APPLICABLE TO UNDELIVERED ITEMS AND TO DELIVERED ITEMS NOT INVOICED AND ACCEPTED *(Item 11 less 20a)*		
c. ITEM 20b MULTIPLIED BY ITEM 6a		
d. ELIGIBLE SUBCONTRACTOR FINANCING PAYMENTS *(Same as Item 14e)*		
e. LIMITATION *(Item 20c plus 20d)*		
21. COMPUTATION OF PROGRESS PAYMENT CLAUSE LIMITATION		
a. CONTRACT PRICE OF ITEMS DELIVERED, ACCEPTED AND INVOICED AS OF THE DATE SHOWN IN THE HEADING OF SECTION II		
b. CONTRACT PRICE OF ITEMS NOT DELIVERED, ACCEPTED AND INVOICED *(Item 5 less 21a)*		
c. ITEM 21b MULTIPLIED BY ITEM 6b		
d. UNLIQUIDATED ADVANCE PAYMENTS PLUS ACCRUED INTEREST		
e. LIMITATION *(Item 21c less 21d)*		
22. MAXIMUM UNLIQUIDATED PROGRESS PAYMENTS *(Lesser of Item 20e or 21e)*		
23 TOTAL AMOUNT LIQUIDATED AND TO BE LIQUIDATED		
24. UNLIQUIDATED PROGRESS PAYMENTS *(Item 18 less 23)*		
25. MAXIMUM PERMISSIBLE PROGRESS PAYMENTS *(Item 22 less 24)*		
26. AMOUNT OF CURRENT INVOICE FOR PROGRESS PAYMENT *(Lesser of item 25 or 19)*		
27. AMOUNT APPROVED BY CONTRACTING OFFICER		

CERTIFICATION

DATE _____

I Certify that

(a) The above statement (with attachments) has been prepared from the books and records of the above-named contractor in accordance with the contract and the instructions hereon, and to the best of my knowledge and belief, that it is correct,
(b) All the costs of contract performance (except as herewith reported in writing) have been paid to the extent shown herein, or where not shown as paid have been paid or will be paid currently, by the contractor, when due, in the ordinary course of business,
(c) The work reflected above has been performed,
(d) The quantities and amounts involved are consistent with the requirements of the contract,
(e) There are no encumbrances (except as reported in writing herewith, or on previous progress payment request number _____) against the property acquired or produced for, and allocated or properly chargeable to the contract which would affect or impair the Government's title,
(f) There has been no materially adverse change in the financial condition of the contractor since the contractor's (insert 'as of' date of financial information) _____ submission of its last financial information dated (insert date of prior submission/certification) _____ to the Government in connection with the contract,
(g) To the extent of any contract provision limiting progress payments pending first article approval, such provision has been complied with, and
(h) After the making of the requested progress payment the unliquidated progress payments will not exceed the maximum unliquidated progress payments permitted by the contract

NAME AND TITLE OF CONTRACTOR REPRESENTATIVE SIGNING THIS FORM	SIGNATURE
NAME AND TITLE OF CONTRACTING OFFICER	SIGNATURE

NSN 7540-01-140-5523

STANDARD FORM 1443 (REV. 6/2009)
Prescribed by GSA FAR (48 CFR 53 232)

INSTRUCTIONS

GENERAL - All dollar amounts must be shown in whole dollars, rounded using a consistent methodology (e.g., always round up, always round down, always round to the nearest dollar). All line item numbers not included in the instructions below are self-explanatory.

SECTION I - IDENTIFICATION INFORMATION. Complete items 1 through 8b in accordance with the following instructions.

Item 1. TO - Enter the name and address of the cognizant Contract Administration Office (the office administering the contract).
PAYING OFFICE - Enter the designation of the paying office, as indicated on the contract.

Item 2. FROM - CONTRACTOR'S NAME AND ADDRESS/ZIP CODE - Enter the name and mailing address of the contractor. If applicable, the division of the company performing the contract should be entered immediately following the contractor's name.

Item 3 Enter an "X" in the appropriate block to indicate whether or not the contractor is a small business concern.

Item 4. Enter the contract number, including the task or delivery order number if applicable. Progress payment requests under individual orders shall be submitted as if the order constituted a separate contract, unless otherwise specified in this contract (FAR 52.232-16(m)).

Item 5. Enter the total contract price in accordance with the following (See FAR 32.501-3):
(1) Under firm-fixed-price contracts, the contract price is the current amount fixed by the contract plus the not-to-exceed amount for any unpriced modifications.
(2) If the contract is redeterminable or subject to economic price adjustment, the contract price is the initial price until modified.
(3) Under a fixed-price incentive contract, the contract price is the target price plus the not-to-exceed amount for any unpriced modifications. However, if the contractor's properly incurred costs exceed the target price, the contracting officer may provisionally increase the price up to the ceiling or maximum price.
(4) Under a letter contract, the contract price is the maximum amount obligated by the contract as modified
(5) Under an unpriced order issued against a basic ordering agreement, the contract price is the maximum amount obligated by the order, as modified.
(6) Any portion of the contract specifically providing for reimbursement of costs only shall be excluded from the contract price.

Item 6A. PROGRESS PAYMENT RATES - Enter the 2-digit progress payment percentage rate shown in paragraph (a) (1) of the progress payment clause

Item 6B. LIQUIDATED RATE - Enter the current progress payment liquidation rate prescribed in the contract (FAR 52.232-16(b)) using three digits - Example. show 80% as 800 - show 72.3% as 723. Decimals between tenths must be rounded up to the next highest tenth (not necessarily the nearest tenth), since rounding down would produce a rate below the minimum rate calculated (FAR 32.503-10(b) (4)).

Item 7. DATE OF INITIAL AWARD - Enter the four digit calendar year Use two digits to indicate the month. Example: Show January 2005 as 2005/01.

Item 8A. PROGRESS PAYMENT REQUEST NUMBER - Enter the number assigned to this request. All requests under a single contract must be numbered consecutively, beginning with 1 Each subsequent request under the same contract must continue in sequence, using the same series of numbers without omission.

Item 8B. Enter the date of the request.

SECTION II - STATEMENT OF COSTS UNDER THIS CONTRACT.
Date. In the space provided in the heading enter the date through which costs have been accumulated from inception for inclusion in this request. This date is applicable to item entries in Sections II and III.

Cost Basis. In accordance with FAR 52.232-16 (a) (1), the basis for progress payments is the contractor's total costs incurred under this contract, whether or not actually paid, plus financing payments to subcontractors (computed in accordance with FAR 52.232-16(j)), less the sum of all previous progress payments made by the Government under this contract.

Item 11. Costs eligible for progress payments under the progress payments clause. Compute the eligible costs in accordance with the requirements at FAR 52.232-16(a)(1) through (4) First articles: Before first article approval, the acquisition of materials or components for, or the commencement of production of, the balance of the contract quantity is at the sole risk of the contractor. Before the first article approval, the costs thereof shall not be allowable for purposes of progress payments (See FAR 52.209-3(g) and FAR 52.209-4(h))

Item 12a. Enter the total contract costs incurred to date, if the actual amount is not known, enter the best possible estimate If an estimate is used, enter (E) after the amount
Item 12b Enter the estimated cost to complete the contract. The contractor shall furnish estimates to complete that have been developed or updated within six months of the date of the progress payment request. The estimates to complete shall represent the contractor's best estimate of total costs to complete all remaining contract work required under the contract. The estimates shall include sufficient detail to permit Government verification.
Items 14a through 14e. Include only financing payments (progress payments, performance-based payments, and commercial item financing) on subcontracts which are in accordance with the requirements of FAR 52.232-16(j) Do not include interim payments under a cost reimbursement contract

Item 14a. Enter only financing payments actually paid.

Item 14b. Enter total financing payments recouped from subcontractors.

Item 14d. Include the amount of unpaid subcontract progress payment billings which have been approved by the contractor for the current payment in the ordinary course of business.

SECTION III - ADVANCE PAYMENTS/ACCEPTED ITEMS. This Section must be completed only if the contractor has received advance payments against this contract, or if the items have been delivered, invoiced and accepted as of the date indicated in the heading of Section II above.
EXCEPTION: Item 27 must be completed for all progress payment requests where the line 12c amount exceeds the amount on Line 5

Item 20a. Of the costs reported in Item 11, compute and enter only costs which are properly allocable to items delivered, invoiced and accepted to the applicable date. In order of preference, these costs are to be computed on the basis of one of the following: (a) The actual unit cost of items delivered, giving proper consideration to the deferment of the starting load costs or (b) projected unit costs (based on experienced costs plus the estimated cost to complete the contract), where the contractor maintains cost data which will clearly establish the reliability of such estimates.

Item 23. Enter total progress payments liquidated (monies recouped from the contractor on prior billings) and those to be liquidated from billings submitted but not yet paid (monies to be recouped from the contractor on submitted but unpaid billings).

CERTIFICATION
Paragraph (f). If no financial information has been provided previously in connection with this contract, insert "N/A" in the submission date block and the financial information date block Otherwise, insert respectively, the "as of" date of the financial information submitted last and the date of the last submission.

[FR Doc. E9–13977 Filed 6–12–09; 8:45 am]
BILLING CODE 6820–EP–C

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2009–0002, Sequence 4]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–33; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator of the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 2005–33 which amend the FAR. Interested parties may obtain further information regarding these rules by referring to FAC 2005–33, which precedes this document. These documents are also available via the Internet at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Ms. Hada Flowers, Regulatory Secretariat, (202) 208–7282. For clarification of content, contact the analyst whose name appears in the table below.

LIST OF RULES IN FAC 2005–33

Item	Subject	FAR case	Analyst
I	Trade Agreements—Costa Rica, Oman, and Peru (Interim)	2008–036	Murphy.
II	Contractor's Request for Progress Payments	2005–032	Murphy.

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2005–33 amends the FAR as specified below:

Item I—Trade Agreements—Costa Rica, Oman, and Peru (FAR Case 2008–036) (Interim)

This interim rule allows contracting officers to purchase the goods and services of Costa Rica, Oman, and Peru without application of the Buy American Act if the acquisition is subject to the applicable trade agreements. The free trade agreements with Costa Rica, Oman, and Peru join the North American Free Trade Agreement (NAFTA), the Australia, Bahrain, Chile, Morocco, and Singapore Free Trade Agreements, and the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA–DR) with respect to the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua, which are already in the FAR.

The threshold for supplies and services is $67,826 for the CAFTA-DR and $194,000 for the Oman and Peru FTAs. The threshold for construction is $7,443,000 for the CAFTA-DR and the Peru FTA and $8,817,449 for the Oman FTA.

Item II—Contractor's Request for Progress Payments (FAR Case 2005–032)

This final rule converts the proposed rule published at 73 FR 19035 on April 8, 2008, to a final rule with one editorial change. This final rule incorporates improvements related to requests for progress payments and the Standard Form (SF) 1443, Contractor's Request for Progress Payments, used to request those progress payments.

Dated: June 9, 2009.

Al Matera,

Director, Office of Acquisition Policy.

[FR Doc. E9–13976 Filed 6–12–09; 8:45 am]
BILLING CODE 6820–EP–C

Federal Register

Monday,
June 15, 2009

Part V

The President

Notice of June 12, 2009—Continuation of the National Emergency With Respect To The Actions and Policies of Certain Members of the Government of Belarus and Other Persons that Undermine Democratic Processes or Institutions in Belarus

Federal Register
Vol. 74, No. 113
Monday, June 15, 2009

Presidential Documents

Title 3—

The President

Notice of June 12, 2009

Continuation of the National Emergency With Respect To The Actions and Policies of Certain Members of the Government of Belarus and Other Persons that Undermine Democratic Processes or Institutions in Belarus

On June 16, 2006, by Executive Order 13405, the President declared a national emergency and ordered related measures blocking the property of certain persons undermining democratic processes or institutions in Belarus, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706). The President took this action to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions and policies of certain members of the Government of Belarus and other persons that have undermined democratic processes or institutions; committed human rights abuses related to political repression, including detentions and disappearances; and engaged in public corruption, including by diverting or misusing Belarusian public assets or by misusing public authority.

Despite some positive developments in the past year, including the release of internationally recognized political prisoners, the actions and policies of certain members of the Government of Belarus and other persons continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. Accordingly, the national emergency declared on June 16, 2006, and the measures adopted on that date to deal with that emergency, must continue in effect beyond June 16, 2009. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13405.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,
June 12, 2009.

[FR Doc. E9–14214
Filed 6–12–09; 1:00 pm]
Billing code 3195–W9–P

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