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WHEN: Tuesday, May 20, 2008
9:00 a.m.–Noon

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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Contents

Federal Register

Vol. 73, No. 95

Thursday, May 15, 2008

Agency for Healthcare Research and Quality
NOTICES
Meetings:
Health Care Policy and Research Special Emphasis Panel, 28119

Agricultural Marketing Service
RULES
Increase in Fees and Charges for Egg, Poultry, and Rabbit Grading; Correction, 28026

Agriculture Department
See Agricultural Marketing Service
See Forest Service

Antitrust Division
NOTICES
Complaint:
United States V. Regal Cinemas, Inc. and Consolidated Theatres Holdings, GP, 28154–28166

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

Coast Guard
RULES
Safety Zones:
Northeast Gateway, Deepwater Port, Atlantic Ocean, Boston, MA, 28039–28041
Safety Zones: Weymouth 4th of July Fireworks; Port of Boston, 28038–28039
PROPOSED RULES
Drawbridge Operation Regulations:
Smith Creek at Wilmington, NC, 28069–28071

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 28099–28100

Committee for Purchase From People Who Are Blind or Severely Disabled
RULES
Change in Investigatory Procedures, 28043–28044

Education Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 28103–28105

Employment and Training Administration
NOTICES
Determinations Regarding Eligibility to Apply for Worker Adjustment, etc., 28166–28167
Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment, etc., 28168–28169
Investigation Termination:
Gil-Mar Manufacturing Co., 28168
Maxim Integrated Products, 28168
Solon Mfg. Co., 28168
Revised Determination on Reconsideration:
Bolton Metal Products Co., 28169–28170

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
PROPOSED RULES
Approval and Promulgation of Air Quality Implementation Plans:
Texas, 28071–28073
NOTICES
Adequacy Status of Motor Vehicle Budgets in Submitted South Coast 8-hour Ozone and PM2.5 Attainment, etc.:
California, 28110–28112
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 28112–28113

Equal Employment Opportunity Commission
NOTICES
Meetings; Sunshine Act, 28114

Executive Office of the President
See Trade Representative, Office of United States

Federal Aviation Administration
RULES
Amendment of Class E Airspace:
Bradford, PA, 28032
Establishment of Class E Airspace:
Seneca, PA, 28032–28033
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 28182–28184

Federal Communications Commission
RULES
Competitive Networks:
Multiunit Premises, 28049–28057
Extension of Waiver:
Interconnected Voice Over Internet Protocol; Extension of Time to Route 711-Dialed Calls, 28057–28059
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 28114–28116
Rulemaking Proceeding; Petitions for Reconsideration, 28116
Use of Non-service Initialized Phones to Make Fraudulent 911 Calls, 28116–28117

Federal Deposit Insurance Corporation
NOTICES
Meetings:
Board of Directors, 28117

Federal Emergency Management Agency
RULES
Changes in Flood Elevation Determinations, 28044–28049
PROPOSED RULES
Proposed Flood Elevation Determinations, 28073–28080

NOTICES
Major Disaster Declaration:
Arkansas, 28147
Missouri, 28147
Missouri; Amendment No. 1 to Notice of a Major Disaster Declaration, 28147–28148
Oklahoma; Major Disaster and Related Determinations, 28148

Federal Energy Regulatory Commission
NOTICES
Combined Notice of Filings, 28105–28108
Meetings; Sunshine Act, 28108–28110

Federal Highway Administration
NOTICES
Environmental Statements; Availability, etc.:
Clark County, WA, 28184–28185
Final Federal Agency Actions on Proposed Highway; Lawrence, Kansas, 28185–28186

Federal Maritime Commission
NOTICES
Ocean Transportation Intermediary License; Reissuances, 28117

Federal Motor Carrier Safety Administration
NOTICES
Qualification of Drivers; Exemption Applications; Vision, 28186–28188
Qualification of Drivers; Exemption Renewals; Vision, 28188

Federal Reserve System
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 28117–28118
Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies, 28118
Formations, Acquisitions, and Mergers of Bank Holding Companies, 28118–28119

Fish and Wildlife Service
RULES
Endangered and Threatened Wildlife and Plants:
Determination of Threatened Status for the Polar Bear (Ursus maritimus) Throughout Its Range, 28212–28303
Endangered and Threatened Wildlife and Plants; Special Rule for the Polar Bear, 28306–28318
PROPOSED RULES
Endangered and Threatened Wildlife and Plants:
90-Day Finding on a Petition To List the Ashy Storm-Petrel (Oceanodroma homochroa), 28080–28084
90-Day Finding on Petition to Delist the Hualapai Mexican vole (Microtus mexicanus hualpaiensis), 28094–28097
Designation of Critical Habitat for the Wintering Population of the Piping Plover in North Carolina; Revised, 28084–28094

Food and Drug Administration
RULES
Implantation or Injectable Dosage Form New Animal Drugs; Flunixin, 28036–28037
NOTICES
Determination of Regulatory Review Period for Purposes of Patent Extension; TYZEKA, 28119–28120

Forest Service
NOTICES
Environmental Impact Statements; Availability, etc.:
Dakota Prairie Grasslands, Medora Ranger District; ND; North Billings County Range Allotment, etc., 28098–28099

Health and Human Services Department
See Agency for Healthcare Research and Quality
See Food and Drug Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency
See Transportation Security Administration
RULES
Establishment of a Genealogy Program, 28026–28032
PROPOSED RULES
Privacy Act; Systems of Records, 28060–28069
NOTICES
National Protection and Programs Directorate, 28127–28128
Privacy Act; Systems of Records, 28128–28147

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service
See Surface Mining Reclamation and Enforcement Office

International Trade Administration
NOTICES
Certain Frozen Fish Fillets from Vietnam:
Extension of Time Limit for Final Results of Changed Circumstances Review, 28100
Extension of Time Limits for the Final Results of Antidumping Duty Administrative Review:
Certain Hot-Rolled Carbon Steel Flat Products from India, 28100–28101
Rescission of Antidumping Duty Administrative Reviews:
Hot-Rolled Carbon Steel Flat Products from Thailand, 28101–28102

International Trade Commission
NOTICES
Five-Year Review Concerning the Antidumping Duty Order:
Silicon Metal From Russia, 28153–28154

Justice Department
See Antitrust Division
NOTICES
Proposed Administrative Settlement Agreement and Order on Consent, 28154

Labor Department
See Employment and Training Administration

Land Management Bureau
NOTICES
Alaska Native Claims Selection, 28149
Environmental Impact Statements; Availability, etc.:
Pompeys Pillar National Monument, MT, 28150–28151
Meetings:
State of Arizona Resource Advisory Council, 28151–28152
Proposed Reinstatement of Terminated Oil and Gas Leases, 28152

National Aeronautics and Space Administration
RULES
Development Work for Industry in NASA Wind Tunnels, 28033

National Institutes of Health
NOTICES
Meetings:
Biophysics of Neural Systems Study Section; change, 28120
Center for Scientific Review Special Emphasis Panel; Cancellation, 28120
Immunology Integrated Review Group, 28121–28122
Musculoskeletal, Oral and Skin Sciences Integrated Review Group and Others, 28122–28123
National Institute on Aging Initial Review Group Biological Aging Review Committee, 28123–28124
National Institute on Aging Special Emphasis Panel, 28124
Statement of Organization, Functions, and Delegations of Authority, 28124–28126

National Oceanic and Atmospheric Administration
NOTICES
Meetings:
Gulf of Mexico Fishery Management Council; Cancellation, 28102–28103
New England Fishery Management Council, 28103

National Park Service
NOTICES
Extension of Concession Contract, 28152

Nuclear Regulatory Commission
NOTICES
Acceptance for Docketing of the Application and Opportunity for Hearing Regarding Renewal:
Rensselaer Polytechnic Institute Reactor Critical Facility, 28170–28171
Environmental Statements; Availability, etc.:
Naval Air Depot, Cherry Point, NC, 28171–28173
Withdrawal of Application for Amendment to Facility Operating License:
Dominion Energy Kewaunee, Inc, 28173–28174

Office of United States Trade Representative
See Trade Representative, Office of United States

Pension Benefit Guaranty Corporation
RULES
Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits, 28037–28038

Personnel Management Office
RULES
Political Activity; Federal Employees Residing in Designated Localities, 28025–28026

Postal Service
RULES
Repositionable Notes Transitioned from an Experimental Test to a Permanent Classification, 28041–28042

Securities and Exchange Commission
NOTICES
Applications:
Main Street Capital Corp., et al., 28175–28178
Self-Regulatory Organizations; Proposed Rule Changes:
NYSE Arca, Inc., 28178–28180

Small Business Administration
NOTICES
Disaster Declarations:
Arkansas, 28180
Connecticut, 28180
Indiana, 28180–28181
Mississippi, 28181

Social Security Administration
RULES
Parent-to-Child Deeming from Stepparents, 28033–28036
NOTICES
Rescission of Social Security Acquiescence Ruling, 28181–28182

Substance Abuse and Mental Health Services Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 28126–28127

Surface Mining Reclamation and Enforcement Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 28152–28153

Surface Transportation Board
NOTICES
Discontinuance of Service Exemption:
Norfolk Southern Railway Company; Chesapeake, VA, 28188–28189
Genesee & Wyoming Inc.—Control Exemption—Columbus and Greenville Railway Company, et al., 28189
Trackage Rights Exemption:
Indiana Rail Road Co.; CSX Transportation, Inc., 28189–28190

Trade Representative, Office of United States
NOTICES
Generalized System of Preferences:
Initiation of the 2008 Annual GSP Product and Country Eligibility Practices Review and Deadlines for Filing Petitions, 28174–28175

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Motor Carrier Safety Administration
See Surface Transportation Board

Transportation Security Administration
NOTICES
Transportation Worker Identification Credential:
Enrollment Dates for the Ports of Manatee, FL; Marcus Hook, PA; Rochester, NY; and Greenville, MS, 28149

Treasury Department
NOTICES
Draft Report of the Advisory Committee on the Auditing Profession, 28190–28208
Meetings:
Advisory Committee on the Auditing Profession, 28208–28209

Separate Parts in This Issue

Part II
Interior Department, Fish and Wildlife Services, 28212–28303

Part III
Interior Department, Fish and Wildlife Services, 28306–28318

Reader Aids

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

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

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

5 CFR
733 28025

6 CFR

Proposed Rules:
5 (3 documents) 28060, 28062, 28066

7 CFR
56 28026
70 28026

8 CFR
103 28026
299 28026

14 CFR
71 (2 documents) 28032
1210 28033

20 CFR
416 28033

21 CFR
522 28036

29 CFR
4022 28037
4044 28037

33 CFR
100 28038
165 28039

Proposed Rules:
117 28069

39 CFR
111 28041

40 CFR

Proposed Rules:
52 28071

41 CFR
51-3 28043
51-4 28043

44 CFR
65 (2 documents) 28044, 28046

Proposed Rules:
67 28073

47 CFR
64 (2 documents) 28049, 28057
17 (2 documents) 28212, 28306

50 CFR

Proposed Rules:
17 (3 documents) 28080, 28084, 28094

Rules and Regulations

Federal Register
Vol. 73, No. 95
Thursday, May 15, 2008

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

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 733

RIN 3206–AL32

Political Activity—Federal Employees Residing in Designated Localities

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: OPM is amending its regulations at 5 CFR part 733 to grant Federal employees residing in Fauquier County, Virginia, a partial exemption from the political activity restrictions in the Hatch Act, and to add Fauquier County to its regulatory list of designated localities. The amendment reflects OPM's determination that Fauquier County meets the criteria in the Hatch Act and OPM regulations for a partial exemption to issue.

DATES: This rule is effective June 16, 2008.

FOR FURTHER INFORMATION CONTACT: Jo-Ann Chabot, Office of the General Counsel, United States Office of Personnel Management, (202) 606–1700.

SUPPLEMENTARY INFORMATION: The Hatch Act, at 5 U.S.C. 7323(a)(2) and (3), prohibits Federal employees from becoming candidates for partisan political office and from soliciting, accepting, or receiving political contributions. However, 5 U.S.C. 7325, authorizes OPM to prescribe regulations permitting employees in certain communities to participate in local elections for partisan political office without regard to the prohibitions in 5 U.S.C. 7323(a)(2) and (3) only if the requirements described in section 7325 are met. The first requirement is that the community or political subdivision must be located in Maryland or Virginia, and in the immediate vicinity of the District of Columbia. Alternatively, the majority of the community's registered voters must be employed by the United States Government. The second requirement is that OPM must determine that it is in the domestic interest of the employees to permit that political participation because of special or unusual circumstances existing in the community or political subdivision. These statutory requirements are reflected in 5 CFR 733.107(a). Under 5 CFR part 733, the exemption from the prohibitions in 5 U.S.C. 7323(a)(2) and (3) is a partial exemption because in 5 CFR 733.103–733.106, OPM has established limitations on political participation by most Federal employees residing in these designated municipalities and subdivisions.

On July 19, 2007, OPM issued a proposed rule at 72 FR 39582 to add Fauquier County, Virginia, to this regulatory list of designated localities at 5 CFR 733.107(c). In its notice of proposed rulemaking, OPM noted that Fauquier County, Virginia, had fulfilled the statutory requirements for a partial exemption to issue and proposed the addition of Fauquier County to the regulatory list of designated localities. 72 FR 39582 (July 19, 2007). OPM also placed a legal notice in *The Fauquier Times Democrat* on September 12, 2007.

OPM received only one comment. In this comment, an individual identifying himself as a resident of Fauquier County stated that he feared interference every four years from residents who had no long range plans to stay in the community, or had no understanding of the ancestral history of the area. This individual also noted that he had nothing against the potential expertise of the county's Federally employed residents. He also stated, however, that he was ''sick of gerrymandering of'' the election process. OPM notes that most Federal civilian employees are individuals who have made a career of public service and reside in the same communities for many years. This individual, moreover, did not submit to OPM any evidence that political participation of Federal employees in connection with local elections would result in any ''gerrymandering'' of the election process, and OPM has not received any such evidence from any other source.

Therefore, OPM is adding Fauquier County to its list of designated localities at 5 CFR 733.107(c). When this rule becomes effective, Federally employed residents of Fauquier County will be permitted under 5 CFR 733.103 to participate in the following activities:

(1) Run as independent candidates for election to partisan political office in elections for local office in the municipality or political subdivision;
(2) Solicit, accept, or receive a political contribution as, or on behalf of, an independent candidate for partisan political office in elections for local office in the municipality or political subdivision;
(3) Accept or receive a political contribution on behalf of an individual who is a candidate for local partisan political office and who represents a political party;
(4) Solicit, accept, or receive uncompensated volunteer services as an independent candidate, or on behalf of an independent candidate, for local partisan political office, in connection with the local elections of the municipality or subdivision; and
(5) Solicit, accept, or receive uncompensated volunteer services on behalf of an individual who is a candidate for local partisan political office and who represents a political party.

Under 5 CFR 733.104 of title 5, however, Federally employed residents of Fauquier may not:

(1) Run as the representative of a political party for local partisan political office;
(2) Solicit a political contribution on behalf of an individual who is a candidate for local partisan political office and who represents a political party;
(3) Knowingly solicit a political contribution from any Federal employee, except as permitted under 5 U.S.C. 7323(a)(2)(A)–(C).
(4) Accept or receive a political contribution from a subordinate;
(5) Solicit, accept, or receive uncompensated volunteer services from a subordinate for any political purpose;
(6) Participate in political activities:
○ While they are on duty:
○ While they are wearing a uniform, badge, or insignia that identifies the employing agency or instrumentality or the position of the employee;
○ While they are in any room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States or any agency or instrumentality thereof; or
○ While using a Government-owned or leased vehicle or while using a privately owned vehicle in the discharge of official duties.

Moreover, candidacy for, and service in, a partisan political office shall not result in neglect of, or interference with, the performance of the duties of the

employee or create a conflict, or apparent conflict, of interest.

Sections 733.103 and 733.104 of Title 5, Code of Federal Regulations, do not apply to individuals, such as career senior executives and employees of the Federal Bureau of Investigation, who are employed in the agencies or positions listed in 5 CFR 733.105(a). These individuals are subject to the more stringent limitations described in 5 CFR 733.105 and 733.106.

Individuals who require advice concerning specific political activities, and whether an activity is permitted or prohibited under 5 CFR 733.103–733.106, should contact the United States Office of Special Counsel at (800) 854–2824 or (202) 254–3650. Requests for Hatch Act advisory opinions may be made by e-mail to: *hatchact@osc.gov.*

Fauquier County will be listed after Falls Church, Virginia, and before Herndon, Virginia, at 5 CFR 733.107(c).

E.O. 12866, Regulatory Review

This regulation has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the changes will affect only employees of the Federal Government.

List of Subjects in 5 CFR Part 733

Political activities (Government employees).

Office of Personnel Management.

Linda M. Springer,

Director.

■ Accordingly, the Office of Personnel Management amends 5 CFR Part 733 as follows:

PART 733—POLITICAL ACTIVITY—FEDERAL EMPLOYEES RESIDING IN DESIGNATED LOCALITIES

■ 1. The authority citation for part 733 continues to read as follows:

Authority: 5 U.S.C. 7325; sec. 308 of Pub. L. 104–93, 109 Stat. 961, 966 (Jan. 6, 1996).

■ 2. Section 733.107(c) is amended by adding Fauquier County, Virginia, alphabetically to the list of designated Virginia municipalities and political subdivisions as set forth below.

§ 733.107 Designated localities.

* * * * *

(c) * * *

In Virginia

* * * * *

Fauquier County

* * * * *

[FR Doc. E8–10774 Filed 5–14–08; 8:45 am]

BILLING CODE 6325–48–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 56 and 70

[Docket No. AMS–PY–08–0030; PY–06–002]

Increase in Fees and Charges for Egg, Poultry, and Rabbit Grading; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final regulations that were published in the **Federal Register** on Wednesday, March 14, 2007 (72 FR 11773) related to the fees and charges for Federal voluntary egg, poultry, and rabbit grading found in sections 7 CFR 56.54(a)(2), 7 CFR 70.76(a)(2) and 7 CFR 70.77(a)(5). The final regulations that are the subject of these corrections were to increase the minimum fees for rabbit grading and for non-resident egg and poultry grading services that had been effective since September 25, 2005. Although the increases were included in the supplementary information, they were inadvertently omitted in the regulatory language.

DATES: *Effective Date:* May 15, 2008.

FOR FURTHER INFORMATION CONTACT: David Bowden, Jr., Chief, USDA, AMS, PY, Standards, Promotion and Technology Branch (202) 690–3148.

SUPPLEMENTARY INFORMATION: The docket provides correcting amendments to Marketing Orders 56 and 70, found respectively at 7 CFR part 56 and part 70.

List of Subjects

7 CFR Part 56

Eggs and egg products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

7 CFR Part 70

Food grades and standards, Food labeling, Poultry and Poultry products, Rabbits and rabbit products, Reporting and recordkeeping requirements.

■ Accordingly, 7 CFR, parts 56 and 70 are corrected by making the following correcting amendments:

PART 56—VOLUNTARY GRADING OF SHELL EGGS

■ 1. The authority citation for part 56 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

§ 56.54 [Amended]

■ 2. In § 56.54, paragraph (a)(2) is amended by removing the figure ''$260'' and adding the figure ''$275'' in its place.

PART 70—VOLUNTARY GRADING OF POULTRY PRODUCTS AND RABBIT PRODUCTS

■ 3. The authority citation for part 70 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

§ 70.76 [Amended]

■ 4. In § 70.76, paragraph (a)(2) is amended by removing the figure ''$260'' and adding the figure ''$275'' in its place.

§ 70.77 [Amended]

■ 5. In § 70.77, paragraph (a)(5) is amended by removing the figure ''$260'' and adding the figure ''$275'' in its place.

Dated: May 9, 2008.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E8–10821 Filed 5–14–08; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 103 and 299

[CIS No. 2074–00; DHS Docket No. USCIS–2005–0013]

RIN 1615—AB19

Establishment of a Genealogy Program

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Final rule.

SUMMARY: This rule establishes a fee-for-service Genealogy Program within U.S. Citizenship and Immigration Services (USCIS) to streamline and improve the process for acquiring historical records of deceased individuals. Currently, USCIS processes such requests through its Freedom of Information Act/Privacy Act (FOIA/PA) program, thereby adding unnecessary delays to the process.

USCIS expects that this Genealogy Program will ensure a timely response to requests for genealogical and historical records and will relieve

USCIS' FOIA/PA program of requests that do not require FOIA/PA expertise. It will put researchers in touch with the correct staff persons within USCIS, and it will create a dedicated queue for genealogists and other researchers seeking access to historical records.

DATES: This rule is effective August 13, 2008.

FOR FURTHER INFORMATION CONTACT: Marian L. Smith, Office of Records Services (ORS), U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., Washington, DC 20529, telephone (202) 272–8367.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background and Purpose
II. Discussion of Comments
A. Summary of Comments
B. Response to Comments, Generally
C. Response to Comments about Fees
III. Regulatory Analyses
A. Regulatory Flexibility Act
B. Unfunded Mandates Reform Act of 1995
C. Small Business Regulatory Enforcement Fairness Act of 1996
D. Executive Order 12866
E. Executive Order 13132
F. Executive Order 12988
G. Paperwork Reduction Act

I. Background and Purpose

USCIS currently processes requests for historical records of deceased individuals (i.e., genealogical requests) under USCIS' FOIA/PA program. However, the demand for historical records by historical and genealogical researchers, as well as other members of the public, has grown dramatically over the past several years. The volume of genealogical requests has contributed to the USCIS FOIA/PA backlog. USCIS believes that removing genealogy research from the immense FOIA group of ''all'' requesters would improve service to historical researchers, genealogists, and other members of the public. It would also greatly reduce the number of FOIA requests and improve the ability of USCIS to respond to requests for other non-historical records and materials.

On April 20, 2006, the Department of Homeland Security published a proposed rule in the **Federal Register** (71 FR 20357), soliciting comments from the public on the establishment of a fee-for-service Genealogy Program in USCIS. As discussed in the proposed rule, the Genealogy Program would accept genealogical research requests directly from requesters. There would be two types of requests: (1) Requests for searching the index of records if the requester is unable to identify a specific historical record; and (2) requests for making copies of historical records the requester can identify by file number. To make a request, the requester would need to submit to the Genealogy Program the appropriate request form, accompanied by any supporting documentation and the applicable fee. The Genealogy Program would handle the entire request/retrieval process.

II. Discussion of Comments

A. Summary of Comments

The comment period for the April 20, 2006 proposed rule closed on June 19, 2006. USCIS received a total of thirty-three comments, including thirty-one comments from individuals identified as either hobbyists or professional genealogists. One of the comments came from an umbrella organization for numerous genealogical societies worldwide. There were twenty-eight positive remarks in favor of USCIS establishing a Genealogy Program. In addition, USCIS received three negative comments that objected to USCIS' establishment of a Genealogy Program.

Of the positive comments, seven requested that the Genealogy Program have an online search capability with public access to the index. Nine supported USCIS' proposal to remove genealogy research from the FOIA program. One of the commenters, an umbrella organization for genealogical societies that was in favor of creating a dedicated fee-for-service Genealogy Program, noted the benefits of such a program. The program would permit individuals to make requests over the Internet, remove those requests from the FOIA program (thereby eliminating the excessive waiting time), and support the creation of a dedicated staff that the public can contact. This commenter noted that the organization and its members approved of a fee-based system and expressed hope that USCIS would balance the final fee range with the issue of affordability for individuals seeking records.

Five commenters discussed the range of fees that USCIS proposed. One commenter stated that fees above $10 will limit access to the documents. A second commenter suggested that the proposed fees would make USCIS-held records ''records of last resort,'' because a researcher would only submit a request if it were impossible to find the naturalization or immigration information elsewhere. A third commenter opined that the proposed range of fees would substantially dampen people's interest in obtaining such records and stop people from continuing their genealogy research. This commenter further stated that most of the people who do genealogy research are over 50 years old or are senior citizens with finite financial resources. The fourth commenter wrote that the proposed fees were too high for the average genealogy researcher and suggested that fees in the $15 to $25 range would be more affordable. The fifth commenter expressed concern that the proposed fee range of $26 to $55 for a copy of textual documentation is much too high for the average person to afford.

B. Response to Comments, Generally

USCIS will establish the Genealogy Program as a fee-for-service program. USCIS will not expend any of its financial resources, which are dedicated to its overall mission for the administration of immigration and naturalization adjudication functions and establishing immigration services, policies, and priorities.

In many cases, USCIS is the only government agency that will have certain historical records that provide the missing link for which genealogists or family historians are searching. An example is the Visa File packet, which contains the original arrival record of immigrants admitted for permanent residence under provisions of the Immigration Act of 1924. The packet contains information and documents of the immigrant's exact date and place of birth, names of parents and children, all places of residence for five full years prior to immigration, and photographs. In addition, some Visa packets contain birth, marriage, and military records. USCIS will join other Federal agencies that provide record search and document production services (for a fee) to family researchers and genealogists.

C. Response to Comments About Fees

In the proposed rule, USCIS provided a detailed analysis about fees and specifically requested comment on the issue of fees. 71 FR at 20363. Several commenters provided input on fees, and those comments are summarized above. In response, USCIS provides the following explanation on its basis for establishing fees and setting the amounts of the fees.

In the proposed rule, USCIS proposed a fee range of $16 to $45 for an index search and $16 to $45 for a record/file services request. 71 FR at 20362. USCIS had calculated these proposed fees in accordance with Office of Management and Budget (OMB) Circular A–25, which requires that user fees recover the full cost of services provided. OMB Circular A–25, User Charges (Revised), section 6, 58 FR 38142 (July 15, 1993) (OMB Circular A–25). Full cost under

OMB Circular A–25 includes items such as management and personnel costs (salaries and benefits), physical overhead, consulting, materials and supplies, utilities, insurance, travel, and rent of building space and equipment. As was discussed in the proposed rule, the services to be provided under the USCIS Genealogy Program will be significantly enhanced from what is currently provided under existing FOIA/PA processing.

The fees that USCIS will charge to provide services that are described in this rule will cover the costs of that enhanced service as well as overhead items as required by OMB Circular A–25. The full cost of this service will include the cost of research and information collection, a description of the document, suggestions of where to locate records from other federal or state agencies, establishment of procedures and standards, and the issuance of regulations. Thus, the fees must be established at a level that recovers these costs.

OMB Circular A–25 also provides that, when costs are not known, such as when an agency is developing and implementing a new fee for a service program, an agency may establish fees based on a study and comparison of other comparable fee-based services provided by other governmental entities. Since the genealogy program is new, USCIS utilized this method of fee determination in addition to analyzing the actual costs projected to carry out the program. No other organization provides exactly the same service, because no other organization holds precisely the same variety or volume of records. USCIS, however, considered the fees charged by a few similar organizations. As stated in the proposed rule, USCIS considered the fees charged by the Social Security Administration, the National Archives and Records Administration, the Department of Interior's Bureau of Land Management, and a few state agencies.

After considering the comments received on the proposed rule, the costs of providing this service, OMB requirements, and the fees charged for similar services, USCIS has decided to set the search and document reproduction fees for the Genealogy Program as follows:

Index Search: $20.

Copy of Document from Microfilm: $20.

Copy of Textual File: $35.

Chart 1 lists the records that the public would be able to request from the Genealogy Program versus the records that the public would be able to request from the FOIA/PA program.

CHART 1

Genealogy program	FOIA/PA program
Files of deceased subjects. (Provided files are defined as historical records.)	Files of living subjects.
Naturalization Certificate Files (C-Files) from 9/27/1906 to 4/1/1956	Naturalization records on or after 4/1/1956.
Visa Files from 7/1/1924 to 3/31/1944 and Visa records from 3/31/1944 to 5/1/1951 in A-files.	Visa records on or after 5/1/1951 in A-Files.
A-Files below 8 million and documents therein dated prior to 5/1/1951	A-files above 8 million and documents therein dated on or after 5/1/1951.
Registry Files from 3/2/1929 to 3/31/1944 and registry records from 4/1/1944 to 4/30/1951 in A-files.	Registry records on or after 5/1/1951 in A-Files.
AR–2 Files from 8/1/1940 to 3/31/1944 and Alien Registration Forms from 3/31/1944 to 4/30/1951 in A-Files.	Alien Registration Forms on or after 5/1/1951 in A-Files.

III. Regulatory Analyses

A. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), DHS certifies that this rule will not have a significant economic impact on a substantial number of small entities because of the following factors:

This rule affects professional genealogists and other members of the public requesting historical records from USCIS. The main source of genealogy requests comes from individuals doing personal research, rather than from small entities, such as professional genealogists. ''The Washington Post'' reported that seventy-three percent of Americans have an interest in their family history, according to a 2005 study conducted by Market Strategies, Inc., a syndicated research firm based in Livonia, Michigan, and MyFamily.com, an online network of genealogical tools based in Provo, Utah. ''The Wall Street Journal'' described genealogy as a $200 million per year industry ranging from individual researchers to multi-million dollar companies.

In addition, the growth of the Internet has spurred interest in genealogy and a rapidly growing number of hobbyists pursuing genealogy. According to the ''Occupational Outlook Quarterly'' (Bureau of Labor Statistics, Fall 2000), a 1997 survey of certified genealogists found that 57 percent work part-time, 34 percent work full-time, and 9 percent are hobbyists. In 2001, there were over 300 certified genealogists, and currently, the Association of Professional Genealogists has 1,600 members worldwide (*http://www.apgen.org*). The National Genealogical Society notes:

> Some professional genealogists are employed as librarians, archivists, editors or research assistants to established professionals; others work for genealogical firms. Most, however, choose self-employment-learning business principles to ensure the success of their genealogical practice. As with other entrepreneurial fields, most make the move gradually from their original field of employment, building a practice—be it a client base, writing outlets, or some other venue—before moving full-time into genealogy. Some make this career switch in mid-life. Others choose genealogy as a second career upon retirement from their first one. Because genealogical degree programs are still relatively rare, only a few enjoy the opportunity to make genealogy their first career. No accurate count exists for the number of individuals employed as genealogists, full-time and part-time (*http://www.ngsgenealogy.org/articles/profession.cfm*).

With the growth of the Internet, the number of individuals and hobbyists has grown at a much faster rate. Much of the growth in genealogy as a sector arises from providing individuals with the means of conducting their own family history research through online databases and research tools. The growing dominance of individual hobbyists suggests that individuals rather than professionals are the primary requesters of historical records. Professional genealogists tend to be hired when individuals hit a ''brick wall,'' or encounter a particular problem that they cannot resolve. This suggests that professional researchers tend to focus on aspects of genealogy research

other than the standard index searches or record requests that would be submitted to the USCIS Genealogy Program.

In each of the past 4 years, USCIS has received an average of 10,000 combined index search and/or records requests for historical records through the FOIA program. For purposes of counting records, USCIS counts each request for a record search as one request. Based on an estimated increase in the demand for historical information and the fact that the Genealogy Program will treat index search requests and records requests as separate rather than combined requests, DHS expects the total number of genealogy requests to be significantly higher than when the FOIA Program handled genealogical requests. DHS estimates that it will receive a combined total of 26,597 genealogy requests, including 15,250 index search requests, 6,619 requests for microfilm records, and 4,728 requests for textual records.

DHS has determined that individuals make requests for historical records. If professional genealogists and researchers have submitted such requests, they are not identifying themselves as commercial requesters and thus cannot be segregated in the data. Genealogists typically advise clients on how to submit their own requests. Reasons for this practice include the time required for a response to the request and the belief that records are more releasable to a relative rather than an unrelated third party.

Based on discussions with professional genealogists, USCIS believes that professional genealogists and researchers who fall under the approved definition from the Small Business Association definition of a small entity in this category (i.e., All Other Professional, Scientific, and Technical Services with annual average receipts of $6 million or less) generate well below 5 percent of the total number of requests. If USCIS assumes that professional genealogists and researchers account for 5 percent of the requests, and these costs are borne exclusively by the 1,600 members of the Association of Professional Genealogists, the average impact would be $18.84 per year. This figure was derived by multiplying the total cost of the rule $602,860 by .5% (the percentage of small entities) and divided by 1,600 (the number of small entities.)

These practices arise from the nature of the genealogy sector. Professional genealogists charge from $10 to $100 per hour, with an average of $30 to $60 per hour, according to the Association of Professional Genealogists (*http://www.apgen.org/articles/hire.html*). Expenses, such as record requests and copies, are often charged to the client as an additional expense. The fees established with this rule could be passed along as a direct expense to the professional genealogists' client, thus no significant economic impact would be borne by the professional genealogist. Specialists typically charge a relatively higher fee. (*http://www.progenealogists.com/compare.htm*). In addition, many professionals require a retainer of $300 to $500. See Sue P. Morgan, ''What You Should Know Before Hiring a Professional Genealogist,'' available at *http://www.genservices.com/docs/HiringAPro.htm*.

Depending on the depth of the research, the fees for a genealogical study can be substantial. This does not suggest a substantial burden on researchers. Given the low number of professional genealogists and researchers that would be impacted by this rule, the resulting degree of economic impact would not require DHS to perform Regulatory Flexibility Analysis.

B. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

C. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

D. Executive Order 12866

It has been determined that this rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review. Nonetheless, USCIS has assessed both the costs and benefits of this rule and has determined that the benefits of this regulation justify its costs. The anticipated benefits of this rule are: (1) Relieve the FOIA/PA program from burdensome requests that require no FOIA/PA expertise; (2) place requesters and the Genealogy staff in direct communication; (3) provide a dedicated queue and point of contact for genealogists and other researchers seeking access to those records described as historical records; (4) generate sufficient revenue to cover expenses as a fee for service program; and (5) reduce the time it takes for USCIS to respond to these genealogy requests.

The cost to the public of this rule will be $20 for a request for an index search, $20 for a request for a copy of a file on microfilm, and $35 for a request for a copy of a textual file. USCIS is authorized to charge a fee to recover the full costs of providing research and information services under section 286(t) of the Immigration and Nationality Act, 8 U.S.C. 1356(t). Other sources exist for many types of genealogical research, and it is not evident that every search by a genealogist would require access to the Genealogy Program at USCIS.

Based upon these fees, it is possible to approximate the impact of fees on individual and professional genealogists and researchers. USCIS expects to receive approximately 15,250 genealogical (name) index search requests per year, which, at $20 per search, would yield $305,000; in addition, there would be a total of 6,619 requests for microfilmed records, and 4,728 requests for textual records (i.e., hard copy files). The fee for microfilmed records would yield $132,380. The fee to pull textual records would yield $165,480. Therefore, the total fees collected by the Genealogy Program should yield $602,860.

Establishing the Genealogy Program will benefit both individuals and researchers making genealogy requests for historical records as well as those seeking information under the current FOIA/PA program, because it will allow for a more timely response for both sets of requests. USCIS estimates that it received an average of 10,000 combined index search and record requests per year for genealogical information in each of the past 4 fiscal years through the existing FOIA/PA program. USCIS can release these records without redaction or withholding, eliminating the need for FOIA/PA analysis. A program specifically designed to handle these requests would expedite the process and improve services to historical researchers, genealogists and the general public. For example, the rule does not increase information collection

requirements of the rule. In fact, the introduction of e-filing presents an opportunity to simplify the information collection process and expedite handling. At the same time, the resources of the FOIA/PA program could be applied more efficiently to requests more directly related to immigration, citizenship, or naturalization benefits that require more detailed FOIA/PA analysis.

E. Executive Order 13132

This rule will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, USCIS has determined that this rule does not have federalism implications to warrant the preparation of a federalism summary impact statement. It provides for alternate document handling procedures that do not implicate state government.

F. Executive Order 12988

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

G. Paperwork Reduction Act

The Office of Management and Budget approved the information collection requirements for the use of Forms G–1041, Genealogy Search Request, and G–1041A, Genealogy Records Request, contained in this rule. The OMB control number for this collection is 1615–0096.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of Information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

■ Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES; AVAILABILITY OF RECORDS

■ 1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; Public Law 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*), E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

■ 2. Section 103.7 is amended by:

■ a. Adding the entries ''Form G–1041'' and ''Form G–1041A'' in proper alpha/numeric sequence, in paragraph (b)(1); and by

■ b. Revising the fifth sentence in paragraph (c)(1).

The additions and revision read as follows:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

* * * * *

Form G–1041. For filing a request for a search of indices to historical records to be used in genealogical research—$20. The search fee is not refundable.

Form G–1041A. For filing a request for a copy of historical records to be used in genealogical research—$20 for each file copy from microfilm or $35 for each file copy from a textual record. In some cases, the researcher may be unable to determine the fee, because the researcher will have a file number obtained from a source other than the USCIS Genealogy Program and therefore not know the format of the file (microfilm or hard copy). In this case, if USCIS locates the file and it is a textual file, the Genealogy Program will notify the researcher to remit the additional $15. The Genealogy Program will refund the records request fee only when it is unable to locate the file previously identified in response to the index search request.

* * * * *

(c) * * *

(1) * * * The fees for Form I–907, Request for Premium Processing Services, and for Forms G–1041 and G–1041A, Genealogy Program request forms, may not be waived.

* * * * *

■ 3. Section 103.38 is added to read as follows:

§ 103.38 Genealogy Program.

(a) *Purpose.* The Department of Homeland Security, U.S. Citizenship and Immigration Services Genealogy Program is a fee-for-service program designed to provide genealogical and historical records and reference services to genealogists, historians, and others seeking documents maintained within the historical record systems.

(b) *Scope and limitations.* Sections 103.38 through 103.41 comprise the regulations of the Genealogy Program. These regulations apply only to searches for and retrieval of records from the file series described as historical records in 8 CFR 103.39. These regulations set forth the procedures by which individuals may request searches for historical records and, if responsive records are located, obtain copies of those records.

■ 4. Section 103.39 is added to read as follows:

§ 103.39 Historical Records.

Historical Records are files, forms, and documents now located within the following records series:

(a) *Naturalization Certificate Files (C–Files), from September 27, 1906 to April 1, 1956.* Copies of records relating to all U.S. naturalizations in Federal, State, county, or municipal courts, overseas military naturalizations, replacement of old law naturalization certificates, and the issuance of Certificates of Citizenship in derivative, repatriation, and resumption cases. The majority of C–Files exist only on microfilm. Standard C–Files generally contain at least one application form (Declaration of Intention and/or Petition for Naturalization, or other application) and a duplicate certificate of naturalization or certificate of citizenship. Many files contain additional documents, including correspondence, affidavits, or other records. Only C–Files dating from 1929 onward include photographs.

(b) *Microfilmed Alien Registration Forms, from August 1, 1940 to March 31, 1944.* Microfilmed copies of 5.5 million Alien Registration Forms (Form AR–2) completed by all aliens age 14 and older, residing in or entering the United States between August 1, 1940 and March 31, 1944. The two-page form called for the following information: Name; name at arrival; other names used; street address; post-office address; date of birth; place of birth; citizenship; sex; marital status; race; height; weight; hair and eye color; date, place, vessel, and class of admission of last arrival in United States; date of first arrival in United States; number of years in United States; usual occupation; present occupation; name, address, and business of present employer; membership in clubs, organizations, or societies; dates and nature of military or naval service; whether citizenship papers filed, and if so date, place, and court for declaration or petition; number of relatives living in the United States; arrest record, including date, place, and disposition of each arrest; whether or not affiliated with a foreign government; signature; and fingerprint.

(c) *Visa Files, from July 1, 1924 to March 31, 1944.* Original arrival records of immigrants admitted for permanent residence under provisions of the Immigration Act of 1924. Visa forms contain all information normally found on a ship passenger list of the period,

as well as the immigrant's places of residence for 5 years prior to emigration, names of both the immigrant's parents, and other data. In most cases, birth records or affidavits are attached to the visa, and in some cases, marriage, military, or police records may also be attached to the visa.

(d) *Registry Files, from March 2, 1929 to March 31, 1944.* Original records documenting the creation of immigrant arrival records for persons who entered the United States prior to July 1, 1924, and for whom no arrival record could later be found. Most files also include documents supporting the immigrant's claims regarding arrival and residence (e.g., proofs of residence, receipts, and employment records).

(e) *Alien-Files numbered below 8 million (A8000000), and documents therein dated prior to May 1, 1951.* Individual alien case files (A–files) became the official file for all immigration records created or consolidated after April 1, 1944. The United States issued A–numbers ranging up to approximately 6 million to aliens and immigrants who were within or entered the United States between 1940 and 1945. The United States entered the 6 million and 7 million series of A–numbers between circa 1944 and May 1, 1951. Any documents dated after May 1, 1951, though found in an A–File numbered below 8 million, will remain subject to FOIA/PA restrictions.

■ 5. Section 103.40 is added to read as follows:

§ 103.40 Genealogical Research Requests.

(a) *Nature of requests.* Genealogy requests are requests for searches and/or copies of historical records relating to a deceased person, usually for genealogy and family history research purposes.

(b) *Manner of requesting genealogical searches and records.* Requests must be submitted on Form G–1041, Genealogy Index Search Request, or Form G–1041A, Genealogy Records Request, and mailed to the address listed on the form. Beginning on August 13, 2008, USCIS will accept requests electronically through its Web site at *http://www.USCIS.gov*. A separate request on Form G–1041 must be submitted for each individual searched, and that form will call for the name, aliases, and all alternate spellings relating to the one individual immigrant. Form G–1041A may be submitted to request one or more separate records relating to separate individuals.

(c) *Information required to perform index search.* As required on Form G–1041, all requests for index searches to identify records of individual immigrants must include the immigrant's full name (including variant spellings of the name and/or aliases, if any), date of birth, and place of birth. The date of birth must be at least as specific as a year, and the place of birth must be at least as specific as a country (preferably the country name as it existed at the time of the immigrant's immigration or naturalization). Additional information about the immigrant's date of arrival in the United States, residence at time of naturalization, name of spouse, and names of children may be required to ensure a successful search.

(d) *Information required to retrieve records.* As required on Form G–1041A, requests for copies of historical records or files must identify the record by number or other specific data used by the Genealogy Program Office to retrieve the record. C–Files must be identified by a naturalization certificate number. Forms AR–2 and A–Files numbered below 8 million must be identified by Alien Registration Number. Visa Files must be identified by the Visa File Number. Registry Files must be identified by the Registry File Number (for example, R–12345).

(e) *Information required for release of records.* Subjects will be presumed deceased if their birth dates are more than 100 years prior to the date of the request. In other cases, the subject is presumed to be living until the requestor establishes to the satisfaction of the Genealogy Program Office that the subject is deceased. As required on Form G–1041A, primary or secondary documentary evidence of the subject's death will be required (including but not limited to death records, published obituaries or eulogies, published death notices, church or bible records, photographs of gravestones, and/or copies of official documents relating to payment of death benefits). All documentary evidence must be attached to Form G–1041A or submitted in accordance with instructions provided on Form G–1041A.

(f) *Processing of index search requests.* This service is designed for customers who are unsure whether USCIS has any record of their ancestor, or who suspect a record exists but cannot identify that record by number. Each request for index search services will generate a search of the indices to determine the existence of responsive historical records. If no record is found, USCIS will notify the customer accordingly. If records are found, USCIS will provide the customer with the search results, including the type of record found and the file number or other information identifying the record. The customer can use this information to request a copy of the record(s).

(g) *Processing of record copy requests.* This service is designed for customers who can identify a specific record or file to be retrieved, copied, reviewed, and released. Customers may identify one or more files in a single request. However, separate fees will apply to each file requested. Upon receipt of requests identifying specific records by number or other identifying information, USCIS will retrieve, review, duplicate, and then mail the record(s) to the requester. It is possible that USCIS will find a record that contains data that is not releasable to the customer. An example would be names and birth dates of persons who might be living. The FOIA/PA only permits release of this type of information when the affected individual submits a release authorization to USCIS. Therefore, the Genealogy Program Office will contact and inform the customer of this requirement. The customer will have the opportunity to submit the release authorization. The customer can also agree to the transfer of the document request to the FOIA/PA program for treatment as a FOIA/PA request as described in 6 CFR Part 5. Document retrieval charges will apply in all cases where documents are retrieved.

■ 6. Section 103.41 is added to read as follows:

§ 103.41 Genealogy request fees.

(a) *Genealogy search fee.* See 8 CFR 103.7(b)(1).

(b) *Genealogy records fees.* See 8 CFR 103.7(b)(1).

(c) *Manner of submission.* When a request is submitted online, credit card payments are required. These payments will be processed through the Treasury Department's Pay.Gov financial management system. Cashier's checks or money orders in the exact amount must be submitted for requests submitted with Form G–1041 or Form G–1041A in accordance with 8 CFR 103.7(a)(1). Personal Checks will not be accepted.

PART 299—IMMIGRATION FORMS

■ 7. The authority citation for part 299 continues to read as follows:

Authority: 8 U.S.C. 1101 and note, 1103; 8 CFR part 2.

■ 8. Section 299.1 is amended in the table by adding ''G–1041'' and ''G–1041A'', in proper alpha/numeric sequence, to read as follows:

§ 299.1 Prescribed forms.

* * * * *

Form No.	Edition date	Title
* * *	*	* * *
G–1041	11/15/06	Genealogy Index Search Request.
G–1041A	11/15/06	Genealogy Records Request.
* * *	*	* * *

■ 9. Section 299.5 is amended in the table by adding entries for Forms ''G–1041'' and ''G–1041A'', in proper alpha/numeric sequence, to read as follows:

§ 299.5 Display of control numbers.

* * * * *

Form No.	Form title	Currently assigned OMB control No.
* * *	* * *	*
G–1041	Genealogy Index Search Request	1615–0096
G–1041A	Genealogy Records Request	1615–0096
* * *	* * *	*

Michael Chertoff,

Secretary.

[FR Doc. E8–10651 Filed 5–14–08; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–0310; Airspace Docket No. 07–AEA–21]

Amendment of Class E Airspace; Bradford, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, confirmation of effective date.

SUMMARY: This action confirms the effective date of a direct final rule published in the **Federal Register** (73 FR 9443) that modifies Class E Airspace at Bradford, PA. The modified controlled airspace from nearby Bradford Regional Airport will now adequately support the Area Navigation (RNAV) Global Positioning System (GPS) Special Instrument Approach Procedure (IAP) developed for medical flight operations for the University of Pittsburgh.

DATES: Effective 0901 UTC, June 05, 2008. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Melinda Giddens, System Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; Telephone (404) 305–5610; Fax (404) 305–5572.

SUPPLEMENTARY INFORMATION:

Confirmation of Effective Date

The FAA published this direct final rule with a request for comments in the **Federal Register** on February 21, 2008 (73 FR 9443), Docket No. FAA–2007–031 0; Airspace Docket No. 07–AEA–21. The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on June 5, 2008. No adverse comments were received, and thus this notice confirms that effective date.

Issued in College Park, Georgia, on April 21, 2008.

Lynda G. Otting,

Acting Manager, System Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. E8–10430 Filed 5–14–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–0277; Airspace Docket No. 07–AEA–17]

Establishment of Class E Airspace; Seneca, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, confirmation of effective date.

SUMMARY: This action confirms the effective date of a direct final rule published in the **Federal Register** (73 FR 8595) that establishes Class E Airspace at Seneca, PA to support a new Area Navigation (RNAV) Global Positioning System (GPS) Special Instrument Approach Procedure (IAP) that has been developed for medical flight operations into the University of Pittsburgh Medical Center (UPMC) Northwest Heliport.

DATES: Effective 0901 UTC, June 5, 2008. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Melinda Giddens, System Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5610.

SUPPLEMENTARY INFORMATION:

Confirmation of Effective Date

The FAA published this direct final rule with a request for comments in the **Federal Register** on February 14, 2008 (73 FR 8595), Docket No. FAA–2007 0277; Airspace Docket No. 07–AEA–17. The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on June 5, 2008. No adverse comments were received, and thus this notice confirms that effective date.

Issued in College Park, Georgia, on April 21, 2008.

Lynda G. Otting,

Acting Manager, System Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. E8–10432 Filed 5–14–08; 8:45 am]

BILLING CODE 4910–13–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1210

[Notice (08–045)]

RIN 2700–AC81

Development Work for Industry in NASA Wind Tunnels

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: The National Aeronautics and Space Administration (NASA) is amending its regulations by removing part 1210. This amendment will allow Agency, Center, and wind tunnel facility operations manuals to provide guidance on project priority, facility utilization charges, and test preparation and conduct.

DATES: Effective July 14, 2008.

FOR FURTHER INFORMATION CONTACT: *Technical information:* Michael George, 650–604–5881.

Legal information: Rebecca Gilchrist, 202–358–2072.

SUPPLEMENTARY INFORMATION: The amendment of 14 CFR part 1210 will eliminate existing errors in reference to Agency policy, offices, and positions. The amendment will also eliminate redundancy and conflicts in guidance regarding the establishment of agreements with other government agencies, industry, academia, and foreign entities as outlined in 14 CFR 1210.1 thru 1210.5. Authority, regulation, and guidance for these types of agreements are provided by the following policies: 42 U.S.C. 2473(c)(1), section 203(c)(1) of the National Aeronautics and Space Act of 1958, as amended; NASA Financial Management Requirements Vol. 16 Reimbursable Agreements; NASA Policy Directive 1050.1H Authority to Enter Space Act Agreements; and NAII 1050–1A Space Act Agreement Manual.

The amendment will eliminate existing errors in 14 CFR 1210.6 Test Preparation and Conduct which provides guidance in facility operational testing procedures. For example, the section does not address the implementation of NASA export control policy regarding data handling and transfer as required by the following: 50 U.S.C. Appendix, parts 2401–2420, the Export Administration Act of 1979 (Pub. L. 96–72), as amended, 15 CFR parts 730–774, Export Administration Regulations, 22 CFR parts 120–130, International Traffic in Arms Regulations.

Facility-specific, day-to-day operational procedures will be, and currently are, dictated by Agency and Center policy which can be found in documents such as:

APR 8800.7, R&D Facilities Services Core Processes, February 6, 2006.

NASA TM–1999–208478/Rev1 Glenn 1X1 Supersonic Wind Tunnel User Manual.

NASA TM 2004–21697 User Manual for 10X10 Supersonic Wind Tunnel.

Standards Handbook for Planning and Conducting Wind Tunnel Tests at Glenn Research Center.

The amendment will ensure Agency, Center, and facility policy to provide guidance where deemed appropriate and ease the process for changing and maintaining these documents by placing that responsibility at the appropriate management level.

List of Subjects in 14 CFR Part 1210

Armed Forces, Classified information, Engineers, Federal buildings and facilities, Government contracts, Intergovernmental relations, National defense, and Utilities.

PART 1210—[REMOVED]

■ Under the authority of 42 U.S.C. 2473, The National Aeronautics and Space Administration amends 14 CFR Chapter V by removing and reserving part 1210.

Michael D. Griffin,

Administrator.

[FR Doc. E8–10799 Filed 5–14–08; 8:45 am]

BILLING CODE 7510–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 416

[Docket No. SSA 2007–0070]

RIN 0960–AF96

Parent-to-Child Deeming From Stepparents

AGENCY: Social Security Administration (SSA).

ACTION: Final rule.

SUMMARY: We are changing the Supplemental Security Income (SSI) parent-to-child deeming rules so that we no longer will consider the income and resources of a stepparent when an eligible child resides in the household with a stepparent, but that child's natural or adoptive parent has permanently left the household. These rules respond to a decision by the United States Court of Appeals for the Second Circuit, codified in Social Security Acquiescence Ruling (AR) 99–1(2), and establish a uniform national policy. Also, we are making uniform the age at which we consider someone to be a ''child'' in SSI program regulations and are making other minor clarifications to our rules.

DATES: This final rule is effective on June 16, 2008.

FOR FURTHER INFORMATION CONTACT: Eric Skidmore, Office of Income Security Programs, 252 Altmeyer Building, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 597–1833. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html.*

Background

The basic purpose of the SSI program is to provide a minimum level of income to people aged 65 or older, or who are blind or disabled, and who

have limited income and resources. Section 1611 of the Social Security Act (the Act) provides that SSI payments can only be made to people who have income and resources below specified amounts. When we determine SSI eligibility and benefit amounts, we always consider the individual's own income and resources. Through a process known as deeming, we also consider the income and resources of others who are responsible for the individual's welfare. Deeming is based on the concept that those with responsibility for others provide support to them.

Section 1614(f)(2) of the Act requires the Commissioner of Social Security (the Commissioner) to deem the income and resources of eligible children to include the income and resources of a natural or adoptive parent and the spouse of a parent who are living in the same household as the eligible child. These income and resource amounts are deemed to the eligible child whether or not they are available to the child, except to the extent determined by the Commissioner to be inequitable under the circumstances.

Existing regulations in 20 CFR part 416, subparts K, L, and R, apply to parents and stepparents equally for purposes of deeming income and resources to an eligible child who lives in the same household as the parent or stepparent. However, a 1998 decision by the United States Court of Appeals for the Second Circuit held that our regulations require that a stepparent live in the same household as the natural or adoptive parent, in addition to living with the child, in order for the stepparent's income to be deemed to the child. (*Florez on behalf of Wallace* v. *Callahan,* 156 F.3d 438). In the case of a natural parent who abandoned the family home leaving her spouse, as stepparent, with sole physical custody of the eligible child, the Second Circuit found that deeming of a stepparent's income to the child was not supported by the regulations.

The Second Circuit also disagreed with our position that the controlling regulation in the case was § 416.1806, which addresses who is a spouse for SSI purposes and, by extension, who is a spouse for purposes of deeming. Under that regulation, we deem the income and resources of a stepparent living in the same household as the eligible child when the stepparent is legally married under State law to that child's natural or adoptive parent, even if the natural or adoptive parent is not living in the household. Instead, the court held that § 416.1101, which defines a spouse as someone who lives with another person as that person's husband or wife, was the controlling regulation. The court found that §§ 416.1101 and 416.1806 created a two-part test for determining whether a stepparent who lives with the eligible child is an eligible parent for deeming purposes under § 416.1160. Under this test, the spouse must live with the child's natural or adoptive parent pursuant to § 416.1101, and the relationship must be as husband or wife, as defined at § 416.1806. The court concluded that both the plain language of these regulations and the legislative history of the Act required us to exclude a stepparent's income from deeming when the eligible child's natural parent no longer resided in the family home. As a result of this decision, we issued AR 99–1(2) on February 1, 1999, to apply the court's decision in the States in the Second Circuit. We apply the AR if an SSI beneficiary is an eligible child who resides in Connecticut, New York, or Vermont at the time of the determination (including all post-eligibility determinations) or decision at any level of the administrative review process. We continue to use § 416.1806 as the controlling regulation in similar cases for the rest of the nation.

The new regulation will restore national uniformity by extending the policy set out in AR 99–1(2) to the rest of the nation. The regulation deems a child's income and resources to include the income and resources of the stepparent only if the stepparent lives in the same household as the child and the natural or adoptive parent. We will not deem the income and resources of a stepparent to an eligible child if the natural or adoptive parent is permanently absent from the household. We are publishing a notice in the **Federal Register** effective on the same day as this final rule to rescind AR 99–1(2).

Generally, we believe this regulation will prove beneficial to SSI children because we will not deem income or resources from stepparents who assume sole responsibility for their well-being. We also believe the policy change embodied in the regulation will encourage stepparents to voluntarily accept responsibility for SSI eligible children who have been abandoned by their natural or adoptive parents. This regulatory change may affect a small number of children in the following circumstance: the stepparent no longer will be considered a parent for deeming purposes. However, the child will be considered living in another person's household and, therefore, possibly in receipt of income in the form of in-kind support and maintenance (ISM). ISM includes the value of food and shelter that an individual receives while in the household of someone who is not the individual's spouse or parent. Although we no longer will deem the stepparent's income and resources when the natural or adoptive parent has left the home, under the SSI living arrangement rules, we will consider the value of the ISM the child may receive. When the individual is living in the household of another, we determine the value of ISM by dividing the food and household expenses by the number of people in the household and then subtracting the individual's contribution, if any, toward those expenses. If the individual's contribution is less than the computed pro rata share of the expenses, the difference between the contribution and the pro rata share is counted as income to the individual. The amount of income charged to an eligible individual in such a situation is capped at one-third of the Federal Benefit Rate (FBR) for an individual. We reduce the amount of ISM charged to the child if the child contributed a portion of his or her income (such as the child's SSI check) toward the household expenses. In no case can ISM alone cause a child to be ineligible for SSI benefits.

In order to determine the effect of this change on eligible children, we tracked cases in the States in the Second Circuit for a 1-year period following issuance of AR 99–1(2). We found no other cases where the stepparent was the only person who remained in the household with the eligible child after the natural or adoptive parent left. Since there are generally other people in the household, we believe it is likely that the eligible child could pay his or her pro rata share of the household expenses and, therefore, the child would be charged with little or no ISM. In addition, if the computation results in countable ISM, it may be less than the amount of deemed income we would have counted under our prior rules in such a circumstance. As compared to our prior rules where we deem a stepparent's income, we believe these final rules likely will cause no adverse impact on the child.

We considered the possibility of revising our regulations pertaining to ISM to not count ISM in this situation. However, we determined that this option was undesirable because of the inequities it would create. We could not justify not counting ISM where an eligible child lives with a non-deemor stepparent, but continuing to count ISM in similar situations, such as where an eligible child lives with a non-deemor such as a friend or other relative. In addition, we modified our regulations to clarify our longstanding policy of not deeming the income and resources of a

stepparent who lives with an eligible child to the child when the natural or adoptive parent dies or divorces the stepparent.

We also made one change and one clarification to our definition of ''ineligible child.'' First, we eliminated the age difference in our regulations between our definitions of ''child'' and ''ineligible child.'' For purposes of consistency and to make our rules more easily understood by the public, we revised the regulatory definition of ''ineligible child'' to mirror the regulatory definition of ''child'' with respect to the maximum age requirement. The new rule permits a child in the household to be considered an ineligible child for deeming purposes until attainment of age 22, assuming all other requirements are met.

We modified our definition of ''ineligible child'' to make clear that we will provide an allocation even if that ineligible child's parent were to leave the household. In determining the amount of income to deem from a parent to an eligible child, we make an allocation for other ineligible children in the home: We consider what other ineligible children reside in the home and reduce the amount of income to be deemed accordingly. And, consistent with our current policy, the final rule clarifies that we use the definition of ''spouse'' at § 416.1806 when determining who meets the definition of ''ineligible child'' for SSI purposes.

Finally, we updated our regulations to properly identify the United States Department of Homeland Security. This change is clerical in nature and has no substantive effect on our policies or procedures.

Explanation of Proposed Changes

We amended the regulations in 20 CFR, part 416, subparts K, L, and R, to implement policy changes and clarify existing policy as discussed above. In summary, we are:

- Revising §§ 416.1160(a)(2) and (d), 416.1165(g)(4), 416.1202(b)(1), and 416.1851(c) to not deem income and resources from a stepparent when an eligible child lives with a stepparent but not with his or her natural or adoptive parent. This will make our national policy uniform with respect to the deeming of income and resources from stepparents to eligible children when the natural or adoptive parent has permanently left the household.
- Updating § 416.1160(d) to replace ''Immigration and Naturalization Service'' with ''U.S. Citizenship and Immigration Services'' due to a change in the name of a government entity. This is a result of the creation of the Department of Homeland Security.
- Revising the definition of ineligible child in § 416.1160(d) to remove the under 21 age standard so that the definition of ''ineligible child'' will cross-reference the definition of ''child'' in § 416.1101, which uses an age limit of 22. This change eliminates the distinction between an ''ineligible child'' for deeming purposes and a ''child'' for all other purposes.
- Revising the definition of ineligible child in § 416.1160(d) to clarify how we decide who is a ''spouse'' when determining who is an ''ineligible child.'' The definition of ''ineligible child'' will cross-reference § 416.1806 defining how we determine if an individual is married and who is a spouse. The change clarifies our regulations, consistent with our policy, to provide an ineligible child allocation when the spouse of a parent leaves the household, but the spouse's children remain in the household with the eligible child and the parent of the eligible child.
- Revising § 416.1165(g)(3) to clarify how we deem income to an eligible child when the ineligible parent dies. The changes to § 416.1165(g)(3) clarify our longstanding policy, consistent with § 416.1881(b), to not deem the income of the stepparent to the eligible child when the natural or adoptive parent dies or divorces the stepparent.
- Updating § 416.1204 to replace ''Immigration and Naturalization Service'' with ''U.S. Citizenship and Immigration Services'' due to a change in the name of the government entity. This is a result of the creation of the Department of Homeland Security.

Public Comments

In the notice of proposed rulemaking we published at 72 FR 72641 (December 21, 2007), we provided the public with a 60-day period in which to comment on the proposed changes. That comment period ended on February 19, 2008. We received comments from one individual who supported the proposed changes.

Regulatory Procedures

Executive Order 12866, as Amended

The Office of Management and Budget (OMB) determined that the proposed rules met the requirements for a significant regulatory action under Executive Order 12866, as amended, and it reviewed those proposed rules. Because we are making no changes in the final rules from what we proposed, OMB agreed that it did not need to review the final rules.

Regulatory Flexibility Act

We certify that these rules will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Accordingly, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These regulations will impose no additional reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance Programs No. 96.006, Supplemental Security Income)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: May 8, 2008.

Michael J. Astrue,

Commissioner of Social Security.

■ For the reasons set out in the preamble, we are amending subparts K, L, and R of part 416 of chapter III of title 20 Code of Federal Regulations as set forth below:

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart K—[Amended]

■ 1. The authority citation for subpart K of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1602, 1611, 1612, 1613, 1614(f), 1621, 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, 1383, and 1383b); sec. 211, Pub. L. 93–66, 87 Stat. 154 (42 U.S.C. 1382 note).

■ 2. Amend § 416.1160 by revising the section heading, paragraph (a)(2) and the definitions of ''Date of admission to or date of entry into the United States'' and ''Ineligible child'' in paragraph (d) to read as follows:

§ 416.1160 What is deeming of income?

(a) * * *

(2) *Ineligible parent.* If you are a child to whom deeming rules apply (see § 416.1165), we look at your ineligible parent's income to decide whether we must deem some of it to be yours. If you live with both your parent and your parent's spouse (i.e., your stepparent), we also look at your stepparent's income to decide whether we must deem some of it to be yours. We do this because we expect your parent (and

your stepparent, if living with you and your parent) to use some of his or her income to take care of your needs.

* * * * *

(d) * * *

Date of admission to or *date of entry into the United States* means the date established by the U.S. Citizenship and Immigration Services as the date the alien is admitted for permanent residence.

* * * * *

Ineligible child means your natural child or adopted child, or the natural or adopted child of your spouse, or the natural or adopted child of your parent or of your parent's spouse (as the term *child* is defined in § 416.1101 and the term *spouse* is defined in § 416.1806), who lives in the same household with you, and is not eligible for SSI benefits.

* * * * *

■ 3. Amend § 416.1165 by revising paragraphs (g)(3) and (g)(4) to read as follows:

§ 416.1165 How we deem income to you from your ineligible parent(s).

* * * * *

(g) * * *

(3) *Ineligible parent dies.* If your ineligible parent dies, we do not deem that parent's income to you to determine your eligibility for SSI benefits beginning with the month following the month of death. In determining your benefit amount beginning with the month following the month of death, we use only your own countable income in a prior month, excluding any income deemed to you in that month from your deceased ineligible parent (see § 416.1160(b)(2)(iii)). If you live with two ineligible parents and one dies, we continue to deem income from the surviving ineligible parent who is also your natural or adoptive parent. If you live with a stepparent following the death of your natural or adoptive parent, we do not deem income from the stepparent.

(4) *Ineligible parent and you no longer live in the same household.* If your ineligible parent and you no longer live in the same household, we do not deem that parent's income to you to determine your eligibility for SSI benefits beginning with the first month following the month in which one of you leaves the household. We also will not deem income to you from your parent's spouse (i.e., your stepparent) who remains in the household with you if your natural or adoptive parent has permanently left the household. To determine your benefit amount if you continue to be eligible, we follow the rule in § 416.420 of counting your income including deemed income from your parent and your parent's spouse (i.e., your stepparent) (if the stepparent and parent lived in the household with you) in the second month prior to the current month.

* * * * *

Subpart L—[Amended]

■ 4. The authority citation for subpart L of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1602, 1611, 1612, 1613, 1614(f), 1621, 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, 1383, and 1383b); sec. 211, Pub. L. 93–66, 87 Stat. 154 (42 U.S.C. 1382 note).

■ 5. Amend § 416.1202 by revising paragraph (b)(1) to read as follows:

§ 416.1202 Deeming of resources.

* * * * *

(b) Child—(1) *General.* In the case of a child (as defined in § 416.1856) who is under age 18, such child's resources shall be deemed to include any resources, not otherwise excluded under this subpart, of an ineligible parent of such child who is living in the same household with such child (as described in § 416.1851). Such child's resources also shall be deemed to include the resources of an ineligible spouse of a parent (stepparent), provided the stepparent lives in the same household as the child and the parent. The child's resources shall be deemed to include the resources of the parent and stepparent whether or not the resources of the parent and stepparent are available to the child, to the extent that the resources of such parent (or parent and stepparent), exceed the resource limits described in § 416.1205 except as provided in paragraph (b)(2) of this section. (If the child is living with only one parent, the resource limit for an individual applies. If the child is living with both parents, or the child is living with one parent and the stepparent, the resource limit for an individual and spouse applies.) In addition to the exclusions listed in § 416.1210, pension funds which the parent or spouse of a parent may have are also excluded. The term ''pension funds'' is defined in paragraph (a) of this section. As used in this section, the term ''parent'' means the natural or adoptive parent of a child and the terms ''spouse of a parent'' and ''stepparent'' means the spouse (as defined in § 416.1806) of such natural or adoptive parent who is living in the same household with the child and parent.

* * * * *

■ 6. Amend § 416.1204 by revising the first two sentences of the introductory text to read as follows:

§ 416.1204 Deeming of resources of the sponsor of an alien.

The resources of an alien who first applies for SSI benefits after September 30, 1980, are deemed to include the resources of the alien's sponsor for 3 years after the alien's date of admission into the United States. The *date of admission* is the date established by the U.S. Citizenship and Immigration Services as the date the alien is admitted for permanent residence.* * *

* * * * *

Subpart R—[Amended]

■ 7. The authority citation for subpart R of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1612(b), 1614(b), (c), and (d), and 1631(d)(1) and (e) of the Social Security Act (42 U.S.C. 902(a)(5), 1382a(b), 1382c(b), (c), and (d), and 1383(d)(1) and (e)).

■ 8. Amend § 416.1851 by revising the first sentence of paragraph (c) and adding a new second sentence to read as follows:

§ 416.1851 Effects of being considered a child.

* * * * *

(c) If you are under age 18 and live with your parent(s) who is not eligible for SSI benefits, we consider (deem) part of his or her income and resources to be your own. If you are under age 18 and live with both your parent and your parent's spouse (stepparent) and neither is eligible for SSI benefits, we consider (deem) part of their income and resources to be your own. * * *

[FR Doc. E8–10800 Filed 5–14–08; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Flunixin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental abbreviated new animal drug application (ANADA) filed by IVX Animal Health, Inc. The

supplemental ANADA provides for the veterinary prescription use of flunixin meglumine solution by intravenous injection in lactating dairy cattle for control of pyrexia associated with acute bovine mastitis.

DATES: This rule is effective May 15, 2008.

FOR FURTHER INFORMATION CONTACT: John K. Harshman, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8197, e-mail: *john.harshman@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: IVX Animal Health, Inc., 3915 South 48th Street Ter., St. Joseph, MO 64503, filed supplemental ANADA 200–124 that provides for veterinary prescription use of Flunixin Meglumine Injection intravenously in lactating dairy cattle for control of pyrexia associated with acute bovine mastitis. The supplemental ANADA is approved as of April 24, 2008, and the regulations are amended in 21 CFR 522.970 to reflect the approval.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

FDA has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 522

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. In § 522.970, revise paragraphs (b)(2) and (b)(4) to read as follows:

§ 522.970 Flunixin.

* * * * *

(b) * * *

(2) See Nos. 057561 and 061623 for use as in paragraphs (e)(1), (e)(2)(i)(A), (e)(2)(ii)(A), and (e)(2)(iii) of this section.

* * * * *

(4) See Nos. 055529 and 059130 for use as in paragraphs (e)(1) and (e)(2) of this section.

* * * * *

Dated: May 6, 2008.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. E8–10856 Filed 5–14–08; 8:45 am]

BILLING CODE 4160–01–S

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

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

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in June 2008. Interest assumptions are also published on the PBGC's Web site (*http://www.pbgc.gov*).

DATES: Effective June 1, 2008.

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: The 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.

Three sets of interest assumptions are prescribed: (1) A set for the valuation of benefits for allocation purposes under section 4044 (found in Appendix B to Part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in Appendix B to Part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the 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 June 2008, (2) adds to Appendix B to Part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during June 2008, 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 the PBGC's historical methodology for valuation dates during June 2008.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in Appendix B to part 4044) will be 5.68 percent for the first 20 years following the valuation date and 4.75 percent thereafter. These interest assumptions represent a decrease (from those in effect for May 2008) of 0.13 percent for the first 20 years following the valuation date and 0.13 percent for all years thereafter.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 3.25 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 May 2008. For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

The 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 June 2008, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The 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 176, 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
*	*		*	*	*	*	*	*
176	06–1–08	07–1–08	3.25	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 176, 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
*	*		*	*	*	*	*	*
176	06–1–08	07–1–08	3.25	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 June 2008, 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 month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
*	*	*	*	*	*	*
June 2008	.0568	1–20	.0475	>20	N/A	N/A

Issued in Washington, DC, on this 9th day of May 2008.

Vincent K. Snowbarger,

Deputy Director, Pension Benefit Guaranty Corporation.

[FR Doc. E8–10886 Filed 5–14–08; 8:45 am]

BILLING CODE 7709–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2008–0323]

Notice of Enforcement of Regulation

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a safety zone for the Weymouth 4th of July fireworks event. This action is to ensure the safety of life and protection of property during the fireworks event. During the enforcement period, no person or vessel may enter the safety zone without permission of the Captain of the Port Boston.

DATES: For the special local regulations described in 33 CFR 100.114, Fireworks Display Table entry 7.11, the zone will be enforced on June 28, 2008.

FOR FURTHER INFORMATION CONTACT: Chief Eldridge McFadden at phone number 617–223–3000.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulation in 33 CFR 100.114 for the annual Weymouth 4th of July Fireworks on June 28, 2008, from 9 p.m. through 11 p.m.

Under the provisions of 33 CFR 100.114, a vessel may not enter the regulated area, unless it receives permission from the COTP. Additionally, no person or vessel may enter or remain within 500 yards around the fireworks barge. Spectator vessels may safely transit outside the regulated area but may not anchor, block, loiter in, or impede the transit of ship parade participants or official patrol vessels. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

This notice is issued under authority of 33 CFR 100.114 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 extensive advance notification of this enforcement period via the Local Notice to Mariners. If the COTP determines that the regulated area need not be enforced for the full duration stated in this notice, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area.

Dated: May 6, 2008.

G.P. Kulisch,

Captain, U.S. Coast Guard, Captain of the Port Boston.

[FR Doc. E8–10804 Filed 5–14–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0372]

RIN 1625–AA00

Safety Zones: Northeast Gateway, Deepwater Port, Atlantic Ocean, Boston, MA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is re-establishing two temporary safety zones of 500 meter radii around the primary components, two independent submerged turret-loading buoys, of Excelerate Energy's Northeast Gateway Deepwater Port, Atlantic Ocean, and its accompanying systems. The purpose of these temporary safety zones is to protect vessels and mariners from the potential safety hazards associated with deepwater port facilities. All vessels, with the exception of deepwater port support vessels, are prohibited from entering into or moving within either of the safety zones.

DATES: This rule is effective from May 7, 2008 through July 12, 2008.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–0372 and are available online at *http://www.regulations.gov.* 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 Boston, 427 Commercial Street, Boston, MA 02109 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call Chief Petty Officer Eldridge McFadden, Waterways Management Division, U.S. Coast Guard Sector Boston, at 617–223–5160. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The deepwater port facilities discussed elsewhere in this rule were recently completed and present a potential safety hazard to vessels, especially fishing vessels, operating in the vicinity of submerged structures associated with the deepwater port facility. A more robust regulatory scheme to ensure the safety and security of vessels operating in the area, has been developed via separate rulemaking, and is available for review and comment at the Web site *http://www.regulations.gov* using a search term of USCG–2007–0087. These safety zones are needed pending implementation of a final regulatory scheme, proposed in a separate rulemaking docket, USCG–2007–0087, to protect vessels from the hazard posed by the presence of the currently uncharted, submerged deepwater infrastructure. Delaying the effective day pending completion of notice and comment rulemaking is contrary to the public interest to the extent it would expose vessels currently operating in the area to the known, but otherwise uncharted submerged hazards.

For the 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

On May 14, 2007, the Maritime Administration (MARAD), in accordance with the Deepwater Port Act of 1974, as amended, issued a license to Excelerate Energy to own, construct, and operate a natural gas deepwater port, ''Northeast Gateway.'' Northeast Gateway Deepwater Port (NEGDWP) is located in the Atlantic Ocean, approximately 13 nautical miles south-southeast of the City of Gloucester, Massachusetts, in Federal waters. The coordinates for its two submerged turret loading (STL) buoys are: STL Buoy A, Latitude 42°23′38″ N, Longitude 070°35′31″ W and STL Buoy B, Latitude 42°23′56″ N, Longitude 070°37′00″ W. The NEGDWP will accommodate the mooring, connecting, and offloading of two liquefied natural gas carriers (LNGCs) at one time. The NEGDWP operator plans to offload LNG by degasifying the LNG on board the vessels. The regasified natural gas is then transferred through two submerged turret-loading buoys, via a flexible riser leading to a seabed pipeline that ties into the Algonquin Gas Transmission Pipeline for transfer to shore.

Excelerate recently completed installation of the STL buoys and associated sub-surface infrastructure, which includes, among other things, a significant sub-surface sea anchor and mooring system.

In December 2007, the Coast Guard established a safety zone around the submerged turret loading buoys while regulations were developed to protect the buoys as well as passing vessels. See 73 FR 1274. That temporary safety zone expires May 7, 2007. The comment period for the permanent rulemaking project, docket number USCG–2007–0087, ends May 12, 2008. The temporary zone created by this rule ensures that there is no gap in authority to ensure safety around the submerged deepwater port infrastructure while comments on proposed permanent

regulatory regime are analyzed, and that rulemaking project is completed.

Discussion of Rule

The Coast Guard is re-establishing two temporary safety zones 500 meters around the Northeast Gateway Deepwater Port (NEGDWP) STL buoys as described above to protect vessels from these submerged hazards. All vessels, other than Liquefied Natural Gas carriers and associated support vessels are prohibited from entering into or moving within the safety zones.

This rule is effective immediately through July 12, 2008.

Regulatory Evaluation

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 regulation may have some impact on the public in excluding vessels from the areas of these zones. This impact, however, is outweighed by the safety risk mitigated by the enactment of these zones.

Small Entities

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

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

This rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in those portions of Atlantic Ocean covered by the safety zones. 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.

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), in the NPRM we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

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 that they can better evaluate its effects on them and participate in the rulemaking process.

If this rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call Lieutenant Commander Heather Morrison, Chief, Waterways Management Division, Coast Guard Sector Boston, at 617–223–3028.

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 an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation as the rule establishes a safety zone.

A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' will be 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, and Waterways.

Words of Issuance and Regulatory Text

■ 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 and 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T01–0372 to read as follows:

§ 165.T01–0372 Safety Zones: Northeast Gateway, Deepwater Port, Atlantic Ocean, Boston, MA.

(a) *Location.* The following areas are safety zones: All navigable waters of the United States within a 500-meter radius of the two submerged turret loading buoys of the Northeast Gateway Deepwater Port located at 42°23′38″ N, 070°35′31″ W and 42°23′56″ N, 070°37′00″. All coordinates are North American Datum 1983.

(b) *Definitions.* As used in this section—

Authorized representative means a Coast Guard commissioned, warrant, or petty officer or a Federal, State, or local law enforcement officer designated by or assisting the Captain of the Port, Boston (COTP).

Deepwater port means any facility or structure meeting the definition of deepwater port in 33 CFR 148.5.

Support vessel means any vessel meeting the definition of support vessel in 33 CFR 148.5.

(c) *Regulations.*

(1) The general regulations contained in 33 CFR 165.23 apply.

(2) In accordance with the general regulations in § 165.23 of this part, entry into or movement within these zones is prohibited unless authorized by the Captain of the Port, Boston. Liquefied Natural Gas Carrier vessels and related Support Vessels calling on the Northeast Gateway Deepwater Port are authorized to enter and move within the safety zones of this section in the normal course of their operations.

(3) All persons and vessels shall comply with the Coast Guard Captain of the Port or authorized representative.

(4) Upon being hailed by an authorized representative by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed.

(5) Persons and vessels may contact the Coast Guard to request permission to enter the zone on VHF–FM Channel 16 or via phone at 617–223–5761.

Dated: May 7, 2008.

Gail P. Kulisch,

Captain, U.S. Coast Guard, Captain of the Port, Boston.

[FR Doc. 08–1267 Filed 5–12–08; 3:11 pm]

BILLING CODE 4910–15–P

POSTAL SERVICE

39 CFR Part 111

Repositionable Notes Transitioned from an Experimental Test to a Permanent Classification

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: On February 27, 2008, the Postal Service™, in accordance with the Postal Accountability and Enhancement Act, gave notice to the Postal Regulatory Commission, that the Governors of the Postal Service established Repositionable Notes (RPNs) as a permanent classification. The 3″ by 3″ removable, paper notes are an optional feature for commercial First-Class Mail®, Periodicals, and Standard Mail®.

DATES: *Effective Date:* May 15, 2008.

FOR FURTHER INFORMATION CONTACT: Carol A. Lunkins at 202–268–7262.

SUPPLEMENTARY INFORMATION: Over a three-year testing period, RPNs have proven compatible with postal automation letter and flat processing equipment. The removable notes can be mailed on postcards, envelopes, flats, catalogs, magazines, and newspapers to highlight important information or special offers. The notes are easily removed so that customers can keep the information handy.

RPNs add to the value of mail as an advertising medium and contribute directly to net postal revenue. The use of RPNs has aided postal customers with increasing brand awareness and generated sales and repeat business for their organizations.

The Postal Service adopts the following changes to the *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM®), which is incorporated by reference in the *Code of Federal Regulations*. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

■ Accordingly, 39 CFR part 111 is amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the following sections of the *Mailing Standards of the United States*

Postal Service, Domestic Mail Manual (DMM) as follows:

* * * * *

700 Special Standards

* * * * *

705 Advanced Preparation and Special Postage Payment Systems

* * * * *

[*Add new 21.0 Repositionable Notes section, as follows:*]

21.0 Repositionable Notes (RPNs)

21.1 Use

RPNs must meet all of the following standards:

a. RPNs may be attached to letter- and flat-size commercial First-Class Mail, Standard Mail, and Periodicals mailpieces.

b. For letter-size mailpieces, attach a single RPN to the address side of the mailpiece as specified in Exhibit 21.1b.

Exhibit 21.1b Placing RPNs on Letters

[*See exhibit on Postal Explorer at pe.usps.com by clicking on* ***Federal Register*** *Notices'' in the left frame.*

c. For flat-size mailpieces, a single RPN may be attached to either the address side or nonaddress side of the mailpiece and attached in the locations described and shown in Exhibit 21.3g1 and Exhibit 21.3g2.

d. RPNs are included as an integral part of the mailpiece for weight and postage price computation purposes.

e. The written and graphic characteristics of the notes are considered when determining eligibility of mailpieces mailed at the Standard Mail and Nonprofit Standard Mail prices.

f. Attach the RPNs to all pieces in the mailing.

21.2 Mailpiece Characteristics

Each mailpiece must:

a. Not be in a plastic wrapper (e.g., polybag, polywrap, or shrinkwrap).

b. Be letter-size (including cards) or flat-size.

21.3 RPN Characteristics

RPNs must:

a. Measure 3 inches by 3 inches, plus or minus ⅛ inch for either dimension.

b. Not contain phosphorescent or red fluorescent colorants.

c. Be adhered with a minimum of ¾ inch (with a tolerance of 1/16 inch) adhesive strip across the top portion on the reverse side of the note.

d. Not be placed in a manner that interferes with the delivery address, price markings, or postage and must not display a specific address or ZIP Code. References to general landmarks are permissible.

e. Not be manually affixed.

f. On letter-size mailpieces:

1. Position the RPN parallel with the length of the mailpiece.

2. Affix RPNs with labeling equipment to ensure adequate adhesion.

3. Place the RPN to the left of the delivery address, no closer than ⅜ inch from the left edge of the delivery address.

4. Place the RPN at least ½ inch (with a tolerance of ⅛ inch) from the bottom and left edges of the mailpiece.

g. On flat-size mailpieces:

1. Affix RPNs with labeling equipment to ensure adequate adhesion.

2. If the RPN is placed on the address side of the mailpiece, position the RPN according to Exhibit 21.3g1.

Exhibit 21.3g1 Placing RPNs on Flats—Address Side

*[See exhibit on Postal Explorer at pe.usps.com by clicking on ''****Federal Register*** *Notices'' in the left frame.]*

2. If the RPN is placed on the nonaddressed side of the mailpiece, position the RPN according to Exhibit 21.3g2.

Exhibit 21.3g2 Placing RPNs on Flats—Nonaddress Side

*[See exhibit on Postal Explorer at pe.usps.com by clicking on ''****Federal Register*** *Notices'' in the left frame.]*

21.4 RPNs on Automation-Price Mailpieces

21.4.1 Letter-Size Mailpieces

Letter-size mailpieces with RPNs claiming automation prices must meet the standards in 21.1 through 21.3, 201.3.0, and the following additional standards:

a. Each mailpiece must be rectangular and have a surface smoothness of 195 Shefield Units or smoother.

b. *Enveloped mailpieces.* Each mailpiece prepared in an envelope must be constructed from paperstock having a basis weight of 20 pounds or greater.

Window envelopes must have a closed panel made of polystyrene or glassine. Each enveloped mailpiece is limited to the following dimensions:

1. For height, no less than 4⅛ inches and no more than 6 inches high.

2. For length, no less than 8 inches and no more than 9½ inches long.

3. For thickness, no less than 0.02 inch and no more than 0.125 inch thick.

c. *Oversize cards.* Each mailpiece prepared as an oversize card is limited to the following dimensions:

1. For height, no less than 4½ inches and no more than 6 inches high.

2. For length, no less than 8½ inches and no more than 9 inches long.

3. For thickness, no less than 0.009 inch thick (cards 5¾ inches or more in height must be no less than 0.012 inch thick.)

21.4.2 Flat-Size Mailpieces

Flat-size mailpieces with RPNs claiming automation prices must meet the standards in 21.1 through 21.3 and 301.3.0.

21.5 Prices

First-Class Mail letters and flats—$0.005

Periodicals letters and flats—$0.015

Standard Mail letters and flats—$0.015

21.6 Compliance

[Revise the text of 21.6a and 21.6b, as follows:]

Mailers must comply as follows:

a. RPNs must be obtained from an approved RPN vendor (see *www.usps.com* for a listing of approved vendors). Prospective vendors can obtain USPS standards and test procedures from USPS Engineering (see 608.8.0 for address). Testing must be performed by a certified independent laboratory.

b. Mailers must present evidence at the time of mailing to show that their RPNs have been supplied by an approved vendor. The vendor name on the reverse side of the note will be sufficient as evidence; in lieu of the vendor name printed on the notes, an invoice from the approved vendor for purchase of the RPNs will constitute such evidence.

c. As part of each mailing, mailers must include two pieces addressed to the manager, USPS Engineering Letter Technology, Attn: RPN Sample (see 608.8.0 for address).

* * * * *

[Revise the title of 709, as follows:]

709 Experimental Classifications and Prices

* * * * *

[Delete 3.0 in its entirety]

* * * * *

Neva R. Watson,

Attorney, Legislative.

[FR Doc. E8–10420 Filed 5–15–08; 8:45 am]

BILLING CODE 7710–12–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

41 CFR Parts 51–3 and 51–4

RIN 3037–AA04

Change in Investigatory Procedures

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Final rule.

SUMMARY: The Committee for Purchase From People Who Are Blind or Severely Disabled (the Committee) has deliberated and voted to clarify the Committee's role regarding oversight of nonprofit agencies within the AbilityOne Program. Previously, the Committee had authorized the designated Central Nonprofit Agencies (CNAs) to perform some oversight responsibilities of AbilityOne participating nonprofit agencies. However, through this action, the Committee assumes sole responsibility for official Program oversight including inspecting and investigating alleged violations by the nonprofit agencies. This action is taken to address a General Accountability Office (GAO) report recommendation aimed at improving oversight of the AbilityOne Program.

DATES: *Effective Date:* May 15, 2008.

ADDRESSES: The Committee office is located at Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, VA 22202–3259.

FOR MORE INFORMATION CONTACT: Dennis Lockard, General Counsel, by telephone (703) 603–7740, or by facsimile at (703) 603–0030, or by mail at the Committee for Purchase From People Who Are Blind or Severely Disabled, 1421 Jefferson Davis Hwy, Suite 10800, Arlington, VA 22202–3259.

SUPPLEMENTARY INFORMATION: The Committee's statutory authority includes making rules and regulations necessary to carry out the Javits-Wagner-O'Day (JWOD) Act (41 U.S.C. 46–48c). The Committee implements the purpose of the Act to provide employment opportunities for people who are blind or have other severe disabilities through the manufacture and delivery of products and services to the Federal Government. The Committee has designated two Central Nonprofit Agencies (CNAs), National Industries for the Blind (NIB) and NISH (serving people with a wide range of disabilities) to assist in the program's implementation and to represent their respective qualified nonprofit agencies nationwide. These qualified nonprofit agencies employ people who are blind or severely disabled to produce the products and provide the services the Committee determines are suitable for procurement by the Government.

In January of 2007, GAO released a Report to Congressional Requesters entitled ''Federal Disability Assistance: Stronger Federal Oversight Could Help Assure Multiple Programs' Accountability'' (GAO–07–236). In response to the request from Congress, GAO reviewed four federal employment related programs aimed at helping people with disabilities obtain jobs. The AbilityOne was one of the four programs reviewed by GAO. The GAO's tasks, specific to the Committee, were to assess the extent to which performance goals and measures were established and to assess the extent of the Committee's oversight procedures over the CNAs.

In performing its function for Congressional Requesters, the GAO found that the Committee delegates most of its oversight responsibilities to the two CNAs. Although the Committee retained some authority to investigate the nonprofit agencies for possible violations of the Committee's regulations, the majority of oversight of the qualified nonprofit agencies was done by the CNAs who also represent the interests of the nonprofit agencies to the Committee and other Federal agencies. The GAO concluded that this arrangement, as well as the fact that the CNAs received a percentage of the total value of contracts from the affiliated nonprofit agencies, raised questions about the CNAs independence and gave the CNAs little incentive to identify regulatory violations because that might result in the nonprofit agencies losing contracts and thus losing their ability to pay the CNAs a fee.

This interpretive rule is a Committee action to address GAO's concerns about the Committee's oversight procedures of the CNAs.

Executive Order 12866: This agency has made the determination that this rule is not significant for the purposes of EO 12866.

Administrative Procedure Act: The Committee finds under 5 U.S.C. 553(b)(3)(A) that the statute does not apply to interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice. This final rule simply changes the investigatory authority from the Central Nonprofit Agencies to the Committee for Purchase From People Who Are Blind or Severely Disabled. Further, pursuant to 5 U.S.C. 553(b)(3)(A), this rule of agency organization, procedure and practice is not subject to the requirement to provide prior notice and an opportunity for public comment. The Committee also finds that the 30-day delay in effectiveness, required under 5 U.S.C. 553(d), is inapplicable because this rule is not a substantive rule.

Regulatory Flexibility Act: Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

List of Subjects

41 CFR Part 51–3

Government procurement, Individuals with disabilities.

41 CFR Part 51–4

Government procurement, Individuals with disabilities, Reporting and recordkeeping requirements.

PART 51–3—CENTRAL NONPROFIT AGENCIES

■ 1. The authority citation for part 51–3 continues to read as follows:

Authority: 41 U.S.C. 46–48c.

■ 2. In § 51–3.2 revise paragraph (j) to read as follows:

§ 51–3.2 Responsibilities under the AbilityOne Program.

* * * * *

(j) Monitor and assist its nonprofit agencies to meet the statutory and regulatory requirements to fully participate in the program. Conduct assistance visits with its nonprofits as necessary and provide the Committee with the results and recommendations of such visits.

* * * * *

PART 51–4—NONPROFIT AGENCIES

■ 3. The authority citation for part 51–4 continues to read as follows:

Authority: 41 U.S.C. 46–48c.

§ 51–4.3 [Amended]

■ 4. In § 51–4.3 paragraph (b)(4), remove the word ''inspection'' and add in its place the word ''review''.

§ 51–4.5 [Amended]

■ 5. Section 51–4.5(a) is amended by:

■ A. Removing the words ''appropriate central nonprofit agency'' and adding in their place the word ''Committee''; and

■ B. Removing the second and third sentences.

Dated: May 9, 2008.

Earnestine Ballard,

Executive Director.

[FR Doc. E8–10770 Filed 5–14–08; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Modified Base (1% annual-chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified BFEs will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective dates for these modified BFEs are indicated on the following table and revise the Flood Insurance Rate Maps (FIRMs) in effect for the listed communities prior to this date.

ADDRESSES: The modified 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 of the modified BFEs for each community listed. These modified BFEs have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of FEMA resolved any appeals resulting from this notification.

The modified BFEs are not listed for each community in this notice. However, this final rule includes the address of the Chief Executive Officer of the community where the modified BFEs determinations are available for inspection.

The modified BFEs are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These 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 modified BFEs 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. The changes in BFEs are in accordance with 44 CFR 65.4.

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, Federalism.

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 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.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief Executive Officer of Community	Effective date of modification	Community No.
Arizona:					
Maricopa (FEMA Docket No.: B–7766).	Town of Buckeye (07–09–1734P).	December 7, 2007, December 14, 2007, *West Valley View*.	The Honorable Bobby Bryant, Mayor, Town of Buckeye, 100 North Apache Road, Suite A, Buckeye, AZ 85326.	December 19, 2007	040039
Mohave (FEMA Docket No.: B–7754).	City of Kingman (08–09–0423X) (06–09–BH12P).	October 25, 2007, November 1, 2007, *The Kingman Daily Miner*.	The Honorable Lester Byram, Mayor, City of Kingman, 310 North Fourth Street, Kingman, AZ 86401.	February 7, 2008	040060
Pinal (FEMA Docket No.: B–7761).	City of Casa Grande (07–09–1769P).	November 14, 2007, November 21, 2007, *Copper Basin News*.	The Honorable Robert M. Jackson, Mayor, City of Casa Grande, 510 East Florence Boulevard, Casa Grande, AZ 85222.	December 5, 2007	040080
Yavapai (FEMA Docket No.: B–7761).	City of Prescott (07–09–1688P).	November 15, 2007, November 22, 2007, *Prescott Daily Courier*.	The Honorable Rowle Simmons, Mayor, City of Prescott, 201 South Cortez Street, Prescott, AZ 86303.	February 21, 2008	040098
California:					

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief Executive Officer of Community	Effective date of modification	Community No.
Alameda (FEMA Docket No.: B–7761).	City of Hayward (08–09–0157P).	November 21, 2007, November 28, 2007, *The Daily Review*.	The Honorable Michael Sweeney, Mayor, City of Hayward, 777 B Street, Hayward, CA 94541.	February 27, 2008	065033
Colorado:					
Mesa (FEMA Docket No.: B–7766).	City of Grand Junction (07–08–0859P).	December 6, 2007, December 13, 2007, *The Daily Sentinel*.	Mr. Jim Doody, Mayor, City of Grand Junction, 250 North Fifth Street, Grand Junction, CO 81501.	March 13, 2008	080117
Mesa (FEMA Docket No.: B–7766).	Unincorporated areas of Mesa County (07–08–0859P).	December 6, 2007, December 13, 2007, *The Daily Sentinel*.	The Honorable Craig J. Meis, Chairman, Mesa County Board of Commissioners, P.O. Box 20000, Grand Junction, CO 81502–5010.	March 13, 2008	080115
Florida:					
Manatee (FEMA Docket No.: B–7766).	Unincorporated areas of Manatee County (07–04–4406P).	December 6, 2007, December 13, 2007, *The Bradenton Herald*.	The Honorable Amy E. Stein, Chairman, Manatee County Board of Commissioners, P.O. Box 1000, Bradenton, FL 34206–1000.	March 13, 2008	120153
Okaloosa (FEMA Docket No.: B–7761).	Unincorporated areas of Okaloosa County (07–04–4369P).	November 15, 2007, November 22, 2007, *Northwest Florida Daily News*.	Mr. James D. Curry, County Administrator, Okaloosa County, 1804 Lewis Turner Boulevard, Suite 400, Fort Walton Beach, FL 32547.	February 21, 2008	120173
Polk (FEMA Docket No.: B–7766).	City of Winter Haven (07–04–5471P).	December 6, 2007, December 13, 2007, *News Chief*.	The Honorable Nathaniel Birdsong, Mayor, City of Winter Haven, P.O. Box 2277, Winter Haven, FL 33883.	March 13, 2008	120271
Georgia:					
Columbia (FEMA Docket No.: B–7761).	Unincorporated areas of Columbia County (07–04–4563P).	November 14, 2007, November 21, 2007, *Columbia County News-Times*.	The Honorable Ron C. Cross, Chairman, Columbia County Board of Commissioners, P.O. Box 498, Evans, GA 30809.	October 30, 2007	130059
Coweta (FEMA Docket No.: B–7761).	City of Newnan (07–04–4787P).	November 15, 2007, November 22, 2007, *The Times-Herald*.	The Honorable Keith Brady, Mayor, City of Newnan, City Hall, 25 LaGrange Street, Newnan, GA 30263.	February 21, 2008	130062
DeKalb (FEMA Docket No.: B–7761).	City of Atlanta (07–04–3101P).	November 14, 2007, November 21, 2007, *The Atlanta Journal and Constitution*.	The Honorable Shirley Franklin, Mayor, City of Atlanta, 55 Trinity Avenue, Suite 2500, Atlanta, GA 30303.	February 20, 2008	135157
DeKalb (FEMA Docket No.: B–7761).	City of Decatur (07–04–3101P).	November 14, 2007, November 21, 2007, *Dunwoody Crier*.	The Honorable Bill Floyd, Mayor, City of Decatur, P.O. Box 220, Decatur, GA 30031.	February 20, 2008	135159
DeKalb (FEMA Docket No.: B–7761).	Unincorporated areas of DeKalb County (07–04–3101P).	November 14, 2007, November 21, 2007, *Dunwoody Crier*.	The Honorable Burrell Ellis, Chairman, DeKalb County Board of Commissioners, 1300 Commerce Drive, Decatur, GA 30030.	February 20, 2008	130065
Murray (FEMA Docket No.: B–7761).	Unincorporated areas of Murray County (07–04–2594P).	November 16, 2007, November 23, 2007, *The Dalton Daily Citizen*.	The Honorable Jim Welch, Murray County Commissioner, P.O. Box 1129, Chatsworth, GA 30705.	February 22, 2008	130366
Iowa:					
Linn (FEMA Docket No.: B–7761).	City of Marion (07–07–1087P).	November 21, 2007, November 28, 2007, *Cedar Rapids Gazette*.	The Honorable John Nieland, Mayor, City of Marion, 195 35th Street, Marion, IA 52302.	February 27, 2008	190191
Linn (FEMA Docket No.: B–7761).	Unincorporated areas of Linn County (07–07–1087P).	November 21, 2007, November 28, 2007, *Cedar Rapids Gazette*.	The Honorable Linda Langston, Chairperson, Linn County Board of Supervisors, 930 First Street, Southwest, Cedar Rapids, IA 52404.	February 27, 2008	190829
Kansas:					
Marshall (FEMA Docket No.: B–7766).	City of Marysville (07–07–0767P).	December 6, 2007, December 13, 2007, *The Marysville Advocate*.	The Honorable Bernie Krug, Mayor, City of Marysville, 209 North Eighth Street, Marysville, KS 66508.	March 13, 2008	200212
Marshall (FEMA Docket No.: B–7766).	Unincorporated areas of Marshall County (07–07–0767P).	December 6, 2007, December 13, 2007, *The Marysville Advocate*.	The Honorable Michael J. Keating, Head Commissioner, Marshall County, 1201 Broadway, Marysville, KS 66508.	March 13, 2008	200210
Maryland:					
Frederick (FEMA Docket No.: B–7766).	Town of Emmitsburg (07–03–0468P).	December 13, 2007, December 20, 2007, *The Frederick News-Post*.	The Honorable James E. Hoover, Mayor, Town of Emmitsburg, 300A–1 South Seton Avenue, Emmitsburg, MD 21727.	December 31, 2007	240029
Frederick (FEMA Docket No.: B–7766).	Unincorporated areas of Frederick County (07–03–0468P).	December 13, 2007, December 20, 2007, *The Frederick News-Post*.	Ms. Jan Gardner, President, Board of Commissioners, Frederick County, 12 East Church Street, Frederick, MD 21701.	December 31, 2007	240027
Nevada:					
Clark (FEMA Docket No.: B–7761).	Unincorporated areas of Clark County (07–09–1179P).	November 8, 2007, November 15, 2007, *Las Vegas Review-Journal*.	The Honorable Rory Reid, Chair, Clark County Board of Commissioners, 500 South Grand Central Parkway, Las Vegas, NV 89106.	February 14, 2008	320003
North Carolina:					
Wake (FEMA Docket No.: B–7761).	Unincorporated areas of Wake County (06–04–C341P).	December 10, 2007, December 17, 2007, *News and Observer*.	Mr. David C. Cooke, Manager, Wake County, 337 South Salisbury Street, Suite 1100, Raleigh, North Carolina 27602.	December 3, 2007	370368
Ohio:					

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief Executive Officer of Community	Effective date of modification	Community No.
Greene (FEMA Docket No.: B–7766).	City of Xenia (07–05–5432P).	November 3, 2007, November 10, 2007, *Xenia Daily Gazette*.	The Honorable Phyllis Pennewitt, Mayor, City of Xenia, 101 North Detroit Street, Xenia, OH 45385.	February 11, 2008	390197
Greene (FEMA Docket No.: B–7766).	Unincorporated areas of Greene County (07–05–5432P).	November 3, 2007, November 10, 2007, *Xenia Daily Gazette*.	The Honorable Ralph Harper, President, Greene County Board of Commissioners, 35 Greene Street, Xenia, OH 45385.	February 11, 2008	390193
Oklahoma:					
Payne (FEMA Docket No.: B–7761).	City of Stillwater (07–06–0679P).	November 15, 2007, November 22, 2007, *Stillwater NewsPress*.	The Honorable Roger L. McMillan, Mayor, City of Stillwater, 723 South Lewis Street, Stillwater, OK 74076.	November 30, 2007	405380
Payne (FEMA Docket No.: B–7761).	Unincorporated areas of Stillwater County (07–06–0679P).	November 15, 2007, November 22, 2007, *Stillwater NewsPress*.	The Honorable Gloria A. Hesser, County Commissioner, District No. 2, Stillwater, 315 West Sixth Street, Suite 203, Stillwater, OK 74074.	November 30, 2007	400493
Tulsa (FEMA Docket No.: B–7761).	City of Sand Springs (07–06–2114P).	November 15, 2007, November 22, 2007, *Tulsa World*.	The Honorable Robert L. Walker, Mayor, City of Sand Springs, P.O. Box 338, Sand Springs, OK 74063.	November 30, 2007	400211
Tulsa (FEMA Docket No.: B–7761).	Unincorporated areas of Tulsa County (07–06–2114P).	November 15, 2007, November 22, 2007, *Tulsa World*.	The Honorable Randi Miller, Chair, Tulsa County Board of Commissioners, 500 South Denver Avenue, Tulsa, OK 74103.	November 30, 2007	400462
Pennsylvania:					
Chester (FEMA Docket No.: B–7761).	Township of West Goshen (07–03–1259P).	November 15, 2007, November 22, 2007, *Daily Local News*.	The Honorable Robert White, Chairman, Board of Supervisors, West Goshen Township, 1025 Paoli Pike, West Chester, PA 19380–4699.	February 21, 2008	420293
Montgomery (FEMA Docket No.: B–7761).	Township of Plymouth (07–03–1103P).	November 14, 2007, November 21, 2007, *The Times Herald*.	The Honorable Alexander Fazzini, Chair, Plymouth Township Council, 700 Belvoir Road, Plymouth Meeting, PA 19462.	February 20, 2008	420955
Puerto Rico:					
Puerto Rico (FEMA Docket No.: B–7761).	Commonwealth of Puerto Rico (07–02–0993P).	November 15, 2007, November 22, 2007, *The San Juan Star*.	The Honorable Anibal Acevedo-Vila, Governor of Puerto Rico, P.O. Box 82, La Fortaleza, San Juan, PR 00901.	February 21, 2008	720000
Texas:					
Kendall (FEMA Docket No.: B–7761).	Unincorporated areas of Kendall County (07–06–0875P).	November 16, 2007, November 23, 2007, *The Boerne Star*.	The Honorable Eddie John Vogt, Kendall County Judge, Kendall County Courthouse, 201 East San Antonio Street, Boerne, TX 78006.	November 29, 2007	480417
Randall (FEMA Docket No.: B–7766).	City of Canyon (07–06–1472P).	December 16, 2007, December 23, 2007, *The Canyon News*.	The Honorable Quinn Alexander, Mayor, City of Canyon, 3011 6th Street, Canyon, TX 79015.	March 24, 2008	480533
Tarrant (FEMA Docket No.: B–7766).	City of Grapevine (07–06–1696P).	December 6, 2007, December 13, 2007, *Northeast Tarrant Star-Telegram*.	The Honorable William D. Tate, Mayor, City of Grapevine, P.O. Box 95104, Grapevine, TX 76099.	November 21, 2007	480598
Travis (FEMA Docket No.: B–7766).	City of Lakeway (07–06–1024P).	December 6, 2007, December 13, 2007, *Austin American-Statesman*.	The Honorable Steve Swan, Mayor, City of Lakeway, 1102 Lohman's Crossing, Lakeway, TX 78734.	December 20, 2007	481303
West Virginia:					
Jefferson (FEMA Docket No.: B–7766).	Unincorporated areas of Jefferson County (07–03–0824P).	December 13, 2007, December 20, 2007, *The Journal*.	The Honorable Frances Morgan, President, Jefferson County Board of Commissioners, P.O. Box 250, Charles Town, WV 25414.	March 20, 2008	540065
Wisconsin:					
Columbia & Sauk (FEMA Docket No.: B–7761).	City of Wisconsin Dells (07–05–4282P).	November 14, 2007, November 21, 2007, *Wisconsin Dells Events*.	The Honorable Eric Helland, Mayor, City of Wisconsin Dells, P.O. Box 655, Wisconsin Dells, WI 53965.	November 30, 2007	550065

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

Dated: May 7, 2008.

David I. Maurstad,

Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E8–10870 Filed 5–14–08; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket No. FEMA–B–7780]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1% annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Maps (FIRMs) in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Mitigation Assistant Administrator of FEMA reconsider the changes. The modified BFEs may be changed during the 90-day period.

ADDRESSES: The modified 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 modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These 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 the other Federal, State, or regional entities. The changed BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This interim 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 interim 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 interim rule involves no policies that have federalism implications under Executive Order 13132, Federalism.

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 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.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief Executive Officer of Community	Effective date of modification	Community No.
Alabama: Madison	Unincorporated areas of Madison County (07–04–6424P).	March 7, 2008, March 14, 2008, *Madison County Record*.	The Honorable Mike Gillespie, Chairman, Madison County Commission, 100 Northside Square, Huntsville, AL 35801.	July 14, 2008	010151
Arizona: Pinal	City of Casa Grande (08–09–0418P).	April 9, 2008, April 16, 2008, *Copper Basin News*.	The Honorable Robert M. Jackson, Mayor, City of Casa Grande, 510 East Florence Boulevard, Casa Grande, AZ 85222.	April 25, 2008	040080
Colorado:					
El Paso	City of Colorado Springs (07–08–0678P).	April 2, 2008, April 9, 2008, *El Paso County News*.	The Honorable Lionel Rivera, Mayor, City of Colorado Springs, P.O. Box 1575, Colorado Springs, CO 80901.	March 25, 2008	080060
El Paso	City of Colorado Springs (07–08–0679P).	March 5, 2008, March 12, 2008, *El Paso County News*.	The Honorable Lionel Rivera, Mayor, City of Colorado Springs, P.O. Box 1575, Colorado Springs, CO 80901.	July 11, 2008	080060
Jefferson	City of Lakewood (08–08–0234P).	March 20, 2008, March 27, 2008, *The Golden Transcript*.	The Honorable Bob Murphy, Mayor, City of Lakewood, 480 South Allison Parkway, Lakewood, CO 80226–3127.	March 11, 2008	085075
Jefferson	City of Lakewood (08–08–0276P).	April 10, 2008, April 17, 2008, *The Golden Transcript*.	The Honorable Bob Murphy, Mayor, City of Lakewood, 480 South Allison Parkway, Lakewood, CO 80226–3127.	August 18, 2008	085075
Jefferson	City of Wheat Ridge (08–08–0276P).	April 10, 2008, April 17, 2008, *The Golden Transcript*.	The Honorable Jerry DiTullio, Mayor, City of Wheat Ridge, 7500 West 29th Avenue, Wheat Ridge, CO 80033.	August 18, 2008	085079
Summit	Town of Silverthorne (07–08–0747P).	April 4, 2008, April 11, 2008, *Summit County Journal*.	The Honorable Dave Koop, Mayor, Town of Silverthorne, P.O. Box 1002, Silverthorne, CO 80498.	August 11, 2008	080201
Florida:					
Polk	City of Lakeland (08–04–0475P).	February 27, 2008, March 5, 2008, *Polk County Democrat*.	The Honorable Ralph L. Fletcher, Mayor, City of Lakeland, 228 South Massachusetts Avenue, Lakeland, FL 33801.	February 20, 2008	120267

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief Executive Officer of Community	Effective date of modification	Community No.
Polk	Unincorporated areas of Polk County (08–04–0620P).	February 13, 2008, February 20, 2008, *Polk County Democrat*.	The Honorable Bob English, Chairman, Polk County Board of Commissioners, P.O. Box 9005, Drawer BC01, Bartow, FL 33831.	May 21, 2008	120261
Sarasota	City of Sarasota (08–04–0422P).	March 6, 2008, March 13, 2008, *Sarasota Herald-Tribune*.	The Honorable Lou Ann Palmer, Mayor, City of Sarasota, 1565 First Street, Suite 101, Sarasota, FL 34236.	February 28, 2008	125150
Sarasota	City of Sarasota (08–04–0621P).	April 4, 2008, April 11, 2008, *Sarasota Herald-Tribune*.	The Honorable Lou Ann Palmer, Mayor, City of Sarasota, 1565 First Street, Room 101, Sarasota, FL 34236.	March 28, 2008	125150
Georgia: Barrow	Unincorporated areas of Barrow County (08–04–0478P).	March 5, 2008, March 12, 2008, *Barrow County News*.	The Honorable Douglas H. Garrison, Chairman, Barrow County, Board of Commissioners, 233 East Broad Street, Winder, GA 30680.	July 11, 2008	130497
Hawaii:					
Hawaii	Unincorporated areas of Hawaii County (08–09–0081P).	April 3, 2008, April 10, 2008, *Hawaii Tribune-Herald*.	The Honorable Harry Kim, Mayor, Hawaii County, 25 Aupuni Street, Room 215, Hilo, HI 96720.	August 8, 2008	155166
Hawaii	Unincorporated areas of Hawaii County (08–09–0102P).	April 3, 2008, April 10, 2008, *Hawaii Tribune-Herald*.	The Honorable Harry Kim, Mayor, Hawaii County, 25 Aupuni Street, Room 215, Hilo, HI 96720.	March 25, 2008	155166
Idaho:					
Ada	Unincorporated areas of Ada County (07–10–0641P).	April 4, 2008, April 11, 2008, *Idaho Statesman*.	The Honorable Fred Tilman, Chairman, Ada County Board of Commissioners, 200 West Front Street, Boise, ID 83702.	August 11, 2008	160001
Ada	City of Meridian (07–10–0641P).	April 4, 2008, April 11, 2008, *Idaho Statesman*.	The Honorable Tammy de Weerd, Mayor, City of Meridian, 33 East Idaho Avenue, Meridian, ID 83642–2300.	August 11, 2008	160180
Illinois:					
DuPage	City of Aurora (08–05–0818P).	April 3, 2008, April 10, 2008, *Beacon News*.	The Honorable Thomas J. Weisner, Mayor, City of Aurora, 44 East Downer Place, Aurora, IL 60507.	March 25, 2008	170320
DuPage	Village of Glen Ellyn (08–05–1365P).	April 11, 2008, April 18, 2008, *Wheaton Sun*.	The Honorable Gregory S. Mathews, President, Village of Glen Ellyn, 535 Duane Street, Glen Ellyn, IL 60137.	August 18, 2008	170207
Grundy	Unincorporated areas of Grundy County (08–05–0597P).	March 21, 2008, March 28, 2008, *Herald News*.	The Honorable Francis E. Halpin, Chairman, Grundy County Board, 1320 Union Street, Morris, IL 60450.	April 14, 2008	170256
Grundy	City of Morris (08–05–0597P).	March 21, 2008, March 28, 2008, *Herald News*.	The Honorable Richard Kopczick, Mayor, City of Morris, 320 Wauponsee Street, Morris, IL 60450.	April 14, 2008	170263
Will	City of Joliet (07–05–5618P).	March 20, 2008, March 27, 2008, *Herald News*.	The Honorable Arthur Schultz, Mayor, City of Joliet, 150 West Jefferson Street, Joliet, IL 60431.	March 10, 2008	170702
Will	Village of Mokena (08–05–0765P).	March 20, 2008, March 27, 2008, *Herald News*.	The Honorable Joseph W. Werner, Village President, Village of Mokena, 11004 Carpenter Street, Mokena, IL 60448.	April 14, 2008	170705
Will	City of Naperville (08–05–0551P).	March 6, 2008, March 13, 2008, *Naperville Sun*.	The Honorable A. George Pradel, Mayor, City of Naperville, 400 South Eagle Street, Naperville, IL 60540.	February 29, 2008	170213
Will	Village of Shorewood (08–05–1364P).	March 28, 2008, April 4, 2008, *Herald News*.	The Honorable Richard E. Chapman, President, Village of Shorewood, 903 West Jefferson Street, Shorewood, IL 60404.	March 24, 2008	170712
Will	Unincorporated areas of Will County (08–05–0551P).	March 6, 2008, March 13, 2008, *Naperville Sun*.	The Honorable Lawrence M. Walsh, Will County Executive, 302 North Chicago Street, Joliet, IL 60432.	February 29, 2008	170695
Kansas: Sedgwick	City of Wichita (07–07–1695P).	April 4, 2008, April 11, 2008, *Wichita Eagle*.	The Honorable Carl Brewer, Mayor, City of Wichita, 455 North Main Street, Wichita, KS 67202.	March 27, 2008	200328
Massachusetts: Barnstable.	Town of Falmouth (07–01–1083P).	April 3, 2008, April 10, 2008, *Cape Cod Times*.	The Honorable Kevin E. Murphy, Chairman, Board of Selectmen, 59 Town Hall Square, Falmouth, MA 02540.	August 8, 2008	255211
Minnesota: Dakota	City of Lakeville (08–05–0668P).	April 3, 2008, April 10, 2008, *Lakeville Sun Current*.	The Honorable Holly Dahl, Mayor, City of Lakeville, 20195 Holyoke Avenue, Lakeville, MN 55044.	March 26, 2008	270107
Missouri:					
Jackson	City of Grain Valley (07–07–1749P).	April 7, 2008, April 14, 2008, *The Blue Springs Examiner*.	The Honorable David Halphin, Mayor, City of Grain Valley, 711 Main Street, Grain Valley, MO 64029.	August 14, 2008	290737
Taney	City of Branson (07–07–1909P).	March 7, 2008, March 14, 2008, *Branson Daily News*.	The Honorable Raeanne Presley, Mayor, City of Branson, 110 West Maddux Street, Branson, MO 65616.	July 14, 2008	290436
Taney	City of Hollister (07–07–1909P).	March 7, 2008, March 14, 2008, *Branson Daily News*.	The Honorable David G. Tate, Mayor, City of Hollister, 312 Esplanade Street, Hollister, MO 65373.	July 14, 2008	290437

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief Executive Officer of Community	Effective date of modification	Community No.
Taney	Unincorporated areas of Taney County (07–07–1909P).	March 7, 2008, March 14, 2008, *Branson Daily News*.	The Honorable Chuck Pennel, Presiding Commissioner, Taney County Commission, P.O. Box 383, Forsyth, MO 65653.	July 14, 2008	290435
South Carolina:					
Greenville	Unincorporated areas of Greenville County (08–04–0619P).	March 7, 2008, March 14, 2008, *The Greenville News*.	The Honorable Butch Kirven, Chairman, Greenville County Council, 213 League Road, Simpsonville, SC 29681.	July 11, 2008	450089
Richland	Unincorporated areas of Richland County (07–04–3534P).	March 7, 2008, March 14, 2008, *Columbia Star*.	The Honorable Joseph McEachern, Chairman, Richland County Council, 2020 Hampton Street, Suite 4069, Columbia, SC 29202.	July 14, 2008	450170
Richland	Unincorporated areas of Richland County (08–04–1671P).	March 7, 2008, March 14, 2008, *Columbia Star*.	The Honorable Joseph McEachern, Chairman, Richland County Council, 2020 Hampton Street, Second Floor, Columbia, SC 29202.	July 14, 2008	450170
Tennessee:					
Davidson	Metropolitan Government of Nashville & Davidson County (08–04–0137P).	March 6, 2008, March 13, 2008, *The Tennessean*.	The Honorable Bill Purcell, Mayor, Metropolitan Government of Nashville and Davidson County, 107 Metropolitan Courthouse, Nashville, TN 37201.	July 11, 2008	470040
Madison	City of Jackson (07–04–4683P).	March 7, 2008, March 14, 2008, *Jackson Sun*.	The Honorable Jerry Gist, Mayor, City of Jackson, 121 East Main Street, Suite 301, Jackson, TN 38301.	March 31, 2008	470113
Wilson	City of Lebanon (08–04–0116P).	March 7, 2008, March 14, 2008, *Wilson Post*.	The Honorable Donald W. Fox, Mayor, City of Lebanon, 200 North Castle Heights Avenue, Suite 100, Lebanon, TN 37087.	July 21, 2008	470208
Wilson	Unincorporated areas of Wilson County (08–04–0116P).	March 7, 2008, March 14, 2008, *Wilson Post*.	The Honorable Robert Dedman, Mayor, Wilson County, 228 East Main Street, Lebanon, TN 37087.	July 21, 2008	470207
Texas:					
Collin	Town of Prosper (08–06–0164P).	April 3, 2008, April 10, 2008, *Allen American*.	The Honorable Charles Niswanger, Mayor, Town of Prosper, P.O. Box 307, Prosper, TX 75078.	August 8, 2008	480141
Dallas	City of Coppell (07–06–2203P).	April 2, 2008, April 9, 2008, *Coppell Gazette*.	The Honorable Douglas N. Stover, Mayor, City of Coppell, P.O. Box 9478, Coppell, TX 75019.	April 24, 2008	480170
El Paso	City of El Paso (07–06–2485P).	April 3, 2008, April 10, 2008, *El Paso Times*.	The Honorable John Cook, Mayor, City of El Paso, Two Civic Center Plaza, Tenth Floor, El Paso, TX 79901.	March 27, 2008	480214
Tarrant	City of Bedford (08–06–1343P).	March 7, 2008, March 14, 2008, *Colleyville Courier*.	The Honorable Jim Story, Mayor, City of Bedford, 2000 Forest Ridge Drive, Bedford, TX 76021.	June 13, 2008	480585
Tarrant	City of Euless (08–06–1343P).	March 7, 2008, March 14, 2008, *Colleyville Courier*.	The Honorable Mary Lib Saleh, Mayor, City of Euless, 201 North Ector Drive, Euless, TX 76039.	June 13, 2008	480593
Tarrant	City of Keller (08–06–0002P).	March 28, 2008, April 4, 2008, *Keller Citizen*.	The Honorable Pat McGrail, Mayor, City of Keller, P.O. Box 770, Keller, TX 76244.	August 4, 2008	480602
Travis	Unincorporated areas of Travis County (07–06–1238P).	April 3, 2008, April 10, 2008, *Austin American-Statesman*.	The Honorable Samuel T. Biscoe, Travis County Judge, 314 West 11th Street, Suite 520, Austin, TX 78701.	August 8, 2008	481026

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

Dated: May 7, 2008.

David I. Maurstad,

Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E8–10869 Filed 5–14–08; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[WT Docket No. 99–217; FCC 08–87]

Competitive Networks, Multiunit Premises

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission adopts rules prohibiting telecommunications carriers from entering into contracts that would make them the exclusive provider of telecommunications services in residential multiple tenant environments (MTEs), e.g., apartment buildings, condominiums, and cooperatives. The rules also prohibit telecommunications carriers from enforcing existing exclusivity contracts.

DATES: Effective July 14, 2008.

FOR FURTHER INFORMATION CONTACT: Jon Reel, Wireline Competition Bureau, (202) 418–1580.

SUPPLEMENTARY INFORMATION: In this Order, the Commission removes impediments to facilities-based competition to provide voice, video, and data services as intended by the Communications Act of 1934, as amended (the Act) and Commission precedent. As it did with video service providers (*see Exclusive Service*

Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments, MB Docket No. 07–51, 72 FR 61129–01, 22 FCC Rcd 20235 (2007) (*Video Nonexclusivity Order*)), the Commission finds that the harm to competition from exclusivity agreements outweighs any benefit, and that such contracts are inherently unjust and unreasonable. The rule establishes regulatory parity between telecommunications carriers and cable television operators, which are already banned from entering into or enforcing arrangements to be the sole provider of video services in residential MTEs. By removing impediments to competition, and by establishing regulatory parity among likely competitors, this action should bring the benefits of competition, including competition to provide broadband Internet access services, to residents of MTEs.

The Commission will send a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

Final Paperwork Reduction Act of 1995 Analysis

This document does not contain new or modified information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Synopsis of Report and Order

1. On October 25, 2000, the Commission issued the *Promotion of Competitive Networks in Local Telecommunications Markets, First Report and Order and Further Notice of Proposed Rulemaking,* WT Docket No. 99–217, 66 FR 2322–01, 15 FCC Rcd 22983 (2000) (*Competitive Networks Order and Further NPRM*) to foster local competition pursuant to the 1996 Act, and adopted several measures to ensure that competing telecommunications providers are able to provide services in MTEs. Most notably for the purposes of this proceeding, that order prohibited carriers from entering into contracts that restrict or effectively restrict owners and managers of commercial MTEs from permitting access by competing carriers. The Commission also sought comment in several areas, including whether the prohibition on exclusive access contracts in commercial MTEs should be extended to residential settings, and whether carriers should be prohibited from enforcing exclusive access provisions in existing contracts in either commercial or residential MTEs.

2. On March 28, 2007, the Wireline Competition Bureau released a public notice inviting interested parties to update the record pertaining to issues raised in the Commission's Competitive Networks proceeding in light of marketplace and industry developments. (*Parties Asked to Refresh Record Regarding Promotion of Competitive Networks in Local Telecommunications Markets,* WT Docket No. 99–217, CC Docket No. 96–98, public notice, 22 FCC Rcd 5632 (2007)). Specifically, the notice sought updates on the progress of the real estate industry's voluntary commitments aimed at improving tenants' access to alternative telecommunications carriers, and on intervening industry developments such as service bundling and integration.

3. The Commission concludes that exclusive agreements to provide telecommunications services to residential customers in MTEs harm competition and consumers without evidence of countervailing benefits, and the Commission thus prohibits carriers from entering into or enforcing such provisions. This conclusion comports with the Commission's decision in the *Video Nonexclusivity Order* to prohibit cable operators and others subject to the relevant statutory provisions from executing or enforcing existing video exclusivity provisions in contracts to serve residential multiunit premises. In an environment of increasingly competitive bundled service offerings, the importance of regulatory parity is particularly compelling in the Commission's determination to remove this impediment to fair competition. Moreover, nothing in the record indicates that the competitive benefits that commercial customers enjoy by virtue of the Commission's prior prohibition of such contracts in the commercial context should not also be extended to residential users.

4. *Scope of Residential MTEs.* In the *Competitive Networks Order and Further NPRM,* the Commission prohibited exclusivity provisions with respect to the provision of telecommunications services in commercial MTEs. As it observed in that order, however, ''some premises are used for both commercial and residential purposes.'' That Commission stated that in situations ''where a single access agreement covers the entire premises, the Commission finds it most consistent with the purposes of this rule to determine its status as residential or commercial by predominant use.'' The Commission has continued that approach in subsequent decisions, for example granting certain section 251(c) unbundling relief for fiber deployed to ''predominantly residential'' multiunit premises relying on the distinctions drawn in the *Competitive Networks Order and Further NPRM.* Consistent with that precedent, the protections against telecommunications exclusivity provisions here extend to the tenants in residential MTEs as determined by the MTE's predominant use.

5. As the Commission held in the *Competitive Networks Order and Further NPRM,* the guests of hotels or similar establishments are not ''tenants'' covered by the exclusivity ban within the meaning of the Commission's rules. Similar to the Commission's decision in the video context in the *Video Nonexclusivity Order,* and consistent with prior decisions in the telecommunications context, the Commission likewise does not find the prohibition adopted here necessary to protect guests in ''hotels, or similar establishments,'' since such guests tend to be transient users, for whom such a prohibition likely would not bring the same competitive benefits. For purposes of protecting consumers in residential MTEs, the prohibition on exclusive arrangements for the provision of telecommunications services does not extend to guests in hotels or similar establishments, as described in the *Video Nonexclusivity Order* at para. 7.

6. *Prohibition on Entering Into and Enforcing Exclusivity.* The Commission finds that the record leaves no doubt of the existence of exclusive arrangements for the provision of telecommunications services. These arrangements have the same harmful effects on the provision of triple play services and broadband deployment as discussed in the *Video Nonexclusivity Order,* and pose just as much of a barrier to competition where they are attached to the provision of telecommunications services as they are to the provision of video services. Such provisions can ''prohibit or economically discourage consumers from seeking alternative service providers'' for telecommunications services, thereby limiting consumer choice and competition. This not only could adversely affect consumers' rates, but also quality, innovation, and network redundancy.

7. Developments in the markets for telecommunications, video, and broadband services over the last several years support the conclusion to extend the ban on exclusivity to residential

MTEs. At the time the Commission issued the *Competitive Networks Order and Further NPRM,* the Commission distinguished between residential and commercial tenants because of an inconclusive record about the likely competitive effects in residential MTEs, and cited commenter concerns that ''in the residential context, potential revenue streams from any one building are typically not enough to attract competitive entry without exclusive contracts.'' As the Commission has discussed at length in the *Video Nonexclusivity Order* and in other recent orders, the dramatic growth of service combinations and the ''triple play'' reduces the concern that a sole telecommunications service revenue stream is insufficient to generate additional competitive entry, even in the residential context. The shift from competition between stand alone services to that between service bundles, as well as the integration of service providers, supports the removal of obstacles to facilities-based entry. Given that the same facilities used to provide video and data services often can readily be used to provide telephone service, as well, denying such providers the right to do so only serves to reduce the entry incentives of competing providers, and thus competition, for each of those services.

8. In addition, section 706 of the Telecommunications Act of 1996 (1996 Act) and the goal of regulatory parity support this decision. When the Commission last addressed this issue in 2000, the Commission indicated its hope that the growth of facilities-based competition would increase the availability of advanced services. While providers have deployed broadband facilities to a tremendous degree since then, the Commission believes that its actions here will further promote that goal. Because allowing the imposition of restrictions on competitive offerings to residents in a multiunit premise would deter competitors from offering broadband service in combination with video, voice, or other telecommunications services, the Commission also finds that prohibiting carriers from entering into exclusivity contracts for the provision of telecommunications services furthers section 706's mandate to ''encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans'' as a basis for expanding the prohibition on contractual exclusivity.

9. The Commission is not persuaded by arguments that the Commission should refrain from taking any action with regard to residential MTEs. In response to the issues raised in the Competitive Networks proceeding, the real estate industry made a commitment to the Commission to develop model contracts and ''best practices'' to facilitate negotiations for building access, which include a firm policy not to enter into exclusive contracts. While this approach is commendable and pro competitive, the Commission does not find on this record that the effects of this voluntary commitment are not widespread, nor does it find such an unenforceable commitment sufficient to ensure the necessary competitive access.

10. The Commission previously found no evidence of benefits to competition or consumer welfare from the use of exclusive contracts in commercial settings, and the record in residential settings similarly lacks such evidence. Although the data cited in the comments recently refreshing the Competitive Networks proceeding are not detailed, that does not render the anticompetitive impact of exclusivity provisions inconsequential. Qwest reports that it is increasingly encountering residential buildings where it is prohibited to sell its voice services. Indeed, no party disputes that carriers and MTE representatives continue to enter into these contracts, and even in arguing against a prohibition, RAA introduces a survey of property owners and managers showing that two percent of the respondents admit to having at least one exclusive agreement for building access. The Commission is mindful of the concerns of some that ''community-based arrangements'' allow competitive providers some assurance of a steady revenue stream to justify their initial development, but, for the reasons described above, the Commission is not persuaded by such concerns in the present marketplace environment. Thus, the Commission concludes that the perpetuation of exclusivity contracts is not in the public interest. Just as the Commission concluded in the context of video programming services, the Commission finds that the benefits do not outweigh the harms, and it acts accordingly for telecommunications services. The exclusive provision of telecommunications services in residential MTEs bars competitive and new entry in the telecommunications services market and triple play market, and discourages the deployment of broadband facilities to the American public. This in turn results in higher prices and fewer competitive choices for consumers. Such limitations are inconsistent with the pro-competitive goals of the 1996 Act, and therefore such contracts are unjust and unreasonable practices.

11. The Commission finds that immediately prohibiting the enforcement of such provisions is more appropriate than phasing them out or waiting until contracts expire and are replaced by contracts without exclusivity provisions. The Commission agrees with commenters that such approaches would only serve to further delay the entry of competition to customers in the buildings at issue. To leave existing exclusivity contracts in effect would allow the competitive harms identified to continue for some time, even years, and the Commission believes it is in the public interest to prohibit such contracts from being enforced. Further, to the extent that exclusivity provisions prevent incumbent local exchange carriers (LECs) from serving a building, they could be at odds with applicable carrier of last resort obligations. In addition, nothing in the record suggests that small carriers are particularly disadvantaged by exclusivity prohibitions, or that the cost/benefit analysis for consumers differs when small carriers are involved. Finally, the Commission notes that the validity of exclusivity provisions in contracts for the provision of telecommunications services to residential MTEs has been subject to question for some time. In the *Competitive Networks Order and Further NPRM,* the Commission found such provisions unreasonable in the context of commercial MTEs, and sought comment on the propriety of a similar prohibition for residential MTEs, including the prohibition on enforcement of existing exclusivity provisions. Thus, carriers have been on notice for more than seven years that the Commission might prohibit both their entering, and enforcement of, such provisions.

12. As the Commission found in the *Competitive Networks Order and Further NPRM,* it has ample authority to prohibit exclusivity provisions in agreements for the provision of telecommunications service to residential MTEs. There, the Commission specifically found that ''exclusive contracts for telecommunications service in commercial settings impede the pro-competitive purposes of the 1996 Act and appear to confer no substantial countervailing public benefits,'' and thus ''a carrier's agreement to such a contract is an unreasonable practice'' under section 201(b) of the Communications Act of 1934, as amended (Act).

13. The same conclusion is applicable here because just as in the commercial MTE context, the prohibition of exclusive contracts in the provision of telecommunications services to residential MTEs furthers the same policy goals—facilitating competitive entry, lower prices, and more broadband deployment. Thus, the Commission finds that a carrier's execution or enforcement of such an exclusive access provision is an unreasonable practice and implicates the Commission's authority under section 201(b) of the Act to prohibit unreasonable practices. As with video contracts, the Commission does not limit this prohibition to future exclusivity contracts for the provision of telecommunications services, but also prohibits the enforcement of such existing contracts. In the *Competitive Networks Order and Further NPRM,* the Commission sought comment on whether to prohibit carriers from enforcing exclusive access provisions in existing contracts in either commercial or residential multiunit premises, including the extent of the Commission's authority to do so. The Commission concludes that it has such authority, and that it is in the public interest to prohibit the enforcement of exclusive contracts for the provision of telecommunications services to residential MTEs.

14. The Commission has authority to ''modify * * * provisions of private contracts when necessary to serve the public interest.'' *See, e.g., Expanded Interconnection with Local Telephone Company Facilities,* CC Docket No. 91–141, Memorandum Opinion and Order, 9 FCC Rcd 5154, 5207–10, paras. 197–208 (1994). The Commission has exercised this authority previously when private contracts violate sections 201 through 205 of the Act. As the Commission found in the *Competitive Networks Order and Further NPRM,* the exclusive access provisions at issue here ''perpetuate the very 'barriers to facilities-based competition' that the 1996 Act was designed to eliminate,'' and appear to confer no substantial countervailing public benefits. Having for the same reasons found such exclusive contracts violate section 201 of the Act, and given the adverse competitive effects of such contracts, the Commission finds it necessary in the public interest to prohibit enforcement of such existing contracts.

15. In addition, the Commission concludes that its prohibition on the enforcement of telecommunications exclusivity contracts here does not violate the Fifth Amendment for the same reasons discussed in the *Video Nonexclusivity Order* in the context of video exclusivity provisions. In particular, such action is not a per se taking, nor does it represent a regulatory taking under the Supreme Court's framework. As is true in the video context, the prohibition on exclusivity arrangements does not prevent telecommunications carriers from utilizing the facilities they own to provide services to MTEs, nor does it prohibit other types of arrangements such as exclusive marketing arrangements. Exclusive telecommunications contracts have been under scrutiny for years, and have been prohibited by the Commission and states in certain contexts. To the extent that carriers have used exclusivity to obstruct competition, any underlying investment-backed expectations are not sufficiently longstanding or pro-competitive in nature to warrant immunity from regulation. In addition, the prohibition on enforcement of the exclusivity provisions at issue substantially advances the government interest in preventing unreasonable practices reflected in section 201(b) of the Act, and is based on weighing of the relative costs and benefits of such provisions. Moreover, the Commission notes that this action applies only to carriers seeking to enter or enforce telecommunications exclusivity contracts—the Commission is not hereby mandating access to residential or other MTEs. Thus, it finds that it has ample authority to regulate telecommunications carriers' contractual conduct even though it may have a tangential effect on MTE owners.

16. In sum, the Commission concludes that it has both a sufficient policy basis and legal authority to prohibit carriers from entering or enforcing exclusivity provisions on contracts to provide telecommunications services to residential MTEs. By adopting such a prohibition here, it furthers the competitive goals of the 1996 Act, and continues efforts to ensure that consumers in MTEs enjoy the benefits of increased competition in both telephone and video service offerings.

Final Regulatory Flexibility Analysis, WC Docket No. 99–217 (Competitive Networks)

17. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Further Notice of Proposed Rulemaking (Further NPRM) to this proceeding. The Commission sought written public comment on the proposals in the Further NPRM, including comment on the IRFA. The Commission received one comment on the IRFA, from the Real Access Alliance. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Report and Order

18. This Report and Order adopts rules and provides guidance to implement sections 1, 2(a), 4(i), 4(j), 201, 202, 205, and 405 of the Communications Act of 1934, as amended (the Act) and section 706 of the Telecommunications Act of 1996. Those sections of the Act authorize the Commission to prohibit any telecommunications carrier from enforcing or executing contracts with premises owners for provision of telecommunications service alone or in combination with other services in predominantly residential multiple tenant environments (MTEs). The Commission has found that existing and future exclusive contracts constitute an unreasonable barrier to entry for competitive entrants that would impede competition and accelerated broadband deployment, and that they constitute an unfair method of competition. The measures adopted in this Report and Order ensure that, in furtherance of the Telecommunications Act of 1996, certain contractual exclusivity provisions no longer serve as an obstacle to competitive access in the telecommunications market.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

19. Only one commenter, RAA, submitted a comment that specifically responded to the IRFA. RAA asserts that the IRFA was defective because it did not address the effects of possible outcomes on apartment building owners.

20. We disagree with RAA's assertion. In fact, the IRFA discussed apartment building owners specifically in paragraph 15. Moreover, an IRFA need only address the concerns of entities directly regulated by the Commission. The Commission does not directly regulate apartment building operators. Accordingly, even if the IRFA had not addressed the concerns of apartment building owners, it would not be defective. When an agency finds that there is no direct impact on a substantial number of small entities that are subject to the requirements of the rule, then no discussion of alternatives, less costly than the proposed rule, is required.

C. Description and Estimate of the Number of Small Entities To Which the Rules Will Apply

21. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

22. The rules and guidance adopted by this Report and Order will ease the entry of providers of telecommunications services, including those providing the ''triple play'' of voice, video, and broadband Internet access service. The Commission has determined that the group of small entities directly affected by the rules adopted herein consists of wireline and wireless telecommunications carriers. Therefore, in the Report and Order, the Commission considers the impact of the rules on carriers. A description of such small entities, as well as an estimate of the number of such small entities, is provided below.

23. *Small Businesses.* Nationwide, there are a total of approximately 22.4 million small businesses according to SBA data.

24. *Small Organizations.* Nationwide, there are approximately 1.6 million small organizations. Small Governmental Jurisdictions. The term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States. The Commission estimates that, of this total, 84,377 entities were ''small governmental jurisdictions.'' Thus, the Commission estimates that most governmental jurisdictions are small.

1. Wireline Carriers and Service Providers

25. The Commission has included small incumbent local exchange carriers (LECs) in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, inter alia, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees) and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. The Commission has therefore included small incumbent LECs in this RFA analysis, although the Commission emphasizes that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

26. *Incumbent LECs.* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent LECs. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,303 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,303 carriers, an estimated 1,020 have 1,500 or fewer employees and 283 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the Commission's action.

27. *Competitive LECs, Competitive Access Providers (CAPs), ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers.''* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 859 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive LEC services. Of these 859 carriers, an estimated 741 have 1,500 or fewer employees and 118 have more than 1,500 employees. In addition, 16 carriers have reported that they are ''Shared-Tenant Service Providers,'' and all 16 are estimated to have 1,500 or fewer employees. In addition, 44 carriers have reported that they are ''Other Local Service Providers.'' Of the 44, an estimated 43 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers'' are small entities.

28. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 330 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 309 have 1,500 or fewer employees and 21 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by the Commission's action.

2. Wireless Telecommunications Service Providers

29. Below, for those services subject to auctions, the Commission notes that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

30. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of ''Paging'' and ''Cellular and Other Wireless Telecommunications.'' Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, under this second category and size standard, the majority of firms can, again, be considered small.

31. *Cellular Licensees.* The SBA has developed a small business size standard for wireless firms within the

broad economic census category ''Cellular and Other Wireless Telecommunications.'' Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, under this category and size standard, the majority of firms can be considered small. Also, according to Commission data, 437 carriers reported that they were engaged in the provision of cellular service, Personal Communications Service (PCS), or Specialized Mobile Radio (SMR) Telephony services, which are placed together in the data. The Commission has estimated that 260 of these are small under the SBA small business size standard.

32. *Paging.* The SBA has developed a small business size standard for the broad economic census category of ''Paging.'' Under this category, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. In addition, according to Commission data, 365 carriers have reported that they are engaged in the provision of ''Paging and Messaging Service.'' Of this total, the Commission estimates that 360 have 1,500 or fewer employees, and five have more than 1,500 employees. Thus, in this category the majority of firms can be considered small.

33. We also note that, in the Paging Second Report and Order, the Commission adopted a size standard for ''small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. In this context, a small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. The SBA has approved this definition. An auction of Metropolitan Economic Area (MEA) licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 2,499 licenses auctioned, 985 were sold. Fifty-seven companies claiming small business status won 440 licenses. An auction of MEA and Economic Area (EA) licenses commenced on October 30, 2001, and closed on December 5, 2001. Of the 15,514 licenses auctioned, 5,323 were sold. One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs commenced on May 13, 2003, and closed on May 28, 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses. The Commission also notes that, currently, there are approximately 74,000 Common Carrier Paging licenses.

34. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission established small business size standards for the wireless communications services (WCS) auction. A ''small business'' is an entity with average gross revenues of $40 million or less for each of the three preceding years, and a ''very small business'' is an entity with average gross revenues of $15 million or less for each of the three preceding years. The SBA has approved these small business size standards. The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as ''very small business'' entities, and one that qualified as a ''small business'' entity.

35. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services (PCS), and specialized mobile radio (SMR) telephony carriers. As noted earlier, the SBA has developed a small business size standard for ''Cellular and Other Wireless Telecommunications'' services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to Commission data, 432 carriers reported that they were engaged in the provision of wireless telephony. The Commission has estimated that 221 of these are small under the SBA small business size standard.

36. *Broadband Personal Communications Service.* The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These standards defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA. No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as ''small'' or ''very small'' businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

37. *Narrowband Personal Communications Services.* The Commission held an auction for Narrowband PCS licenses that commenced on July 25, 1994, and closed on July 29, 1994. A second auction commenced on October 26, 1994 and closed on November 8, 1994. For purposes of the first two Narrowband PCS auctions, ''small businesses'' were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses. To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the Narrowband PCS Second Report and Order. A ''small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A ''very small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards. A third auction commenced on October 3, 2001 and closed on October 16, 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses. Three of these claimed status as a small or very small entity and won 311 licenses.

38. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, the Commission applies the small business size standard under the SBA rules applicable to ''Cellular and Other Wireless Telecommunications'' companies. This category provides that a small business is a wireless company employing no more than 1,500 persons. For the census category Cellular and Other Wireless Telecommunications, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. Thus, under this second category and size standard, the majority of firms can, again, be considered small. Assuming this general ratio continues in the context of Phase I 220 MHz licensees, the Commission estimates that nearly all such licensees are small businesses under the SBA's small business size standard. In addition, limited preliminary census data for 2002 indicate that the total number of cellular and other wireless telecommunications carriers increased approximately 321 percent from 1997 to 2002.

39. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service and is subject to spectrum auctions. The 220 MHz Third Report and Order adopted a small business size standard for ''small'' and ''very small'' businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. This small business size standard indicates that a ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. A ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years. The SBA has approved these small business size standards. Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. In the first auction, 908 licenses were auctioned in three different-sized geographic areas: Three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.

40. *800 MHz and 900 MHz Specialized Mobile Radio Licenses.* The Commission awards ''small entity'' and ''very small entity'' bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years, or that had revenues of no more than $3 million in each of the previous calendar years, respectively. These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. The Commission assumes, for purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small or very small entities in the 900 MHz SMR auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small or very small entities won 263 licenses. In the 800 MHz auction, 38 of the 524 licenses won were won by small and very small entities.

41. *700 MHz Guard Band Licensees.* The 700 MHz Guard Band Order adopted a small business size standard for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A ''small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

42. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of $40 million or less in the three previous calendar years. An additional size standard for ''very small business'' is: an entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by the rules and policies adopted herein.

43. *Wireless Cable Systems.* Wireless cable systems use 2 GHz band frequencies of the Broadband Radio Service (''BRS''), formerly Multipoint Distribution Service (''MDS''), and the Educational Broadband Service (''EBS''), formerly Instructional Television Fixed Service (''ITFS''), to transmit video programming and provide broadband services to residential subscribers. These services were originally designed for the delivery of multichannel video programming, similar to that of traditional cable systems, but over the past several years licensees have focused their operations instead on providing two-way high-speed Internet access services. The Commission estimates that the number of wireless cable subscribers is approximately 100,000, as of March 2005. Local Multipoint Distribution Service (''LMDS'') is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. As described below, the SBA small business size standard for the broad census category

of Cable and Other Program Distribution, which consists of such entities generating $13.5 million or less in annual receipts, appears applicable to MDS, ITFS and LMDS. Other standards also apply, as described.

44. The Commission has defined small MDS (now BRS) and LMDS entities in the context of Commission license auctions. In the 1996 MDS auction, the Commission defined a small business as an entity that had annual average gross revenues of less than $40 million in the previous three calendar years. This definition of a small entity in the context of MDS auctions has been approved by the SBA. In the MDS auction, 67 bidders won 493 licenses. Of the 67 auction winners, 61 claimed status as a small business. At this time, the Commission estimates that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that have gross revenues that are not more than $40 million and are thus considered small entities. MDS licensees and wireless cable operators that did not receive their licenses as a result of the MDS auction fall under the SBA small business size standard for Cable and Other Program Distribution. Information available to us indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of $13.5 million annually. Therefore, the Commission estimates that there are approximately 850 small entity MDS (or BRS) providers, as defined by the SBA and the Commission's auction rules.

45. Educational institutions are included in this analysis as small entities; however, the Commission has not created a specific small business size standard for ITFS (now EBS). The Commission estimates that there are currently 2,032 ITFS (or EBS) licensees, and all but 100 of the licenses are held by educational institutions. Thus, the Commission estimates that at least 1,932 ITFS licensees are small entities.

46. In the 1998 and 1999 LMDS auctions, the Commission defined a small business as an entity that has annual average gross revenues of less than $40 million in the previous three calendar years. Moreover, the Commission added an additional classification for a ''very small business,'' which was defined as an entity that had annual average gross revenues of less than $15 million in the previous three calendar years. These definitions of ''small business'' and ''very small business'' in the context of the LMDS auctions have been approved by the SBA. In the first LMDS auction, 104 bidders won 864 licenses. Of the 104 auction winners, 93 claimed status as small or very small businesses. In the LMDS re-auction, 40 bidders won 161 licenses. Based on this information, the Commission believes that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

47. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. The auction of the 1,030 LMDS licenses began on February 18, 1998 and closed on March 25, 1998. The Commission established a small business size standard for LMDS licensees as an entity that has average gross revenues of less than $40 million in the three previous calendar years. An additional small business size standard for ''very small business'' was added as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards in the context of LMDS auctions. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders. Based on this information, the Commission concludes that the number of small LMDS licenses consists of the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers.

48. *218–219 MHz Service.* The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carryover losses), has no more than $2 million in annual profits each year for the previous two years. The 218–219 MHz Report and Order and Memorandum Opinion and Order established a small business size standard for a ''small business'' as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed $15 million for the preceding three years. A ''very small business'' is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed $3 million for the preceding three years. The Commission cannot estimate, however, the number of licenses that will be won by entities qualifying as small or very small businesses under the rules in future auctions of 218–219 MHz spectrum.

49. *24 GHz—Incumbent Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of ''Cellular and Other Wireless Telecommunications'' companies. This category provides that such a company is small if it employs no more than 1,500 persons. According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. Thus, under this size standard, the great majority of firms can be considered small. These broader census data notwithstanding, the Commission believes that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent and TRW, Inc. It is the Commission's understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

50. *24 GHz—Future Licensees.* With respect to new applicants in the 24 GHz band, the small business size standard for ''small business'' is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of $15 million. ''Very small business'' in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years. The SBA has approved these small business size standards. These size standards will apply to the future auction, if held.

D. Description of Projected Reporting, Record Keeping and Other Compliance Requirements

51. The rule adopted in the Report and Order will require no additional reporting, record keeping, and other compliance requirements.

E. Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

52. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

53. Because the Report and Order imposes no compliance or reporting requirements on any entity, only the last of the foregoing alternatives is material. The Report and Order takes note in paragraph 13 above that nothing in the record suggests that small carriers are particularly disadvantaged by exclusivity prohibitions, or that the cost/benefit analysis for consumers differs when small carriers are involved.

F. Report to Congress

54. The Commission will send a copy of the Order, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act. A copy of the Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

Final Paperwork Reduction Act of 1995 Analysis

This document does not contain new or modified information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Congressional Review Act

The Commission will send a copy of this Report and Order and Order on Remand in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

Ordering Clauses

55. Accordingly, *It is ordered,* pursuant to sections 1, 2(a), 4(j), 4(i), 201, 202, 205, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i), 154(j), 201, 202, 205, and 405, and pursuant to section 706 of the Telecommunications Act of 1996, 47 U.S.C. 157 nt., that the Report and Order in WT Docket No. 99–217 is adopted, and that Part 64 of the Commission's Rules, 47 CFR part 64, is amended as set forth in Appendix B of the order. It is the Commission's intention in adopting these rule changes that, if any provision of the rules is held invalid by any court of competent jurisdiction, the remaining provisions shall remain in effect to the fullest extent permitted by law.

56. *It is further ordered* that the rules and the requirements of this Report and Order *shall become effective* July 14, 2008.

57. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Communications common carriers, telecommunications, telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

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

Authority: 47 U.S.C. 151, 152(a), 154(i), 154(j), 201, 202, 205, 405, and 157 nt.

■ 2. Section 64.2500 is revised to read as follows:

§ 64.2500 Prohibited agreements.

(a) No common carrier shall enter into any contract, written or oral, that would in any way restrict the right of any commercial multiunit premises owner, or any agent or representative thereof, to permit any other common carrier to access and serve commercial tenants on that premises.

(b) No common carrier shall enter into or enforce any contract, written or oral, that would in any way restrict the right of any residential multiunit premises owner, or any agent or representative thereof, to permit any other common carrier to access and serve residential tenants on that premises.

■ 2. Section 64.2501 is revised to read as follows:

§ 64.2501 Scope of limitation.

For the purposes of this subpart, a multiunit premises is any contiguous area under common ownership or control that contains two or more distinct units. A commercial multiunit premises is any multiunit premises that is predominantly used for non-residential purposes, including for-profit, non-profit, and governmental uses. A residential multiunit premises is any multiunit premises that is predominantly used for residential purposes.

[FR Doc. E8–10764 Filed 5–14–08; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[WC Docket No. 04–36; WT Docket No. 96–198; CG Docket No. 03–123 and CC Docket No. 92–105; DA 08–821]

IP–Enabled Services; Implementation of Sections 255 and 251(a)(2) of The Communications Act of 1934, as Enacted by The Telecommunications Act of 1996: Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons With Disabilities; Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities; the Use of N11 Codes and Other Abbreviated Dialing Arrangements

AGENCY: Federal Communications Commission.

ACTION: Final rule; extension of waiver.

SUMMARY: In this document, the Consumer and Governmental Affairs Bureau (Bureau) grants interconnected voice over Internet Protocol (VoIP) providers an extension of time to route 711-dialed calls to an appropriate telecommunications relay service (TRS) center in the context of 711-dialed calls in which the calling party's telephone

number may not reflect his or her geographic location. The Bureau also grants traditional TRS providers (those providing relay service via the public switched telephone network (PSTN) and a text telephone (TTY)) an extension of time to fulfill their obligation to implement a system to automatically and immediately call an appropriate Public Safety Answering Point (PSAP) when receiving an emergency 711-dialed call via an interconnected VoIP service. The Bureau takes this action based on information in the record reflecting the significant technical challenges presented by this requirement and on the Bureau's finding that the delivery of the inbound leg of a 711-dialed call by an interconnected VoIP provider to the appropriate relay center is a predicate to the delivery by the relay center of the outbound leg of such a call to an appropriate PSAP.

DATES: Document DA 08–821 became effective on April 4, 2008. Interconnected VoIP providers are granted a waiver, until March 31, 2009, of the requirement to route 711-dialed calls to an appropriate relay center, but only in the context of 711-dialed calls in which the calling party is using a non-geographically relevant telephone number or a nomadic interconnected VoIP service. Traditional TRS Providers are granted an extension of time, until March 31, 2009, to implement a system to automatically and immediately call an appropriate PSAP when receiving an emergency 711-dialed call via an interconnected VoIP service.

FOR FURTHER INFORMATION CONTACT: Lisa Boehley, Consumer and Governmental Affairs Bureau at (202) 418–7395 (voice), or e-mail: *Lisa.Boehley@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Bureau's Order, DA 08–821, adopted and released April 4, 2008. The full text of DA 08–821, and copies of any subsequently filed documents in this matter, will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. DA 08–821 and copies of any subsequently filed documents in this matter also may be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact the Commission's duplicating contractor at its Web site, *http://www.bcpiweb.com*, or by calling 1–800–378–3160. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY). DA 08–821 also can be downloaded in Word and Portable Document Format (PDF) at: *http://www.fcc.gov/cgb/dro/trs.html#orders*.

Synopsis

On June 15, 2007, the Commission released IP-Enabled Services; Implementation of sections 255 and 251(a)(2) of The Communications Act of 1934, as Enacted by The Telecommunications Act of 1996: Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; the Use of N11 Codes and Other Abbreviated Dialing Arrangements, WC Docket No. 04–36, WT Docket No. 96–198, CG Docket No. 03–123 and CC Docket No. 92–105, Report and Order, 22 FCC Rcd 11275 (2007) (*2007 VoIP TRS Order*), published at 72 FR 43546, August 6, 2007. In the *2007 VoIP TRS Order*, which became effective October 5, 2007, the Commission extended the TRS requirements contained in part 64 of the Commission's rules to providers of interconnected VoIP services. Among the requirements extended to interconnected VoIP providers was the obligation to offer 711 abbreviated dialing access to traditional TRS via a voice telephone or a text telephone (TTY). Following release of the *2007 VoIP TRS Order*, several parties filed petitions for waiver raising issues concerning (1) the ability of interconnected VoIP providers to route the inbound leg of a 711-dialed call to an appropriate TRS provider, particularly when the caller's telephone number does not correspond to the caller's geographic location, and (2) the ability of TRS providers that receive, via an interconnected VoIP service, a 711-dialed call concerning an emergency to determine an appropriate PSAP to call.

In IP-Enabled Services; Implementation of sections 255 and 251(a)(2) of The Communications Act of 1934, as Enacted by The Telecommunications Act of 1996: Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; the Use of N11 Codes and Other Abbreviated Dialing Arrangements, WC Docket No. 04–36, WT Docket No. 96–198, CG Docket No. 03–123 and CC Docket No. 92–105, Order and Public Notice Seeking Comment, 22 FCC Rcd 18319 (Cons. Govt. Aff. Bur. 2007) (*October 2007 Order and Notice*), published at 72 FR 61813 and 73 FR 61882, November 1, 2007, the Bureau clarified the 711-dialing requirement adopted in the *2007 VoIP TRS Order* and granted interconnected VoIP providers a six-month waiver of the requirement to route the inbound leg of a 711-dialed call to an ''appropriate TRS provider.'' The Bureau also granted traditional TRS providers a six-month waiver of their obligation to implement a system to automatically and immediately call an appropriate PSAP when receiving an emergency 711-dialed call via an interconnected VoIP service.

In the *October 2007 Order and Notice*, the Bureau sought comment on ''technical solutions'' that would enable interconnected VoIP providers to route 711 calls to ''an appropriate relay center,'' as clarified in the *October 2007 Order and Notice*, and that would enable relay centers ''to identify the appropriate PSAP to call'' when receiving an emergency call via 711 and an interconnected VoIP service.

In DA 08–821, the Bureau extends and modifies the current waivers, as they apply to interconnected VoIP providers and traditional TRS providers. First, the Bureau finds good cause to grant interconnected VoIP providers an extension of time, until March 31, 2009, to route 711-dialed calls to an appropriate relay center, but only in the context of 711-dialed calls in which the calling party's telephone number may not reflect his or her geographic location (because the caller is using a ''non-geographically relevant'' telephone number or a ''nomadic'' interconnected VoIP service). The record demonstrates that the technical difficulties associated with identifying the geographic location of a caller using a nomadic interconnected VoIP service or a non-geographically relevant telephone number when dialing a 711 call will not be resolved by the time the current waiver expires after April 5, 2008. Taking into account the progress providers have made to date, and in view of the extension petitions filed by Qwest Communications Corporation and Verizon, which detail the timetable for completion of developmental work that is, according to these providers, currently underway, the Bureau finds that providing interconnected VoIP providers this additional time to bring

themselves into compliance is warranted.

The Bureau also, however, does not think additional time beyond March 31, 2009 is necessary, and therefore denies the request of Verizon to the extent it seeks to extend the current waiver for two years. In declining to grant a longer extension, the Bureau also agrees with the Coalition of Organizations for Accessible Technology that, in assessing the necessity of a waiver in this context, the Commission should proceed cautiously, insofar as granting an extension may postpone the ability of persons with speech and hearing disabilities to access emergency services via TRS. For this reason, the Bureau limits the duration of the waiver and, as discussed above, limits the scope of the waiver to the routing of 711-dialed calls to an appropriate relay center where the calling party's telephone number may not reflect his or her geographic location.

The Bureau emphasizes the limited scope of this waiver and notes that, upon expiration of the prior waiver (after April 5, 2008), interconnected VoIP providers are required to route to the appropriate relay center (as defined in the *October 2007 Order and Notice*) those 711-dialed calls using a service in which the calling party's telephone number does reflect his or her geographic location. Further, notwithstanding the limited relief provided in DA 08–821, interconnected VoIP providers are nevertheless required to continue to accept nomadic and non-geographically relevant 711-dialed calls and route them to a relay center, even if it is not necessarily to the ''appropriate relay center.'' In addition, during the pendency of this waiver period, interconnected VoIP providers must continue to take steps to remind persons with speech or hearing disabilities to call 911 directly in the case of an emergency rather than making a 711-dialed TRS call.

Regarding the obligation of traditional TRS providers to handle emergency calls in accordance with the Commission's rules, the Bureau also finds good cause to extend, until March 31, 2009, the current waiver of 47 CFR 64.604(a)(4), as applied to TRS providers' handling and routing of emergency 711-dialed calls placed via TTY by interconnected VoIP customers. Section 64.604(a)(4) requires TRS providers to use a system for incoming emergency calls that ''automatically and immediately'' routes the outbound leg of a TRS call to an appropriate PSAP. The Bureau's reasons for extending the waiver for TRS providers are three-fold. First, the record reflects that the routing of the outbound leg of a VoIP-originated, 711-dialed call to an appropriate PSAP by a TRS provider continues to present significant technical and operational challenges. Second, to the extent that interconnected VoIP providers are unable to consistently deliver the inbound leg of a 711-dialed call to the appropriate relay center, particularly when the caller's phone number does not reflect the caller's geographic location, the Bureau agrees with commenters that the successful accomplishment of this task is a predicate to the delivery by the relay provider of the outbound leg of such a call to an appropriate PSAP. In particular, until interconnected VoIP providers are technically able to route a ''nomadic'' 711-dialed call to the ''appropriate'' TRS provider (*i.e.*, the TRS provider serving the state where the calling party is located or corresponding to the caller's last registered address), the TRS provider that receives such a call in error may contact a PSAP that corresponds to the caller's telephone number, but not the caller's actual location. Third, as noted by commenters, addressing these challenges will require a joint effort and the collaboration of TRS providers, interconnected VoIP providers and their vendors, PSAPs, the emergency services community, and the disability community. Although the Bureau applauds the steps undertaken thus far by various stakeholders, the record reflects that further collaboration is needed. For these reasons, the Bureau grants TRS providers an extension of the current waiver of the emergency call handling requirement until March 31, 2009.

During the period of this waiver, pursuant to § 64.604(a)(4), the Bureau continues to require a TRS provider that cannot automatically and immediately route to an appropriate PSAP the outbound leg of an emergency 711 call placed via TTY by an interconnected VoIP user to implement a manual system for doing so, to the extent feasible, that accomplishes the proper routing of emergency 711 calls as efficiently as possible. Further, during this period, TRS providers are instructed to continue to take steps to remind individuals with hearing or speech disabilities to dial 911 directly (as a text-to-text, TTY-to-TTY call) in an emergency, whether using a PSTN-based service or interconnected VoIP service, rather than making a TRS call via 711 in an emergency. The Bureau also expects TRS providers will continue to collaborate with industry stakeholders in order to address any remaining issues, such that a further extension of this waiver will be unnecessary.

Ordering Clauses

Pursuant to sections 1, 2, and 225 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, and 225, and § § 0.141, 0.361, and 1.3 of the Commission's rules, 47 CFR 0.141, 0.316 and 1.3, DA 08–821 is adopted.

Interconnected VoIP providers are granted a waiver, until March 31, 2009, of the requirement to route 711-dialed calls to an appropriate relay center, but only in the context of 711-dialed calls in which the calling party is using a non-geographically relevant telephone number or a nomadic interconnected VoIP service.

State TRS Providers are granted an extension of time, until March 31, 2009, to implement a system, as set forth in 47 CFR 64.604(a)(4), to automatically and immediately call an appropriate PSAP when receiving an emergency 711-dialed call via an interconnected VoIP service.

The petitions filed by Qwest Communications Corporation and Verizon are granted to the extent described in DA 08–821.

Federal Communications Commission.

Pam Slipakoff,

Chief of Staff, Consumer and Governmental Affairs Bureau.

[FR Doc. E8–10755 Filed 5–14–08; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 73, No. 95
Thursday, May 15, 2008

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

Office of the Secretary; Privacy Office

6 CFR Part 5

[Docket No. DHS–2007–0018]

Privacy Act of 1974: Implementation of Exemptions: The Office of Intelligence and Analysis Enterprise Records System

AGENCY: Privacy Office, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Homeland Security is concurrently establishing a new system of records pursuant to the Privacy Act of 1974 [5 U.S.C. 552a], as amended, to cover records maintained by the Office of Intelligence and Analysis. These records were previously covered by the Department of Homeland Security, Homeland Security Operations Center Database [DHS/IAIP–001], last published in full text on April 18, 2005 [70 FR 20156]. In this proposed rulemaking, the Department of Homeland Security proposes to exempt this new system of records, entitled the Office of Intelligence and Analysis Enterprise Records System (ERS) [DHS/IA–001], from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k). As explained in the proposed rule, the exemption is necessary to avoid interference with the intelligence, counterterrorism, and other homeland security responsibilities, and any related law enforcement functions of the Department of Homeland Security and its Office of Intelligence and Analysis. Public comment is invited.

DATES: Comments must be received on or before June 16, 2008.

ADDRESSES: You may submit comments, identified by DOCKET NUMBER DHS–2007–0023 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments via docket number DHS–2007–0018.
- *Fax:* 1–866–466–5370.
- *Mail:* Hugo Teufel III, DHS Chief Privacy Officer, Department of Homeland Security, Washington, DC 20528.
- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.
- *Docket:* For access to the docket to read background documents or comments received go to *http://www.regulations.gov.*
- *Hand Delivery/Courier:* Hugo Teufel III, Chief Privacy Officer, Department of Homeland Security, 245 Murray Lane, SW., Building 410, Washington, DC 20528, 7:30 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: For general questions, please contact the Director, Information Sharing and Knowledge Management Division, Office of Intelligence and Analysis, Department of Homeland Security, Washington, DC 20528, at (202) 282–8248. For privacy issues, please contact: Hugo Teufel III (571–227–3813), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528, E-mail: *PIA@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

Elsewhere in today's **Federal Register**, the Department of Homeland Security (DHS) is publishing a Privacy Act system of records notice describing records in the ''Office of Intelligence and Analysis Enterprise Records System, DHS/IA–001'' (ERS). These records were previously covered by the Department of Homeland Security, Homeland Security Operations Center (HSOC) Database [DHS/IAIP–001], last published on April 18, 2005 [70 FR 20156]. The DHS/IAIP–001 SORN originally addressed the treatment of Privacy Act records under the administrative and organizational framework of the former DHS Information Analysis and Infrastructure Protection (IAIP) Directorate.

After successive organizational realignments of the Department by the Secretary and Congress, in 2005 and 2006 respectively, the IAIP Directorate was effectively eliminated and the functional responsibilities and organization of what was then IAIP's Office of Information Analysis, today the Office of Intelligence and Analysis (I&A), were elevated when I&A became a stand alone organization within the Department, headed by what is now the position of Under Secretary for I&A, with direct-report responsibilities to the Secretary. Thus, ERS replaces those aspects of the HSOC Database [DHS/IAIP–001] SORN insofar as they previously applied to I&A records, but does not rescind, revoke, or supersede any portion of the previously published HSOC Database SORN, itself, insofar as it continues to apply to other components of DHS who maintain records within and consistent with that system.

ERS is a system of records established pursuant to the Homeland Security Act of 2002 (Pub. L. 107–296), as amended, and subject to the Privacy Act of 1974, 5 U.S.C. 552a, to support both the mission of I&A in providing intelligence and analysis support directly to DHS leadership; to all DHS operational components, elements, and other offices and activities; and to the Under Secretary for I&A, as Chief Intelligence Officer of the Department, in his role of effectively integrating and managing DHS's Intelligence Programs. I&A is the DHS-wide analytic entity and unified intelligence office which directly supports the Under Secretary for I&A, other DHS elements responsible for carrying out the mission of the Department under the Homeland Security Act of 2002, as amended, and other federal, State, local, tribal, and private sector DHS partners with responsibilities for securing the homeland from natural and manmade threats. As a member of the National Intelligence Community, I&A is also obligated to conduct its mission in conformance with the requirements of Executive Order 12333, as amended, ''United States Intelligence Activities,'' dated December 4, 1981. Amongst other requirements, Section 2.3 of Executive Order 12333 requires that each agency head within the IC establish procedures to govern the collection, retention, and dissemination of information concerning U.S. Persons, in a manner which protects the privacy and Constitutional rights of those U.S. Persons.

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses and disseminates personally identifiable information. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. Individuals may request their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR part 5. The Privacy Act requires each agency to publish in the **Federal Register** a description of the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency recordkeeping practices transparent, to notify individuals regarding the uses to which personally identifiable information is put, and to assist individuals to more easily find such files within the agency. Pursuant to his statutory authorities under section 222 of the Homeland Security Act of 2002, Public Law 107–296, section 222, 116 Stat. 2135, 2155, the DHS Chief Privacy Officer is the senior DHS official appointed by the Secretary to oversee implementation of the Privacy Act within the Department and to undertake other privacy-related activities. Accordingly, the DHS Chief Privacy Officer published the system of records notice which corresponds with this proposed rule.

The Privacy Act also allows government agencies, as appropriate, to exempt certain records from the access and amendment provisions. Where an agency seeks to claim an exemption, however, it must issue a Notice of Proposed Rulemaking to make clear to the public the reasons why a particular exemption is claimed. DHS is claiming exemptions from certain requirements of the Privacy Act by publication of this proposed rule.

Accordingly, DHS proposes to exempt this system, in part, from certain provisions of the Privacy Act and to add that exemption to Appendix C to Part 5, DHS Systems of Records Exempt from the Privacy Act. I&A needs these exemptions in order to protect information relating to authorized intelligence, counterterrorism, homeland security, and related law enforcement activities from disclosure to subjects of investigations and others who, by accessing or knowing this information, could interfere with those activities or otherwise place in jeopardy the national or homeland security. Specifically, the exemptions are necessary in order to prevent revealing information concerning intelligence, counterterrorism, homeland security, or related investigative efforts. Revealing such information to the subject or other individual could reasonably be expected to compromise ongoing efforts of the Department to identify, understand, analyze, investigate, and counter the activities that threaten national or homeland security; compromise classified or other sensitive information; identify a confidential source or disclose information which would constitute an unwarranted invasion of another individual's personal privacy; reveal a sensitive intelligence or investigative technique or method, and interfere with intelligence or law enforcement analytic or investigative processes; or constitute a potential danger to the health or safety of intelligence, counterterrorism, homeland security, and law enforcement personnel, confidential sources and informants, or potential witnesses.

The exemptions proposed here are standard law enforcement and national security exemptions exercised by a large number of federal law enforcement and intelligence agencies. In appropriate circumstances, where compliance would not appear to interfere with or adversely affect the national or homeland security of the United States, or the law enforcement purposes of any investigatory material contained within this system, the applicable exemptions may be waived.

List of Subjects in 6 CFR Part 5

Classified information, Privacy, Courts; Freedom of information; Government employees.

For the reasons stated in the preamble and pursuant to the authority vested in the Department of Homeland Security by 5 U.S.C. 552a, and assigned to me under Section 222 of the Homeland Security Act of 2002, DHS proposes to amend Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

1. The authority citation for Part 5 continues to read as follows:

Authority: Pub. L. 107–296, 116 Stat. 2135, 6 U.S.C. 101 *et seq.*; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552.

2. At the end of Appendix C to Part 5, add the following new section 8:

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

8. DHS/IA–001, Enterprise Records System.

(a) Pursuant to 5 U.S.C. 552a(k)(1), (2), (3), and (5), this system of records is exempt from 5 U.S.C. 552a(c)(3), (d)(1), (2), (3), (4), and (5), (e)(1), (e)(4)(G), (H), and (I), and (f). These exemptions apply only to the extent that information in this system is subject to exemption. Where compliance would not appear to interfere with or adversely affect the intelligence, counterterrorism, homeland security, and related law enforcement purposes of this system, the applicable exemption may be waived by DHS.

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) (Accounting for Disclosures) because making available to a record subject the accounting of disclosures from records concerning him/her would specifically reveal any interest in the individual of an intelligence, counterterrorism, homeland security, or related investigative nature. Revealing this information could reasonably be expected to compromise ongoing efforts of the Department to identify, understand, analyze, investigate, and counter the activities of:

(i) Known or suspected terrorists and terrorist groups;

(ii) Groups or individuals known or believed to be assisting or associated with known or suspected terrorists or terrorist groups;

(iii) Individuals known, believed to be, or suspected of being engaged in activities constituting a threat to homeland security, including (1) Activities which impact or concern the security, safety, and integrity of our international borders, including any illegal activities that either cross our borders or are otherwise in violation of the immigration or customs laws and regulations of the United States; (2) activities which could reasonably be expected to assist in the development or use of a weapon of mass effect; (3) activities meant to identify, create, or exploit the vulnerabilities of, or undermine, the ''key resources'' (as defined in section 2(9) of the Homeland Security Act of 2002) and ''critical infrastructure'' (as defined in 42 U.S.C. 5195c(c)) of the United States, including the cyber and national telecommunications infrastructure and the availability of a viable national security and emergency preparedness communications infrastructure; (4) activities detrimental to the security of transportation and transportation systems; (5) activities which violate or are suspected of violating the laws relating to counterfeiting of obligations and securities of the United States and other financial crimes, including access device fraud, financial institution fraud, identity theft, computer fraud; and computer-based attacks on our nation's financial, banking, and telecommunications infrastructure; (6) activities, not wholly conducted within the United States, which violate or are suspected of violating the laws which prohibit the production, transfer, or sale of narcotics or

substances controlled in accordance with Title 21 of the United States Code, or those associated activities otherwise prohibited by Titles 21 and 46 of the United States Code; (7) activities which impact, concern, or otherwise threaten the safety and security of the President and Vice President, their families, heads of state, and other designated individuals; the White House, Vice President's residence, foreign missions, and other designated buildings within the United States; (8) activities which impact, concern, or otherwise threaten domestic maritime safety and security, maritime mobility and navigation, or the integrity of the domestic maritime environment; (9) activities which impact, concern, or otherwise threaten the national operational capability of the Department to respond to natural and manmade major disasters and emergencies, including acts of terrorism; (10) activities involving the importation, possession, storage, development, or transportation of nuclear or radiological material without authorization or for use against the United States;

(iv) Foreign governments, organizations, or persons (foreign powers); and

(v) Individuals engaging in intelligence activities on behalf of a foreign power or terrorist group.

Thus, by notifying the record subject that he/she is the focus of such efforts or interest on the part of DHS, or other agencies with whom DHS is cooperating and to whom the disclosures were made, this information could permit the record subject to take measures to impede or evade such efforts, including the taking of steps to deceive DHS personnel and deny them the ability to adequately assess relevant information and activities, and could inappropriately disclose to the record subject the sensitive methods and/or confidential sources used to acquire the relevant information against him/her. Moreover, where the record subject is the actual target of a law enforcement investigation, this information could permit him/her to take measures to impede the investigation, for example, by destroying evidence, intimidating potential witnesses, or avoiding detection or apprehension.

(2) From subsections (d)(1), (2), (3), and (4) (Access to Records) because these provisions concern individual rights of access to and amendment of records (including the review of agency denials of either) contained in this system, which consists of intelligence, counterterrorism, homeland security, and related investigatory records concerning efforts of the Department, as described more fully in subsection (b)(1), above. Compliance with these provisions could inform or alert the subject of an intelligence, counterterrorism, homeland security, or investigatory effort undertaken on behalf of the Department, or by another agency with whom DHS is cooperating, of the fact and nature of such efforts, and/or the relevant intelligence, counterterrorism, homeland security, or investigatory interest of DHS and/or other intelligence, counterterrorism, or law enforcement agencies. Moreover, compliance could also compromise sensitive information either classified in the interest of national security, or which otherwise requires, as appropriate, safeguarding and protection from unauthorized disclosure; identify a confidential source or disclose information which would constitute an unwarranted invasion of another individual's personal privacy; reveal a sensitive intelligence or investigative technique or method, including interfering with intelligence or law enforcement investigative processes by permitting the destruction of evidence, improper influencing or intimidation of witnesses, fabrication of statements or testimony, and flight from detection or apprehension; or constitute a potential danger to the health or safety of intelligence, counterterrorism, homeland security, and law enforcement personnel, confidential sources and informants, and potential witnesses. Amendment of the records would interfere with ongoing intelligence, counterterrorism, homeland security, and law enforcement investigations and activities, including incident reporting and analysis activities, and impose an impossible administrative burden by requiring investigations, reports, and analyses to be continuously reinvestigated and revised.

(3) From subsection (e)(1) (Relevant and Necessary) because it is not always possible for DHS to know in advance of its receipt the relevance and necessity of each piece of information it acquires in the course of an intelligence, counterterrorism, or investigatory effort undertaken on behalf of the Department, or by another agency with whom DHS is cooperating. In the context of the authorized intelligence, counterterrorism, and investigatory activities undertaken by DHS personnel, relevance and necessity are questions of analytic judgment and timing, such that what may appear relevant and necessary when acquired ultimately may be deemed unnecessary upon further analysis and evaluation. Similarly, in some situations, it is only after acquired information is collated, analyzed, and evaluated in light of other available evidence and information that its relevance and necessity can be established or made clear. Constraining the initial acquisition of information included within the ERS in accordance with the relevant and necessary requirement of subsection (e)(1) could discourage the appropriate receipt of and access to information which DHS and I&A are otherwise authorized to receive and possess under law, and thereby impede efforts to detect, deter, prevent, disrupt, or apprehend terrorists or terrorist groups, and/or respond to terrorist or other activities which threaten homeland security. Notwithstanding this claimed exemption, which would permit the acquisition and temporary maintenance of records whose relevance to the purpose of the ERS may be less than fully clear, DHS will only disclose such records after determining whether such disclosures are themselves consistent with the published ERS routine uses. Moreover, it should be noted that, as concerns the receipt by I&A, for intelligence purposes, of information in any record which identifies a U.S. Person, as defined in Executive Order 12333, as amended, such receipt, and any subsequent use or dissemination of that identifying information, is undertaken consistent with the procedures established and adhered to by I&A pursuant to that Executive Order. Specifically, I&A intelligence personnel may acquire information which identifies a particular U.S. Person, retain it within or disseminate it from ERS, as appropriate, only when it is determined that the personally identifying information is necessary for the conduct of I&A's functions, and otherwise falls into one of a limited number of authorized categories, each of which reflects discrete activities for which information on individuals would be utilized by the Department in the overall execution of its statutory mission.

(4) From subsections (e)(4) (G), (H) and (I) (Access), and (f) (Agency Rules), inasmuch as it is unnecessary for the publication of rules and procedures contemplated therein since the ERS, pursuant to subsections (1) and (2), above, will be exempt from the underlying duties to provide to individuals notification about, access to, and the ability to amend or correct the information pertaining to them in, this system of records. Furthermore, to the extent that subsection (e)(4)(I) is construed to require more detailed disclosure than the information accompanying the system notice for ERS, as published in today's **Federal Register**, exemption from it is also necessary to protect the confidentiality, privacy, and physical safety of sources of information, as well as the methods for acquiring it. Finally, greater specificity concerning the description of categories of sources of properly classified records could also compromise or otherwise cause damage to the national or homeland security.

Hugo Teufel III,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E8–10891 Filed 5–14–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

6 CFR Part 5

[Docket No. DHS–2008–0003]

Privacy Act of 1974: Implementation of Exemptions; Law Enforcement Information Database (LEIDB)/Pathfinder

AGENCY: Privacy Office, Office of the Secretary, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Homeland Security is giving concurrent notice of a system of records pursuant to the Privacy Act of 1974 for the United States Coast Guard's Law Enforcement Information Data Base (LEIDB)/Pathfinder system. In this proposed rulemaking, the Department proposes to exempt this system of records from one or more provisions of the Privacy Act because of criminal, civil, intelligence and administrative enforcement requirements.

DATES: Comments must be received on or before June 16, 2008.

ADDRESSES: You may submit comments, identified by DOCKET NUMBER DHS–2008–0003 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Facsimile:* 1–866–466–5370.
- *Mail:* Hugo Teufel III, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Department of Homeland Security United States Coast Guard (LEIDB/Pathfinder System Manager), Intelligence Division (CG–262), 2100 2nd Street, SW., Washington, DC 20593–0001; Hugo Teufel III, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528; telephone 703–235–0780.

SUPPLEMENTARY INFORMATION:

Background

Elsewhere in today's **Federal Register**, the Department of Homeland Security (DHS) is publishing a Privacy Act system of records notice DHS/USCG–061 LEIDB/Pathfinder.

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security is establishing Law Enforcement Information Data Base (LEIDB)/Pathfinder as a system to meet urgent homeland security and law enforcement mission needs.

The Assistant Commandant for Intelligence and Criminal Investigations (CG–2) identified a need to archive messages for more than thirty (30) days and to be able to perform analysis of the data contained within the messages to support law enforcement (LE) and intelligence activities. Pathfinder was selected and implemented to support the requirement. LEIDB is currently in limited operation. LEIDB is receiving message traffic, however limitations on use of the data are in place. Coast Guard policy restricts LEIDB queries to searches that do not utilize U.S. Citizen or Lawful Permanent Resident Alien PII. Once the SORN is approved and published, new instructions will be published allowing PII searches.

LEIDB/Pathfinder is installed on the Secure Internet Protocol Router Network (SIPRNET). LEIDB/Pathfinder contains both unclassified and National Security Classified information. Message traffic originating from federal agencies and managed on the Coast Guard Message System (CGMS) or the Defense Message Systems (DMS) are moved to the LEIDB/Pathfinder automatically and via personnel intervention with e-mail.

Users of the system access LEIDB/Pathfinder data via a web browser interface. The interface allows users to search for data using Boolean searches that are run against the unstructured text in a message. Messages contained in LEIDB/Pathfinder are not machine processed in any fashion to enable data manipulation; they are not normalized or correlated.

The Law Enforcement Information Database (LEIDB)/Pathfinder is a historical repository of selected Coast Guard message traffic. LEIDB/Pathfinder supports law enforcement intelligence activities. LEIDB/Pathfinder users can query archived message traffic and link relevant information across multiple data records within LEIDB/Pathfinder. Users have system tools enabling the user to identify potential relationships between information contained in otherwise unrelated documents. These tools allow the analysts to build high precision and low return queries, which minimize false hits and maximize analyst productivity while working with unstructured, unformatted, free test documents.

The Privacy Act also allows government agencies, as appropriate, to exempt certain records from the access and amendment provisions. Where an agency seeks to claim an exemption, however, it must issue a Notice of Proposed Rulemaking to make clear to the public the reasons why a particular exemption is claimed. DHS is claiming exemptions from certain requirements of the Privacy Act by publication of this proposed rule.

Accordingly, DHS proposes to exempt this system, in part, from certain provisions of the Privacy Act and to add that exemption to Appendix C to Part 5, DHS Systems of Records Exempt from the Privacy Act. Coast Guard needs these exemptions in order to protect information relating to authorized intelligence, counterterrorism, homeland security, and related law enforcement activities from disclosure to subjects of investigations and others who, by accessing or knowing this information, could interfere with those activities or otherwise place in jeopardy the national or homeland security. Specifically, the exemptions are necessary in order to prevent revealing information concerning intelligence, counterterrorism, homeland security, or related investigative efforts. Revealing such information to the subject or other individual could reasonably be expected to compromise ongoing efforts of the Department to identify, understand, analyze, investigate, and counter the activities that threaten national or homeland security; compromise classified or other sensitive information; identify a confidential source or disclose information which would constitute an unwarranted invasion of another individual's personal privacy; reveal a sensitive intelligence or investigative technique or method, and interfere with intelligence or law enforcement analytic or investigative processes; or constitute a potential danger to the health or safety of intelligence, counterterrorism, homeland security, and law enforcement personnel, confidential sources and informants, or potential witnesses.

The exemptions proposed here are standard law enforcement and national security exemptions exercised by a large number of Federal law enforcement and intelligence agencies. Nonetheless, DHS will examine each separate request on a case-by-case basis, and, after conferring with the appropriate component or agency, may waive applicable exemptions in appropriate circumstances and where it would not appear to interfere with or adversely affect the law enforcement or national security purposes of the systems from which the information is recompiled or in which it is contained.

Regulatory Requirements

A. Regulatory Impact Analyses

Changes to Federal regulations must undergo several analyses. In conducting these analyses, DHS has determined:

1. Executive Order 12866 Assessment

This rule is not a significant regulatory action under Executive Order 12866, ''Regulatory Planning and Review'' (as amended). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB). Nevertheless, DHS has reviewed this rulemaking, and concluded that there will not be any significant economic impact.

2. Regulatory Flexibility Act Assessment

Pursuant to section 605 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), as amended by the Small

Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA), DHS certifies that this rule will not have a significant impact on a substantial number of small entities. The rule would impose no duties or obligations on small entities. Further, the exemptions to the Privacy Act apply to individuals, and individuals are not covered entities under the RFA.

3. International Trade Impact Assessment

This rulemaking will not constitute a barrier to international trade. The exemptions relate to criminal investigations and agency documentation and, therefore, do not create any new costs or barriers to trade.

4. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), (Pub. L. 104–4, 109 Stat. 48), requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. This rulemaking will not impose an unfunded mandate on State, local, or tribal governments, or on the private sector.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires that DHS consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA section 3507(d), obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations. DHS has determined that there are no current or new information collection requirements associated with this rule.

C. Executive Order 13132, Federalism

This action will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore will not have federalism implications.

D. Environmental Analysis

DHS has reviewed this action for purposes of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347) and has determined that this action will not have a significant effect on the human environment.

E. Energy Impact

The energy impact of this action has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (42 U.S.C. 6362). This rulemaking is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 6 CFR Part 5

Freedom of information, Privacy, Sensitive information.

For the reasons stated in the preamble, DHS proposes to amend Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

1. The authority citation for part 5 continues to read as follows:

Authority: Pub. L. 107–296, 116 Stat. 2135, 6 U.S.C. 101 *et seq.*; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552.

2. At the end of Appendix C to part 5, add the following new section 7:

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

6. DHS/USCG–061, LEIDB/Pathfinder.

(a) Pursuant to 5 U.S.C. 552a(j)(2), (k)(1), and (k)(2) certain records or information in the above mentioned system of records are exempt from 5 U.S.C. 552a(c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (4)(G) through (I), (e)(5), and (8); (f), and (g). These exemptions apply only to the extent that information in this system is subject to exemption. Where compliance would not appear to interfere with or adversely affect the intelligence, counterterrorism, homeland security, and related law enforcement purposes of this system, the applicable exemption may be waived by DHS.

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) (Accounting for Disclosures) because making available to a record subject the accounting of disclosures from records concerning him/her would specifically reveal any interest in the individual of an intelligence, counterterrorism, homeland security, or related investigative nature. Revealing this information could reasonably be expected to compromise ongoing efforts of the Department to identify, understand, analyze, investigate, and counter the activities of:

(i) Known or suspected terrorists and terrorist groups;

(ii) Groups or individuals known or believed to be assisting or associated with known or suspected terrorists or terrorist groups;

(iii) Individuals known, believed to be, or suspected of being engaged in activities constituting a threat to homeland security, including (1) activities which impact or concern the security, safety, and integrity of our international borders, including any illegal activities that either cross our borders or are otherwise in violation of the immigration or customs laws and regulations of the United States; (2) activities which could reasonably be expected to assist in the development or use of a weapon of mass effect; (3) activities meant to identify, create, or exploit the vulnerabilities of, or undermine, the ''key resources'' (as defined in section 2(9) of the Homeland Security Act of 2002) and ''critical infrastructure'' (as defined in 42 U.S.C. 5195c(c)) of the United States, including the cyber and national telecommunications infrastructure and the availability of a viable national security and emergency preparedness communications infrastructure; (4) activities detrimental to the security of transportation and transportation systems; (5) activities which violate or are suspected of violating the laws relating to counterfeiting of obligations and securities of the United States and other financial crimes, including access device fraud, financial institution fraud, identity theft, computer fraud; and computer-based attacks on our nation's financial, banking, and telecommunications infrastructure; (6) activities, not wholly conducted within the United States, which violate or are suspected of violating the laws which prohibit the production, transfer, or sale of narcotics or substances controlled in accordance with Title 21 of the United States Code, or those associated activities otherwise prohibited by Titles 21 and 46 of the United States Code; (7) activities which impact, concern, or otherwise threaten the safety and security of the President and Vice President, their families, heads of state, and other designated individuals; the White House, Vice President's residence, foreign missions, and other designated buildings within the United States; (8) activities which impact, concern, or otherwise threaten domestic maritime safety and security, maritime mobility and navigation, or the integrity of the domestic maritime environment; (9) activities which impact, concern, or otherwise threaten the national operational capability of the Department to respond to natural and manmade major disasters and emergencies, including acts of terrorism; (10) activities involving the importation, possession, storage, development, or transportation of nuclear or radiological material without authorization or for use against the United States;

(iv) Foreign governments, organizations, or persons (foreign powers); and

(v) Individuals engaging in intelligence activities on behalf of a foreign power or terrorist group.

Thus, by notifying the record subject that he/she is the focus of such efforts or interest on the part of DHS, or other agencies with whom DHS is cooperating and to whom the disclosures were made, this information could permit the record subject to take measures to impede or evade such efforts, including the taking of steps to deceive DHS personnel and deny them the ability to adequately assess relevant information and activities, and could inappropriately disclose to the record subject the sensitive methods and/or confidential sources used to acquire the relevant information against him/her. Moreover, where the record subject is the actual target of a law enforcement investigation, this information could permit

him/her to take measures to impede the investigation, for example, by destroying evidence, intimidating potential witnesses, or avoiding detection or apprehension.

(2) From subsection (c)(4) (Accounting for Disclosure, notice of dispute) because certain records in this system are exempt from the access and amendment provisions of subsection (d), this requirement to inform any person or other agency about any correction or notation of dispute that the agency made with regard to those records, should not apply.

(3) From subsections (d)(1), (2), (3), and (4) (Access to Records) because these provisions concern individual rights of access to and amendment of records (including the review of agency denials of either) contained in this system, which consists of intelligence, counterterrorism, homeland security, and related investigatory records concerning efforts of the Department, as described more fully in subsection (b)(1), above. Compliance with these provisions could inform or alert the subject of an intelligence, counterterrorism, homeland security, or investigatory effort undertaken on behalf of the Department, or by another agency with whom DHS is cooperating, of the fact and nature of such efforts, and/or the relevant intelligence, counterterrorism, homeland security, or investigatory interest of DHS and/or other intelligence, counterterrorism, or law enforcement agencies. Moreover, compliance could also compromise sensitive information either classified in the interest of national security, or which otherwise requires, as appropriate, safeguarding and protection from unauthorized disclosure; identify a confidential source or disclose information which would constitute an unwarranted invasion of another individual's personal privacy; reveal a sensitive intelligence or investigative technique or method, including interfering with intelligence or law enforcement investigative processes by permitting the destruction of evidence, improper influencing or intimidation of witnesses, fabrication of statements or testimony, and flight from detection or apprehension; or constitute a potential danger to the health or safety of intelligence, counterterrorism, homeland security, and law enforcement personnel, confidential sources and informants, and potential witnesses. Amendment of the records would interfere with ongoing intelligence, counterterrorism, homeland security, and law enforcement investigations and activities, including incident reporting and analysis activities, and impose an impossible administrative burden by requiring investigations, reports, and analyses to be continuously reinvestigated and revised.

(4) From subsection (e)(1) (Relevant and Necessary) because it is not always possible for DHS to know in advance of its receipt the relevance and necessity of each piece of information it acquires in the course of an intelligence, counterterrorism, or investigatory effort undertaken on behalf of the Department, or by another agency with whom DHS is cooperating. In the context of the authorized intelligence, counterterrorism, and investigatory activities undertaken by DHS personnel, relevance and necessity are questions of analytic judgment and timing, such that what may appear relevant and necessary when acquired ultimately may be deemed unnecessary upon further analysis and evaluation. Similarly, in some situations, it is only after acquired information is collated, analyzed, and evaluated in light of other available evidence and information that its relevance and necessity can be established or made clear. Constraining the initial acquisition of information included within the LEIDB in accordance with the relevant and necessary requirement of subsection (e)(1) could discourage the appropriate receipt of and access to information which DHS and USCG are otherwise authorized to receive and possess under law, and thereby impede efforts to detect, deter, prevent, disrupt, or apprehend terrorists or terrorist groups, and/or respond to terrorist or other activities which threaten homeland security. Notwithstanding this claimed exemption, which would permit the acquisition and temporary maintenance of records whose relevance to the purpose of the LEIDB may be less than fully clear, DHS will only disclose such records after determining whether such disclosures are themselves consistent with the published LEIDB routine uses. Moreover, it should be noted that, as concerns the receipt by USCG, for intelligence purposes, of information in any record which identifies a U.S. Person, as defined in Executive Order 12333, as amended, such receipt, and any subsequent use or dissemination of that identifying information, is undertaken consistent with the procedures established and adhered to by USCG pursuant to that Executive Order. Specifically, USCG intelligence personnel may acquire information which identifies a particular U.S. Person, retain it within or disseminate it from LEIDB, as appropriate, only when it is determined that the personally identifying information is necessary for the conduct of USCG's functions, and otherwise falls into one of a limited number of authorized categories, each of which reflects discrete activities for which information on individuals would be utilized by the Department in the overall execution of its statutory mission.

(5) From subsection (e)(2) (Collection of Information from Individuals) because application of this provision could present a serious impediment to counterterrorism or law enforcement efforts in that it would put the subject of an investigation, study or analysis on notice of that fact, thereby permitting the subject to engage in conduct designed to frustrate or impede that activity. The nature of counterterrorism, and law enforcement investigations is such that vital information about an individual frequently can be obtained only from other persons who are familiar with such individual and his/her activities. In such investigations it is not feasible to rely solely upon information furnished by the individual concerning his own activities.

(6) From subsection (e)(3) (Notice to Subjects), to the extent that this subsection is interpreted to require DHS to provide notice to an individual if DHS or another agency receives or collects information about that individual during an investigation or from a third party. Should the subsection be so interpreted, exemption from this provision is necessary to avoid impeding counterterrorism or law enforcement efforts by putting the subject of an investigation, study or analysis on notice of that fact, thereby permitting the subject to engage in conduct intended to frustrate or impede that activity.

(7) From subsections (e)(4)(G), (H) and (I) (Access), inasmuch as it is unnecessary for the publication of rules and procedures contemplated therein since the LEIDB, pursuant to subsections (2) and (3), above, will be exempt from the underlying duties to provide to individuals notification about, access to, and the ability to amend or correct the information pertaining to them in, this system of records. Furthermore, to the extent that subsection (e)(4)(I) is construed to require more detailed disclosure than the information accompanying the system notice for LEIDB, as published in today's **Federal Register**, exemption from it is also necessary to protect the confidentiality, privacy, and physical safety of sources of information, as well as the methods for acquiring it. Finally, greater specificity concerning the description of categories of sources of properly classified records could also compromise or otherwise cause damage to the national or homeland security.

(8) From subsection (e)(5) (Collection of Information) because many of the records in this system coming from other system of records are derived from other domestic and foreign agency record systems and therefore it is not possible for DHS to vouch for their compliance with this provision; however, the DHS has implemented internal quality assurance procedures to ensure that data used in its screening processes is as complete, accurate, and current as possible. In addition, in the collection of information for law enforcement and counterterrorism purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light. The restrictions imposed by (e)(5) would limit the ability of those agencies' trained investigators and intelligence analysts to exercise their judgment in conducting investigations and impede the development of intelligence necessary for effective law enforcement and counterterrorism efforts.

(9) From subsection (e)(8) (Notice on Individuals) because to require individual notice of disclosure of information due to compulsory legal process would pose an impossible administrative burden on DHS and other agencies and could alert the subjects of counterterrorism or law enforcement investigations to the fact of those investigations then not previously known.

(10) From subsection (f) (Agency Rules) because portions of this system are exempt from the access and amendment provisions of subsection (d). Access to, and amendment of, system records that are not exempt or for which exemption is waived may be obtained

under procedures described in the related SORN or Subpart B of this Part.

(11) From subsection (g) to the extent that the system is exempt from other specific subsections of the Privacy Act relating to individuals' rights to access and amend their records contained in the system. Therefore DHS is not required to establish rules or procedures pursuant to which individuals may seek a civil remedy for the agency's refusal to amend a record; refusal to comply with a request for access to records; failure to maintain accurate, relevant, timely, and complete records; or failure to otherwise comply with an individual's right to access or amend records.

Hugo Teufel III,

Chief Privacy Officer.

[FR Doc. E8–10893 Filed 5–14–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

6 CFR Part 5

[Docket No. DHS–2007–0073]

Privacy Act of 1974: Implementation of Exemptions; Maritime Awareness Global Network (MAGNET)

AGENCY: Privacy Office, Office of the Secretary, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Homeland Security is giving concurrent notice of a revised and updated system of records pursuant to the Privacy Act of 1974 for the United States Coast Guard's Maritime Awareness Global Network (MAGNET) system. In this proposed rulemaking, the Department proposes to exempt this system of records from one or more provisions of the Privacy Act because of criminal, civil, intelligence and administrative enforcement requirements.

DATES: Comments must be received on or before June 16, 2008.

ADDRESSES: You may submit comments, identified by DOCKET NUMBER DHS–2007–0073 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Facsimile:* 1–866–466–5370.
- *Mail:* Hugo Teufel III, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Department of Homeland Security United States Coast Guard (MAGNET Executive Agent), Intelligence Division (CG–26), 2100 2nd Street, SW., Washington, DC 20593–0001; Hugo Teufel III, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528; telephone 703–235–0780.

SUPPLEMENTARY INFORMATION:

Background

Elsewhere in today's **Federal Register**, the Department of Homeland Security (DHS) is publishing a Privacy Act system of records notice DHS/USCG–061 Maritime Awareness Global Network (MAGNET). These records were previously covered by a legacy system of records, Department of Transportation DOT/CG 642 System of Records Notice known as Joint Maritime Information Element, JMIE, Support System, JSS (67 FR 19475). When fully operational, MAGNET will replace and enhance JMIE/JSS by adding additional data sources, media storage, access capabilities, and infrastructure. MAGNET will provide rapid, near real-time data to the Coast Guard and other authorized organizations both within and outside DHS with a need to know the information.

The information in MAGNET establishes Maritime Domain Awareness. Maritime Domain Awareness is the collection of as much information as possible about the maritime world. In other words, MAGNET establishes a full awareness of the entities (people, places, things) and their activities within the maritime industry. MAGNET collects the information and connects the information in order to fulfill this need.

Coast Guard Intelligence (through MAGNET) will provide awareness to the field as well as to strategic planners by aggregating data from existing sources internal and external to the Coast Guard or DHS. MAGNET will correlate and provide the medium to display information such as ship registry, current ship position, crew background, passenger lists, port history, cargo, known criminal vessels, and suspect lists. Coast Guard Intelligence (CG–2) will serve as MAGNET's executive agent and will share appropriate aggregated data to other law enforcement and intelligence agencies.

The Privacy Act also allows government agencies, as appropriate, to exempt certain records from the access and amendment provisions. Where an agency seeks to claim an exemption, however, it must issue a Notice of Proposed Rulemaking to make clear to the public the reasons why a particular exemption is claimed. DHS is claiming exemptions from certain requirements of the Privacy Act by publication of this proposed rule.

Accordingly, DHS proposes to exempt this system, in part, from certain provisions of the Privacy Act and to add that exemption to Appendix C to Part 5, DHS Systems of Records Exempt from the Privacy Act. Coast Guard needs these exemptions in order to protect information relating to authorized intelligence, counterterrorism, homeland security, and related law enforcement activities from disclosure to subjects of investigations and others who, by accessing or knowing this information, could interfere with those activities or otherwise place in jeopardy the national or homeland security. Specifically, the exemptions are necessary in order to prevent revealing information concerning intelligence, counterterrorism, homeland security, or related investigative efforts. Revealing such information to the subject or other individuals could reasonably be expected to compromise ongoing efforts of the Department to identify, understand, analyze, investigate, and counter the activities that threaten national or homeland security; compromise classified or other sensitive information; identify a confidential source or disclose information which would constitute an unwarranted invasion of another individual's personal privacy; reveal a sensitive intelligence or investigative technique or method, and interfere with intelligence or law enforcement analytic or investigative processes; or constitute a potential danger to the health or safety of intelligence, counterterrorism, homeland security, and law enforcement personnel, confidential sources and informants, or potential witnesses.

The exemptions proposed here are standard law enforcement and national security exemptions exercised by a large number of federal law enforcement and intelligence agencies.

Nonetheless, DHS will examine each separate request on a case-by-case basis, and, after conferring with the appropriate component or agency, may waive applicable exemptions in appropriate circumstances and where it would not appear to interfere with or adversely affect the law enforcement or national security purposes of the

systems from which the information is recompiled or in which it is contained.

Regulatory Requirements

A. Regulatory Impact Analyses

Changes to Federal regulations must undergo several analyses. In conducting these analyses, DHS has determined:

1. Executive Order 12866 Assessment

This rule is not a significant regulatory action under Executive Order 12866, ''Regulatory Planning and Review'' (as amended). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB). Nevertheless, DHS has reviewed this rulemaking, and concluded that there will not be any significant economic impact.

2. Regulatory Flexibility Act Assessment

Pursuant to section 605 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA), DHS certifies that this rule will not have a significant impact on a substantial number of small entities. The rule would impose no duties or obligations on small entities. Further, the exemptions to the Privacy Act apply to individuals, and individuals are not covered entities under the RFA.

3. International Trade Impact Assessment

This rulemaking will not constitute a barrier to international trade. The exemptions relate to criminal investigations and agency documentation and, therefore, do not create any new costs or barriers to trade.

4. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), (Pub. L. 104–4, 109 Stat. 48), requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. This rulemaking will not impose an unfunded mandate on State, local, or tribal governments, or on the private sector.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires that DHS consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA section 3507(d), obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations. DHS has determined that there are no current or new information collection requirements associated with this rule.

C. Executive Order 13132, Federalism

This action will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore will not have federalism implications.

D. Environmental Analysis

DHS has reviewed this action for purposes of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347) and has determined that this action will not have a significant effect on the human environment.

E. Energy Impact

The energy impact of this action has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (42 U.S.C. 6362). This rulemaking is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 6 CFR Part 5

Freedom of information, Privacy, Sensitive information.

For the reasons stated in the preamble, DHS proposes to amend Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

1. The authority citation for Part 5 continues to read as follows:

Authority: Pub. L. 107–296, 116 Stat. 2135, 6 U.S.C. 101 *et seq.*; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552.

2. At the end of Appendix C to Part 5, add the following new section 6:

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

6. DHS/USCG–061, Maritime Awareness Global Network (MAGNET).

(a) Pursuant to 5 U.S.C. 522a(j)(2), (k)(1), and (k)(2) this system of records is exempt from 5 U.S.C. 552a (c)(3) and (4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H), and (I), e(5), e(8), e(12), (f), and (g). These exemptions apply only to the extent that information in this system is subject to exemption. Where compliance would not appear to interfere with or adversely affect the intelligence, counterterrorism, homeland security, and related law enforcement purposes of this system, the applicable exemption may be waived by DHS.

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) (Accounting of Certain Disclosures) because making available to a record subject the accounting of disclosures from records concerning him/her would specifically reveal any interest in the individual of an intelligence, counterterrorism, homeland security, or related investigative nature. Revealing this information could reasonably be expected to compromise ongoing efforts of the Department to identify, understand, analyze, investigate, and counter the activities of:

(i) known or suspected terrorists and terrorist groups;

(ii) groups or individuals known or believed to be assisting or associated with known or suspected terrorists or terrorist groups;

(iii) individuals known, believed to be, or suspected of being engaged in activities constituting a threat to homeland security, including (1) activities which impact or concern the security, safety, and integrity of our international borders, including any illegal activities that either cross our borders or are otherwise in violation of the immigration or customs laws and regulations of the United States; (2) activities which could reasonably be expected to assist in the development or use of a weapon of mass effect; (3) activities meant to identify, create, or exploit the vulnerabilities of, or undermine, the ''key resources'' (as defined in section 2(9) of the Homeland Security Act of 2002) and ''critical infrastructure'' (as defined in 42 U.S.C. 5195c(c)) of the United States, including the cyber and national telecommunications infrastructure and the availability of a viable national security and emergency preparedness communications infrastructure; (4) activities detrimental to the security of transportation and transportation systems; (5) activities which violate or are suspected of violating the laws relating to counterfeiting of obligations and securities of the United States and other financial crimes, including access device fraud, financial institution fraud, identity theft, computer fraud; and computer-based attacks on our nation's financial, banking, and telecommunications infrastructure; (6) activities, not wholly conducted within the United States, which violate or are suspected of violating the laws which prohibit the production, transfer, or sale of narcotics or substances controlled in accordance with Title 21 of the United States Code, or those associated activities otherwise prohibited by Titles 21 and 46 of the United States Code; (7) activities which impact, concern, or otherwise threaten the safety and security of the President and Vice President, their families, heads of state, and other designated individuals; the White House, Vice President's residence, foreign missions, and other designated buildings within the United States; (8) activities which impact, concern, or otherwise threaten domestic maritime safety and security, maritime mobility and navigation, or the integrity of the domestic maritime environment; (9) activities which impact, concern, or otherwise threaten the national operational capability of the

Department to respond to natural and manmade major disasters and emergencies, including acts of terrorism; (10) activities involving the importation, possession, storage, development, or transportation of nuclear or radiological material without authorization or for use against the United States;

(iv) foreign governments, organizations, or persons (foreign powers); and

(v) individuals engaging in intelligence activities on behalf of a foreign power or terrorist group.

Thus, by notifying the record subject that he/she is the focus of such efforts or interest on the part of DHS, or other agencies with whom DHS is cooperating and to whom the disclosures were made, this information could permit the record subject to take measures to impede or evade such efforts, including the taking of steps to deceive DHS personnel and deny them the ability to adequately assess relevant information and activities, and could inappropriately disclose to the record subject the sensitive methods and/or confidential sources used to acquire the relevant information against him/her. Moreover, where the record subject is the actual target of a law enforcement investigation, this information could permit him/her to take measures to impede the investigation, for example, by destroying evidence, intimidating potential witnesses, or avoiding detection or apprehension.

(2) From subsection (c)(4) (Accounting for Disclosure, notice of dispute) because certain records in this system are exempt from the access and amendment provisions of subsection (d), this requirement to inform any person or other agency about any correction or notation of dispute that the agency made with regard to those records, should not apply.

(3) From subsections (d)(1), (2), (3), and (4) (Access to Records) because these provisions concern individual rights of access to and amendment of records (including the review of agency denials of either) contained in this system, which consists of intelligence, counterterrorism, homeland security, and related investigatory records concerning efforts of the Department, as described more fully in subsection (b)(1), above. Compliance with these provisions could inform or alert the subject of an intelligence, counterterrorism, homeland security, or investigatory effort undertaken on behalf of the Department, or by another agency with whom DHS is cooperating, of the fact and nature of such efforts, and/or the relevant intelligence, counterterrorism, homeland security, or investigatory interest of DHS and/or other intelligence, counterterrorism, or law enforcement agencies. Moreover, compliance could also compromise sensitive information either classified in the interest of national security, or which otherwise requires, as appropriate, safeguarding and protection from unauthorized disclosure; identify a confidential source or disclose information which would constitute an unwarranted invasion of another individual's personal privacy; reveal a sensitive intelligence or investigative technique or method, including interfering with intelligence or law enforcement investigative processes by permitting the destruction of evidence, improper influencing or intimidation of witnesses, fabrication of statements or testimony, and flight from detection or apprehension; or constitute a potential danger to the health or safety of intelligence, counterterrorism, homeland security, and law enforcement personnel, confidential sources and informants, and potential witnesses. Amendment of the records would interfere with ongoing intelligence, counterterrorism, homeland security, and law enforcement investigations and activities, including incident reporting and analysis activities, and impose an impossible administrative burden by requiring investigations, reports, and analyses to be continuously reinvestigated and revised.

(4) From subsection (e)(1) (Relevant and Necessary) because it is not always possible for DHS to know in advance of its receipt the relevance and necessity of each piece of information it acquires in the course of an intelligence, counterterrorism, or investigatory effort undertaken on behalf of the Department, or by another agency with whom DHS is cooperating. In the context of the authorized intelligence, counterterrorism, and investigatory activities undertaken by DHS personnel, relevance and necessity are questions of analytic judgment and timing, such that what may appear relevant and necessary when acquired ultimately may be deemed unnecessary upon further analysis and evaluation. Similarly, in some situations, it is only after acquired information is collated, analyzed, and evaluated in light of other available evidence and information that its relevance and necessity can be established or made clear. Constraining the initial acquisition of information included within the MAGNET in accordance with the relevant and necessary requirement of subsection (e)(1) could discourage the appropriate receipt of and access to information which DHS and MAGNET are otherwise authorized to receive and possess under law, and thereby impede efforts to detect, deter, prevent, disrupt, or apprehend terrorists or terrorist groups, and/or respond to terrorist or other activities which threaten homeland security. Notwithstanding this claimed exemption, which would permit the acquisition and temporary maintenance of records whose relevance to the purpose of the MAGNET may be less than fully clear, DHS will only disclose such records after determining whether such disclosures are themselves consistent with the published MAGNET routine uses. Moreover, it should be noted that, as concerns the receipt by USCG, for intelligence purposes, of information in any record which identifies a U.S. Person, as defined in Executive Order 12333, as amended, such receipt, and any subsequent use or dissemination of that identifying information, is undertaken consistent with the procedures established and adhered to by USCG pursuant to that Executive Order. Specifically, USCG intelligence personnel may acquire information which identifies a particular U.S. Person, retain it within or disseminate it from MAGNET, as appropriate, only when it is determined that the personally identifying information is necessary for the conduct of USCG's functions, and otherwise falls into one of a limited number of authorized categories, each of which reflects discrete activities for which information on individuals would be utilized by the Department in the overall execution of its statutory mission.

(5) From subsection (e)(2) (Collection of Information from Individuals) because application of this provision could present a serious impediment to counterterrorism or law enforcement efforts in that it would put the subject of an investigation, study or analysis on notice of that fact, thereby permitting the subject to engage in conduct designed to frustrate or impede that activity. The nature of counterterrorism, and law enforcement investigations is such that vital information about an individual frequently can be obtained only from other persons who are familiar with such individual and his/her activities. In such investigations it is not feasible to rely solely upon information furnished by the individual concerning his own activities.

(6) From subsection (e)(3) (Notice to Subjects), to the extent that this subsection is interpreted to require DHS to provide notice to an individual if DHS or another agency receives or collects information about that individual during an investigation or from a third party. Should the subsection be so interpreted, exemption from this provision is necessary to avoid impeding counterterrorism or law enforcement efforts by putting the subject of an investigation, study or analysis on notice of that fact, thereby permitting the subject to engage in conduct intended to frustrate or impede that activity.

(7) From subsections (e) (4) (G), (H) and (I) (Access), and (f) (Agency Rules), inasmuch as it is unnecessary for the publication of rules and procedures contemplated therein since the MAGNET, pursuant to subsections (3), above, will be exempt from the underlying duties to provide to individuals notification about, access to, and the ability to amend or correct the information pertaining to them in, this system of records. Furthermore, to the extent that subsection (e)(4)(I) is construed to require more detailed disclosure than the information accompanying the system notice for MAGNET, as published in today's **Federal Register**, exemption from it is also necessary to protect the confidentiality, privacy, and physical safety of sources of information, as well as the methods for acquiring it. Finally, greater specificity concerning the description of categories of sources of properly classified records could also compromise or otherwise cause damage to the national or homeland security.

(8) From subsection (e)(5) (Collection of Information) because many of the records in this system coming from other system of records are derived from other domestic and foreign agency record systems and therefore it is not possible for DHS to vouch for their compliance with this provision; however, the DHS has implemented internal quality assurance procedures to ensure that data used in its screening processes is as complete, accurate, and as current as possible. In addition, in the collection of

information for law enforcement and counterterrorism purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light. The restrictions imposed by (e)(5) would limit the ability of those agencies' trained investigators and intelligence analysts to exercise their judgment in conducting investigations and impede the development of intelligence necessary for effective law enforcement and counterterrorism efforts.

(9) From subsection (e)(8) (Notice on Individuals) because to require individual notice of disclosure of information due to compulsory legal process would pose an impossible administrative burden on DHS and other agencies and could alert the subjects of counterterrorism or law enforcement investigations to the fact of those investigations then not previously known.

(10) From subsection (e)(12) (Matching Agreements) because requiring DHS to provide notice of alterations to existing matching agreements would impair DHS operations by indicating which data elements and information are valuable to DHS's analytical functions, thereby providing harmful disclosure of information to individuals who would seek to circumvent or interfere with DHS's missions.

(11) From subsection (g) (Civil Remedies) to the extent that the system is exempt from other specific subsections of the Privacy Act.

Hugo Teufel III,

Chief Privacy Officer.

[FR Doc. E8–10897 Filed 5–14–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG–2008–0302]

RIN 1625–AA09

Drawbridge Operation Regulations; Smith Creek at Wilmington, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the drawbridge operation regulations of the S117–S133 Bridge, at mile 1.5, across Smith Creek at Wilmington, NC. This proposal would allow that the draw need not be opened for the passage of vessels.

DATES: Comments and related material must reach the Coast Guard on or before June 30, 2008.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2008–0302 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Online: http://www.regulations.gov.*

(2) *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.

(3) *Hand delivery:* Room W12–140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Gary S. Heyer, Bridge Management Specialist, Fifth Coast Guard District, at (757) 398–6629. 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. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's ''Privacy Act'' paragraph below.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2008–0302), indicate the specific section of this document to which each comment applies, and give the reason for each comment. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* at any time. Enter the docket number for this rulemaking (USCG–2008–0302) in the Search box, and click ''Go>>.'' You may also visit either the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays or at Commander (dpb), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, VA 23704–5004 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://DocketsInfo.dot.gov*.

Public Meeting

Currently, no public meeting is scheduled. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The North Carolina Department of Transportation (NCDOT) is responsible for the operation of the S117–S133 Bridge, at mile 1.5, across Smith Creek at Wilmington, NC. The existing operating regulation is set out in 33 CFR 117.841 which requires the draw to open on signal if at least 24 hour notice is given. In the closed-to-navigation

position, the S117–S133 Bridge has a vertical clearance of 12 feet, above mean high water.

From the 1930s to the 1970s, Smith Creek was the main waterway route for commercial vessel traffic servicing lumber mills and factories along the waterfront in Wilmington NC. There are no longer any commercial interests requiring access upstream. NCDOT has not received a request to open the bridge in over 20 years for waterway navigation, and it has been more than 35 years since the bridge was actually manned by operators.

Due to the lack of requests for vessel openings of the drawbridge for the past 20 years, NCDOT requested to change the current operating regulations so that the draw need not be opened for the passage of vessels.

Discussion of Proposed Rule

The Coast Guard proposes to amend 33 CFR 117.841 which governs the S117–S133 Bridge by revising the paragraph to read that the draw need not be opened for the passage of vessels.

Regulatory Evaluation

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. We reached this conclusion based on the fact that NCDOT has not received a request to open the bridge in over 20 years for waterway navigation and a six-month notification prerequisite for mariners would be required for vessel access.

Small Entities

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

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

This proposed rule would not have a significant economic impact on a substantial number of small entities because NCDOT has not received a request to open the bridge in over 20 years for waterway navigation. 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 Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District, (757) 398–6222. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of 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 Commandant Instruction M16475.lD which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is not likely to have a significant effect on the human environment because it simply promulgates the operating regulations or procedures for drawbridges. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 117

Bridges.

Words of Issuance and Proposed Regulatory Text

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

2. Revise § 117.841 to read as follows:

§ 117.841 Smith Creek

The draw of the S117–S133 Bridge, mile 1.5 at Wilmington, need not open for the passage of vessels.

Dated: May 5, 2008.

Fred M. Rosa, Jr.,

Rear Admiral, United States Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. E8–10801 Filed 5–14–08; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2006–0867; FRL–8566–5]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Control of Air Pollution by Permits for New Construction or Modification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the Texas State Implementation Plan (SIP), submitted by the Texas Commission on Environmental Quality (TCEQ) on October 9, 2006. The SIP revision EPA is proposing to approve would require decreased newspaper notice for proposed air quality Standard Permits with statewide applicability to the following metropolitan areas: Austin, Dallas, Houston, and any other regional newspapers the TCEQ Executive Director designates on a case-by-case basis. TCEQ will publish notice of a proposed air quality Standard Permit in the *Texas Register* and will issue a press release. In addition, TCEQ may also use electronic means to inform state and local officials of a proposed air quality Standard Permit. EPA proposes to approve these revisions pursuant to section 110 of the Federal Clean Air Act (Act).

DATES: Comments must be received on or before *June 16, 2008.*

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R06–OAR–2006–0867, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- U.S. EPA Region 6 ''Contact Us'' Web site: *http://epa.gov/region6/r6coment.htm.* Please click on ''6PD'' (Multimedia) and select ''Air'' before submitting comments.
- *E-mail:* Mr. Stanley M. Spruiell at *spruiell.stanley@epa.gov.*
- *Fax:* Mr. Stanley M. Spruiell, Air Permits Section (6PD–R), at fax number 214–665–7263.
- *Mail:* Stanley M. Spruiell, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
- *Hand or Courier Delivery:* Stanley M. Spruiell, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R06–OAR–2006–0867. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an

appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection at the State Air Agency listed below during official business hours by appointment: Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley M. Spruiell, Air Permits Section (6PD–R), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7212; fax number 214–665–7263; e-mail address *spruiell.stanley@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

Outline

I. What Action is EPA Taking?
II. What is the Background for this Action?
III. What is EPA's Evaluation of the Revised Regulations that Texas Submitted?
IV. Proposed Action
V. Statutory and Executive Order Reviews

I. What Action Is EPA Taking?

EPA is proposing approval on a revision to 30 Texas Administrative Code (TAC), Chapter 116 (Control of Air Pollution by Permits for New Construction or Modification), Subchapter F (Standard Permits), section 116.603 (Public Participation in Issuance of Standard Permits). TCEQ submitted the proposed SIP revision to EPA on October 9, 2006 for approval.

The proposed SIP revision requires that any proposed air quality Standard Permit with statewide applicability be published in the daily newspaper of largest general circulation within each of the following metropolitan areas: Austin, Dallas, Houston, and any other regional newspaper designated by the Executive Director on a case-by-case basis. The proposed revision also requires TCEQ to publish notice of a proposed Standard Permit in the *Texas Register* and issue a press release. However, the proposed revision changes the current EPA SIP-approved rule as it no longer requires TCEQ to issue newspaper notices for proposed Standard Permits with statewide applicability in the following metropolitan areas: Amarillo, Corpus Christi, El Paso, the Lower Rio Grande Valley, Lubbock, the Permian Basin, or Tyler. EPA proposes to approve the revision as meeting the federal requirements in 40 CFR 51.161, Public Availability of Information that requires ''* * * [n]otice by prominent advertisement in the area affected * * *.''

II. What Is the Background for This Action?

On November 14, 2003 (68 FR 64543), EPA approved provisions under 30 TAC Chapter 116, Subchapter F, Standard Permits. These provisions include the procedures the TCEQ follows when it issues or revises a Standard Permit. A Standard Permit is adopted under Chapter 116, Subchapter F, and provides a streamlined mechanism for approving the construction of certain sources within categories that contain numerous similar sources. The November 14, 2003, action describes our basis for approving the provisions for Standard Permits and describes how these rules meet EPA's requirements for new and modified sources.

The SIP-approved provisions for Standard Permits include section 116.603 (Public Participation in Issuance of Standard Permits). This SIP-approved section requires that the TCEQ publish notice of a proposed air quality Standard Permit in a daily or weekly newspaper of general circulation in the area affected by the activity that is the subject of the proposed Standard Permit. If the proposed Standard Permit will have statewide applicability, the SIP-approved rule requires TCEQ to publish notice in the daily newspaper of the largest general circulation within each of the following metropolitan areas: Amarillo, Austin, Corpus Christi, Dallas, El Paso, Houston, Lower Rio Grande Valley, Lubbock, the Permian Basin, San Antonio, and Tyler. The SIP-approved rule also requires that TCEQ publish notice in the *Texas Register*, an official State publication that is available throughout the State of Texas.

On October 9, 2006, TCEQ submitted revisions to section 116.603. The State's revised rule requires newspaper notice for proposed Standard Permits with statewide applicability in only three of the eleven original metropolitan areas: Austin, Dallas, Houston, and any other regional newspaper designated by the Executive Director on a case-by-case basis. The State's rule no longer requires newspaper notice for each proposed Standard Permit to be published in Amarillo, Corpus Christi, El Paso, the Lower Rio Grande Valley, Lubbock, the Permian Basin, San Antonio, or Tyler. However, TCEQ will continue to publish public notice in the *Texas Register* and issue a press release.

III. What Is EPA's Evaluation of the Revised Regulations That Texas Submitted?

EPA is aware that states' minor new source review programs vary widely from state to state. EPA has also approved various minor new source public notice and participation rules based on the environmental significance of the permit action. 68 FR 2894, 2895 (Jan. 22, 2003). Publication through newspaper notice for proposed Standard Permits with statewide applicability will be published in fewer metropolitan areas. However, notice will continue to be published in the *Texas Register*, an official, weekly publication that serves as the journal of state agency rulemaking. The *Texas Register* can be accessed through the Texas Secretary of State's website as well as other means.[1] EPA believes this is sufficient to ensure public notice of Standard Permits with statewide applicability.

The revised rule provides that for a proposed Standard Permit with statewide applicability, to publish public notice in the daily newspaper of largest general circulation within the metropolitan areas of Austin, Dallas, and Houston, and any other regional newspapers designated by the executive director on a case-by-case basis. The Commission will also publish notice in the *Texas Register* and issue a press release. The TCEQ may use electronic means to transmit notice to selected state and local officials. Although EPA has considered whether TCEQ should develop replicable procedures for determining when to publish notice in other regional newspapers on a case-by-case basis, EPA believes that the baseline rule is sufficient provide adequate public notice to the entire State of Texas. The baseline notice includes:

- Publication in the daily newspaper of largest general circulation within the metropolitan areas of Austin, Dallas, and Houston;
- Publication of notice in the *Texas Register*;
- Issuance of a press release, and
- TCEQ may use electronic means to transmit notice to selected state and local officials.

EPA believes that these requirements are sufficient to ensure adequate notice to the State of Texas. Accordingly, the publication of notice in other regional newspapers on a case-by-case basis will

[1] Any person can access the *Texas Register* at *http://www.sos.state.tx.us/texreg/index.shtml.* Under this website, any person can access the current issue of the *Texas Register* and the back issues of the *Texas Register* beginning with the year 1991.

be in addition to the above described baseline requirements.

The public may also access Texas' proposed Standard Permits on the TCEQ's Web site. The TCEQ posts its proposed Standard Permits on its Web site at *http://www.tceq.state.tx.us/permitting/air/nav/standard.html.* This Web site includes the public notice of proposed Standard Permits during the comment period, the information on TCEQ's final action on Standard Permits (including TCEQ's response to the comments received from the public, and the text of all existing Standard Permits.

A more detailed discussion of Texas' public notice procedures for proposed Standard Permits is in the Technical Support Document which is in the docket for this proposed action.

For the reasons discussed above and in the Technical Support Document, EPA believes that this revision to section 116.603 continues to ensure that the entire State of Texas is provided with adequate public notice of any proposed Standard Permit with statewide applicability and ensures that citizens in Texas are afforded the opportunity to comment on the proposed Standard Permit.

Section 110(l) of the CAA states that EPA cannot approve a SIP revision if the revision would interfere with any applicable requirements concerning attainment and reasonable further progress towards attainment of the National Ambient Air Quality Standards (NAAQS) or any other applicable requirements of the Act. Based upon our review of the Texas SIP submittals discussed in this notice and the Technical Support Document, we believe indicate that the revisions will not interfere with any applicable requirements concerning attainment and reasonable further progress towards attainment of the NAAQS or any other applicable requirements of the Act.

IV. Proposed Action

For the reasons discussed above, EPA is proposing to approve and requests comments on the changes to 30 TAC 116.603 (Public Participation in Issuance of Standard Permits) submitted October 9, 2006, as a revision to the Texas SIP. EPA will evaluate all significant comments in finalizing its decision.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et. seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon Monoxide, Hydrocarbons, Intergovernmental relations, Lead, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 5, 2008.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

Authority: 42 U.S.C. 7401 *et seq.*

[FR Doc. E8–10924 Filed 5–14–08; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–B–7779]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1 percent 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 August 13, 2008.

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–7779, 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.

Administrative Procedure Act Statement. This matter is not a rulemaking governed by the Administrative Procedure Act (APA), 5 U.S.C. 553. FEMA publishes flood elevation determinations for notice and comment; however, they are governed by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and do not fall under the APA.

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		Communities affected
		Effective	Modified	
Douglas County, Nevada, and Incorporated Areas				
Airport Tributary Wash	Approximately 5,400 feet upstream of Freemont Street	None	+4958	Unincorporated Areas of Douglas County
	Approximately 7,445 feet upstream of Freemont Street	None	+5019	
Airport Wash	Approximately 2,475 feet upstream of East Valley Road.	None	+4902	Unincorporated Areas of Douglas County.
	Approximately 9,175 feet upstream of East Valley Road.	+5015	+5009	
Bobwhite Wash	Confluence with Juniper Road Wash	+5121	+5123	Unincorporated Areas of Douglas County.
	Approximately 1,390 feet upstream of confluence with Juniper Road Wash.	+5136	+5135	
Buckbrush Wash	Approximately 645 feet downstream of Fuller Avenue	None	+4786	Unincorporated Areas of Douglas County.
	Approximately 3,320 feet upstream of Lindsay Lane	None	+5019	
Buckeye Creek	Approximately 4,933 feet downstream of Orbit Way	None	+4762	Unincorporated Areas of Douglas County.
	Approximately 7,624 feet upstream of Juniper Road	+4973	+5008	
Calle De Asco Wash	Confluence with Calle Hermosa Wash	None	+5070	Unincorporated Areas of Douglas County.
	Approximately 3,525 feet upstream of confluence with Calle Hermosa Wash.	None	+5114	
Calle Hermosa Wash	Approximately 469 feet downstream of Ty Lane	+4881	+4884	Unincorporated Areas of Douglas County.
	Approximately 1,598 feet upstream of Calle Hermosa Road.	None	+5122	
Johnson Lane Wash	Approximately 3,555 feet downstream of Squires Street.	None	+4782	Unincorporated Areas of Douglas County.
	Approximately 2,939 feet upstream of Nye Drive	None	+4991	

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Juniper Road Wash	Approximately 1,935 feet downstream of Coyote Road	+4880	+4881	Unincorporated Areas of Douglas County.
	Approximately 3,500 feet upstream of Carlson Drive	None	+5194	
Sunrise Pass Wash	At MacKay Way	None	+4907	Unincorporated Areas of Douglas County.
	Approximately 3,310 feet upstream of MacKay Way	None	+4991	

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

Unincorporated Areas of Douglas County

Maps are available for inspection at 1615 Eight Street, Minden, NV 89423.

Hertford County, North Carolina, and Incorporated Areas

Ahoskie Creek	At the confluence with Wiccacon River and Bear Swamp.	None	+11	Unincorporated Areas of Hertford County, Town of Ahoskie.
	Approximately 0.7 mile upstream of the confluence with Ahoskie Creek Tributary 8.	None	+62	
Ahoskie Creek Tributary 1	At the confluence with Ahoskie Creek	None	+18	Unincorporated Areas of Hertford County.
	Approximately 1,325 feet upstream of DT Road (State Road 1419).	None	+23	
Ahoskie Creek Tributary 7	At the confluence with Ahoskie Creek	None	+52	Unincorporated Areas of Hertford County.
	Approximately 0.5 mile upstream of the confluence with Ahoskie Creek.	None	+57	
Banks Creek	At the confluence with Kirby Creek	None	+17	Unincorporated Areas of Hertford County.
	Approximately 960 feet upstream of the confluence with Banks Creek Tributary 1.	None	+18	
Banks Creek Tributary 1	At the confluence with Banks Creek	None	+17	Unincorporated Areas of Hertford County.
	Approximately 0.9 mile upstream of the confluence with Banks Creek.	None	+25	
Barbeque Swamp	At the confluence with Chinkapin Creek and Chinkapin Swamp.	None	+13	Unincorporated Areas of Hertford County.
	At the Hertford/Bertie County boundary	None	+19	
Bear Swamp	At the confluence with Wiccacon River and Ahoskie Creek.	None	+11	Unincorporated Areas of Hertford County.
	Approximately 1,111 feet upstream of Ahoskie Cofield Road (State Road 1403).	None	+34	
Bells Branch	At the confluence with Potecasi Creek	None	+19	Unincorporated Areas of Hertford County.
	Approximately 2.9 miles upstream of the confluence with Potecasi Creek.	None	+33	
Bluewater Branch	At the confluence with Cutawhiskie Creek	None	+28	Unincorporated Areas of Hertford County.
	Approximately 0.5 mile upstream of the confluence with Bluewater Branch Tributary 2.	None	+43	
Bluewater Branch Tributary 1.	At the confluence with Bluewater Branch	None	+32	Unincorporated Areas of Hertford County.
	Approximately 0.5 mile upstream of Leweter Farm Road (State Road 1139).	None	+43	
Bluewater Branch Tributary 2.	At the confluence with Bluewater Branch	None	+40	Unincorporated Areas of Hertford County.
	Approximately 0.4 mile upstream of the confluence with Bluewater Branch.	None	+49	
Brooks Creek	At the confluence with Wiccacon River	None	+7	Unincorporated Areas of Hertford County.
	Approximately 1.1 miles upstream of Bazemore Road (State Road 1445).	None	+22	

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Buckhorn Creek	At the confluence with Chowan River	None	+12	Unincorporated Areas of Hertford County.
	Approximately 1.1 miles upstream of Buckhorn Church Road (State Road 1316).	None	+59	
Catherine Creek	At the confluence with Chowan River	None	+7	Unincorporated Areas of Hertford County.
	Approximately 1.1 miles upstream of the confluence with Catherine Creek Tributary 1.	None	+20	
Catherine Creek Tributary 1	At the confluence with Catherine Creek	None	+7	Unincorporated Areas of Hertford County.
	Approximately 0.4 mile upstream of the confluence with Catherine Creek.	None	+11	
Chinkapin Creek	At the confluence with Wiccacon River	None	+7	Unincorporated Areas of Hertford County.
	At the confluence of Chinkapin Swamp and Barbeque Swamp.	None	+13	
Chinkapin Creek Tributary 1.	At the confluence with Chinkapin Creek	None	+7	Unincorporated Areas of Hertford County.
	Approximately 0.9 mile upstream of the confluence of Chinkapin Creek Tributary 1A.	None	+17	
Chinkapin Creek Tributary 1A.	At the confluence with Chinkapin Creek Tributary 1	None	+7	Unincorporated Areas of Hertford County.
	Approximately 0.6 mile upstream of the confluence with Chinkapin Creek Tributary 1.	None	+17	
Chinkapin Creek Tributary 2.	At the confluence with Chinkapin Creek	None	+11	Unincorporated Areas of Hertford County.
	Approximately 1,390 feet upstream of Big Mill Road (State Road 1432).	None	+14	
Chinkapin Creek Tributary 3.	At the confluence with Chinkapin Creek	None	+12	Unincorporated Areas of Hertford County.
	Approximately 0.6 mile upstream of the confluence with Chinkapin Creek.	None	+16	
Chinkapin Swamp	At the confluence with Barbeque Swamp and Chinkapin Creek.	None	+13	Unincorporated Areas of Hertford County.
	Approximately 0.9 mile upstream of the confluence with Chinkapin Creek and Barbeque Swamp.	None	+14	
Chowan River	At the Hertford/Bertie/Chowan County boundary	None	+7	Unincorporated Areas of Hertford County, Town of Winton.
	At the Virginia/North Carolina State boundary	None	+13	
Chowan River Tributary 1	At the confluence with Chowan River	None	+7	Unincorporated Areas of Hertford County.
	Approximately 1.3 miles upstream of the confluence with Chowan River.	None	+39	
Cutawhiskie Creek	At the confluence with Potecasi Creek	None	+26	Unincorporated Areas of Hertford County.
	Approximately 1.2 miles upstream of Fennell Road (State Road 1155).	None	+55	
Cutawhiskie Creek Tributary 1.	At the confluence with Cutawhiskie Creek	None	+36	Unincorporated Areas of Hertford County.
	Approximately 0.9 mile upstream of the confluence with Cutawhiskie Creek.	None	+40	
Cutawhiskie Creek Tributary 2.	At the confluence with Cutawhiskie Creek	None	+39	Unincorporated Areas of Hertford County.
	Approximately 0.8 mile upstream of the confluence with Cutawhiskie Creek.	None	+43	
Cutawhiskie Creek Tributary 3.	At the confluence with Cutawhiskie Creek	None	+49	Unincorporated Areas of Hertford County.
	Approximately 0.5 mile upstream of the confluence with Cutawhiskie Creek.	None	+51	
Deep Creek	At the confluence with Chowan River	None	+8	Unincorporated Areas of Hertford County.
	Approximately 1.2 miles upstream of the confluence with Deep Creek Tributary 1.	None	+21	
Deep Creek Tributary 1	At the confluence with Deep Creek	None	+11	Unincorporated Areas of Hertford County.
	Approximately 0.6 mile upstream of the confluence with Deep Creek.	None	+23	

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Deep Creek Tributary 2	At the confluence with Deep Creek	None	+11	Unincorporated Areas of Hertford County, Village of Cofield.
	Approximately 1.2 miles upstream of the confluence with Deep Creek.	None	+22	
Deep Swamp	At the confluence with Chowan River	None	+7	Unincorporated Areas of Hertford County.
	Approximately 1.4 miles upstream of Cullen Road (State Road 1439).	None	+55	
Deep Swamp Tributary 1	At the confluence with Deep Swamp	None	+7	Unincorporated Areas of Hertford County.
	Approximately 1.5 miles upstream of the confluence with Deep Swamp.	None	+26	
Deep Swamp Tributary 2	At the confluence with Deep Swamp	None	+8	Unincorporated Areas of Hertford County.
	Approximately 0.9 mile upstream of the confluence with Deep Swamp.	None	+29	
Deep Swamp Tributary 3	At the confluence with Deep Swamp	None	+8	Unincorporated Areas of Hertford County.
	Approximately 1.2 miles upstream of the confluence with Deep Swamp.	None	+41	
Fort Branch	At the confluence with Ahoskie Creek	None	+46	Unincorporated Areas of Hertford County.
	At the Hertford/Bertie County boundary	None	+55	
Hares Branch	At the confluence with Meherrin River	None	+15	Unincorporated Areas of Hertford County, Town of Murfreesboro.
	Approximately 0.8 mile upstream of U.S. Highway 158	None	+25	
Horse Swamp	At the confluence with Bear Swamp	None	+20	Unincorporated Areas of Hertford County.
	Approximately 0.7 mile upstream of the Railroad	None	+35	
Indian Creek	At the confluence with Cutawhiskie Creek	None	+28	Unincorporated Areas of Hertford County.
	Approximately 0.4 mile upstream of Flea Hill Road (State Road 1142).	None	+39	
Kill 'em Swamp	At the confluence with Long Branch	None	+11	Unincorporated Areas of Hertford County.
	Approximately 2.0 miles upstream of the confluence with Long Branch.	None	+19	
Kirby Creek	At the confluence with Meherrin River	None	+17	Unincorporated Areas of Hertford County.
	Approximately 150 feet downstream of the confluence with Turkey Creek.	None	+17	
Liverman Creek	At the confluence with Meherrin River	None	+8	Unincorporated Areas of Hertford County.
	Approximately 0.4 mile upstream of Spiers Road (State Road 1317).	None	+78	
Liverman Creek Tributary 1	At the confluence with Liverman Creek	None	+12	Unincorporated Areas of Hertford County.
	Approximately 1.3 miles upstream of Parkers Ferry Road (State Road 1306).	None	+21	
Liverman Creek Tributary 1A.	At the confluence with Liverman Creek Tributary 1	None	+16	Unincorporated Areas of Hertford County.
	Approximately 1.7 miles upstream of the confluence with Liverman Creek Tributary 1.	None	+26	
Liverman Creek Tributary 2	At the confluence with Liverman Creek	None	+21	Unincorporated Areas of Hertford County.
	Approximately 0.7 mile upstream of U.S. Highway 258	None	+28	
Long Branch	At the confluence with Chinkapin Creek	None	+11	Unincorporated Areas of Hertford County.
	Approximately 1,300 feet upstream of Quebec Road (State Road 1002).	None	+37	
Long Branch Tributary 1	At the confluence with Long Branch	None	+13	Unincorporated Areas of Hertford County.
	Approximately 0.5 mile upstream of the confluence with Long Branch.	None	+19	
Long Branch Tributary 2	At the confluence with Long Branch	None	+15	Unincorporated Areas of Hertford County.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
	Approximately 0.5 mile upstream of Quebec Road (State Road 1002).	None	+29	
Long Branch Tributary 3	At the confluence with Long Branch	None	+20	Unincorporated Areas of Hertford County.
	Approximately 0.6 mile upstream of the confluence with Long Branch.	None	+27	
Long Branch Tributary 4	At the confluence with Long Branch	None	+24	Unincorporated Areas of Hertford County.
	Approximately 0.7 mile upstream of the confluence with Long Branch.	None	+44	
Meherrin River	At the confluence with the Chowan River	None	+8	Unincorporated Areas of Hertford County, Town of Murfreesboro.
	Approximately 50 feet upstream of the Virginia/North Carolina State boundary.	None	+26	
Meherrin River Tributary 1	At the confluence with Meherrin River	None	+12	Unincorporated Areas of Hertford County.
	Approximately 1.9 miles upstream of the confluence with Meherrin River.	None	+22	
Meherrin River Tributary 2	At the confluence with Meherrin River	None	+12	Unincorporated Areas of Hertford County.
	Approximately 0.8 mile upstream of Mapleton Road (State Road 1303).	None	+29	
Meherrin River Tributary 3	At the confluence with Meherrin River	None	+19	Unincorporated Areas of Hertford County.
	Approximately 0.8 mile upstream of Boones Bridge Road (State Road 1311).	None	+34	
Meherrin River Tributary 4	At the confluence with Meherrin River	None	+19	Unincorporated Areas of Hertford County.
	Approximately 0.9 mile upstream of Boones Bridge Road (State Road 1311).	None	+25	
Mill Branch	At the confluence with Potecasi Creek	None	+8	Unincorporated Areas of Hertford County.
	Approximately 200 feet downstream of U.S. Highway 158.	None	+17	
Mill Branch South	At the confluence with Ahoskie Creek	None	+54	Unincorporated Areas of Hertford County.
	Approximately 0.8 mile upstream of the confluence with Ahoskie Creek.	None	+57	
Mill Branch Tributary 1	At the confluence with Mill Branch	None	+8	Unincorporated Areas of Hertford County.
	Approximately 0.6 mile upstream of the confluence with Mill Branch.	None	+19	
Old Tree Swamp	At the confluence with Potecasi Creek	None	+26	Unincorporated Areas of Hertford County.
	Approximately 1.8 miles upstream of Beaver Dam Road (State Road 1167).	None	+50	
Panther Swamp	At the confluence with Potecasi Creek	None	+30	Unincorporated Areas of Hertford County.
	Approximately 1,170 feet upstream of Pine Tops Road	None	+49	
Panther Swamp Tributary 2	At the confluence with Panther Swamp	None	+44	Unincorporated Areas of Hertford County.
	Approximately 0.4 mile upstream of the confluence with Panther Swamp.	None	+49	
Potecasi Creek	At the confluence with the Meherrin River	None	+8	Unincorporated Areas of Hertford County.
	At the Hertford/Northampton County boundary	None	+36	
Potecasi Creek Tributary 1	At the confluence with Potecasi Creek	None	+10	Unincorporated Areas of Hertford County.
	Approximately 1.2 miles upstream of U.S. 158 Highway West.	None	+36	
Potecasi Creek Tributary 2	At the confluence with Potecasi Creek	None	+23	Unincorporated Areas of Hertford County.
	Approximately 1,800 feet upstream of Country Club Road (State Road 1108).	None	+28	
Potecasi Creek Tributary 3	At the confluence with Potecasi Creek	None	+26	Unincorporated Areas of Hertford County.
	Approximately 930 feet downstream of Boone Farm Road (State Route 1108).	None	+30	

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Snake Branch	At the confluence with Ahoskie Creek	None	+29	Unincorporated Areas of Hertford County.
	Approximately 1,020 feet upstream of Jernigan Airport Road (State Road 1100).	None	+41	
Stony Creek	At the confluence with Ahoskie Creek	None	+25	Unincorporated Areas of Hertford County.
	The Hertford/Bertie County boundary	None	+25	
Turkey Creek	At the confluence with Kirby Creek	None	+17	Unincorporated Areas of Hertford County.
	Approximately 70 feet upstream of U.S. Highway 158	None	+50	
Turkey Creek (South)	At the confluence with Ahoskie Creek	None	+41	Unincorporated Areas of Hertford County.
	Approximately 930 feet upstream of NC Highway 11	None	+49	
Turnpike Branch	At the confluence with Wiccacon River	None	+10	Unincorporated Areas of Hertford County, Village of Cofield.
	Approximately 500 feet upstream of Ahoskie Cofield Road.	None	+37	
White Oak Swamp	At the confluence with Ahoskie Creek	None	+11	Unincorporated Areas of Hertford County, Town of Ahoskie.
	Approximately 2.1 miles upstream of Newsome Grove Road.	None	+42	
Wiccacon River	At the confluence with Chowan River	None	+7	Unincorporated Areas of Hertford County.
	At the confluence of Ahoskie Creek and Bear Swamp	None	+11	
Wiccacon River Tributary 2	At the confluence with Wiccacon River	None	+7	Unincorporated Areas of Hertford County.
	Approximately 0.5 mile upstream of Wiccacon Road (State Road 1443).	None	+14	
Wiccacon River Tributary 4	At the confluence with Wiccacon River	None	+8	Unincorporated Areas of Hertford County.
	Approximately 0.7 mile upstream of the confluence with Wiccacon River.	None	+13	
Wiccacon River Tributary 6	At the confluence with Wiccacon River	None	+9	Unincorporated Areas of Hertford County.
	Approximately 0.5 mile upstream of the confluence with Wiccacon River Tributary 6A.	None	+12	
Wiccacon River Tributary 6A.	At the confluence with Wiccacon River Tributary 6	None	+9	Unincorporated Areas of Hertford County.
	Approximately 0.5 mile upstream of the confluence with Wiccacon River Tributary 6.	None	+12	

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

Town of Ahoskie
Maps are available for inspection at Ahoskie Town Hall, 201 West Main Street, Ahoskie, NC.

Town of Murfreesboro
Maps are available for inspection at Murfreesboro Town Hall, 105 East Broad Street, Murfreesboro, NC.

Town of Winton
Maps are available for inspection at Hertford County Planning Department, 704 North King Street, Winton, NC.

Unincorporated Areas of Hertford County
Maps are available for inspection at Hertford County Planning Department, 704 North King Street, Winton, NC.

Village of Cofield
Maps are available for inspection at Cofield Village Hall, 105 Milton Street, Cofield, NC.

Yadkin County, North Carolina, and Incorporated Areas

North Deep Creek	Approximately 250 feet upstream of the confluence with Deep Creek and South Deep Creek.	None	+739	Unincorporated Areas of Yadkin County, Town of Yadkinville.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
North Deep Creek Tributary 2A.	Approximately 1.2 miles upstream of Spencer Road (SR 1385).	None	+1,065	Unincorporated Areas of Yadkin County, Town of Yadkinville.
	At the confluence with North Deep Creek Tributary 2 ...	None	+860	
	Approximately 0.7 mile upstream of the confluence with North Deep Creek Tributary 2.	None	+877	

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

Town of Boonville
Maps are available for inspection at Boonville Town Hall, 110 North Carolina Avenue, Boonville, NC.

Town of East Bend
Maps are available for inspection at East Bend Town Hall, 108 West Main Street, East Bend, NC.

Town of Jonesville
Maps are available for inspection at Jonesville Town Hall, 136 West Main Street, Jonesville, NC.

Town of Yadkinville
Maps are available for inspection at Yadkinville Town Hall, 213 Van Buren Street, Yadkinville, NC.

Unincorporated Areas of Yadkin County
Maps are available for inspection at Yadkin County Manager's Office, 217 East Willow Street, Yadkinville, NC.

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

Dated: May 7, 2008.

David I. Maurstad,

Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E8–10868 Filed 5–14–08; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R8–ES–2008–0049; 1111 FY08 MO–B2]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the Ashy Storm-Petrel (Oceanodroma homochroa) as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list the ashy storm-petrel (*Oceanodroma homochroa*) as threatened or endangered under the Endangered Species Act of 1973, as amended (Act). We find that the petition presents substantial scientific or commercial information indicating that listing the ashy storm-petrel may be warranted. Therefore, with the publication of this notice, we are initiating a status review of the species to determine if listing the species is warranted. To ensure that the review is comprehensive, we are soliciting information and data regarding this species. We will make a determination on critical habitat for this species, which was also requested in the petition, if, and when, we initiate a listing action.

DATES: To allow us adequate time to conduct this review, we request that information be submitted on or before July 14, 2008.

ADDRESSES: You may submit information by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–R8–ES–2008–0049; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all information received at *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Information Solicited section below for more information).

FOR FURTHER INFORMATION CONTACT: Mike Long, Field Supervisor, Arcata Fish and Wildlife Office, 1655 Heindon Road, Arcata, CA 95521; telephone 707–822–7201; facsimile 707–822–8411. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Information Solicited

When we make a finding that substantial information is presented to indicate that listing a species may be warranted, we are required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available science and commercial information, we are soliciting additional information on the ashy storm-petrel. We request information from the public, other concerned governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties on the status of the

ashy storm-petrel throughout its range, including but not limited to:

(1) The historical and current status and distribution of ashy storm-petrel; the species' biology and ecology; ongoing conservation measures for the species and its habitat; and threats to the species and its habitat.

(2) The effects of potential threat factors that are the basis for a listing determination under section 4(a) of the Act, which are:

(a) Present or threatened destruction, modification, or curtailment of the species' habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence.

(3) Timing within year, type, and amount of human activities (e.g., commercial and recreational fishing, tourism) at locations where ashy storm-petrels are known or suspected to breed, including but not limited to: Van Damme Rock (Mendocino County); Bird, Chimney, and Double Point Rocks (Marin County); the Farallon Islands (San Francisco County); Castle and Hurricane Point Rocks (Monterey County); San Miguel Island, Castle Rock, Prince Island, mainland locations and offshore islets at Vandenberg Air Force Base, Santa Cruz Island, Santa Barbara Island, Sutil Island, and Shag Rock (Santa Barbara County); Anacapa Island (Ventura County); Santa Catalina Island and San Clemente Island (Los Angeles County); and Islas Los Coronados and Islas Todos Santos, Mexico.

(4) Projected changes in sea level along the coast of California during the 21st century, specifically at the locations listed in (3) above.

(5) Elevations of known and suitable breeding habitat at the locations listed in (3) above.

(6) Projected acidification of oceanic waters of the California Current during the 21st century.

(7) Locations of oil tanker routes, and timing and frequency of oil tanker traffic along the coast of California and Northern Baja California, Mexico.

(8) Nighttime observations of ashy storm-petrels, other storm-petrels, other nocturnal seabirds (e.g., Xantus's murrelets (Synthliboramphus hypoleucus)), and other seabirds (e.g., gulls (*Larus* sp.)) on or near boats (commercial or recreational) off central and southern California and Baja California, Mexico.

(9) Measured and observed nighttime lighting, and timing within year of nighttime lighting by boats (commercial and recreational) at locations listed in (3) above.

(10) Daily and seasonal activity patterns of ashy storm-petrels and avian predators of ashy storm-petrels (e.g., western gull (*Larus occidentalis*), burrowing owl (*Athene cunicularia*)) at breeding locations in general and, specifically, in relation to light intensity at night.

(11) Abundance and distribution of predators of ashy storm-petrels at ashy storm-petrel breeding locations.

(12) Observations of ashy storm-petrels or other storm-petrels at night on offshore oil platforms, or additional evidence that ashy storm-petrels are attracted to or have collided with offshore oil platforms.

(13) Locations of proposed offshore liquefied natural gas (LNG) facilities along the coast of California and Northern Baja California, Mexico.

(14) Evidence of organochlorine contamination of ashy storm-petrel eggs and birds.

(15) Ingestion of plastics by ashy storm-petrels, and distribution and abundance of plastics in the California Current.

(16) Military activities at sea and on islands off the coast of California and northern Baja California, Mexico.

(17) Factors that pose a threat to ashy storm-petrels (those listed above, and otherwise) and the potential cumulative effects of these factors that may threaten or endanger ashy storm-petrels.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is a threatened or endangered species shall be made ''solely on the basis of the best scientific and commercial data available.'' Based on the status review, we will issue the 12-month finding on the petition, as provided in section 4(b)(3)(B) of the Act.

You may submit your information concerning this finding by one of the methods listed in the **ADDRESSES** section. We will not consider submissions sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

If you submit information via *http://www.regulations.gov*, your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov*.

Information and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Arcata Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*) requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files at the time we make the determination. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly commence a status review of the species.

On October 16, 2007, we received a formal petition, dated October 15, 2007, from the Center for Biological Diversity, requesting that we list the ashy storm-petrel. The petition also requested that critical habitat be designated concurrently with the listing. The petition clearly identified itself as a petition and included the requisite identification information as required in 50 CFR 424.14(a). Included in the petition was supporting information regarding the species' taxonomy and ecology, historical and current distribution, present status, and potential causes of decline and active imminent threats. In response to the petition, we sent a letter to the petitioner dated January 11, 2008, stating that we had secured funding and

that we anticipated making an initial finding as to whether the petition contained substantial information indicating listing the ashy storm-petrel may be warranted in Fiscal Year 2008. We also concluded in our January 11, 2008, letter that emergency listing of the ashy storm-petrel was not warranted.

Species Information

The ashy storm-petrel is a seabird species belonging to the order Procellariiformes, family Hydrobatidae. The ashy storm-petrel is one of five storm-petrel species (including fork-tailed (*O. furcata*), Leach's (*O. leucorhoa*), black (*O. melania*), and least (*O. microsoma*) storm-petrels) that nest on islands along the west coast of North America (Harrison 1983, pp. 272–278). The ashy storm-petrel is a smoke-gray, medium-sized bird with long slender wings, a long forked tail, and webbed feet (Ainley 1995, p. 2).

Ashy storm-petrels have been confirmed to breed at 26 locations on islands and offshore rocks from Marin County, California, south to Todos Santos Islands, west of Ensenada, Baja California, Mexico (Carter *et al.* 1992, pp. 77–81; Ainley 1995, p. 2; Carter *et al.* 2006, p. 6; Carter *et al.* 2008, p. 118). In addition, ashy storm-petrels possibly breed at five locations from Mendocino County south to San Clemente Island (Carter *et al.* 2008, pp. 118–119). The species breeds primarily in two population centers at the Farallon Islands and in the California Channel Islands (Sowls *et al.* 1980, p. 24; Ainley *et al.* 1990, p. 135; Carter *et al.* 1992, p. 86). Ashy storm-petrels do not excavate burrows; rather, they nest in crevices of talus slopes, rock walls, sea caves, cliffs, and driftwood (James-Veitch 1970, pp. 87–88; Ainley *et al.* 1990, p. 147; McIver 2002, p. 1).

The breeding season is protracted, and activities at nesting locations occur from March through January (James-Veitch 1970, p. 71). Clutch size is one egg per year (Ainley 1995, p. 6). The egg-laying period extends from late March to October, peaking in June and July (James-Veitch 1970, p. 243; Ainley *et al.* 1990, p. 148; McIver 2002, pp. 34–36). The average period of incubation is 44 days (James-Veitch 1970, p. 244). Hatchlings are ''semi-precocial'' (James-Veitch 1970, p. 128). The term semi-precocial describes young that have characteristics of precocial young at hatch (open eyes, down, capacity to leave the nest), but that remain at the nest and are cared for by parents until close to adult size (Sibley 2001, p. 573). Chicks are brooded and attended by adults for approximately the first week of life, after which time they are left unattended in the nest during the day (James-Veitch 1970, p. 141). Chicks are fed irregularly, once every 1 to 3 nights on average (James-Veitch 1970, pp. 180–208). At Southeast Farallon Island, James-Veitch (1970, p. 212) reported a mean of 76 days from hatching to fledging; Ainley *et al.* (1990, p. 152) reported a mean of 84 days from hatching to fledging. Fledging occurs at night, from late August to January, and once they leave the nest, fledglings are independent of their parents (Ainley *et al.* 1974, p. 303; McIver 2002, p. 36). Nonbreeding ashy storm-petrels also visit breeding locations during the breeding season (James-Veitch 1970, pp. 242–243). Although visitations are reduced during the months of January and February, ashy storm-petrels visit nesting locations throughout the year, and most intensely from February into October (Ainley *et al.* 1974, p. 301).

The nocturnal activity (return to and departure from nest) and crevice nesting of this species are adaptations to avoid predation by diurnal predators such as western gulls, burrowing owls, peregrine falcons (*Falco peregrinus*), and common ravens (*Corvus corax*) (Ainley 1995, p. 5; McIver and Carter 2006, p. 3). Ashy storm-petrels are susceptible to predation at night by barn owls (*Tyto alba*) (McIver 2002, p. 30). Nesting in crevices and burrows on remote headlands, offshore rocks, and islands generally reduces predation of storm-petrels by mammalian predators (Warham 1990, p. 13). Known mammalian predators of ashy storm-petrels and their eggs include house mice (*Mus musculus*), deer mice (*Peromyscus maniculatus*), and island spotted skunks (*Spilogale gracilis amphiala*) (Ainley *et al.* 1990, p. 146; McIver 2002, pp. 40–41; McIver and Carter 2006, p. 3).

Ashy storm-petrels are nonmigratory and forage primarily in the California Current from northern California to central Baja California, Mexico; birds forage in areas of upwelling, seaward of the continental shelf, near islands and the coast (Ainley *et al.* 1974, p. 300; Briggs *et al.* 1987, p. 23; Mason *et al.* 2007, p. 60). Four thousand to six thousand ashy storm-petrels are usually observed in the fall in Monterey Bay, approximately 3 to 10 miles (5 to 16 kilometers) off the town of Moss Landing, California, and as many as 10,000 ashy storm-petrels were estimated to be present in Monterey Bay in October 1977 (Roberson 1985, p. 42). Storm-petrels feed on small invertebrates and fish picked from the ocean surface (Warham 1990, p. 186). The diet of ashy storm-petrels has not been extensively studied, but includes euphausiids (spp. *Euphausia, Thysanoessa*), other crustaceans, unidentified fish and squid (G. McChesney, personal communication, 1999).

Obtaining direct population counts of ashy storm-petrels is difficult, because the species nests in often deep, inaccessible crevices (Carter *et al.* 1992, p. 77; Sydeman *et al.* 1998b, p. 438). The world population of ashy storm-petrels has been estimated to be on the order of 10,000 birds (Sowls *et al.* 1980, p. 24; Ainley 1995, p. 1); estimates of breeding birds for California have ranged from 5,187 (Sowls *et al.* 1980, p. 25) to 7,209 (Carter *et al.* 1992, p. 87). Results from Sydeman *et al.* (1998b, p. 445) indicate a reduction in ashy storm-petrel population size at Southeast Farallon Island from 1972 to 1992, ranging from 28 to 44 percent. Sydeman *et al.* (1998b, p. 445) report that this decline occurred in prime nesting habitat and was apparently greater for breeding birds. Sydeman *et al.* (1998b, pp. 445–446) suggest that this decline in population size at Southeast Farallon Island may be due, in part, to an increase in the predation rate on ashy storm-petrel adults and sub-adults by western gulls, which expanded into prime ashy storm-petrel nesting habitat over the course of their study.

Research on reproductive success of the ashy storm-petrel has been conducted at Southeast Farallon Island (James-Veitch 1970; Ainley *et al.* 1990; Sydeman *et al.* 1998a; Sydeman *et al.*, unpublished data) and Santa Cruz Island (McIver 2002; McIver *et al.*, in preparation). Reported productivity values have been variable. For example, on Southeast Farallon Island, reported productivity values are: 0.40 chicks per pair during 1964 to 1965 (James-Veitch 1970, p. 235); 0.69 chicks per pair during 1972 to 1983 (Ainley *et al.* 1990, p. 155); 0.73 chicks per pair during 1971 to 1995 (Sydeman *et al.* 1998a, p. 20) and 0.52 chicks per pair during 1995 to 1998 (Sydeman *et al.*, unpublished data). On Santa Cruz Island, reported productivity values are: 0.51 chicks per pair during 1995 to 1998 (McIver 2002, p. 44); and 0.63 chicks per pair during 2005 to 2007 (McIver *et al.*, in preparation, p. 25).

No data are currently available regarding adult life span, survivorship, and age at first breeding of ashy storm-petrels (Ainley 1995, p. 8). However, like other procellariids, storm-petrels are long-lived (Warham 1996, p. 20). Some ashy storm-petrels reach 25 years old (Sydeman *et al.* 1998a, p. 7), and breeding adults over 20 years in age have been reported in the closely-related Leach's storm-petrel (Morse and

Buchheister 1977, p. 344). Mean age of first breeding in the Leach's storm-petrel has been reported at 5.9 years ± 1.3 standard deviation (Huntington *et al.* 1996, p. 19). Sydeman *et al.* (1998a, p. 7) conducted population viability analyses based upon observations by C. Huntington, and assumed that 90 percent of adult ashy storm-petrels were capable of breeding at 6 years of age.

Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533), and implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) Present or threatened destruction, modification, or curtailment of habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. In making this 90-day finding, we evaluated whether information on threats to the ashy storm-petrel in our files and presented with the October 2007 petition constitute substantial scientific or commercial information such that listing under the Act may be warranted. Our evaluation of this information is presented below.

A. The Present or Threatened Destruction, Modification, or Curtailment of Habitat or Range

The petitioner asserts that the ashy storm-petrel's island breeding habitat is being modified and degraded by artificial light pollution, introduced species, and current and future climate change; they further assert that its at-sea foraging habitat is being modified and degraded by artificial light pollution, chemical and plastics pollution, and current and future ocean climate change (Petition, p. 15).

The market squid (*Loligo opalescens*) fishery is a source of artificial light at night near breeding locations in the California Channel Islands, and could result in increased mortality of storm-petrels due to predation by diurnal predators and direct collision with lights (McIver 2002, pp. 51–2; Maxwell *et al.* 2004, pp. 666–69). Ashy storm-petrels have been recovered dead on an offshore oil platform off the coast of southern California, and from mainland locations in southern California, presumably due to attraction to and collision with bright lights (Carter *et al.* 2000, p. 443).

In addition, oil pollution may pose a threat to ashy storm-petrels. A major oil spill off Monterey Bay during the fall could affect thousands of ashy storm-petrels that concentrate in that area (Roberson 1985, p. 42; Sydeman *et al.* 1998, p. 439). Hampton *et al.* (2003, p. 32) analyzed dumping of tank washings of oil tankers at sea and suggested that the greatest threat of oiling existed for seabird species occurring (while at sea) greater than 80 kilometers (50 miles) offshore, including ashy storm-petrels.

We found substantial evidence presented in the petition indicating that artificial light pollution near breeding colonies and at sea, and at-sea oil pollution may threaten ashy storm-petrels.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The petitioner asserts that research activities may impact ashy storm-petrels, but also states that there is no evidence that this impact has had significant negative consequences on studied populations (Petition, p. 30). Therefore, we do not consider this a significant factor affecting the species.

C. Disease or Predation

The petitioner asserts that predation by native predators, including western gulls, burrowing owls, barn owls, and peregrine falcons, and nonnative predators, including house mice (*Mus musculus*), black rats (*Rattus rattus*), and feral cats (*Felis domesticus*), impact ashy storm-petrel populations (Petition, pp. 30–32).

Sydeman *et al.* (1998, pp. 438–447) reported an increase in the western gull population at Southeast Farallon Island, and an expansion of nesting by western gulls into prime nesting habitat of ashy storm-petrels on the island. They suggested that the decline in population size of ashy storm-petrels at Southeast Farallon Island between the early 1970s and the early 1990s may be due (in part) to an increase in the predation rate on ashy storm-petrels by western gulls.

We find substantial information presented in the petition indicating that predation at nesting colonies may threaten ashy storm-petrels.

D. Inadequacy of Existing Regulatory Mechanisms

The petitioner asserts that existing regulatory mechanisms have been ineffective at preventing the decline of the ashy storm-petrel and in mitigating many of the threats to the species (Petition, p. 32). The petitioner claims that the ineffectiveness of regulatory mechanisms is demonstrated by the failure to eradicate nonnative predators, the inadequate regulation of artificial light pollution, the failure to restrict human disturbance at breeding sites, the lack of regulations on greenhouse gases, and the failure of the Migratory Bird Treaty Act to protect the species from identified threats (Petition, pp. 32–35).

As discussed above, we do find threats to the species from artificial light pollution and predation, and thus find that the petition presents substantial evidence that the inadequacy of existing regulatory mechanisms may threaten ashy storm-petrels.

E. Other Natural or Manmade Factors Affecting Continued Existence

The petitioner cites human disturbance through tourism and military activities as the primary threats under this category (Petition, p. 35). We do not find that the petition presents substantial information supporting the petitioner's claimed threats under this category. However, information in the petition indicates that the ashy storm-petrel may be threatened by the contamination of eggs and birds by organochlorine chemicals.

Eggshell thinning and organochlorine contamination of ashy storm-petrel eggs have been documented during the 1970s and 1990s (Coulter and Risebrough, pp. 254–255; Fry 1994, pp. 1–29; Kiff 1994, pp. 1–24; D. Welsh and H. Carter, unpublished notes).

We find that the petition presents substantial information that the contamination of eggs and birds by organochlorine chemicals may threaten ashy storm-petrels.

Finding

We reviewed the petition, supporting information provided by the petitioner, and information in our files, and we evaluated that information to determine whether the sources cited support the claims made in the petition. Based on this review, we find that the petition presents substantial information indicating that the ashy storm-petrel may be threatened by Factor A, due to artificial light pollution near breeding colonies and at sea, and by at-sea oil pollution; by Factor C, due to predation at nesting colonies; by Factor D, due to the inadequacy of existing regulatory mechanisms; and by Factor E, due to contamination of eggs and birds by organochlorine chemicals.

On the basis of our review, we find that the petition presents substantial information indicating that listing the ashy storm-petrel as threatened or endangered may be warranted.

Therefore, we are initiating a status review to determine if listing the species under the Act is warranted.

The petitioner also requested that critical habitat be designated for the ashy storm-petrel. We always consider the need for critical habitat designation when listing species. If we determine in our 12-month finding following the status review of the species that listing the ashy storm-petrel is warranted, we will address the designation of critical habitat at the time of the proposed rulemaking.

References Cited

A complete list of all references cited in this document is available, upon request, from our Arcata Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary author of this notice is the staff of the U.S. Fish and Wildlife Service, Arcata Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: May 6, 2008.

Kenneth Stansell,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. E8–10790 Filed 5–14–08; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R4–ES–2008–0041; 92210–1117–0000–B4]

RIN 1018–AU48

Endangered and Threatened Wildlife and Plants; Revised Designation of Critical Habitat for the Wintering Population of the Piping Plover in North Carolina

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Revised proposed rule; reopening of comment period, revisions to proposed critical habitat boundaries, notice of availability of revised draft economic analysis and environmental assessment, and amended required determinations.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the comment period on the proposed revised designation of critical habitat for the wintering population of the piping plover (*Charadrius melodus*) in Dare and Hyde Counties, North Carolina (71 FR 33703, June 12, 2006). In this document, we are proposing to add 87 hectares (ha) (215 acres (ac)) of critical habitat to two previously proposed units. As a result, our proposed revised critical habitat designation for the species now includes 4 revised critical habitat units totaling approximately 827 ha (2,043 ac). We also announce the availability of the revised draft economic analysis (DEA) and environmental assessment of the proposed revised designation of critical habitat. We are reopening the comment period on the June 12, 2006, proposed rule to allow all interested parties an opportunity to comment simultaneously on that proposal, the proposed revised critical habitat units described in this document, our amended required determinations, and the associated revised DEA and environmental assessment. Please do not resend comments you have already submitted. We will incorporate comments previously submitted into the public record as part of this comment period, and we will fully consider them when preparing our final determination.

DATES: We will consider comments received or postmarked on or before June 16, 2008.

ADDRESSES: You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: 1018–AU48; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Field Supervisor, Raleigh Fish and Wildlife Office, P.O. Box 33726, Raleigh, NC 27636–3726, (telephone 919–856–4520; facsimile 919–856–4556). If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We will accept written comments and information during this reopened comment period on our June 12, 2006, proposed rule to revise critical habitat for the wintering population of the piping plover in North Carolina (71 FR 33703), the additional areas of critical habitat proposed in this document, the amended required determinations provided in this document, and our revised DEA and environmental assessment of the proposed revised designation. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons why we should or should not designate habitat as critical habitat under section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), including whether the benefit of designation would outweigh any threats to the species due to designation, such that the designation of critical habitat is prudent.

(2) Specific information on:

- The amount and distribution of wintering piping plover habitat in North Carolina,
- What areas occupied at the time of listing that contain features essential for the conservation of the species we should include in the designation and why, and
- What areas not occupied at the time of listing are essential to the conservation of the species and why.

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed revised critical habitat.

(4) Any foreseeable economic, national security, or other relevant impacts resulting from the proposed revised designation and, in particular, any such impacts on small entities, and the benefits of including or excluding areas from the proposed revised designation.

(5) Any foreseeable environmental impacts directly or indirectly resulting from the proposed revised designation of critical habitat.

(6) Information regarding our identification, in our June 12, 2006, proposed rule, of specific areas as not being in need of special management.

(7) Information to assist the Secretary of the Interior in evaluating habitat with physical and biological features essential to the conservation of the piping plover on Cape Hatteras National Seashore, administered by the National Park Service, based on any benefit provided by the Interim Protected Species Management Strategy/Environmental Assessment (Interim Strategy; NPS 2006) to the conservation of the wintering piping plover.

(8) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding or to assist us in accommodating public concerns and comments.

(9) Information on whether the DEA identifies all State and local costs and benefits attributable to the proposed revised critical habitat designation, and information on any costs or benefits that we have overlooked.

(10) Information on whether the DEA makes appropriate assumptions regarding current practices and any regulatory changes likely if we designate revised critical habitat.

(11) Information on whether the DEA correctly assesses the effect on regional costs associated with any land use controls that may result from the revised critical habitat designation.

(12) Information on whether the DEA identifies all costs that could result from the revised designation and whether you agree with the analysis.

(13) Whether there is any information to suggest that beach recreation might increase as a result of this designation, and whether the effects of any such increased visitation can be quantified.

If you submitted comments or information during the initial comment period from June 12, 2006, to August 11, 2006 (71 FR 33703), or during the reopened comment period from May 31, 2007, to July 30, 2007 (72 FR 30326), or at the public hearing held on June 20, 2007, on the proposed rule, please do not resubmit them. We will incorporate them into the public record as part of this comment period, and we will fully consider them in preparation of our final determination. Our final determination concerning revised critical habitat will take into consideration all comments and any additional information we receive during all comment periods. On the basis of public comments, we may, during the development of our final determination, find that areas proposed do not contain the features essential to the conservation of the species or are not themselves essential, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not consider comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

If you submit a comment via *http://www.regulations.gov*, your entire comment—including any personal identifying information—will be posted on the Web site. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on *http://www.regulations.gov*.

Comments and materials we receive, as well as supporting documentation we used in preparing this notice, will be available for public inspection on *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Raleigh Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

You may obtain copies of the proposed rule and DEA at *http://www.regulations.gov*, by mail from the Raleigh Field Office (see **FOR FURTHER INFORMATION CONTACT**), or by visiting our Web site at *http://www.fws.gov/nc-es*.

Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat in this rule. For more information on the biology and ecology of the wintering population of the piping plover, refer to the final rule to designate critical habitat for the wintering population of the piping plover published in the **Federal Register** on July 10, 2001 (66 FR 36038), and the proposed rule to designate revised critical habitat for the wintering population of the piping plover in North Carolina published in the **Federal Register** on June 12, 2006 (71 FR 33703).

The piping plover is a small, pale-colored shorebird that breeds in three discrete areas of North America—the Northern Great Plains, the Great Lakes, and the Atlantic Coast—and winters in coastal areas of the United States from North Carolina to Texas, along the coast of eastern Mexico, and on the Caribbean islands from Barbados to Cuba and the Bahamas. We published a rule to list the piping plover as endangered in the Great Lakes watershed and threatened elsewhere within its range on December 11, 1985 (50 FR 50726). All piping plovers on migratory routes outside of the Great Lakes watershed or on their wintering grounds (which includes the State of North Carolina) are considered threatened.

We first designated critical habitat for the wintering population of the piping plover in 137 areas along the coasts of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, and Texas on July 10, 2001 (66 FR 36038). This designation included approximately 2,891.7 kilometers (km) (1,798.3 miles (mi)) of mapped shoreline and approximately 66,881 ha (165,211 ac) of mapped areas along the Gulf and Atlantic coasts and along margins of interior bays, inlets, and lagoons.

In February 2003, two North Carolina counties (Dare and Hyde) and a beach access group (Cape Hatteras Access Preservation Alliance) filed a lawsuit challenging our designation of four units of critical habitat on the Cape Hatteras National Seashore, North Carolina (Units NC–1, NC–2, NC–4, and NC–5). In 2004, the U.S. District Court for the District of Columbia remanded to us the 2001 designation of the four units (*Cape Hatteras Access Preservation Alliance* v. *U.S. Department of the Interior*, 344 F. Supp 2d 108). In response to the court's order, we published, on June 12, 2006, a proposed rule to revise designated critical habitat for the wintering population of the piping plover in North Carolina (71 FR 33703). That proposed rule described four coastal areas (named Units NC–1, NC–2, NC–4, and NC–5), totaling approximately 739.4 ha (1,827.2 ac) entirely within Cape Hatteras National Seashore, as critical habitat for the wintering population of the piping plover. On May 31, 2007, we announced in the **Federal Register** the availability of a draft economic analysis and environmental assessment on the proposed revised critical habitat for the wintering population of the piping plover (72 FR 30326).

We are now modifying the June 12, 2006, proposed rule (71 FR 33703) to add previously excluded areas to two of the proposed units, as described below in the ''Additional Proposed Critical Habitat Areas'' section. As a result of these additions and revisions, the proposed critical habitat now encompasses 827 ha (2,043 ac), an increase of 87 ha (215 ac) from the June 12, 2006 proposed rule (71 FR 33703).

Section 3 of the Act defines critical habitat as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed rule (with the changes proposed in this document) is made final, section 7 of the Act will prohibit destruction or adverse modification of

critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting areas designated as critical habitat must consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

Under section 4(b)(2) of the Act, we may exclude an area from critical habitat if we determine that the benefits of such exclusion outweigh the benefits of including that particular area as critical habitat, unless failure to designate that specific area as critical habitat will result in the extinction of the species. We may exclude an area from designated critical habitat taking into consideration economic impacts, national security, or any other relevant impact.

Additional Proposed Critical Habitat Areas

By this document, we are advising the public of new proposed revisions to two of the four units described in the June 12, 2006, proposed rule (71 FR 33703). In that rule, we determined that the islands DR–005–05 and DR–005–06 (Dare County) and DR–009–03/04 (Dare and Hyde Counties), owned by the State of North Carolina, and about 96 ha (137 ac) of Pea Island National Wildlife Refuge (Dare County) did not meet the definition of critical habitat under section 3(5)(A) of the Act. However, we have reconsidered our preliminary analysis of the special management or protection needs of the physical and biological features essential to the conservation of the species on these lands and have now determined that these areas should be proposed as critical habitat. This determination is based on *Center for Biological Diversity* v. *Norton*, 240 F. Supp 2d 1090, 1099 (D. Ariz. 2003), which held that if a habitat is already under some sort of management for its conservation, that particular habitat required special management considerations or protection and, therefore, meets the definition of critical habitat. As such, we are now including these areas in this proposed revised critical habitat, and we are considering whether the areas should be excluded from the final designation under section 4(b)(2) of the Act, based on economic or other relevant impacts, and taking into account the existing protections in our benefit analysis.

The two proposed revised units that are expanded by the newly proposed areas are Unit NC–1 (Oregon Inlet) and NC–4 (Hatteras Inlet); we propose to incorporate the areas previously omitted from the June 12, 2006, proposal (i.e., several State-owned islands and portions of Pea Island National Wildlife Refuge) into Unit NC–1 and Unit NC–4. These additional areas of the proposed revised units are located within the range of the population, were occupied at the time of listing and are considered currently occupied, and contain habitat features essential for the conservation of the wintering population of piping plover, as described in the ''Primary Constituent Elements'' of our June 12, 2006, proposed rule (71 FR 33703). The additional areas total 87 ha (215 ac). As a result of these additions, together with the revisions to area estimates proposed in the June 12, 2006, proposed rule (71 FR 33703), the proposed revised critical habitat now encompasses 827 ha (2,043 ac) in four units. The approximate area encompassed within each proposed critical habitat unit is shown in Table 1.

TABLE 1.—REVISED CRITICAL HABITAT UNITS PROPOSED FOR THE WINTERING POPULATION OF THE PIPING PLOVER IN NORTH CAROLINA

[Area estimates reflect all land within critical habitat unit boundaries]

Critical habitat units	Land ownership	Proposed hectares (acres) (from June 12, 2006, proposed rule)	Additional proposed hectares (acres) (proposed in this document)	Total proposed hectares (acres)
Unit NC–1, Oregon Inlet	Federal, State	115.0 (284.0)	81 (201)	196 (485)
Unit NC–2, Cape Hatteras Point	Federal	261.0 (646.0)	0	262 (646)
Unit NC–4, Hatteras Inlet	Federal, State	160.0 (396.0)	6 (14)	166 (410)
Unit NC–5, Ocracoke Island	Federal	203.0 (502.0)	0	203.0 (502.0)
Total		739.0 (1,827.0)	87 (215)	827 (2,043)

Below, we present brief descriptions of the two revised units (NC–1 and NC–4) and reasons why they meet the definition of critical habitat for the piping plover. As stated in the June 12, 2006, proposed rule (71 FR 33703), the textual unit descriptions of the units in the regulation constitute the definitive determination as to whether an area is within the critical habitat boundary.

Unit NC–1: Oregon Inlet

Unit NC–1 is approximately 8.0 km (5.0 mi) long, and consists of about 196 ha (485 ac) of sandy beach and inlet spit habitat on Bodie Island and Pea Island in Dare County, North Carolina. This is the northernmost critical habitat unit proposed within the wintering range of the piping plover. Oregon Inlet is the northernmost inlet in coastal North Carolina, approximately 19.0 km (12.0 mi) southeast of the Town of Manteo, the county seat of Dare County. The proposed unit at Oregon Inlet is bounded by the Atlantic Ocean on the east and Pamlico Sound on the west and includes lands from the mean lower low water (MLLW) on the Atlantic Ocean shoreline to the line of stable, densely vegetated dune habitat (which is not used by piping plovers and where the physical and biological features essential to the conservation of the species do not occur) and from the MLLW on the Pamlico Sound side to the line of stable, densely vegetated habitat, or (where a line of stable, densely vegetated dune habitat does not exist) lands from MLLW on the Atlantic Ocean shoreline to the MLLW on the Pamlico Sound side. The unit begins at Ramp 4 near the Oregon Inlet Fishing Center on Bodie Island and extends approximately 8.0 km (5.0 mi) south to the intersection of NC Highway 12 and Salt Flats Wildlife Trail (near Mile Marker 30, NC Highway 12), approximately 5.0 km (3.0 mi) from the groin, on Pea Island, and includes Green Island and any emergent sandbars south and west of Oregon Inlet, and the lands owned by the State of North Carolina, specifically Islands DR–005–05 and DR–005–06. However, this unit does not include the Oregon Inlet Fishing Center, NC Highway 12, the Bonner Bridge and its associated structures, the terminal groin, the historic Pea Island Life-Saving Station, or any of their ancillary

facilities (e.g., parking lots, out buildings). This unit contains the physical and biological features essential to the conservation of the species. Areas of the unit contain a contiguous mix of intertidal beaches and sand or mud flats (between annual low tide and annual high tide) with no or very sparse emergent vegetation, and adjacent areas of unvegetated or sparsely vegetated dune systems and sand or mud flats above annual high tide.

Oregon Inlet has reported consistent use by wintering piping plovers dating from the mid-1960s. As many as 100 piping plovers have been reported from a single day survey during the fall migration (NCWRC unpublished data). Christmas bird counts regularly recorded 20 to 30 plovers using the area. Recent surveys have also recorded consistent and repeated use of the area by banded piping plovers from the endangered Great Lakes breeding population (J. Stucker, University of Minnesota, unpublished data). The overall number of piping plovers reported using the area has declined since the species was listed in 1986 (NCWRC unpublished data), which corresponds to increases in the number of human users (NPS 2005) and off-road vehicles (Davis and Truett 2000).

Oregon Inlet is one of the first beach access points for off-road vehicles within Cape Hatteras National Seashore when traveling from the developed coastal communities of Nags Head, Kill Devil Hills, Kitty Hawk, and Manteo. As such, the inlet spit is a popular area for off-road vehicle users to congregate. The majority of the Cape Hatteras National Seashore users in this area are off-road vehicle owners and recreational fishermen. In fact, a recent visitor use study of Cape Hatteras National Seashore reported that Oregon Inlet is the second most popular off-road vehicle use area in the park (Vogelsong 2003). Furthermore, the adjacent islands are easily accessed by boat, which can be launched from the nearby Oregon Inlet Fishing Center. Pea Island National Wildlife Refuge does not allow off-road vehicle use; however, Pea Island regularly receives dredged sediments from the maintenance dredging of Oregon Inlet by the U.S. Army Corps of Engineers. The disposal of dredged sediments on Pea Island National Wildlife Refuge has the potential to disturb foraging and roosting plovers and their habitats. As a result, the sandy beach and mud and sand flat habitat being proposed as critical habitat in this unit may require special management considerations or protection.

Unit NC–4: Hatteras Inlet

Unit NC–4 is approximately 8.0 km (5.0 mi) long, and consists of 166 ha (410 ac) of sandy beach and inlet spit habitat on the western end of Hatteras Island and the eastern end of Ocracoke Island in Dare and Hyde Counties, North Carolina. The unit begins at the first beach access point at Ramp 55 at the end of NC Highway 12 near the Graveyard of the Atlantic Museum on the western end of Hatteras Island and continues southwest to the beach access at the ocean-side parking lot near Ramp 59 on the northeastern end of Ocracoke Island. This unit includes lands from the MLLW on the Atlantic Ocean shoreline to the line of stable, densely vegetated dune habitat (which itself is not used by the piping plover and where PBFs do not occur) and from the MLLW on the Pamlico Sound side to the line of stable, densely vegetated habitat, or (where a line of stable, densely vegetated dune habitat does not exist) lands from MLLW on the Atlantic Ocean shoreline to the MLLW on the Pamlico Sound side. The proposed unit at Hatteras Inlet includes all emergent sandbars within Hatteras Inlet including lands owned by the State of North Carolina, specifically Island DR–009–03/04. The unit is adjacent to, but does not include the Graveyard of the Atlantic Museum, the ferry terminal, the groin on Ocracoke Island, NC Highway 12, or their ancillary facilities (*e.g.*, parking lots, out buildings). This unit contains the features essential to the conservation of the species. Areas of the unit contain a contiguous mix of intertidal beaches and sand or mud flats (between annual low tide and annual high tide) with no or very sparse emergent vegetation, and adjacent areas of unvegetated or sparsely vegetated dune systems and sand or mud flats above annual high tide.

Hatteras Inlet has reported consistent use by wintering piping plovers since the early 1980s, but the specific area of use was not consistently recorded in earlier reports. Often piping plovers found at Cape Hatteras Point, Cape Hatteras Cove, and Hatteras Inlet were reported as a collective group. However, more recent surveys report plover use at Hatteras Inlet independently from Cape Hatteras Point. These single-day surveys have recorded as many as 40 piping plovers a day during migration (NCWRC unpublished data). Christmas bird counts regularly recorded 2 to 11 plovers using the area. Recent surveys have also recorded consistent and repeated use of the area by banded piping plovers from the endangered Great Lakes breeding population (J. Stucker, University of Minnesota, unpublished data). The overall numbers of piping plovers reported using the area has declined in the last 10 years (NCWRC unpublished data), corresponding with increases in the number of human users (NPS 2005) and off-road vehicles (Davis and Truett 2000).

Hatteras Inlet is located near the Village of Hatteras, Dare County, and is the southernmost point of Cape Hatteras National Seashore that can be reached without having to take a ferry. As such, the inlet is a popular off-road vehicle and recreational fishing area. In fact, a recent visitor use study of the park found Hatteras Inlet the fourth most used area by off-road vehicles in the park (Vogelsong 2003). Furthermore, the adjacent islands are easily accessed by boat, which can be launched from the nearby marinas of Hatteras Village. As a result, the sandy beach and mud and sand flat habitat being proposed as critical habitat in this unit may require special management considerations or protection.

Draft Economic Analysis

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific and commercial data available, after taking into consideration the economic, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. On June 21, 2007, we published a document in the **Federal Register** (72 FR 34215) announcing the availability of the draft economic analysis for the proposed revised designation of critical habitat for the wintering population of the piping plover. Because we are now proposing additional areas of critical habitat in Units NC–1 and NC–4, we have prepared a revised DEA of the proposed revised critical habitat designation. The revised DEA is described below.

The intent of the DEA is to quantify the economic impacts of all potential conservation efforts for the wintering population of the piping plover; some of these costs will likely be incurred regardless of whether we designate critical habitat. The DEA estimates the foreseeable economic impacts of conservation measures for the wintering population of the piping plover within the proposed revised critical habitat designation on government agencies, private businesses, and individuals. Specifically, the analysis measures how management activities undertaken by the National Park Service (NPS), the Service, and the State of North Carolina to protect wintering piping plover habitat against the threat of off-road

vehicle (ORV) use or other recreational use of the beach may affect the value of the beaches to ORV and other recreational users and the region. In this analysis, it is assumed that the primary management tool employed for wintering piping plover conservation could be the implementation of closures of certain portions of the beach. If implemented, these closures would reduce the opportunity for recreational activities, such as ORV use. The Service believes, however, that additional beach closures due to the designation of critical habitat for wintering piping plovers are unlikely. On October 18, 2007, an action was filed against the National Park Service (NPS) in the United States District Court for the Eastern District of North Carolina, alleging that the management of off-road vehicles at Cape Hatteras National Seashore, which would include the areas proposed for critical habitat (*Defenders of Wildlife et. al.* v. *National Park Service et al.*, No. 2:07–CV–45–BO (E.D.N.C.)). On April 16, 2008, the parties filed with the court a proposed consent decree that would require NPS to close to ORV use areas where piping plovers (and other shorebird species) engage in prenesting and other breeding behavior. If approved by the court, these closures would occur regardless of whether critical habitat is designated. At this time, the NPS, the Service, and the State of North Carolina are not undertaking any new activities on which the Service expects to be required to consult in the future.

However, the Service plans to continue to consult with the U.S. Army Corps of Engineers on future sand disposal operations on Pea Island National Wildlife Refuge. In addition, it plans to consult with the Federal Highway Administration on the replacement of Bonner Bridge. At this time, it is unclear if these projects will affect the proposed revised critical habitat; therefore, this analysis does not include administrative costs associated with these projects. The analysis focuses instead on the effect of public closures of beaches on ORV use and the potential administrative costs to the NPS resulting from additional section 7 consultations and other administrative duties caused by designation of critical habitat. Our analysis determines that recreation may be affected under one of two possible scenarios: the high-end scenario, which estimates that a percentage of ORV trips to proposed revised designated critical habitat areas would be lost; and the low-end scenario, which assumes that no trips would be lost.

The DEA forecasts that costs associated with conservation activities for the wintering population of the piping plover in North Carolina would range from $0 to $23.0 million in lost consumer surplus and $0 to $40.0 million in lost trip expenditures in undiscounted dollars over the next 20 years, with an additional $190,000 to $476,000 in administrative costs. These costs are not related to, or the result of, the recently announced beach closures designed to protect breeding piping plovers and other seabirds resulting from the above-referenced settlement agreement. Discounted forecast impacts are estimated to range from $0 to $11.9 million in lost consumer surplus and $0 to $20.2 million in lost trip expenditures over 20 years using a real rate of seven percent, with an additional $101,000 to $252,000 in administrative costs. This amounts to $0 to $985,000 in lost consumer surplus and $0 to $1.6 million in lost trip expenditures, annually. Using a real rate of three percent, discounted forecast impacts are estimated at $0 to $16.8 million in lost consumer surplus and $0 to $29.1 million in lost trip expenditures over the next 20 years, with an additional $141,000 to $354,000 in administrative costs. This amounts to $0 to $1.1 million in lost consumer surplus and $0 to $2.0 million in lost trip expenditures, annually. Of the four units proposed as revised critical habitat, unit NC–2 is calculated to experience the highest estimated costs (about 40 percent) in both lost consumer surplus ($0 to $9.2 million, undiscounted) and lost trip expenditures ($0 to $16.0 million, undiscounted). Units NC–4, NC–5, and NC–1 account for about 26, 20, and 14 percent, respectively, of the total potential impacts.

The DEA considers the potential economic effects of all actions relating to the conservation of the wintering population of the piping plover, including costs associated with sections 4, 7, and 10 of the Act, as well as costs attributable to the designation of revised critical habitat. It further considers the economic effects of protective measures taken as a result of other Federal, State, and local laws that aid habitat conservation for the wintering population of the piping plover in areas containing features essential to the conservation of the species. The DEA considers both economic efficiency and distributional effects. In the case of habitat conservation, efficiency effects generally reflect the ''opportunity costs'' associated with the commitment of resources to comply with habitat protection measures (such as lost economic opportunities associated with restrictions on land use).

The DEA also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on government agencies, private businesses, and individuals. The DEA measures lost economic efficiency associated with residential and commercial development and public projects and activities, such as economic impacts on water management and transportation projects, Federal lands, small entities, and the energy industry. Decision-makers can use this information to assess whether the effects of the designation might unduly burden a particular group or economic sector. Finally, the DEA looks retrospectively at costs that have been incurred since 1985 (year of the species' final listing) (50 FR 50726), and considers those costs that may occur in the 19 years following the designation of critical habitat. Because the DEA considers the potential economic effects of all actions relating to the conservation of the wintering population of the piping plover, including costs associated with sections 4, 7, and 10 of the Act and those attributable to designation of critical habitat, the DEA may have overestimated the potential economic impacts of the revised critical habitat designation.

The methodology used in the DEA assumes that in the baseline (without critical habitat designation) the entire 24,470 ac (9,903 ha) of the Cape Hatteras National Seashore will be open to ORV access except for areas closed for human safety and sensitive species' protection, and that baseline ORV use is evenly distributed over this area. On the basis of this assumption, the economists calculated an estimate of baseline ORVs per acre and evaluated potential ORV trip reductions using the number of acres potentially closed due to critical habitat designation as a percentage of total acres of Cape Hatteras National Seashore (4.8% in April through July, and 5.8% in August through March; see Exhibit 2–6 in draft DEA). We are specifically seeking comments regarding whether the methodology used in the evaluation is accurate and whether more specific information is available concerning: (1) The area of Cape Hatteras National Seashore open to ORV use; (2) the number of ORV trips within Cape Hatteras National Seashore; (3) how ORV trips to Cape Hatteras National Seashore are distributed across areas; and (4) potential impacts that

could result from additional beach closures.

As stated earlier, we are soliciting data and comments from the public on this revised DEA, as well as on our June 12, 2006, proposed rule to revise critical habitat for the wintering population of the piping plover in North Carolina (71 FR 33703), the additional areas of critical habitat proposed in this document, the amended required determinations provided in this document, and our revised environmental assessment of the proposed revised designation. We may revise the proposed rule, or its supporting documents, to incorporate or address new information we receive. In particular, we may exclude an area from critical habitat designation if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided the exclusion will not result in the extinction of the species.

National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.)

It is our position that, outside the Jurisdiction of the Tenth Federal Circuit, we do not need to prepare environmental analyses as defined by NEPA in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld by the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 516 U.S. 1042 (1996)). However, the court decision remanding the critical habitat designation also ordered us to prepare an environmental analysis of the proposed designation under the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*). To comply with the court's order, we prepared a draft environmental assessment pursuant to the requirements of NEPA as implemented by the Council on Environmental Quality regulations (40 CFR 1500–1508) and according to the Department of the Interior's NEPA procedures. We published a notice of availability for the draft environmental assessment in the **Federal Register** on May 31, 2007 (72 FR 30326). That draft environmental assessment was based on the June 12, 2006, proposed rule (71 FR 33703). We have completed a revised draft environmental assessment to incorporate the proposed additions to units NC–1 and NC–4 discussed in this document, and the revised draft environmental assessment is now available at *http://www.regulations.gov.* As stated earlier, we solicit data and comments from the public on the revised draft environmental assessment.

Required Determinations—Amended

In our June 12, 2006, proposed rule (71 FR 33703), we said that we would defer our determination of compliance with several statutes and Executive Orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders became available in the DEA. We have now made use of the DEA data to make these determinations. In this document we affirm the information in our proposed rule concerning Executive Order (E.O.) 13132, the Paperwork Reduction Act, and the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951). However, based on the DEA data, we revise our required determinations concerning E.O. 12866 and the Regulatory Flexibility Act, E.O. 13211 (Energy, Supply, Distribution, and Use), the Unfunded Mandates Reform Act, and E.O. 12630 (Takings).

Regulatory Planning and Review

The Office of Management and Budget (OMB) has determined that this rule is not significant and has not reviewed this rule under Executive Order 12866 (E.O. 12866). OMB bases its determination upon the following four criteria:

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

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

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

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

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Based on our revised DEA of the proposed revised designation and the revised proposal of critical habitat units in this document, we provide our analysis for whether the proposed rule would result in a significant economic impact on a substantial number of small entities. Based on comments we receive, we may revise this determination as part of our final rulemaking.

According to the Small Business Administration (SBA), small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city, town, and county governments that serve fewer than 50,000 residents (for example, Dare and Hyde Counties); and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities, including Dare County and Hyde County governmental entities, are significant, we considered in our economic analysis the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

To determine if the proposed revised critical habitat designation for the wintering population of the piping plover would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities, such as residential and commercial development. In order to determine whether it is appropriate for our agency to certify that this rule would not have a significant economic impact on a substantial number of small entities, we considered each industry or category individually. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Critical habitat

designation will not affect activities that do not have any Federal involvement; designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies.

If we finalize the proposed revised critical habitat designation (including the additions to revised critical habitat proposed in this document), Federal agencies must consult with us under section 7 of the Act if their activities may affect designated critical habitat. Consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In our revised DEA, we evaluated the potential economic effects on small business entities from conservation actions related to the listing of the wintering population of the piping plover and proposed revised designation of the species' critical habitat. This analysis estimated prospective economic impacts due to the implementation of wintering piping plover conservation efforts in two categories: Recreation (particularly ORV use), and section 7 consultation undertaken by the NPS, the Service, and the State of North Carolina. We anticipate that impacts of conservation activities will not have a significant economic impact on small entities because the costs of consultation are borne entirely by the NPS, the Service, and the State of North Carolina. The only impacts we expect small entities to bear are the costs associated with lost consumer surplus and lost trip expenditures. Lost trips would impact generated visitor expenditures on such items as food, lodging, shopping, transportation, entertainment, and recreation. See ''Draft Economic Analysis'' section above and the revised DEA for a more detailed discussion of estimated discounted impacts.

Approximately 93 percent of businesses in affected industry sectors in both counties are small. Assuming that all expenditures are lost only by small businesses and that these expenditures are distributed equally across all small businesses in both counties, each small business may experience a reduction in annual sales of between $661 and $6,494, depending on a business' industry. Specifically, the entertainment industry may expect a loss of $661 if no trips are lost and $992 if trips are lost. The food industry may expect a loss of $808 and $1,213 for no trips lost and trips lost, respectively. The shopping industry may expect a loss of $1,383 and $2,077, and lodging may expect a loss of $3,660 to $5,495, for no trips lost and trips lost, respectively. The transportation industry may expect a loss of $4,325 if no trips are lost and $6,494 if trips are lost. If the small business is generating annual sales just under the SBA small business threshold for its industry, this loss represents between 0.01 and 0.08 percent of its annual sales (0.01 to 0.03 percent for food, shopping, and entertainment; 0.05 to 0.08 percent for transportation and lodging). The Service concludes that this is not a significant economic impact.

Assuming that each small business has annual sales just under its SBA industry small business threshold may underestimate lost expenditures as a percentage of annual sales. It is likely that most small businesses have annual sales well below the threshold. However, even if a business has annual sales below the small business threshold for its particular industry, it is probable that lost expenditures still are relatively small compared to annual sales. For example, if a small business has annual sales that are one-tenth of that industry's SBA small business threshold, potential losses still only represent between 0.10 and 0.85 percent of its annual sales.

In summary, we have considered whether the proposed rule would result in a significant economic impact on a substantial number of small entities. For the above reasons and based on currently available information, we certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. Therefore, an initial regulatory flexibility analysis is not required.

Executive Order 13211—Energy Supply, Distribution, or Use

On May 18, 2001, the President issued Executive Order (E.O.) 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. OMB's guidance for implementing this Executive Order outlines nine outcomes that may constitute ''a significant adverse effect'' when compared to no regulatory action. The revised DEA finds none of these criteria relevant to this analysis. Thus, based on information in the revised DEA, we do not expect designation of the proposed revised critical habitat to lead to energy-related impacts. As such, we do not expect the proposed revised designation of critical habitat to significantly affect energy supplies, distribution, or use and a Statement of Energy Effects is not required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), we make the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments,'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except as (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program.''

Critical habitat designation does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. Designation of critical habitat may indirectly impact non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action. However, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) As discussed in the revised draft economic analysis of the proposed revised designation of critical habitat for the wintering population of the piping plover, we do not believe that this rule would significantly or uniquely affect small governments because only Federal and State lands are proposed for designation. The SBA does not consider the Federal or State Government to be a small governmental jurisdiction or entity. As such, it is unlikely that small governments will be involved with projects involving section 7 consultations for the wintering population of the piping plover within their jurisdictional areas. Consequently, we do not believe that the designation of critical habitat for this species would significantly or uniquely affect these small governmental entities. As such, a Small Government Agency Plan is not required.

Takings

In accordance with E.O. 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of proposing revised critical habitat for the wintering population of the piping plover. Our takings implications assessment concludes that this proposed revised designation of critical habitat for the wintering population of the piping plover in North Carolina does not pose significant taking implications.

Author

The primary author of this notice is the Raleigh Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to further amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as proposed to be amended at 71 FR 33703, June 12, 2006, as follows:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. The critical habitat entry for ''Piping Plover (*Charadrius melodus*) Wintering Habitat'' in § 17.95(b), which was proposed to be revised on June 12, 2006, at 71 FR 33703, is proposed to be amended by:

a. Revising the critical habitat description for Unit NC–1 to read as set forth below;

b. Revising the critical habitat description for Unit NC–4 to read as set forth below;

c. Revising the first map for ''North Carolina Unit: 1'' as set forth below; and

d. Revising the second map for ''North Carolina Units: 2, 3, 4, 5, & 6'' as set forth below.

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(b) *Birds.*

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Piping Plover (*Charadrius melodus*) Wintering Habitat

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3. * * *

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Unit NC–1: Oregon Inlet, 196 ha (485 ac) in Dare County, North Carolina

This unit extends from the southern portion of Bodie Island through Oregon Inlet to the northern portion of Pea Island. It begins at the edge of Ramp 4 near the Oregon Inlet Fishing Center on Bodie Island and extends south approximately 7.6 km (4.7 mi) to the intersection of NC Highway 12 and Salt Flats Wildlife Trail (near Mile Marker 30, NC Highway 12), approximately 4.8 km (2.9 mi) from the groin, on Pea Island. The unit is bounded by the Atlantic Ocean on the east and Pamlico Sound on the west and includes lands from the mean lower low water (MLLW) on the Atlantic Ocean shoreline to the line of stable, densely vegetated dune habitat (which is not used by piping plovers and where primary constituent elements do not occur) and from the MLLW on the Pamlico Sound side to the line of stable, densely vegetated habitat, or (where a line of stable, densely vegetated dune habitat does not exist) lands from MLLW on the Atlantic Ocean shoreline to the MLLW on the Pamlico Sound side. Any emergent sandbars south and west of Oregon Inlet, including Green Island and lands owned by the State of North Carolina such as Islands DR–005–05 and DR–005–06, are included (but are not shown on map). This unit does not include the Oregon Inlet Fishing Center, NC Highway 12 and the Bonner Bridge or its associated structures, the terminal groin, the historic Pea Island Life-Saving Station, or any of their ancillary facilities (e.g., parking lots, out buildings).

* * * * *

Unit NC–4: Hatteras Inlet, 166 ha (410 ac) in Dare and Hyde Counties, North Carolina

This unit extends from the western end of Hatteras Island to the eastern end of Ocracoke Island. The unit extends approximately 7.6 km (4.7 mi) southwest from the first beach access point at the edge of Ramp 55 at the end of NC Highway 12 near the Graveyard of the Atlantic Museum on the western end of Hatteras Island to the edge of the beach access at the ocean-side parking lot (approximately 0.1 mi south of Ramp 59) on NC Highway 12, approximately 1.25 km (0.78 mi) southwest (straight-line distance) of the ferry terminal on the northeastern end of Ocracoke Island. The unit includes lands from the MLLW on the Atlantic Ocean shoreline to the line of stable, densely vegetated dune habitat (which is not used by the piping plover and where primary constituent elements do not occur) and from the MLLW on the Pamlico Sound side to the line of stable, densely vegetated habitat, or (where a line of stable, densely vegetated dune habitat does not exist) lands from MLLW on the Atlantic Ocean shoreline to the MLLW on the Pamlico Sound side. All emergent sandbars within Hatteras Inlet between Hatteras Island and Ocracoke Island, including lands owned by the State of North Carolina such as Island DR–009–03/04 (not shown on map), are included. The unit is adjacent to but does not include the Graveyard of the Atlantic Museum, the ferry terminal, the groin on Ocracoke Island, NC Highway 12, or their ancillary facilities (e.g., parking lots, out buildings).

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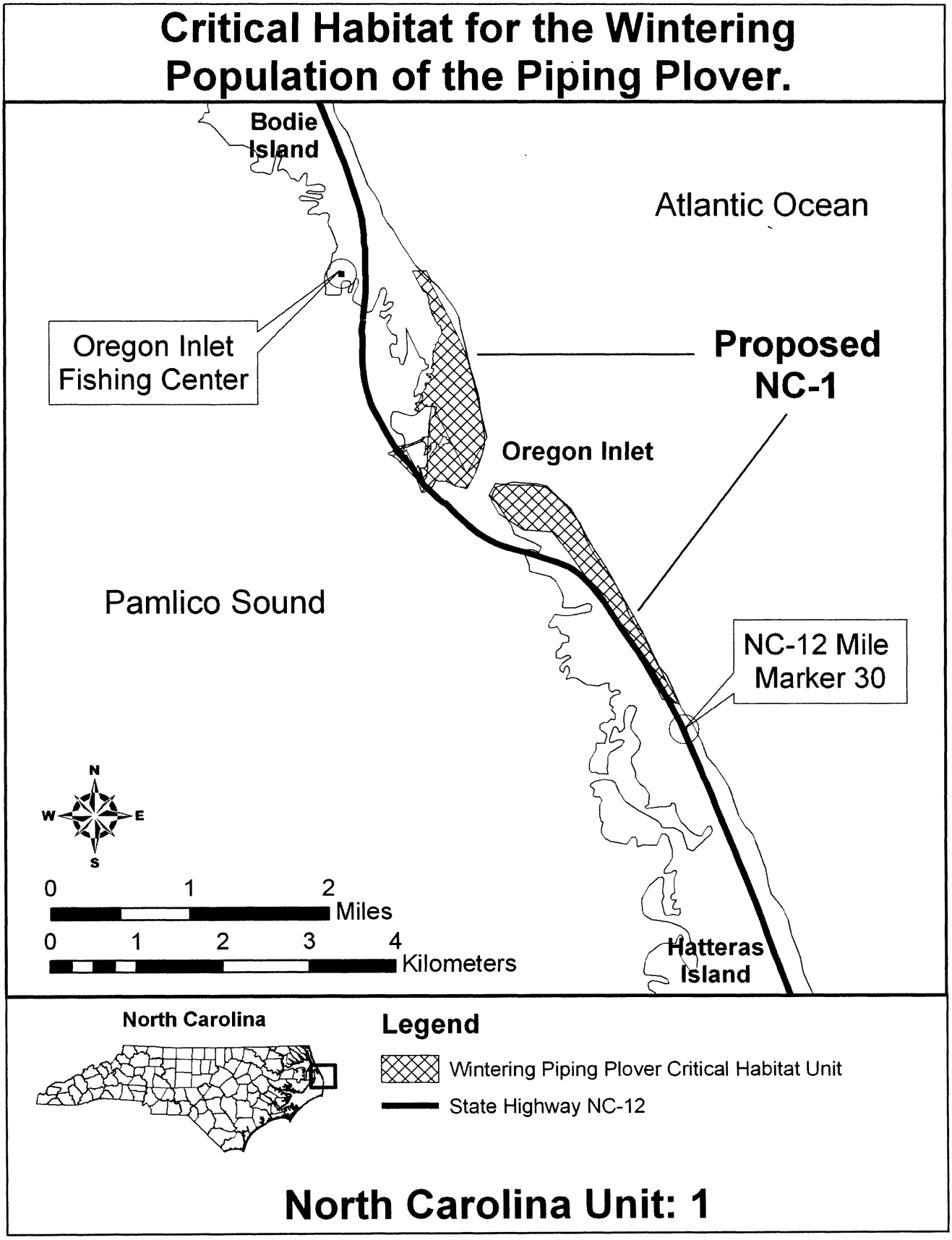
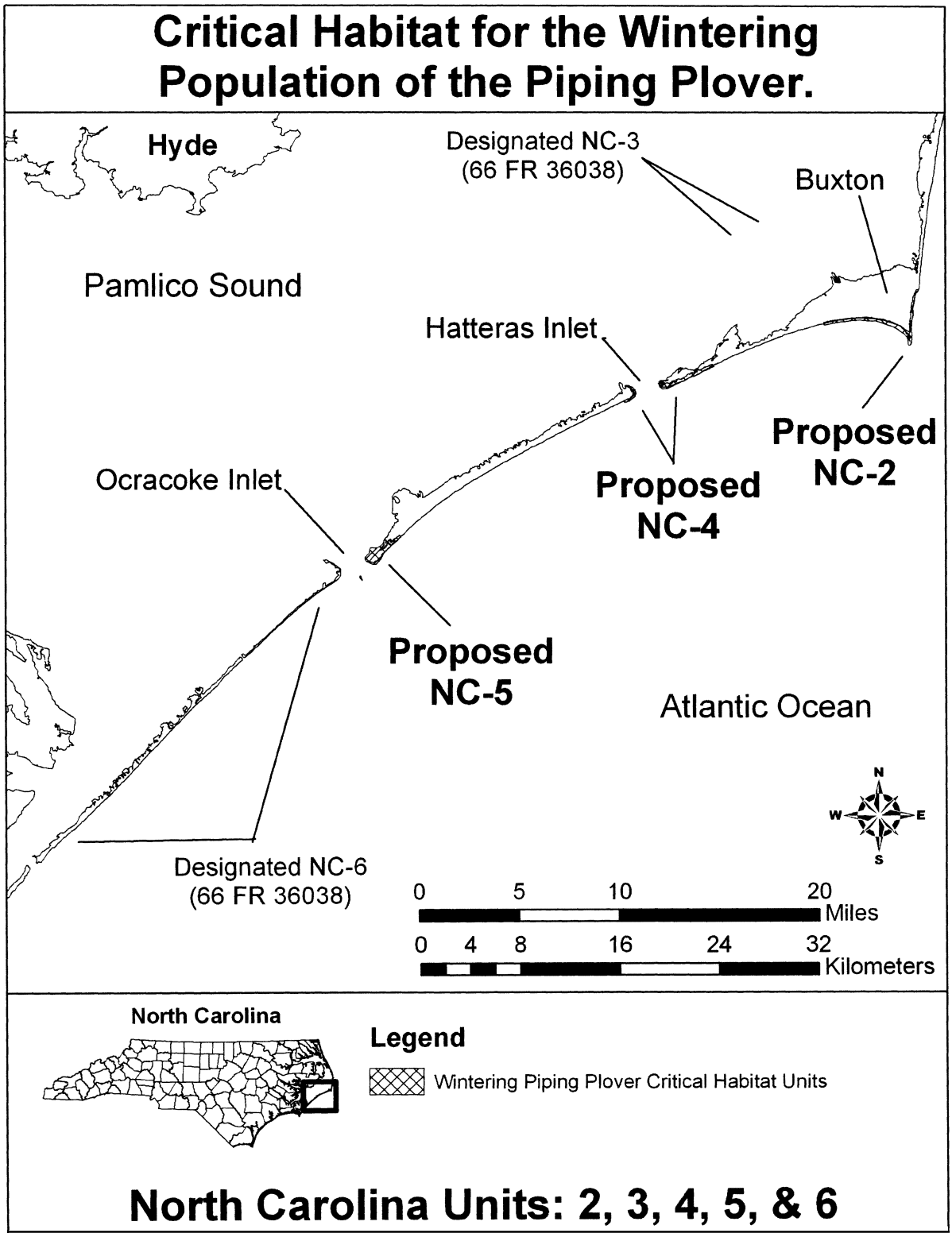

Critical Habitat for the Wintering Population of the Piping Plover.
Bodie Island
Atlantic Ocean
Oregon Inlet Fishing Center
Proposed NC-1
Oregon Inlet
Pamlico Sound
NC-12 Mile Marker 30
N
W
E
S
0 1 2 Miles
0 1 2 3 4 Kilometers
Hatteras Island
North Carolina
Legend
Wintering Piping Plover Critical Habitat Unit
State Highway NC-12
North Carolina Unit: 1


Critical Habitat for the Wintering Population of the Piping Plover.
Hyde
Designated NC-3 (66 FR 36038)
Buxton
Pamlico Sound
Hatteras Inlet
Proposed NC-2
Proposed NC-4
Ocracoke Inlet
Proposed NC-5
Atlantic Ocean
N
W
E
S
Designated NC-6 (66 FR 36038)
0 5 10 20 Miles
0 4 8 16 24 32 Kilometers
North Carolina
Legend
Wintering Piping Plover Critical Habitat Units
North Carolina Units: 2, 3, 4, 5, & 6

* * * * *

Dated: May 7, 2008.

Lyle Laverty,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E8–10887 Filed 5–14–08; 8:45 am]

BILLING CODE 4310–55–C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R2–ES–2008–0037; 92220–1113–0000–C5]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on Petition To Delist the Hualapai Mexican Vole (Microtus mexicanus hualpaiensis)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), make a 90-day finding on a petition to remove the Hualapai Mexican vole (*Microtus mexicanus hualpaiensis*) from the Federal List of Threatened and Endangered Wildlife and Plants pursuant to the Endangered Species Act (Act). We find that the petition presents substantial information indicating that delisting this mammal may be warranted. We are initiating a status review to determine if delisting this subspecies is warranted. We are requesting submission of any information on the Hualapai Mexican vole relevant to its listing status under the Act. Following this review, we will issue a 12-month finding on the petition.

DATES: This finding was made on May 15, 2008. To be considered in the 12-month finding on this petition, comments and information should be submitted to us by July 14, 2008.

ADDRESSES: You may submit written comments and materials to us by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: Docket FWS–R2–ES–2008–0037, Division of Policy and Directives Management, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Suite 222, Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the Public Comments Solicited section below for more information).

You may obtain copies of the petition, reports, and reviews of reports upon which this 90-day finding is based by visiting the Federal eRulemaking Portal at *http://www.regulations.gov* or our Web site at *http://www.fws.gov/southwest/es/arizona/*, or by contacting the Arizona Ecological Services Field Office at the address or contact numbers under **ADDRESSES**.

FOR FURTHER INFORMATION CONTACT: Steve Spangle, Field Supervisor, U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office; by telephone at 602/242–0210; or by facsimile at 602/242–2513. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Act (16 U.S.C. 1531 *et seq.*) requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition. To the maximum extent practicable, we must make this finding within 90 days of receipt of the petition, and publish the finding promptly in the **Federal Register**.

Our review of a 90-day finding under section 4(b)(3)(A) of the Act and 50 CFR 424.14(b) is limited to a determination of whether the information in the petition meets the ''substantial information'' threshold. ''Substantial information'' is defined in section 424.14(b) of our regulations as ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted.'' Petitioners need not prove that the petitioned action is warranted to support a ''substantial'' finding; instead, the key consideration in evaluating a petition for substantiality involves demonstration of the reliability and adequacy of the information supporting the action advocated by the petition.

We have to satisfy the Act's requirement that we use the best available science to make our decisions. However, we do not conduct additional research at this point, nor do we subject the petition to rigorous critical review. Rather, at the 90-day finding stage, we accept the petitioner's sources and characterizations of the information, to the extent that they appear to be based on accepted scientific principles (such as citing published and peer reviewed articles, or studies done in accordance with valid methodologies), unless we have specific information to the contrary. Our finding considers whether the petition states a reasonable case on its face that delisting may be warranted. Thus, our 90-day finding expresses no view as to the ultimate issue of whether the species should no longer be classified as a threatened species. We make no determinations as to the value, accuracy, completeness, or veracity of the petition. The contents of this finding summarize that information that was available to us at the time of the petition review.

In making this finding, we relied on information provided by the petitioner and information available in our files at the time we reviewed the petition, and we evaluated that information in accordance with 50 CFR 424.14(b). Our process for making a 90-day finding under section 4(b)(3)(A) of the Act and section 424.14(b) of our regulations is limited to a determination of whether the information contained in the petition meets the ''substantial information'' threshold.

On August 23, 2004, we received a petition dated August 18, 2004, from the Arizona Game and Fish Department (AGFD 2004) to delist the Hualapai Mexican vole (*Microtus mexicanus hualpaiensis*). The petition (AGFD 2004, pp. 4–6) states that: (1) The subspecies occurs over a much greater area and in higher numbers than previously thought; (2) it is likely that all populations referred to as *M. m. hualpaiensis*, along with other populations of the species in Arizona, should be referred to as *M. m. mogollonensis*; and (3) the threats faced by this more widespread taxon do not indicate that listing under the Act is warranted.

Species Information

The Mexican vole is a cinnamon-brown, mouse-sized rodent approximately 5.5 inches (14 cm) long with a short tail and small ears that are obscured by its fur (Hoffmeister 1986, p. 441; 52 FR 36776, October 1, 1987).

Goldman (1938, pp. 493–494) described and named the Hualapai Mexican vole (also known as the Hualapai vole) as *Microtus mexicanus hualapaiensis* in 1938. This was based on only four specimens, but Cockrum (1960, p. 210), Hall (1981, p. 481), and Hoffmeister (1986, pp. 444–445) all recognized the subspecies. *M. m.*

hualpaiensis has been considered one of three subspecies of *M. mexicanus* found in Arizona (Kime *et al.* 1995, p. 1). It was distinguished from *M. m. navaho* to the northeast by a slightly longer body, longer tail, and longer and broader skull (Hoffmeister 1986, p. 443). It was distinguished from *M. m. mogollonensis* by a longer body, shorter tail, and a longer and narrower skull (Hoffmeister 1986, p. 443).

The final rule listing *M. m. hualpaiensis* (52 FR 36776) indicated that this subspecies occupied the Hualapai Mountains, but also acknowledged that Spicer *et al.* (1985, p. 10) noted similar voles from the Music Mountains and that Hoffmeister (1986, p. 445) had tentatively assigned specimens from Prospect Valley to *M. m. hualpaiensis*. The rule stated that if future taxonomic evaluation of voles from the Music Mountains and Prospect Valley should indicate that they are *M. m. hualpaiensis*, the voles from the Music Mountains and Prospect Valley would be covered by the listing of the subspecies.

At the time of Federal listing, little was known about the life history of the Hualapai Mexican vole, but it was assumed to be similar to the other two *M. mexicanus* subspecies (Service 1991, p. 1). Hualapai Mexican voles are probably active year-round, as are other *Microtus* species (Spicer *et al.* 1985, p. 22). It is assumed they have small litters, similar to the other two subspecies, as they have only two pairs of mammae (mammary glands), which limits the number of young that can be nursed (Hoffmeister 1986, p. 443). Mexican voles are typically found in xeric (dry) habitats, unlike most *Microtus* species, which are associated with mesic (intermediate moisture) habitats (Tamarin 1985, p. 99).

A recovery plan for the Hualapai Mexican vole was completed and signed in August 1991. It outlined recovery objectives and has directed management and research priorities for the ensuing years.

Recent Taxonomy

Following Federal listing of the Hualapai Mexican vole, several focused surveys of the subspecies' distribution, habitat requirements, and genetic relationship to other *M. mexicanus* subspecies were undertaken. The petition reviews the taxonomic history of the Hualapai Mexican vole and recent genetic studies that have a bearing on its taxonomic status and concludes that only one subspecies of *M. mexicanus* should be recognized in Arizona. We briefly describe the petition's interpretations of these genetic studies below. Researchers did not collect or analyze samples from the exact same locations, so site names across studies do not necessarily match. We have presented site names and resulting population assignments as described in the petition and studies cited in the petition.

As a point of clarification, Frey and LaRue (1993, p. 176) asserted that Mexican voles from Mexico are distinct from populations in the United States based on genetic and morphologic data. They assigned voles in Arizona, New Mexico, and Texas that were formerly named *M. mexicanus* to *M. mogollonensis* (Frey and LaRue 1993, pp. 176–177). Because the Service did not formally change the scientific name of the Hualapai Mexican vole, we continue to use the name *M. mexicanus* in this finding.

The petition states that in 1993, Frey and Yates conducted a genetic analysis on tissue samples from 12 populations (AGFD 2004, p. 2); there was an additional population from Mexico (Frey and Yates 1995, p. 9) not mentioned in the petition. According to the petition (AGFD 2004, pp. 2–3), the results showed that three populations (Hualapai Mountains, Hualapai Indian Reservation, and Music Mountains) were genetically distinct from other populations in Arizona and indicated that all three populations might be placed in the subspecies *M. m. hualpaiensis*. The petition noted that Frey and Yates (1993) stipulated that additional analyses including larger sample sizes might substantiate their findings. The petition states that Frey and Yates (1995) continued their work on the three Arizona subspecies and found that six of the populations sampled (Hualapai Mountains, Hualapai Indian Reservation, Music Mountains, Aubrey Cliffs/Chino Wash, Santa Maria Mountains, and Bradshaw Mountains) could be placed in the subspecies *M. m. hualpaiensis* (AGFD 2004, p. 3). In fact, Frey and Yates (1995, p. 9) treated the Aubrey Cliffs and Chino Wash populations as two distinct populations, bringing the number of *M. m. hualpaiensis* populations to seven. They also believed that two other populations (Round Mountain and Sierra Prieta) could be placed in the subspecies *M. m. hualpaiensis*, based on geographic proximity (AGFD 2004, p. 3).

Additional genetic analyses were conducted by Busch *et al.* (2001). According to the petition (AGFD 2004, p. 3), they assessed the evolutionary relatedness of 11 of the 16 populations that Frey and Yates reported on in 1995. In addition, they analyzed samples taken from specimens in two other areas (Watson Woods and Navajo Mountain). The petition states that their results did not support separation of *M. mexicanus* in Arizona into three distinct subspecies. Populations assigned to *M. m. navajo* from Navajo Mountain, Mingus Mountain, San Francisco Peaks, and the Grand Canyon South Rim, and populations assigned to *M. m. mogollonensis* from the Mogollon Rim, Chuska Mountains, and White Mountains were not differentiated from those from the Hualapai Mountains, Hualapai Indian Reservation, Aubrey Cliffs, Bradshaw Mountains, Watson Woods, and Sierra Prieta (AGFD 2004, p. 3; Busch *et al.* 2001, p. 2). The petition states that the authors believed the specimens from the White Mountains and Chuska Mountains could be considered a different subspecies, or they may simply show some genetic difference due to geographic separation (AGFD 2004, p. 3; Busch *et al.* 2001, p. 11–12). According to Busch *et al.* (2001, p. 12) and acknowledged by the petitioner, there is only one subspecies of *M. mexicanus* in Arizona.

The petition included reviews by five experts familiar with genetic research who analyzed the Busch *et al.* (2001) report. According to the petition (AGFD 2004, pp. 3–4), one reviewer believed the data collected from Hualapai Mountains, Hualapai Indian Reservation, Aubrey Cliffs/Chino Wash, Bradshaw Mountains/Watson Woods, and Sierra Prieta represented five populations of *M. m. hualpaiensis.* Conversely, the reviewer concluded that the data from three sites (Mingus Mountain, San Francisco Peaks, and Grand Canyon South Rim) represented a different subspecies (*M. m. navaho*). The reviewer also suggested that the populations found in the Music Mountains and the Santa Maria Mountains were likely *M. m. hualpaiensis* based on ''less well-supported morphologic, genetic, and biogeographic data,'' for a total of seven populations. This reviewer did not include a discussion of *M. m. mogollonensis* and the validity of that subspecies. The petition states that the other four reviewers concurred overall with the conclusions in Busch *et al.* (2001) that all populations sampled could be assigned to *M. m. hualpaiensis* (AGFD 2004, p. 4).

Additionally, AGFD sent Busch *et al.*'s 2001 report to two different experts on mammalian taxonomy. The petition states that one of the taxonomic reviewers agreed with the dissenting genetic review discussed in the preceding paragraph that there are sufficient data to support distinguishing

more than one subspecies (AGFD 2004, p. 4). The reviewer concurred with the geneticist's population assignments of the subspecies. The petition states that the other taxonomic reviewer concluded that there is no basis to consider the three subspecies separate, that the reviewer stated that data used by Hoffmeister (1986) were insufficient to recognize three subspecies, and the genetic analyses (DNA and isozyme) (Frey and Yates 1993; 1995; Busch *et al.* 2001) were subject to methodological problems (AGFD 2004, p. 4). The reviewer asserted that all three subspecies should be considered as one, *M. m. mogollonensis.*

In summary, the various analyses and reviews present multiple interpretations of the taxonomy and distribution of voles in Arizona, none of which match that of our original listing. Although we are unable to ascertain the correct interpretation at this time, we believe the petitioner has presented reliable and accurate information indicating (1) That the Hualapai Mexican vole, as currently listed, may not be a valid taxonomic entity; and (2) that if the Hualapai Mexican vole is a valid taxon, it likely occurs throughout a greater range than originally thought.

Status Assessment

Pursuant to section 4 of the Act, we may list or delist a species, subspecies, or Distinct Population Segment of vertebrate taxa on the basis of any of the following five factors: (A) Present or threatened destruction, modification, or curtailment of habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. If it is determined that the Hualapai Mexican vole is a valid taxon occurring throughout a larger range, a new status review, based on a review of the five listing factors, would be required in order to determine if the Hualapai Mexican vole still meets the definition of threatened or endangered under the Act. This 90-day finding is not a status assessment and does not constitute a status review under the Act. Therefore, what follows below is a preliminary review of the factors affecting this subspecies, as presented by the petitioner. Please note that the petitioner addressed the subspecies as though it occurs in a larger range than what is currently recognized. Because we only monitor populations of Hualapai Mexican vole that occur within the Hualapai Mountains, as described in the listing rule, we have very limited information in our files with which to draw conclusions regarding potential populations outside the Hualapai Mountains.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The final rule listing the subspecies considered the Hualapai Mexican vole to be extremely rare, with one of the most limited habitats of any North American mammal (52 FR 36776). The habitat was considered in danger of further degradation by cattle grazing and increased human recreational activities. The petition asserts that the subspecies occurs over a much greater area and in higher numbers than previously thought (AGFD 2004, pp. 2–6; see Recent Taxonomy discussion above). Therefore, loss of limited habitat should no longer be considered a threat to the subspecies. In addition, the petitioner asserts that the Hualapai Mexican vole is found in more xeric habitats than most Microtus species (AGFD 2004, p. 5); therefore, trampling of spring areas by cattle will not negatively affect the subspecies as intensely as it was thought when the subspecies was listed.

The Service only tracks the status of the Hualapai Mexican vole populations within the Hualapai Mountains, where it was listed. There is not enough information in our files to assess the reliability of information in the petition; therefore, we assume it is reliable.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

While the Hualapai Mexican vole is not sought for commercial, recreational, or educational purposes, persecuted as a pest, or collected for the pet trade, the final rule listing the species indicated that an intensive trapping effort could eliminate a population (52 FR 36773). The petition notes that collecting of the Hualapai Mexican vole has historically been done for genetic analyses and comparison of morphological measurements and that, historically, the number of individuals taken was small relative to the number captured (AGFD 2004, p. 6). Genetic analyses may continue, but will be monitored through scientific collection permits authorized by the petitioner, AGFD. The petitioner does not believe that this factor rises to the level of a threat.

Overutilization for commercial, recreational, scientific, or education purposes was not presented as a threat in the final listing rule, and we have not received any reports of overutilization of Hualapai Mexican voles in the Hualapai Mountains since the listing of the subspecies. We have no information in our files to indicate that the petitioner's information is unreliable or inaccurate.

C. Disease or Predation

The final rule listing the Hualapai Mexican vole states that little is known about disease or predation in Hualapai Mexican vole populations (52 FR 36778). However, species of *Microtus* are usually a fundamental part of the base of the food pyramid, and many potential predators occur in the Hualapai Mountains. Additionally, domestic cats may pose a threat from the expanding residential area near Hualapai Mountain Park. The petitioner notes that predation is not known to be a problem, especially if the range of the subspecies is not limited to the Hualapai Mountains (AGFD 2004, p. 6). Additionally, the petitioner notes that domestic cats have rarely been observed in Hualapai Mountain Park and, therefore, believes the threat of predation on Hualapai Mexican voles is overstated in the listing rule. However, the petitioner provides no information to support these assertions.

Although domestic cats have been mentioned as a threat (Spicer 1985, p. 28), we have no information to suggest these cats represent a significant predation threat to the Hualapai Mexican vole. Therefore, we assume that the petitioner's information is reliable.

D. The Inadequacy of Existing Regulatory Mechanisms

The petition states that the removal of Federal protections afforded by the Act will not negatively affect Hualapai Mexican vole populations, since the species' range and habitat requirements are not as restricted as previously thought (AGFD 2004, p. 6). The petition also recognizes that Arizona Game and Fish Commission Order 14 prohibits hunting or trapping of Hualapai Mexican voles. Arizona Revised Statute (i.e., State Law) allows for the Commission to issue orders regarding the hunting and trapping of wildlife in Arizona. Also, since the petitioner, AGFD, has authority over scientific collection permits, it can approve or deny permits based on submitted research proposals (AGFD 2004, pp. 6–7).

The Service only tracks the status of the Hualapai Mexican vole populations within the Hualapai Mountains, where it is listed. We do not have any information in our files to indicate that a lack of regulatory mechanisms could be a problem. Therefore, we assume that the petitioner's information is reliable.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The final rule listing the Hualapai Mexican vole notes that the areas of habitat supporting the subspecies are small and isolated (52 FR 36778). This mammal is thus fragmented into small populations that may be subject to inbreeding and reduced genetic variability. Drought, which can reduce water flow, vegetation growth, and ground cover, is an additional threat to these populations (52 FR 36778). The petition asserts that because the Hualapai Mexican vole's range is not as restricted as once thought, manmade factors should not negatively influence the continued existence of the species (AGFD 2004, p. 7). Additionally, the petitioner states that drought is not a serious threat to Hualapai Mexican vole populations, because the normal and regular occurrence of drought probably allowed this vole to adapt to drier habitat conditions (AGFD 2004, p. 7). The petitioner also suggested that prescribed fire might improve or expand the habitat of the species (AGFD 2004, p. 7).

The Service only tracks the status of the Hualapai Mexican vole populations within the Hualapai Mountains, where it is listed. The apparent continued presence of the vole in those mountains (Kime *et al.* 1995, p. 6) suggests that drought may not be as great a threat as was thought at the time of listing. We did not address prescribed fire as a manmade factor in our listing rule. There is not enough information in our files to draw conclusions regarding the effects of drought or prescribed burns on additional populations; however, we have no information to indicate that the petitioner's information is unreliable or inaccurate. Therefore, we assumed the petitioner's information is reliable.

Finding

We have reviewed the petition and the supporting documents, as well as other information in our files. We find that the petition presents substantial information indicating that delisting the Hualapai Mexican vole may be warranted. The petitioner has provided information suggesting the taxon may occur over a greater range of the State than known at the time of listing, and may not even warrant taxonomic standing as a subspecies. As discussed above, given the limited information in our files regarding these issues, we assume that the information presented in the petition is reliable. If reliable, that information is adequate to demonstrate that delisting may be warranted. While significant questions remain about the taxonomy of the species and threats facing the additional populations of voles, we consider these questions to be issues relevant to the listing determination that warrant further investigation. Accordingly, we believe it is appropriate to consider this information and any other new information available about this species, and the threats it may face, in a status review.

Public Information Solicited

When we make a finding that a petition presents substantial information to indicate that delisting a species may be warranted, we are required to promptly commence a review of the status of the species. Based on results of the status review, we make a 12-month finding as required by section 4(b)(3)(B) of the Act. To ensure that the status review is complete and based on the best available scientific information, we are soliciting information on *M. mexicanus* in Arizona. This includes information regarding historical and current distribution, taxonomic status, biology and ecology, ongoing conservation measures for the species and its habitat, and threats to the species and its habitat. This information is particularly needed for any populations of the taxon that were not among the three potential populations considered to be *M. m. hualapaiensis* in the 1987 final listing. We also request information regarding the adequacy of existing regulatory mechanisms. We request any additional information, comments, and suggestions from the public, other concerned governmental agencies, Tribes, the scientific community, industry or environmental entities, or any other interested parties concerning the status of *M. mexicanus* in Arizona.

We are particularly interested in the views of scientists with expertise in mammalian taxonomy and the use of genetic data when making taxonomic determinations of species and subspecies. In particular, we are interested in review and comment on whether the information such as the original morphological evidence and new genetic reports support or refute the taxonomic validity of *M. m. hualapaiensis.*

If you wish to comment, you may submit your comments and materials concerning this finding. You may submit your comments and materials concerning the taxonomic and listing status of *M. m. hualapaiensis* by one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section. We will not accept anonymous comments; your comments must include your first and last name, city, State , country, and postal (zip) code. Finally, we will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in the **DATES** section. Comments submitted via *http://www.regulations.gov* must be submitted before midnight (Eastern Standard Time) on the date specified in the **DATES** section.

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov.* If you provide personal identifying information in addition to the required items specified on the previous paragraph, such as your street address, phone number, or e-mail address, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this finding, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office, 2321 W. Royal Palm Road, Suite 103, Phoenix, AZ 85021 (602/242–0210).

References Cited

A complete list of all references cited in this finding is available, upon request, from the U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office, 2321 W. Royal Palm Road, Suite 103, Phoenix, AZ 85021 (602/242–0210).

Authority

The authority for this action is section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: May 2, 2008.

Kenneth Stansell,

Acting Director, Fish and Wildlife Service.

[FR Doc. E8–10906 Filed 5–14–08; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 73, No. 95
Thursday, May 15, 2008

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

Forest Service

Dakota Prairie Grasslands, Medora Ranger District; North Dakota; North Billings County Range Allotment Management Plan Revisions

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Medora Ranger District, Dakota Prairie Grasslands, proposes to continue grazing on 48 allotments in a manner consistent with direction set forth in the Dakota Prairie Grasslands Land and Resource Management Plan (Grasslands Plan) and applicable laws. The ETS will lay the groundwork for revising the Allotment Management Plans (AMPs) for the 48 allotments. Site-specific resource objectives, allowable grazing strategies, and adaptive management tools will be set forth in the EIS in order to allow managers flexibility to meet objectives.

DATES: Comments concerning the scope of the analysis must be received within 30 days of publication of this notice in the **Federal Register**. The draft environmental impact statement is expected in August 2008 and the final environmental impact statement is expected in December 2008.

ADDRESSES: Send written comments to Ronald W. Jablonski, Jr., District Ranger, Medora Ranger District, 23 Ave W., Suite B, Dickinson, ND 58601, or e-mail your comments to *comments-northern-dakota-praire-medora@fs.fed.us*.

FOR FURTHER INFORMATION CONTACT: Jeff Adams, Project Leader, or Nickole Dahl, Co-Project Leader at the Medora Ranger District, USDA Forest Service at the above address or call (701) 227–7800.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose of this action is to develop AMPs for permitted domestic livestock grazing using management that is consistent with the Grasslands Plan direction and to maintain, meet, or move towards desired resource conditions within a 10–20 year timeframe following the decision. There is an overall need for greater management flexibility to meet Grasslands Plan resource goals and objectives and to cope with fluctuations in environmental and social conditions including, but not limited to, annual changes in weather; to be responsive to permittee requests for reasonable operational adjustments; and to respond to unforeseen issues.

Proposed Action

The Forest Service proposes to continue grazing on 48 allotments which are located on the Medora Ranger District in a manner consistent with direction in the Grasslands Plan and applicable laws. The proposal takes an adaptive management approach to allow flexibility for both the Forest Service and the livestock operators to manage appropriately under changing conditions.

The Forest Service has developed allotment-specific desired conditions, needs, and adaptive management proposals designed to meet the overall purpose and need for the project area. Affected resources will be monitored to determine whether they are moving toward, meeting or maintaining desired conditions. If desired conditions are not being met, or measureable progress is not being made toward them, then adaptive management practices will be employed.

Possible Alternatives

Alternatives in addition to the proposed action include:

- A No Action alternative, which would exclude all domestic livestock grazing.
- A current management alternative, which would continue grazing as currently authorized.
- An adaptive management alternative that accounts for changes in animal unit forage demands based on changes in cow/calf size.
- An adaptive management alternative which considers actions that can be implemented to maintain or improve resource conditions including adjusting authorized use based on estimated livestock carrying capacities and changes in animal unit forage demands based on cow/calf size.

Other alternatives may be developed in response to comments.

Responsible Official

Ronald W. Jablonski, Jr., Medora District Ranger is the responsible official. See address under the **ADDRESSES** section above.

Nature of Decision To Be Made

The District Ranger will decide, whether to implement specific changes in grazing management to meet desired conditions, what optional grazing strategies may be used to meet desired conditions, and what monitoring items need to be included.

Scoping Process

Public participation is important to this analysis. Part of the goal of public involvement is to identify additional issues and to refine general issues. Scoping notices will be mailed to the public on or before May 23, 2008. People may visit with Forest Service officials at any time during the analysis and prior to the decision. Two periods are specifically designated for comments on the analysis: (1) During the scoping process, and (2) during the draft ETS period. During the scoping process, the Forest Service seeks additional information and comments from individuals, organizations, and federal, state, and local agencies that may be interested in or affected by the proposed action. The Forest Service invites written comments and suggestions on this action, particularly in terms of issues and alternative development. While public participation in this analysis is welcome at any time, comments received within 30 days of the publication of this notice will be especially useful in the preparation of the draft environmental impact statement.

Preliminary Issues

Issues identified through preliminary work include: Effects of livestock grazing in woody draws, effects of livestock grazing on riparian areas, effects of livestock grazing on herbaceous structure, effects of potential management actions on the local economy, drought, species composition, and the need for a drought management strategy.

Comment Requested

This notice of intent initiates the scoping proces which guides the development of the environmental impact statement.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, *490 F. Supp. 1334, 1338* (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: May 8, 2008.

Ronald W. Jablonski, Jr.,

District Ranger.

[FR Doc. E8–10732 Filed 5–14–08; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Southeast Region Permit Family of Forms.

Form Number(s): None.

OMB Approval Number: 0648–0205.

Type of Request: Regular submission.

Burden Hours: 15,671.

Number of Respondents: 16,820.

Average Hours per Response: The new information is included in a permit form, at no additional burden.

Needs and Uses: The participants in the federally-regulated fisheries in the Exclusive Economic Zone of the South Atlantic, Gulf of Mexico, and Caribbean are required to obtain federal permits under the existing permit program for the specific Fishery Management Plans of each region. National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NOAA Fisheries Service) needs information from the applications and associated data collections to identify fishing vessels/dealers/participants, properly manage the fisheries, and generate fishery-specific data.

Additional information to be collected is crew size and percentage of ownership. The need to collect percentage of ownership in a corporation from permit holders is necessary information for the red snapper Individual Fishing Quota (IFQ) program. The IFQ program has a cap on share percent ownership of six percent. Without the ability to track corporate shareholder information, NOAA Fisheries Service will be unable to enforce this share ownership cap. The crew size information is being collected to better understand the nature of the fishery and the number of participants who are not permit holders.

Affected Public: Business or other for-profit organizations.

Frequency: Annually and on occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov*.

Dated: May 12, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–10852 Filed 5–14–08; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Southeast Region Gulf of Mexico Red Snapper IFQ Program.

OMB Approval Number: 0648–0551.

Form Number(s): None.

Type of Request: Regular submission.

Burden Hours: 1,038 total (24 from revision).

Number of Respondents: 1,417.

Average Hours per Response: 1 minute.

Needs and Uses: The National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NOAA Fisheries Service) manages the red snapper fishery in the waters of the Gulf of Mexico under the Reef Fish Fishery Management Plan (FMP). The Individual Fishing Quota (IFQ) program was implemented to reduce the overcapacity in the fishery and end the derby fishing conditions that resulted from that overcapitalization. As part of this program, the Southeast Regional Office needs to collect percentage of

ownership in a corporation from IFQ participants. The IFQ program has a cap on share percent of ownership of six percent. This revision is intended to allow NOAA Fisheries Service to collect important corporate ownership information to ensure that the share ownership cap in the IFQ program is not violated.

Affected Public: Business or other for-profit organizations.

Frequency: One-time only.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov*.

Dated: May 12, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–10853 Filed 5–14–08; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Institute of Standards and Technology (NIST).

Title: Evacuation Movement and Behavior Questionnaires.

OMB Control Number: None.

Form Number(s): None.

Type of Request: Regular submission.

Burden Hours: 1,111.

Number of Respondents: 6,666.

Average Hours per Response: 10 minutes.

Needs and Uses: The data will be collected via questionnaires on occupant behavior during regularly scheduled evacuation drills from high-rise buildings (varying heights, 1–10 stories, 11–20 stories, 21–35 stories, and 35+ stories) across the United States. The occupant behavioral information is to ascertain the occupants' knowledge of the procedure, awareness of the event, and behavior during the evacuation. This data will be used to improve egress designs for buildings, safety assessment models, and occupant training and education about what to do in an emergency.

Affected Public: Individuals or households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Jasmeet Seehra, (202) 395–3123.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jasmeet Seehra, OMB Desk Officer, FAX number (202) 395–5806 or via the Internet at *Jasmeet_K._Seehra@omb.eop.gov*.

Dated: May 12, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–10854 Filed 5–14–08; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

International Trade Administration

(A–552–801)

Certain Frozen Fish Fillets from Vietnam: Extension of Time Limit for Final Results of Changed Circumstances Review

AGENCY: Import Administration.

EFFECTIVE DATE: May 15, 2008.

FOR FURTHER INFORMATION CONTACT: Javier Barrientos, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2243.

SUPPLEMENTARY INFORMATION: On August 10, 2007, the Department of Commerce (the Department) issued its preliminary results for the changed circumstances review of the antidumping duty order of certain frozen fish fillets from Vietnam. *See Certain Frozen Fish Fillets from Vietnam: Notice of Initiation and Preliminary Results of Changed Circumstances Review*, 72 FR 46604 (August 21, 2007) (*Preliminary Results*). The current deadline for the final results of this review is May 6, 2008.

Extension of Time Limits for Final Results

In our *Preliminary Results*, we indicated we would issue the final results in the instant review within 270 days after the date on which the changed circumstances review is initiated. However, it is not practicable to complete the review within this time period. Accordingly, pursuant to 19 CFR 351.302(b), we are extending the time limit by 60 days.

The Department finds that it is not practicable to complete this review within the original time frame. Subsequent to the *Preliminary Results*, and receipt of Vinh Hoan Co., Ltd./Corp.'s and Petitioners' (the Catfish Farmers of America and individual U.S. catfish processors) case briefs, the Department requested and received new information from Vinh Hoan on which the Department intends to provide interested parties an opportunity to comment. Consequently, in accordance with 19 CFR 351.302(b), the Department is extending the time period for issuing the final results in the instant review by 60 days. Therefore, the final results will be due no later than July 5, 2008. As July 5, 2008, falls on a Saturday, our final results will be issued no later than Monday July 7, 2008.

This notice is published in accordance with section 771(i) of the Tariff Act of 1930, as amended.

Dated: May 6, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–10902 Filed 5–14–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–533–820)

Certain Hot–Rolled Carbon Steel Flat Products from India: Extension of Time Limits for the Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Christopher Hargett, AD/CVD Operations, Office 3, Import Administration, International Trade

Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230; telephone: (202) 482–4161.

SUPPLEMENTARY INFORMATION:

Background

On February 2, 2007, the U.S. Department of Commerce (''Department'') published a notice of initiation of the administrative review of the antidumping duty order on certain hot–rolled carbon steel flat products from India, covering the period December 1, 2005, to November 30, 2006. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 72 FR 5005 (February 2, 2007). On December 31, 2007, the Department published the preliminary results of the antidumping duty administrative review for certain hot–rolled carbon steel flat products from India. *See Certain Hot–Rolled Carbon Steel Flat Products from India: Notice of Preliminary Results of Antidumping Duty Administrative Review*, 72 FR 74267 (December 31, 2007). On April 7, 2008, the Department partially extended the time limit for the final results of this review. *See Certain Hot–Rolled Carbon Steel Flat Products from India: Extension of Time Limits for the Final Results of Antidumping Duty Administrative Review*, 73 FR 18753 (April 7, 2008). The final results of this review are currently due no later than May 14, 2008.

Extension for Time Limit of Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department to issue final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within that time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the final results to a maximum of 180 days. *See also* 19 CFR 351.213(h)(2).

We determine that it is not practicable to complete the final results of this review within the current time limit. Interested parties to this review submitted extensive comments and rebuttal comments on the preliminary results of this review, requiring substantial analysis by the Department. Thus, the Department is extending the final results by an additional 16 days, in accordance with section 751(a)(3)(A) of the Act, to allow sufficient time to thoroughly analyze interested parties' case briefs and rebuttal briefs. The final results are now due no later than May 30, 2008. This extension is issued and published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: May 9, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–10905 Filed 5–14–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–549–817)

Certain Hot–Rolled Carbon Steel Flat Products from Thailand: Notice of Rescission of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On December 27, 2007, the U.S. Department of Commerce (the Department) published a notice of initiation of an administrative review of the antidumping duty order on certain hot–rolled carbon steel flat products (hot–rolled steel) from Thailand. The review covers two manufacturers/exporters: G Steel Public Company Limited (G Steel) and Nakornthai Strip Mill Public Company Limited (NSM). The period of review (POR) is November 1, 2006, through October 31, 2007. Based on requests from United States Steel Corporation (petitioner) and Nucor Corporation (Nucor), we are now rescinding this administrative review.

EFFECTIVE DATE: May 15, 2008.

FOR FURTHER INFORMATION CONTACT: Stephen Bailey or Angelica Mendoza, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0193 or (202) 482–9013, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 1, 2007, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on certain hot–rolled carbon steel flat products from Thailand for the period November 1, 2006, through October 31, 2007. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 72 FR 61859 (November 1, 2007). On November 30, 2007, petitioner, a domestic producer of the subject merchandise, and Nucor made timely requests that the Department conduct an administrative review of G Steel and NSM. On December 27, 2007, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 72 FR 73315 (December 27, 2007).

On January 2, 2008, both G Steel and NSM submitted a letter to the Department certifying that the companies made no shipments or entries for consumption in the United States of the subject merchandise during the POR and requested that the Department rescind their respective administrative reviews. On February 15, 2008, the Department issued a memorandum to the file detailing our request to U.S. Customs and Border Protection (CBP) for import data for G Steel and NSM during the POR. *See* Memorandum to the File titled, ''G Steel Public Company Limited and Nakornthai Strip Mill Public Company Limited – No Shipments of Certain Hot–Rolled Carbon Steel Flat Products from Thailand Pursuant to U.S. Customs and Border Protection Inquiry,'' from Dena Crossland, Analyst, dated February 15, 2008 (CBP Memo). The Department explained in the CBP Memo that it received no reply from CBP regarding our request for shipment and entry information, and the Department preliminarily determined that neither company had shipments or entries of subject merchandise during the POR. On March 11, 2008, both petitioner and Nucor submitted letters requesting that the Department rescind the administrative review with respect to both G Steel and NSM.

Scope of the Antidumping Duty Review

The products covered by this antidumping duty review are certain hot–rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non–metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths, of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat–rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without patterns in relief) of a thickness

not less than 4.0 mm is not included within the scope of this review.

Specifically included within the scope of this review are vacuum degassed, fully stabilized (commonly referred to as interstitial–free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro–alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro–alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro–alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this review, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products in which: i) iron predominates, by weight, over each of the other contained elements; ii) the carbon content is 2 percent or less, by weight; and iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this review unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of this review:

- Alloy hot–rolled steel products in which at least one of the chemical elements exceeds those listed above (including, *e.g.*, American Society for Testing and Materials (ASTM) specifications A543, A387, A514, A517, A506).
- Society of Automotive Engineers (SAE)/American Iron & Steel Institute (AISI) grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico–manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
- ASTM specifications A710 and A736.
- USS abrasion–resistant steels (USS AR 400, USS AR 500).
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
- Non–rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.

The merchandise subject to this review is classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot–rolled carbon steel flat products covered by this review, including: vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTSUS subheadings are provided for convenience and CBP purposes, the written description of the merchandise is dispositive.

Rescission of the Administrative Review

Pursuant to 19 CFR § 351.213(d)(1), the Secretary will rescind an administrative review under this section, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review.

Because petitioner and Nucor submitted their requests to rescind the administrative review of G Steel and NSM within 90 days of the date of publication of the notice of initiation, the Department is rescinding this review in accordance with 19 CFR 351.213(d)(1). The Department intends to issue assessment instructions to CBP 15 days after the date of publication of this rescission of administrative review.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: May 8, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–10904 Filed 5–14–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XH73

Gulf of Mexico Fishery Management Council; Public Hearings; Cancellation

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

ACTION: Notice of public hearings.

SUMMARY: The Gulf of Mexico Fishery Management Council is cancelling the previously published public hearing on Aquaculture Amendment scheduled on Wednesday, May 28, 2008. The Council will publish a **Federal Register** notice when dates for this hearing are set.

DATES: The public hearing scheduled to convene at 6 pm on Wednesday, May 28, 2008 and conclude no later than 9 pm has been cancelled and will be rescheduled at a later date.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, Florida 33607.

FOR FURTHER INFORMATION CONTACT: Wayne Swingle, Executive Director; telephone: 813–348–1630.

SUPPLEMENTARY INFORMATION: The original notice published in the **Federal Register** on May 12, 2008 (73 FR 26963). All other information contained in the original notice remains unchanged. Copies of the Amendment can be obtained by calling the Council office at 813–348–1630.

Dated: May 12, 2008.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E8–10867 Filed 5–14–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XH95

New England Fishery Management Council; Public Meeting

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

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a three-day Council meeting on June 3–5, 2008 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Tuesday, June 3 beginning at 9 a.m., and Wednesday and Thursday, June 4 and 5, beginning at 8:30 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn by the Bay, 88 Spring Street, Portland, ME 04101; telephone (207)775–2311. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone (978) 465–0492.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council, (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Tuesday, June 3, 2008

Following introductions and any announcements, the Council will receive a series of brief reports from the Council Chairman and Executive Director, the NOAA Fisheries Northeast Regional Administrator, Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons, NOAA General Counsel, NOAA Enforcement and representatives of the U.S. Coast Guard and the Atlantic States Marine Fisheries Commission. The Council also will review any experimental fishery permits requests published since the last Council meeting and possibly offer comments. Dr. William Overholtz from NOAA's Northeast Fisheries Science Center will then present a report titled An Ecosystem Approach to the Assessment of the Gulf of Maine/Georges Bank Herring Complex. Following a lunch break, the Council's Skate Committee intends to approve final management measures and alternatives for purposes of inclusion and analyses in Amendment 3 to the Skate Fishery Management Plan (FMP) and it's associated Draft Environmental Impact Statement. The day will end with action on the Council's Standard Bycatch Reporting Methodology Amendment. Members will review and approve, with modifications as necessary, staff recommendations for observer coverage levels for NEFMC-managed fisheries.

Wednesday, June 4, 2008

The Council will receive reports on results of the April 2008 Groundfish Assessment Review Meeting on biological reference points for species managed through the Council's Northeast Multispecies FMP and a Gulf of Maine Research Institute-funded project to evaluate monitoring and reporting needs that would allow for effective tracking of catch by ''sector'' vessels in New England. Prior to a lunch break, the Council's Groundfish Committee will review and ask for approval of management measures along with the identification of preferred alternatives for Draft Amendment 16 to the Northeast Multispecies (Groundfish) FMP for purposes of analyses and to solicit comments from the public. This agenda item will be discussed until the Council meeting adjourns for the day.

Thursday, June 5, 2008

The Council will address scoping comments on Amendment 15 to the Sea Scallop FMP. The Scallop Committee Chairman also will provide the Council with a brief overview of the recent Sea Scallop Advisory Panel meeting concerning scallop survey calibration research and activities to evaluate optical/acoustic survey technologies. The Habitat Committee will describe its draft Risk Assessment on the Adverse Impacts of Fishing on Essential Fisher Habitat to the Council. This will be followed by two presentations from the NMFS Office of Sustainable Fisheries: 1) a review of the agency's proposed rule to integrate National Environmental Policy Act requirements with Magnuson-Stevens Act requirements for fishery management plans; and 2) a review of the agency's proposed rule to address guidelines for annual catch limits and accountability measures in fishery management plans. NMFS Northeast Regional Office staff will provide the Council with an update on possible changes to the Harbor Porpoise Take Reduction Plan; and the Council's Research Steering Committee will report on recently reviewed habitat and a number of other cooperative research projects. The agenda will conclude with a report on the Stellwagen Bank National Marine Sanctuary's 2008 Draft Management Plan and Environmental Assessment.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: May 12, 2008.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E8–10846 Filed 5–14–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 14, 2008.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires

that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: May 12, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Revision.

Title: Federal Family Education Loan (FFEL) Program, Federal Perkins Loan (Perkins Loan) Program, William D. Ford Federal Direct Loan (Direct Loan) Program, and Teacher Education Assistance for College and Higher Education (TEACH) Grant Program Discharge Application: Total and Permanent Disability.

Frequency: On occasion.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 30,000.

Burden Hours: 15,000.

Abstract: The Discharge Application: Total and Permanent Disability serves as the means by which an individual who is totally and permanently disabled (in accordance with the U.S. Department of Education's regulations) applies for a discharge or his or her student loans made under the FFEL, Perkins Loan, or Direct Loan program loans, and TEACH Grant service obligation.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3687. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E8–10925 Filed 5–14–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 16, 2008.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response ''Comment: [insert OMB number], [insert abbreviated collection name, e.g., ''Upward Bound Evaluation'']. Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: May 9, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Revision.

Title: FRSS Educational Technology in Public School Districts.

Frequency: One time.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 1,550.

Burden Hours: 775.

Abstract: This fast response survey will collect information from a sample of 1,550 public school districts. It will provide national data on technology access and use. The survey will cover topics such as technology infrastructure, treatment of older computers, district policies on acceptable uses of technologies, teacher professional development, resources provided to schools and teachers, and respondent perceptions about technology use in the district.

Requests for copies of the information collection submission for OMB review

may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3680. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E8–10926 Filed 5–14–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 14, 2008.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: May 9, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.

Title: Annual Progress Reporting Form for the American Indian Vocational Rehabilitation Services (AIVRS) Program.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 73.

Burden Hours: 1,022.

Abstract: This data collection will be conducted annually to obtain program and performance information from the AIVRS grantees on their project activities. The information collected will assist federal Rehabilitation Services Administration (RSA) staff in responding to the Government Performance and Results Act (GPRA). Data will primarily be collected through an Internet form.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3686. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E8–10927 Filed 5–14–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

May 7, 2008.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC08–78–000.

Applicants: Duke Energy Ohio, Inc., Cinergy Corp., Cinergy Power Investments, Inc., Generating Facility LLCs.

Description: Amendment to Application and Request for Extended Notice Period for Comments of Cinergy Corp., *et.al.*

Filed Date: 05/06/2008.

Accession Number: 20080506–5107.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 27, 2008.

Docket Numbers: EC08–85–000.

Applicants: Mountain View Power Partners, LLC; AES Western Wind MV Acquisition, LLC.

Description: Application for Authorization for Disposition of Jurisdictional Facilities, Request for Confidential Treatment, and Request for Expedited Action of Mountain View Power Partners, LLC, *et. al.*

Filed Date: 05/05/2008.

Accession Number: 20080506–5007.

Comment Date: 5 p.m. Eastern Time on Monday, May 26, 2008.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG08–70–000.

Applicants: Consolidated Edison Energy Massachusetts, LLC.

Description: Consolidated Edison Energy Massachusetts, LLC submits a Notice of Name Change and Application for Redetermination of Status as an Exempt Wholesale Generator.

Filed Date: 05/01/2008.

Accession Number: 20080505–0138.

Comment Date: 5 p.m. Eastern Time on Thursday, May 22, 2008.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER93–465–043; ER96–417–012; ER96–1375–013; OA96–39–020; OA97–245–013.
Applicants: Florida Power & Light Company.
Description: Refund Report Errata of Florida Power & Light Company.
Filed Date: 05/02/2008.
Accession Number: 20080506–5032.
Comment Date: 5 p.m. Eastern Time on Friday, May 23, 2008.

Docket Numbers: ER97–2801–022.
Applicants: PacifiCorp.
Description: PacifiCorp submits a revised Sheet to its market-based rate tariff currently on file with FERC.
Filed Date: 05/02/2008.
Accession Number: 20080506–0229.
Comment Date: 5 p.m. Eastern Time on Friday, May 23, 2008.

Docket Numbers: ER07–1215–003; ER07–265–001; ER08–100–001.
Applicants: The Royal Bank of Scotland plc; Sempra Energy Solutions LLC; Sempra Energy Trading LLC.
Description: Sempra Energy Trading LLC et al. submits a notice of non-material change in status and compliance filing.
Filed Date: 05/01/2008.
Accession Number: 20080506–0083.
Comment Date: 5 p.m. Eastern Time on Thursday, May 22, 2008.

Docket Numbers: ER08–5–001.
Applicants: Ohio Valley Electric Corporation.
Description: Ohio Valley Electric Corp submits an executed Interconnection Agreement with U.S. Department of Energy.
Filed Date: 05/01/2008.
Accession Number: 20080506–0086.
Comment Date: 5 p.m. Eastern Time on Thursday, May 22, 2008.

Docket Numbers: ER08–569–001.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, LLC responds to FERC's request for additional information re its 5/15/08 deficient filing.
Filed Date: 05/01/2008.
Accession Number: 20080506–0085.
Comment Date: 5 p.m. Eastern Time on Thursday, May 22, 2008.

Docket Numbers: ER08–638–001.
Applicants: Crafton LLC.
Description: Crafton LLC submits Amended Petition for Acceptance of Initial Tariff, Waivers and Blanket Authority.
Filed Date: 03/31/2008.
Accession Number: 20080401–0073.
Comment Date: 5 p.m. Eastern Time on Wednesday, May 14, 2008.

Docket Numbers: ER08–671–001.
Applicants: Florida Power Corporation.
Description: Florida Power Corp submits correction filing for Gainesville service agreement under cost-based rates tariff CR–1.
Filed Date: 05/02/2008.
Accession Number: 20080506–0084.
Comment Date: 5 p.m. Eastern Time on Friday, May 23, 2008.

Docket Numbers: ER08–747–001.
Applicants: Beaver Ridge Wind, LLC.
Description: Beaver Ridge Wind, LLC submits an amendment to the Petition for Acceptance of Initial Rate Schedule, Waivers and Blanket Authority.
Filed Date: 05/05/2008.
Accession Number: 20080507–0212.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 27, 2008.

Docket Numbers: ER08–884–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc et al. submits proposed revisions to the Congestion Management Process.
Filed Date: 05/02/2008.
Accession Number: 20080506–0082.
Comment Date: 5 p.m. Eastern Time on Friday, May 23, 2008.

Docket Numbers: ER08–885–000.
Applicants: Entergy Gulf States Louisiana, L.L.C.
Description: Entergy Gulf States Louisiana LLC submits Attachment A Notice of Termination.
Filed Date: 04/30/2008.
Accession Number: 20080502–0116.
Comment Date: 5 p.m. Eastern Time on Wednesday, May 21, 2008.

Docket Numbers: ER08–886–000.
Applicants: The Detroit Edison Company.
Description: The Detroit Edison Co submits copies of the Third Revised Sheets 26, 33 and 36 of the Ancillary Services Tariff.
Filed Date: 04/30/2008.
Accession Number: 20080502–0128.
Comment Date: 5 p.m. Eastern Time on Wednesday, May 21, 2008.

Docket Numbers: ER08–887–000.
Applicants: Interstate Power & Light Company.
Description: Interstate Power and Light Company submits proposed revisions to their RES–5 Wholesale Formula Rates.
Filed Date: 04/30/2008.
Accession Number: 20080502–0120.
Comment Date: 5 p.m. Eastern Time on Wednesday, May 21, 2008.

Docket Numbers: ER08–888–000.
Applicants: Carolina Power & Light Company.
Description: Progress Energy Carolinas Inc submits amendments to the North Carolina Eastern Municipal Power Agency's Network Integration Transmission Service Agreement & a Notice of Cancellation, etc.
Filed Date: 04/30/2008.
Accession Number: 20080502–0119.
Comment Date: 5 p.m. Eastern Time on Wednesday, May 21, 2008.

Docket Numbers: ER08–889–000.
Applicants: Carolina Power & Light Company.
Description: Carolina Power and Light Co submits revised tariff sheets for the transmission rates under its Open Access Transmission Tariff.
Filed Date: 04/30/2008.
Accession Number: 20080505–0128.
Comment Date: 5 p.m. Eastern Time on Wednesday, May 21, 2008.

Docket Numbers: ER08–890–000.
Applicants: Louisiana Generating, LLC.
Description: Louisiana Generating LLC submits a Balancing Authority Area Agreement, Rate Schedule FERC 6 with Cottonwood Energy Company LP.
Filed Date: 04/30/2008.
Accession Number: 20080505–0122.
Comment Date: 5 p.m. Eastern Time on Wednesday, May 21, 2008.

Docket Numbers: ER08–891–000.
Applicants: Wisconsin Power and Light Company.
Description: Alliant Energy Corporate Services, Inc on behalf of Wisconsin Power and Light Co submits a Wholesale Power Agreement.
Filed Date: 04/30/2008.
Accession Number: 20080505–0119.
Comment Date: 5 p.m. Eastern Time on Wednesday, May 21, 2008.

Docket Numbers: ER08–892–000.
Applicants: Allegheny Energy Supply Company, LLC.
Description: Allegheny Energy Supply Co, LLC submits notices of cancellation and notices of termination.
Filed Date: 04/30/2008.
Accession Number: 20080505–0118.
Comment Date: 5 p.m. Eastern Time on Wednesday, May 21, 2008.

Docket Numbers: ER08–893–000.
Applicants: American Electric Power Service Corporation.
Description: American Electric Power Service Corp. submits an Interconnection Agreement with Indianapolis Power & Light Co.
Filed Date: 04/30/2008.
Accession Number: 20080505–0117.
Comment Date: 5 p.m. Eastern Time on Wednesday, May 21, 2008.

Docket Numbers: ER08–894–000.
Applicants: Entergy Services, Inc.
Description: Entergy Services, Inc submits mutually-executed Dynamic Transfer Operating Agreements.
Filed Date: 04/30/2008.

Accession Number: 20080505–0116.
Comment Date: 5 p.m. Eastern Time on Wednesday, May 21, 2008.

Docket Numbers: ER08–895–000.
Applicants: Consolidated Edison Company of New York.
Description: Consolidated Edison Company of New York, Inc submits a Construction and Operating Agreement with New Athens Generating Company, LLC dated as of 7/9/07.
Filed Date: 05/01/2008.
Accession Number: 20080505–0087.
Comment Date: 5 p.m. Eastern Time on Thursday, May 22, 2008.

Docket Numbers: ER08–896–000.
Applicants: Northeast Utilities Service Company.
Description: Northeast Utilities Service Co submits amendments to its new Localized Costs Responsibility Agreements.
Filed Date: 05/01/2008.
Accession Number: 20080505–0085.
Comment Date: 5 p.m. Eastern Time on Thursday, May 22, 2008.

Docket Numbers: ER08–898–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits the Large Generator Interconnection Agreement among the Blythe Energy, LL, SCE, and the California Independent System Operator Corporation.
Filed Date: 05/01/2008.
Accession Number: 20080505–0076.
Comment Date: 5 p.m. Eastern Time on Thursday, May 22, 2008.

Docket Numbers: ER08–899–000.
Applicants: Ohio Power Company.
Description: Ohio Power Company submits a Cost-Based Formula Rate Agreement for Full Requirements Electric Service dated 4/30/08 with the American Electric Power Company.
Filed Date: 05/01/2008.
Accession Number: 20080505–0077.
Comment Date: 5 p.m. Eastern Time on Thursday, May 22, 2008.

Docket Numbers: ER08–901–000.
Applicants: Saracen Energy Partners, LP.
Description: Saracen Energy Partners, LP submits its Petition for Acceptance of Initial Rate Schedule, Waivers and Blanket Authorization of FERC Rate Schedule 1.
Filed Date: 05/01/2008.
Accession Number: 20080505–0080.
Comment Date: 5 p.m. Eastern Time on Thursday, May 22, 2008.

Docket Numbers: ER08–902–000.
Applicants: Vermont Electric Cooperative, Inc.
Description: Vermont Electric Coop, Inc.'s 2008 Transmission Formula Rate Update to charges produced by the formula rates applicable to the VEC-specified Local Service Schedules of the ISO New England Open Access Transmission Tariff, etc.
Filed Date: 05/01/2008.
Accession Number: 20080505–0081.
Comment Date: 5 p.m. Eastern Time on Thursday, May 22, 2008.

Docket Numbers: ER08–903–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc submits an executed Service Agreement for Network Integration Transmission Service with Empire District Electric Co.
Filed Date: 05/01/2008.
Accession Number: 20080505–0082.
Comment Date: 5 p.m. Eastern Time on Thursday, May 22, 2008.

Docket Numbers: ER08–904–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc submits an executed Service Agreement for Network Integration Transmission Service with Kansas Electric Power Coop, Inc.
Filed Date: 05/01/2008.
Accession Number: 20080505–0083.
Comment Date: 5 p.m. Eastern Time on Thursday, May 22, 2008.

Docket Numbers: ER08–905–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc submits an executed Service Agreement for Network Integration Transmission Service with Western Farmers Electric Cooperative, Inc.
Filed Date: 05/01/2008.
Accession Number: 20080505–0084.
Comment Date: 5 p.m. Eastern Time on Thursday, May 22, 2008.

Docket Numbers: ER08–906–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison submits Fifth Revised Sheet 54, et al. to Rate Schedule FERC 424.
Filed Date: 05/01/2008.
Accession Number: 20080505–0120.
Comment Date: 5 p.m. Eastern Time on Thursday, May 22, 2008.

Docket Numbers: ER08–907–000.
Applicants: Unitil Power Corp.
Description: Unitil Power Corp. submits an Amended Unitil System Agreement.
Filed Date: 05/01/2008.
Accession Number: 20080505–0121.
Comment Date: 5 p.m. Eastern Time on Thursday, May 22, 2008.

Docket Numbers: ER08–908–000.
Applicants: Florida Power Corporation.
Description: Progress Energy Florida Inc's CD containing their annual cost factor updates.
Filed Date: 05/02/2008.
Accession Number: 20080502–4003.
Comment Date: 5 p.m. Eastern Time on Friday, May 23, 2008.

Docket Numbers: ER08–913–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc., et al. submits proposed revisions to Section 4.1 and 4.4 of the Congestion Management Process of their Joint Operating Agreement, etc.
Filed Date: 05/02/2008.
Accession Number: 20080506–0076.
Comment Date: 5 p.m. Eastern Time on Friday, May 23, 2008.

Docket Numbers: ER08–914–000.
Applicants: Walnut Creek Energy, LLC.
Description: Petition of Walnut Creek Energy, LLC for authorization for affiliate sales of electric energy.
Filed Date: 05/02/2008.
Accession Number: 20080506–0075.
Comment Date: 5 p.m. Eastern Time on Friday, May 23, 2008.

Docket Numbers: ER08–922–000.
Applicants: Warren Power, LLC.
Description: Warren Power, LLC submits a notice of cancellation of FERC Electric Tariff, Original Volume 1, etc.
Filed Date: 05/06/2008.
Accession Number: 20080507–0221.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 27, 2008.

Take notice that the Commission received the following electric securities filings:
Docket Numbers: ES08–49–000.
Applicants: Entergy Power, Inc.
Description: Entergy Power, Inc. submits its Application for Authorization to Issue Securities Pursuant to Section 204 Federal Power Act and Part 34 of the Commission's Regulations.
Filed Date: 05/02/2008.
Accession Number: 20080502–5026.
Comment Date: 5 p.m. Eastern Time on Friday, May 23, 2008.

Take notice that the Commission received the following open access transmission tariff filings:
Docket Numbers: OA07–40–003.
Applicants: Portland General Electric Company.
Description: Amendment to Application of Portland General Electric Company to correct effective dates on three tariff sheets.
Filed Date: 05/02/2008.
Accession Number: 20080502–5126.
Comment Date: 5 p.m. Eastern Time on Friday, May 23, 2008.

Docket Numbers: OA07–55–001.
Applicants: Black Hills Power, Inc.; Powder River Energy Corp; Basin Electric Power Cooperative, Inc.
Description: Order No. 890 OATT Compliance Filing of Black Hills Power, Inc., et al.
Filed Date: 05/05/2008.
Accession Number: 20080506–5029.
Comment Date: 5 p.m. Eastern Time on Monday, May 26, 2008.

Docket Numbers: OA07–56–002.
Applicants: MidAmerican Energy Company.
Description: MidAmerican Energy Company submits revised and original tariff sheets in compliance with the Order No. 890 requirements dated April 3, 2008.
Filed Date: 05/05/2008.
Accession Number: 20080506–5025.
Comment Date: 5 p.m. Eastern Time on Monday, May 26, 2008.

Docket Numbers: OA07–85–001.
Applicants: Ohio Valley Electric Corporation.
Description: Order No. 890 OATT Attachment C Compliance Filing of Ohio Valley Electric Corporation.
Filed Date: 05/02/2008.
Accession Number: 20080502–5057.
Comment Date: 5 p.m. Eastern Time on Friday, May 23, 2008.

Docket Numbers: OA07–89–001.
Applicants: Florida Power & Light Company.
Description: Florida Power & Light Co submits its compliance filing on Attachment C to its Open Access Transmission Tariff under OA07–89.
Filed Date: 05/05/2008.
Accession Number: 20080507–0211.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 27, 2008.

Docket Numbers: OA07–92–001.
Applicants: Southern Company Services, Inc.
Description: Order No. 890 OATT Filing of Southern Company Services, Inc., Attachment C Request for Waiver.
Filed Date: 05/01/2008.
Accession Number: 20080501–5200.
Comment Date: 5 p.m. Eastern Time on Thursday, May 22, 2008.

Docket Numbers: OA07–96–001.
Applicants: Idaho Power Company.
Description: Order No. 890 OATT Attachment C Filing of Idaho Power Company.
Filed Date: 05/01/2008.
Accession Number: 20080501–5067.
Comment Date: 5 p.m. Eastern Time on Thursday, May 22, 2008.

Docket Numbers: OA08–114–000.
Applicants: PJM Interconnection, LLC.
Description: PJM Interconnection, LLC submits a notification filing pursuant to Order 890 and PJM Tariff Section 19.8.
Filed Date: 04/30/2008.
Accession Number: 20080505–0210.
Comment Date: 5 p.m. Eastern Time on Wednesday, May 21, 2008.

Docket Numbers: OA08–115–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc submits a notification filing pursuant to Order 890 and 890–A.
Filed Date: 04/30/2008.
Accession Number: 20080505–0211.
Comment Date: 5 p.m. Eastern Time on Wednesday, May 21, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,
Deputy Secretary.
[FR Doc. E8–10834 Filed 5–14–08; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting Notice

May 8, 2008.

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: May 15, 2008, 10 a.m.

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

* **Note**—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kimberly D. Bose, Secretary, Telephone (202) 502–8400.

For a recorded message listing items struck from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed on line at the Commission's Web site at *http://www.ferc.gov* using the eLibrary link, or may be examined in the Commission's Public Reference Room.

934th—Meeting

Regular Meeting

May 15, 2008, 10 a.m.

Item No.	Docket No.	Company
	Administrative	
A–1	AD02–1–000	Agency Administrative Matters.
A–2	AD02–7–000	Customer Matters, Reliability, Security and Market Operations.
A–3	AD06–3–000	Energy Market Update.
	Electric	
E–1	OA08–32–000	PJM Interconnection, L.L.C.
E–2	OA08–53–000	Midwest Independent Transmission System Operator, Inc.
E–3	OA08–42–000	Midwest Independent Transmission System Operator, Inc. and American Transmission Company, LLC.
E–4	OA08–41–000	MidAmerican Energy Company.
E–5	OA08–58–000	ISO New England Inc.
E–6	OA08–21–000	Maine Public Service Company.
E–7	RC08–4–000	New Harquahala Generating Company, LLC.
E–8	EL08–34–000	Maryland Public Service Commission v. PJM Interconnection, L.L.C.
	EL08–47–000	PJM Interconnection, L.L.C.
E–9	RM06–22–001	Mandatory Reliability Standards for Critical Infrastructure Protection.
E–10	RM01–8–010	Revised Public Utility Filing Requirements for Electric Quarterly Reports.
E–11	OMITTED.	
E–12	ER96–2585–007	Niagara Mohawk Power Corporation.
	ER98–6–012	New England Power Company.
	ER99–2387–005	KeySpan-Ravenswood, Inc.
	ER02–1470–005	KeySpan-Glenwood Energy Center, LLC.
	ER02–1573–005	KeySpan-Port Jefferson Energy Center, LLC.
	ER05–1249–005	Granite State Electric Company, Massachusetts Electric Company, and The Narragansett Electric Company.
	EC06–125–000	National Grid plc and KeySpan Corporation.
E–13	ER07–940–001	Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C.
E–14	ER99–2541–009	Carthage Energy, LLC.
	ER05–731–003	Central Maine Power Company.
	ER97–3556–017	Energetix, Inc.
	ER04–582–007	Hartford Stream Company.
	ER99–221–012	New York State Electric & Gas Corporation.
	ER99–220–014	NYSEG Solution, Inc.
	ER97–3553–005	PEI Power II, LLC, Rochester Gas and Electric Corporation.
E–15	ER96–496–016	Northeast Utilities Service Company.
	ER99–14–013.	
	ER99–3658–003	Select Energy, Inc.
E–16	EL08–43–000	TransCanada Power Marketing Ltd. v. ISO New England Inc.
E–17	EL06–10–000	California Independent System Operator Corporation.
	EL06–11–000	Pacific Gas and Electric Company.
E–18	TS04–286–003	Exelon Corporation.
E–19	OMITTED.	
E–20	ER07–1285–002	Niagara Mohawk Power Corporation.
E–21	ER07–1019–003	Niagara Mohawk Power Corporation.
	ER07–1019–004.	
	ER07–1020–004.	
	ER07–1020–003.	
	ER07–1021–004.	
	ER07–1021–003.	
E–22	OMITTED.	
E–23	OA08–9–000	PJM Interconnection, L.L.C.
E–24	OA08–5–000	Southwest Power Pool, Inc.
E–25	OA07–51–000	Mid-Continent Area Power Pool.
	OA07–51–001.	
E–26	OA08–14–000	Midwest Independent Transmission System Operator, Inc.
	OA08–14–001.	
	OA07–57–000	Midwest Independent Transmission System Operator, Inc.
	OA08–4–000	Midwest ISO Transmission Owners and Midwest Stand-Alone Transmission Companies.
E–27	ER07–478–005	Midwest Independent Transmission System Operator, Inc.
E–28	ER07–478–006	Midwest Independent Transmission System Operator, Inc.
E–29	OA08–12–000	California Independent System Operator Corporation.
E–30	EL07–102–000	Montgomery Great Falls Energy Partners LP v. NorthWestern Corporation.
	Miscellaneous	
M–1	PL08–3–000	Enforcement of Statutes, Regulations and Orders.
M–2	PL08–2–000	Obtaining Guidance on Regulatory Requirements.
M–3	RM08–8–000	Ex Parte Contacts and Separation of Functions.

Item No.	Docket No.	Company
M–4	RM08–10–000	Submissions to the Commission upon Staff Intention to Seek an Order to Show Cause.
	Gas	
G–1	IN06–3–003	Energy Transfer Partners, L.P., Energy Transfer Company, ETC Marketing Ltd., Houston Pipeline Company, Oasis Pipeline, L.P., Oasis Pipeline Company Texas, L.P., ETC Texas Pipeline Ltd., Oasis Division.
G–2	RP04–98–002 RP04–98–003.	Indicated Shippers v. Columbia Gulf Transmission Company.
G–3	RP98–18–033	Iroquois Gas Transmission, L.P.
G–4	GP99–15–005 RP98–40–041	Burlington Resources Oil & Gas Company. Panhandle Eastern Pipe Line Company.
	Hydro	
H–1	HB73–93–15–003	Arkansas Electric Cooperative Corporation.
	Certificates	
C–1	OMITTED.	
C–2	CP08–68–000	Trunkline LNG Company, LLC.
C–3	CP08–54–000 CP08–55–000	Columbia Gulf Transmission Company. Tennessee Gas Pipeline Company.

Kimberly D. Bose,

Secretary.

A free Webcast of this event is available through *http://www.ferc.gov.* Anyone with Internet access who desires to view this event can do so by navigating to *http://www.ferc.gov*'s Calendar of Events and locating this event in the Calendar. The event will contain a link to its Webcast. The Capitol Connection provides technical support for the free Webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or contact Danelle Springer or David Reininger at 703–993–3100.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

[FR Doc. E8–11012 Filed 5–14–08; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R09–OAR–2008–0378; FRL–8566–4]

Adequacy Status of Motor Vehicle Budgets in Submitted South Coast 8-Hour Ozone and $PM_{2.5}$ Attainment and Reasonable Further Progress Plans for Transportation Conformity Purposes; California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy and inadequacy.

SUMMARY: In this notice, EPA is notifying the public that the Agency has found that the ''baseline'' reasonable further progress motor vehicle emissions budgets for 8-hour ozone and $PM_{2.5}$ in the 2007 South Coast State Implementation Plan (2007 South Coast SIP), as amended on April 30, 2008, are adequate for transportation conformity purposes. In this notice, EPA is also notifying the public that the Agency has found that the ''SIP-based'' motor vehicle emissions budgets for 8-hour ozone and $PM_{2.5}$ in the amended 2007 South Coast SIP are inadequate for transportation conformity purposes. The 2007 South Coast SIP was submitted to EPA on November 28, 2007 by the California Air Resources Board (CARB) as a revision to the California SIP, and includes reasonable further progress and attainment demonstrations for the 8-hour ozone and $PM_{2.5}$ national ambient air quality standards. On February 1, 2008, CARB submitted supplemental technical information related to reasonable further progress for the 8-hour ozone NAAQS. The 2007 South Coast SIP was amended by a submittal dated April 30, 2008 that replaces the original motor vehicle emissions budgets for 8-hour ozone and $PM_{2.5}$ and distinguishes between ''baseline'' budgets and ''SIP-based'' budgets. As a result of our findings, the Southern California Association of Governments and the U.S. Department of Transportation must use the South Coast 8-hour ozone and $PM_{2.5}$ ''baseline'' motor vehicle emissions budgets, and cannot use the ''SIP-based'' budgets, in the amended 2007 South Coast SIP for future conformity determinations.

DATES: This finding is effective May 30, 2008.

FOR FURTHER INFORMATION CONTACT: Rebecca Rosen, U.S. EPA, Region IX, Air Division AIR–2, 75 Hawthorne Street, San Francisco, CA 94105–3901; (415) 947–4152 or *rosen.rebecca@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Receipt of the motor vehicle emissions budgets for 8-hour ozone and $PM_{2.5}$ in the 2007 South Coast SIP submitted on November 28, 2007 was announced on EPA's transportation conformity Web site on February 12, 2008. Receipt of the motor vehicle emissions budgets in the amended 2007 South Coast SIP was announced on March 27, 2008 based on a submittal from CARB dated March 26, 2008 that requested parallel adequacy processing of draft amendments to the 2007 South Coast SIP. The draft amendments to the

2007 South Coast SIP included two sets of budgets, and CARB labeled these sets as ''baseline'' and ''SIP-based'' budgets. CARB also requested that EPA consider both sets of budgets simultaneously but approve all of the ''baseline'' budgets only if the Agency could not approve or find adequate in their entirety the ''SIP-based'' budgets. We received comments in response to the adequacy review posting of the original 2007 South Coast SIP motor vehicle emissions budgets, and comments were also received in response to the adequacy review posting of the amended 2007 South Coast SIP motor vehicle emissions budgets. The final, adopted amendments to the 2007 South Coast SIP submitted by CARB on April 30, 2008 are the same as those submitted by CARB for parallel processing on March 26, 2008.

Today's notice is simply an announcement of a finding that we have already made. EPA Region IX sent a letter to the CARB on May 7, 2008 stating that the ''baseline'' motor vehicle emissions budgets in the amended 2007 South Coast SIP for the reasonable further progress (RFP) milestone years of 2008, 2011, 2014, 2017, and 2020 (for 8-hour ozone) and 2009 and 2012 (for $PM_{2.5}$) are adequate. The adequate motor vehicle emissions budgets are provided in the following table:

ADEQUATE 8-HOUR OZONE ''BASELINE'' MOTOR VEHICLE EMISSIONS

Budget year	8-hour ozone—summer day, tons per day	
	ROG	NO_X
2008	215	427
2011	176	354
2014	150	287
2017	131	32
2020	116	190

ADEQUATE $PM_{2.5}$ ''BASELINE'' MOTOR VEHICLE EMISSIONS BUDGETS

Budget year	$PM_{2.5}$—annual average, tons per day		
	ROG	NO_X	$PM_{2.5}$
2009	196	413	38
2012	163	337	38

Our letter dated May 7, 2008 also states that the ''SIP-based'' motor vehicle emissions budgets in the amended 2007 South Coast SIP are inadequate for transportation conformity purposes. The amended 2007 South Coast SIP included ''SIP-based'' budgets for 2008, 2011, 2014, 2017, 2020, and 2023 (for ozone) and for 2009, 2012, 2014, 2023, and 2030 (for $PM_{2.5}$). The State has included additional on-road mobile source emissions reductions in the ''SIP-based'' budgets from the 2007 State Strategy for the California SIP. The ''baseline'' budgets include no such reductions but rather reflect emissions reductions from CARB rules that were adopted as of October 2006. EPA has determined that the ''SIP-based'' budgets are inadequate because all of the ''SIP-based'' budgets after 2009 include new emission reductions that do not result from specific or enforceable control measures. As a result, three of the transportation conformity rule's adequacy criteria are not met (40 CFR 93.118(e)(4)(iii), (iv), and (v)) for these ''SIP-based'' budgets. The inadequate motor vehicle emissions budgets are provided in the following table:

INADEQUATE ''SIP-BASED'' 8-HOUR OZONE MOTOR VEHICLE EMISSIONS

Budget year	8-hour ozone—summer day, tons per day	
	ROG	NO_X
2008	215	427
2011	162	320
2014	125	196
2017	111	167
2020	101	145
2023	93	128

INADEQUATE ''SIP-BASED'' PM2.5 MOTOR VEHICLE EMISSIONS BUDGETS

Budget year	$PM_{2.5}$—annual average, tons per day		
	ROG	NO_X	$PM_{2.5}$
2009	196	413	38
2012	139	276	37
2014	122	201	33
2023	89	131	37

INADEQUATE "SIP-BASED" PM2.5 MOTOR VEHICLE EMISSIONS BUDGETS—Continued

Budget year	$PM_{2.5}$—annual average, tons per day		
	ROG	NO_X	$PM_{2.5}$
2030	75	121	39

EPA notes that the 2008 8-hour ozone and 2009 $PM_{2.5}$ motor vehicle emissions budgets in the state's ''SIP-based'' approach are the same as the adequate budgets in the state's ''baseline'' approach.

The finding and the response to comments are available at EPA's transportation conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm*. Transportation conformity is required by Clean Air Act section 176(c). EPA's conformity rule requires that transportation plans, transportation improvement programs, and projects conform to state air quality implementation plans and establishes the criteria and procedures for determining whether or not they do conform. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4), which was promulgated on August 15, 1997 final rule (62 FR 43780, 43781–43783). We have further described our process for determining the adequacy of submitted SIP budgets in our July 1, 2004 final rule (69 FR 40004, 40038), and we used the information in these resources in making our adequacy findings. Please note that an adequacy review is separate from EPA's completeness review, and should not be used to prejudge EPA's ultimate approval action for the SIP. Even if we find a budget adequate, the SIP could later be disapproved.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 6, 2008.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. E8–10901 Filed 5–14–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2008–0393; FRL–8566–7]

Agency Information Collection Activities: Proposed Collection; Comment Request; National Volatile Organic Compound Emission Standards for Architectural Coatings

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 EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on July 31, 2008. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before July 14, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2008–0393 by one of the following methods:

- *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov*.
- *Fax:* (202) 566–1741.
- *Mail:* National VOC Standards for Consumer Products—Information Collection Request Renewal, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2008–0393. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Moore, U.S. EPA, Office of Air Quality Planning and Standards, Division (C504–03), U.S. Environmental Protection Agency, Sector Policies and Programs Division, Natural Resources and Commerce Group (E143–03), Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5460; fax number: (919) 541–3470; e-mail address: *moore.bruce@epa.gov*.

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID number EPA–HQ–OAR–2008–0393, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the Air Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket

Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What Information Is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES**.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What Information Collection Activity or ICR Does This Apply to?

Docket ID No. EPA–HQ–OAR–2008–0393.

Affected entities: Entities potentially affected by this action are those which manufacture, distribute, or import architectural and industrial maintenance coatings for sale or distribution in the United States, including the District of Columbia and all United States territories.

Title: National Volatile Organic Compound Emission Standards for Architectural Coatings.

ICR numbers: EPA ICR No. 1750.04, OMB Control No. 2060–0393.

ICR status: This ICR is currently scheduled to expire July 31, 2008. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The information collection includes initial reports and periodic recordkeeping necessary for EPA to ensure compliance with Federal standards for volatile organic compounds in architectural coatings. Respondents are manufacturers, distributors, and importers of architectural coatings. Responses to the collection are mandatory under 40 CFR part 59, Subpart D—National Volatile Organic Compound Emission Standards for Architectural Coatings. All information submitted to the EPA for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in 40 CFR part 2, Subpart B—Confidentiality of Business Information.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 46 hours per respondent. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated Total Number of Potential Respondents: 500.

Frequency of Response: On occasion.

Estimated Total Average Number of Responses for Each Respondent: 1.

Estimated Total Annual Burden Hours: 22,761 hours.

Estimated Total Annual Costs: $1,599,707. This includes an estimated burden cost of $1,599,707 and an estimated zero cost for capital investment or maintenance and operational costs.

Are There Changes in the Estimates From the Last Approval?

There is no change in hours or annual costs in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB.

What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: May 5, 2008.

Jennifer E. N. Edmonds,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. E8–10898 Filed 5–14–08; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Notice

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 73 FR 26395, Friday, May 9, 2008.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: Tuesday, May 13, 2008, 10 a.m. (Eastern Time).

CHANGE IN THE MEETING: The meeting has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: Stephen Llewellyn, Executive Officer on (202) 663–4070.

Dated: May 12, 2008.

Stephen Llewellyn,

Executive Officer, Executive Secretariat.

[FR Doc. 08–1268 Filed 5–13–08; 1:35 pm]

BILLING CODE 6570–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to OMB for Review and Approval, Comments Requested.

May 9, 2008.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before June 16, 2008. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via Internet at *Nicholas_A._Fraser@omb.eop.gov* or via fax at (202) 395–5167 and to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC or via Internet at *Cathy.Williams@fcc.gov* or *PRA@fcc.gov*.

To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB control number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.''

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0289.

Title: Section 76.76.601(a), Performance Tests; Section 76.1704(a)(b), Proof of Performance Test Data; Section 76.1705, Performance Tests (Channels Delivered); Section 76.1717, Compliance with Technical Standards.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; State, local or Tribal Government.

Number of Respondents/Responses: 8,250 respondents; 12,185 responses.

Estimated Time per Response: 0.5–70 hours.

Frequency of Response: Recordkeeping requirement; Semi-annual reporting requirement; Triennial reporting requirement; Third party disclosure requirement.

Total Annual Burden: 276,125 hours.

Total Annual Costs: None.

Nature of Response: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Sections 4(i) and 624(e) of the Communications Act of 1934, as amended.

Confidentiality: No need for confidentiality required.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR Section 76.601(b) requires the operator of each cable television system shall conduct complete performance tests of that system at least twice each calendar year (at intervals not to exceed seven months), unless otherwise noted below. The performance tests shall be directed at determining the extent to which the system complies with all the technical standards set forth in § 76.605(a) and shall be as follows:

(1) For cable television systems with 1,000 or more subscribers but with 12,500 or fewer subscribers, proof-of-performance tests conducted pursuant to this section shall include measurements taken at six (6) widely separated points. However, within each cable system, one additional test point shall be added for every additional 12,500 subscribers or fraction thereof (e.g., 7 test points if 12,501 to 25,000 subscribers; 8 test points if 25,001 to 37,500 subscribers, etc.). In addition, for technically integrated portions of cable systems that are not mechanically continuous (i.e., employing microwave connections), at least one test point will be required for each portion of the cable system served by a technically integrated microwave hub. The proof-of-performance test points chosen shall be balanced to represent all geographic areas served by the cable system. At least one-third of the test points shall be representative of subscriber terminals most distant from the system input and from each microwave receiver (if microwave transmissions are employed), in terms of cable length. The measurements may be taken at convenient monitoring points in the cable network: Provided, that data shall be included to relate the measured performance of the system as would be viewed from a nearby subscriber terminal. An identification of the instruments, including the makes, model numbers, and the most recent date of calibration, a description of the procedures utilized, and a statement of the qualifications of the person performing the tests shall also be included.

(2) Proof-of-performance tests to determine the extent to which a cable television system complies with the standards set forth in § 76.605(a)(3), (4), and (5) shall be made on each of the NTSC or similar video channels of that

system. Unless otherwise as noted, proof-of-performance tests for all other standards in § 76.605(a) shall be made on a minimum of four (4) channels plus one additional channel for every 100 MHz, or fraction thereof, of cable distribution system upper frequency limit (e.g., 5 channels for cable television systems with a cable distribution system upper frequency limit of 101 to 216 MHz; 6 channels for cable television systems with a cable distribution system upper frequency limit of 217–300 MHz; 7 channels for cable television systems with a cable distribution upper frequency limit to 300 to 400 MHz, etc.). The channels selected for testing must be representative of all the channels within the cable television system.

(3) The operator of each cable television system shall conduct semi-annual proof-of-performance tests of that system, to determine the extent to which the system complies with the technical standards set forth in § 76.605(a)(4) as follows. The visual signal level on each channel shall be measured and recorded, along with the date and time of the measurement, once every six hours (at intervals of not less than five hours or no more than seven hours after the previous measurement), to include the warmest and the coldest times, during a 24-hour period in January or February and in July or August.

(4) The operator of each cable television system shall conduct triennial proof-of-performance tests of its system to determine the extent to which the system complies with the technical standards set forth in § 76.605(a)(11).

47 CFR Section 76.601 states prior to additional testing pursuant to Section 76.601(c), the local franchising authority shall notify the cable operator, who will then be allowed thirty days to come into compliance with any perceived signal quality problems which need to be corrected.

47 CFR Section 76.1704 requires that proof of performance test required by 47 CFR Section 76.601 shall be maintained on file at the operator's local business office for at least five years. The test data shall be made available for inspection by the Commission or the local franchiser, upon request. If a signal leakage log is being used to meet proof of performance test recordkeeping requirement in accordance with Section 76.601, such a log must be retained for the period specified in 47 CFR Section 76.601(d).

47 CFR Section 76.1705 requires that the operator of each cable television system shall maintain at its local office a current listing of the cable television channels which that system delivers to its subscribers.

47 CFR Section 76.1717 states that an operator shall be prepared to show, on request by an authorized representative of the Commission or the local franchising authority, that the system does, in fact, comply with the technical standards rules in part 76, subpart K.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–10907 Filed 5–14–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to OMB for Review and Approval, Comments Requested

May 9, 2008.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995, Public Law No. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Pursuant to the PRA, no person shall be subject to any penalty for failing to comply with a collection of information that does not display a valid control number. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before June 16, 2008. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via Internet at *Nicholas_A._Fraser@omb.eop.gov* or via fax at (202) 395–5167 and to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC or via Internet at *Cathy.Williams@fcc.gov* and/or *PRA@fcc.gov.* Include in the e-mails the OMB control number of the collection as shown in the **SUPPLEMENTARY INFORMATION** section below or, if there is no OMB control number, the Title as shown in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at 202–418–2918, via the Internet at *Cathy.Williams@fcc.gov,* and/or *PRA@fcc.gov.* To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of the ICR you want to review (or its Title if there is no OMB control number) and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0717.

Title: Billed Party Preference for InterLATA 0+ Calls, CC Docket No. 92–77, 47 CFR 64.703(a), 64.709, and 64.710.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 630 respondents; 11,250,150 responses.

Estimated Time per Response: 60 seconds to 50 hours.

Frequency of Response: Annual and on occasion reporting requirements.

Total Annual Burden: 197,362 hours.

Total Annual Cost: $116,250.

Obligation to Respond: Required to obtain or retain benefit. The statutory authority for this information collection is found at 47 U.S.C. 226, Telephone Operator Services, Public Law Number 101–435, 104 Stat. 986, codified at 47 CFR sections 64.703(a) Consumer

Information, 64.709 Informational Tariffs, and 64.710 Operator Services for Prison Inmate Phones.

Nature and Extent of Confidentiality: An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information from individuals.

Privacy Impact Assessment: No impact(s).

Needs and Uses: Pursuant to 47 CFR 64.703(a), Operator Service Providers (OSPs) are required to disclose, audibly and distinctly to the consumer, at no charge and before connecting any interstate call, how to obtain rate quotations, including any applicable surcharges. 47 CFR 64.710 imposes similar requirements on OSPs to inmates at correctional institutions. 47 CFR 64.709 codifies the requirements for OSPs to file informational tariffs with the Commission. These rules help to ensure that consumers receive information necessary to determine what the charges associated with an OSP-assisted call will be, thereby enhancing informed consumer choice in the operator services marketplace.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–10909 Filed 5–14–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2866]

Petitions for Reconsideration of Action in Rulemaking Proceeding

May 8, 2008.

Petitions for Reconsideration have been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to these petitions must be filed by May 30, 2008. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to oppositions must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations (MM Docket No. 00–168).

Extension of the Filing Requirements for Children's Television Programming Report (FCC Form 398) (MM Docket No. 00–44).

Number of Petitions Filed: 9.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–10912 Filed 5–14–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[PS Docket No. 08–51, FCC 08–95]

Use of Non-Service Initialized Phones to Make Fraudulent 911 Calls

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission grants a Petition for Notice of Inquiry filed by nine public safety organizations and a software development firm, and seeks comment, analysis, and information in three specific areas: The nature and extent of fraudulent 911 calls made from non-service initialized (NSI) handsets; carrier and public safety authority concerns with blocking NSI phones used to make fraudulent 911 calls, and suggestions for making this a more viable solution for carriers; and other possible solutions to the problem of fraudulent 911 calls from NSI handsets.

DATES: Comments are due June 30, 2008; Reply Comments are due July 29, 2008.

ADDRESSES: You may submit comments, identified by PS Docket No. 08–51, by any of the identified methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *Mail:* U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Jeffrey Cohen, Public Safety and Homeland Security Bureau at (202) 418–0799, TTY (202) 418–7172.

SUPPLEMENTARY INFORMATION: This is a summary of the Notice of Inquiry in PS Docket No. 08–41, FCC 08–95, adopted April 7, 2008, and released April 11, 2008 (''Notice''). The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, 445 12th Street, SW., Washington, DC. This document may also be obtained from the Commission's duplicating contractor, Best Copy and Printing, Inc., in person at 445 12th Street, SW., Room CY–B402, Washington, DC 20554, via telephone at (202) 488–5300, via facsimile at (202) 488–5563, or via e-mail at *fcc@bcpiweb.com.* Alternative formats (computer diskette, large print, audio cassette, and Braille) are available to persons with disabilities by sending an e-mail to *FCC504@fcc.gov* or calling the Consumer and Governmental Affairs Bureau at (202) 418–0530, TTY (202) 418–0432. This document is also available on the Commission's Web site at *http://www.fcc.gov.*

Synopsis of the Notice of Inquiry

1. In this Notice of Inquiry (the Notice) the Commission considers whether additional or modified rules are needed to address the problem of fraudulent 911 calls made from NSI handsets. Specifically, the Notice seeks comment on the extent of the misuse of NSI handsets, and seeks survey, and other evidence, that will allow the Commission to make this determination. The Notice also seeks comment on problems with the present call-blocking solution, including problems involved with roaming callers, other technical concerns related to blocking fraudulent 911 calls from NSI handsets, potential solutions to these technical problems, and concerns regarding legal liability connected with blocking such calls. Finally the Notice seeks to ascertain the viability of other potential solutions to the problem, including further call-back capabilities for NSI devices, elimination of call-forwarding requirements for NSI devices, and requiring carriers' donation programs to provide service-initialized phones.

Procedural Matters

2. *Authority.* This Notice is issued pursuant to authority contained in Sections 1, 4(i), 4(j), 303(r) and 332 of the Communications Act, as amended, 47 U.S.C. 151, 154(i), 154(j), 303(r), and 332.

3. *Ex Parte Rules.* There are no ex parte or disclosure requirements

applicable to this proceeding pursuant to 47 CFR 1.1204(b)(1).

4. *Comment Information*. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using (1) The FCC's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24,121(1998).

• Electronic Filers: Comments may be filed electronically using the Internet by accessing the Electronic Comment Filing System (ECFS): *http://www.fcc.gov/cgb/ecfs* or the Federal eRulemaking Portal: *http://www.regulations.gov*. Filers should follow the instructions provided on the Web site for submitting comments.

• For ECFS filers, if multiple dockets or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov*, and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.

• *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

• Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

• The Commission's contractor will receive hand-delivered or messenger delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

• Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

• U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–10661 Filed 5–14–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 9 a.m. on Monday, May 19, 2008, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, pursuant to section 552b(c)(2), (c)(4), (c)(6), (c)(8), (9)(A)(ii), (9)(B), and (10) of Title 5, United States Code, to consider matters relating to the Corporation's supervisory and corporate activities.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–7122.

Dated: May 12, 2008.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E8–10914 Filed 5–14–08; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/address	Date reissued
017753F	Associated Consolidators Express, dba A.C.E. Balikbayan Boxes Direct, 1273 Industrial Parkway, #290, Hayward, CA 94544.	April 3, 2008.
004076F	Marimar Forwarding, Inc., 806 NW 131st Avenue, Miami, FL 33182	March 14, 2008.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. E8–10783 Filed 5–14–08; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

SUMMARY: Background

Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's

public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Michelle Shore—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829)

OMB Desk Officer—Alexander T. Hunt—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Final approval under OMB delegated authority of the extension for three years, without revision, of the following reports:

1. *Report Title:* Recordkeeping and Disclosure Requirements Associated with the Guidance on Response Programs for Unauthorized Access to Customer Information.

Agency Form Number: FR 4100.

OMB Control Number: 7100–0309.

Frequency: Develop customer notice, one-time; update and maintain customer notice, annually; Incident notification, event-generated.

Reporters: Financial institutions.

Annual Reporting Hours: 62,135.

Estimated Average Hours per Response: Develop customer notice, 24; Update and maintain customer notice, 8; Incident notification, 29.

Number of Respondents: Develop customer notice, 102; Update and maintain customer notice, 6,957; Incident notification, 139.

General Description of Report: This information collection is mandatory (15 U.S.C. 6801(b)). Since the Federal Reserve does not collect information associated with the FR 4100, any issue of confidentiality would not generally be an issue. However, confidentiality may arise if the Federal Reserve were to obtain a copy of a customer notice during the course of an examination or were to receive a copy of a Suspicious Activity Report (SAR; FR 2230; OMB No. 7100–0212). In such cases the information would be exempt from disclosure to the public under the Freedom of Information Act (5 U.S.C 552(b)(3), (4), and (8)). Also, a federal employee is prohibited by law from disclosing an SAR or the existence of an SAR (31 U.S.C. 5318(g)).

Abstract: Recent trends in customer information theft and the accompanying misuse of that information have led to the issuance of a supplemental interpretation of existing information technology-related security guidelines applicable to financial institutions. The supplemental guidelines are designed to facilitate timely and relevant notification of affected customers and the appropriate regulatory authority of the financial institutions. The guidelines provide specific direction regarding the nature and content of customer notice.

Current Actions: On March 6, 2008, the Federal Reserve published a notice in the **Federal Register** (73 FR 12176) requesting public comment for sixty days on the extension, without revision, of the ID-Theft Guidance. The comment period for this notice expired on May 5, 2008. The Federal Reserve did not receive any comments.

2. *Report Title:* The Recordkeeping and Disclosure Requirement in Connection with Regulation DD (Truth in Savings).

Agency Form Number: Reg DD.

OMB Control Number: 7100–0271.

Frequency: Account disclosures, 500; Change in terms notices, 1,130; Prematurity notices, 1,015; Disclosures on periodic statements, 12; and Advertising, 12.

Reporters: State member banks.

Annual Reporting Hours: 176,177.

Estimated Average Hours per Response: Account disclosures, 1.5 minutes; Change in terms notices, 1 minute; Prematurity notices, 1 minute; Disclosures on periodic statements, 8 hours; and Advertising, 30 minutes.

Number of Respondents: 1,172.

General Description of Report: This information collection is mandatory (12 U.S.C. 4308)). Since the Federal Reserve does not collect any information, no issue of confidentiality arises.

Abstract: The Truth in Savings Act and Regulation DD require depository institutions to disclose yields, fees, and other terms concerning deposit accounts to consumers at account opening, upon request, and when changes in terms occur. Depository institutions that provide periodic statements are required to include information about fees imposed, interest earned, and the annual percentage yield (APY) earned during those statement periods. The act and regulation mandate the methods by which institutions determine the account balance on which interest is calculated. They also contain rules about advertising deposit accounts.

Current Actions: On March 6, 2008, the Federal Reserve published a notice in the **Federal Register** (73 FR 1276) requesting public comment for sixty days on the extension, without revision, of the recordkeeping and disclosure requirements of Regulation DD. The comment period for this notice expired on May 5, 2008. The Federal Reserve did not receive any comments.

Board of Governors of the Federal Reserve System, May 9, 2008.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E8–10780 Filed 5–14–08; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 30, 2008.

A. Federal Reserve Bank of Chicago (Burl Thornton, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Mark R. Peterson, Dakota Dunes, South Dakota, to acquire control of Liberty Financial Services, Inc., and thereby indirectly Liberty National Bank, both of Sioux City, Iowa.

Board of Governors of the Federal Reserve System, May 12, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–10858 Filed 5–14–08; 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 June 9, 2008.

A. Federal Reserve Bank of Chicago (Burl Thornton, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Premier Bancorp of Illinois, Inc., Farmer City, Illinois, to retain 20.8 percent of the voting shares of F M Bancorp, Inc., and thereby indirectly retain voting shares of Farmers–Merchants National Bank of Paxton, both of Paxton, Illinois.

B. Federal Reserve Bank of San Francisco (Kenneth Binning, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105–1579:

1. Bank of Whitman Employee Stock Ownership Plan, Colfax Washington, to acquire 56 percent of the voting shares of Whitman Bancorporation Incorporated, Colfax, Washington, and thereby indirectly acquire voting shares of Bank of Whitman, Colfax, Washington.

Board of Governors of the Federal Reserve System, May 12, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.E8–10859 Filed 5–14–08; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meeting

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), announcement is made of a Health Care Policy and Research Special Emphasis Panel (SEP) meeting.

A Special Emphasis Panel is a group of experts in fields related to health care research who are invited by the Agency for Healthcare Research and Quality (AHRQ), and agree to be available, to conduct on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not attend regularly-scheduled meetings and do not serve for fixed terms or a long period of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

Substantial segments of the upcoming SEP meeting listed below will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6). Grant applications for the Announcement of Availability of Funds for Grants regarding Ambulatory Safety and Quality Program: Improving Management of Individuals with Complex Healthcare Needs through Health IT (R18) applications are to be reviewed and discussed at this meeting. These discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure under the above-cited statutes.

SEP Meeting on: Ambulatory Safety and Quality Program: Improving Management of Individuals with Complex Healthcare Needs through Health IT (R18).

Date: June 18–20, 2008 (Open on June 18 from 5 p.m. to 5:15 p.m. and closed for the remainder of the meeting).

Place: Crowne Plaza, Conference Room TBD, 3 Research Blvd, Rockville, Maryland 20850.

Contact Person: Anyone wishing to obtain a roster of members, agenda or minutes of the nonconfidential portions of this meeting should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Extramural Research, Education and Priority Populations, AHRQ, 540 Gaither Road, Room 2038, Rockville, Maryland 20850, Telephone (301) 427–1554.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: May 5, 2008.

Carolyn M. Clancy,

Director.

[FR Doc. E8–10565 Filed 5–14–08; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–E–0035 (formerly Docket No. 2007E–0133) and [Docket No. FDA–2007–E–0227 (formerly Docket No. 2007E–0148)]

Determination of Regulatory Review Period for Purposes of Patent Extension; TYZEKA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for TYZEKA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submissions of applications to the Director of Patents and Trademarks, Department of Commerce, for the extension of patents which claim that human drug product.

ADDRESSES: Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg 51, rm. 6222, Silver Spring, MD 20993–0002, 301–796–3602.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug

products, the testing phase begins when the exemption to permit the clinical investigations of the human drug product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA approved for marketing the human drug product TYZEKA. TYZEKA is indicated for the treatment of chronic hepatitis B in adult patients with evidence of viral replication and either evidence of persistent elevations in serum aminotransferases or histologically active disease. Subsequent to this approval, the Patent and Trademark Office received patent term restoration applications for TYZEKA (U.S. Patent Nos. 6,395,716 and 6,569,837) from Idenix Pharmaceuticals, Inc., Centre National de La Recherche Scientifique, and L'Universite Montpellier II, and the Patent and Trademark Office requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated May 16, 2007, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of TYZEKA represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for TYZEKA is 2,309 days. Of this time, 2,009 days occurred during the testing phase of the regulatory review period, while 300 days occurred during the approval phase. These periods of time were derived from the following dates:

1. The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective: July 1, 2000. The applicant claims the investigational new drug application (IND) was under clinical hold until August 15, 2000, and claims that date as the date the IND became effective. However, according to FDA records, the IND was considered safe to proceed with some recommendations that were sent to the sponsor to consider prior to commencement of the study. The IND effective date was July 1, 2000, which was 30 days after FDA receipt of the IND.

2. The date the application was initially submitted with respect to the human drug product under section 505(b) of the act: December 30, 2005. FDA has verified the applicant's claim that the new drug application (NDA) for TYZEKA (NDA 22–011) was initially submitted on December 30, 2005.

3. The date the application was approved: October 25, 2006. FDA has verified the applicant's claim that NDA 22–011 was approved on October 25, 2006.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 442 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by July 14, 2008. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by November 12, 2008. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA through FDMS only.

Dated: April 28, 2008.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. E8–10857 Filed 5–14–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Biophysics of Neural Systems Study Section, June 12, 2008, 8 a.m. to June 12, 2008, 8 p.m., Hotel Lombardy, 2019 Pennsylvania Avenue, NW., Washington, DC 20006 which was published in the **Federal Register** on April 29, 2008, 73 FR 23257–23259.

The meeting will be held June 12, 2008, 8 a.m. to June 13, 2008, 4 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: May 7, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–10671 Filed 5–14–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Cancellation of Meeting

Notice is hereby given of the cancellation of the Center for Scientific Review Special Emphasis Panel, June 10, 2008, 6 a.m. to June 11, 2008, 6 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on April 29, 2008, 73 FR 23257–23259.

The meeting is cancelled due to the applications being withdrawn.

Dated: May 7, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–10672 Filed 5–14–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), 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: Immunology Integrated Review Group; Immunity and Host Defense Study Section.
Date: May 29–30, 2008.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Doubletree Hotel, 1515 Rhode Island Avenue, NW., Washington, DC 20005.
Contact Person: Patrick K. Lai, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2215, MSC 7812, Bethesda, MD 20892, 301–435–1052, *laip@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; Member Conflicts: Cell Biology.
Date: May 29, 2008.
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: 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.*

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: Renal and Urological Studies Integrated Review; Cellular and Molecular Biology of the Kidney Study Section.
Date: June 2–3, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.
Contact Person: Shirley Hilden, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7814, Bethesda, MD 20892, 301–435–1198, *hildens@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflicts.
Date: June 2, 2008.
Time: 8 a.m. to 11:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Syed M. Amir, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6172, MSC 7892, Bethesda, MD 20892, 301–435–1043, *amirs@csr.nih.gov.*

Name of Committee: Emerging Technologies and Training Neurosciences Integrated Review Group; Neurotechnology Study Section.
Date: June 3–4, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Grand Hyatt, 345 Stockton Street, San Francisco, CA 94108.
Contact Person: Robert C. Elliott, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3130, MSC 7850, Bethesda, MD 20892, 301–435–3009, *elliotro@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Innovative Ultrasound and Imaging.
Date: June 5, 2008.
Time: 10 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Antonio Sastre, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5215, MSC 7412, Bethesda, MD 20892, 301–435–2592, *sastrea@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Vector Biology Study Section.
Date: June 6, 2008.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: The River Inn, 924 25th Street, NW., Washington, DC 20037.
Contact Person: Liangbiao Zheng, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3214, MSC 7808, Bethesda, MD 20892, 301–402–5671, *zhengli@csrnih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Immunology Grant Applications: Member Conflicts and Specials.
Date: June 10–11, 2008.
Time: 10 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: Stephen M. Nigida, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4212, MSC 7812, Bethesda, MD 20892, 301–435–1222, *nigidas@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Gene Therapy and Inborn Errors.
Date: June 16, 2008.
Time: 8 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency O'Hare, 9300 Bryn Mawr Avenue, Rosemont, IL 60018.
Contact Person: Richard Panniers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2212, MSC 7890, Bethesda, MD 20892, 301–435–1741, *pannier@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cancer Diagnostics and Treatments SBIR/STTR.
Date: June 16–17, 2008.
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: Hungyi Shau, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, 301–435–1720, *shauhung@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cell-mediated Immunity Member Conflict.
Date: June 17, 2008.
Time: 1 p.m. to 3 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: Patrick K. Lai, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2215, MSC 7812, Bethesda, MD 20892, 301–435–1052, *laip@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Topics in Virology.
Date: June 19, 2008.
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: 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; Cardiac Metabolism.
Date: June 20, 2008.
Time: 2:30 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Maqsood A. Wani, PhD, DVM, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2114, MSC 7814, Bethesda, MD 20892, 301–435–2270, *wanimaqs@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Shared Instrumentation: Imaging.
Date: June 26, 2008.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Khalid Masood, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, 301–435–2392, *masoodk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Chemical and Bioanalytical Sciences.
Date: June 26, 2008.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.
Contact Person: Denise Beusen, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7806, Bethesda, MD 20892, (301) 435–1267, *beusend@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Drug Discovery and Development.
Date: June 30, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.
Contact Person: Sergei Ruvinov, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, 301–435–1180, *ruvinser@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: May 7, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–10674 Filed 5–14–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Arthritis, Connective Tissue and Skin Study Section.
Date: June 2–3, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Marina del Rey Marriott, 4100 Admiralty Way, Marina del Rey, CA 90292.
Contact Person: Aftab A. Ansari, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892, (301) 594–6376, *ansaria@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; Tumor Immunology.
Date: June 2, 2008.
Time: 11 a.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Manzoor Zarger, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6208, MSC 7804, Bethesda, MD 20892, (301) 435–2477, *zargerma@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; Neurotechnology: Quorum.
Date: June 3–4, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Grand Hyatt San Francisco on Union Square, 345 Stockton Street, San Francisco, CA 94108.
Contact Person: Robert C. Elliott, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5190, MSC 7846, Bethesda, MD 20892, 301–435–3009, *elliotro@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Geographical Influences on Health.
Date: June 3, 2008.
Time: 3 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Karen Lechter, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3128, MSC 7759, Bethesda, MD 20892, 301–496–0726, *lechterk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Anterior Eye Disease Member Conflict.
Date: June 3, 2008.
Time: 12:30 p.m. to 2:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: George Ann Mckie, DVM, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1124, MSC 7846, Bethesda, MD 20892, 301–435–1049, *mckiegeo@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cardiac Arrhythmia and Ca2+ Signaling.
Date: June 4, 2008.
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.
Contact Person: Ai-Ping Zou, PhD, MD, 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: Brain Disorders and Clinical Neuroscience Integrated Review Group; Cell Death in Neurodegeneration Study Section.
Date: June 5–6, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Beacon Hotel and Corporate Quarters, 1615 Rhode Island Avenue, NW., Washington, DC 20036.
Contact Person: Rene Etcheberrigaray, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5196, MSC 7846, Bethesda, MD 20892, (301) 435–1246, *etcheber@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Virology—B Study Section.

Date: June 5–6, 2008.
Time: 8 a.m. to 2:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.
Contact Person: Robert Freund, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3200, MSC 7848, Bethesda, MD 20892, 301–435–1050, *freundr@csr.nih.gov.*

Name of Committee: Health of the Population Integrated Review Group; Health Services Organization and Delivery Study Section.
Date: June 5–6, 2008.
Time: 8:30 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.
Contact Person: Kathy Salaita, SCD Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7770, Bethesda, MD 20892, 301–451–8504, *salaitak@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Clinical Neuroscience and Disease.
Date: June 9–10, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.
Contact Person: Rene Etcheberrigaray, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5196, MSC 7846, Bethesda, MD 20892, (301) 435–1246, *etcheber@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; BMIT/MEDI Member Conflict.
Date: June 9, 2008.
Time: 10:30 a.m. to 1:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Weihua Luo, MD, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5114, MSC 7854, Bethesda, MD 20892, (301) 435–1170, *luow@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Reproductive Endocrinology and Toxicology.
Date: June 9, 2008.
Time: 1 p.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Contact Person: Michael Knecht, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6176, MSC 7892, Bethesda, MD 20892, (301) 435–1046, *knechtm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Bioengineering Research Applications—Respiratory.
Date: June 9, 2008.
Time: 2 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Bonnie L. Burgess-Beusse, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2191C, MSC 7818, Bethesda, MD 20892, 301–435–1783, *beusseb@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Road Map Chemical Probe Discovery Center.
Date: June 10, 2008.
Time: 8 a.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: David R. Jollie, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7806, Bethesda, MD 20892, (301) 435–1722, *jollieda@csr.nih.gov.*

Name of Committee: Renal and Urological Studies Integrated Review Group; Urologic and Kidney Development and Genitourinary Diseases Study Section.
Date: June 16, 2008.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Crowne Plaza Washington National Airport, 1489 Jefferson Davis Highway, Arlington, VA 22202.
Contact Person: Ryan G. Morris, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4205, MSC 7814, Bethesda, MD 20892, 301–435–1501, *morrisr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Social Science and Population Studies RO3s, R15s.
Date: June 18, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.
Contact Person: Valerie Durrant, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3148, MSC 7770, Bethesda, MD 20892, (301) 435–3554, *durrantv@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; DBBD Diversity Predoctoral Fellowships.
Date: June 19, 2008.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: State Plaza Hotel, 2117 E Street, NW., Washington, DC 20037.
Contact Person: Paek-Gyu Lee, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4095D, MSC 7812, Bethesda, MD 20892, (301) 435–1277, *leepg@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Bioengineering Research Partnerships.
Date: June 25, 2008.
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: John Firrell, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5213, MSC 7854, Bethesda, MD 20892, 301–435–2598, *firrellj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Brain Disorders and Clinical Neurosciences Fellowships.
Date: June 26–27, 2008.
Time: 8 a.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: Beacon Hotel and Corporate Quarters, 1615 Rhode Island Avenue, NW., Washington, DC 20036.
Contact Person: Deborah L. Lewis, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7850, Bethesda, MD 20892, 301–435–1224, *lewisdeb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business Visual Systems.
Date: June 30–July 1, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Doubletree Hotel, 1515 Rhode Island Avenue, NW., Washington, DC 20005.
Contact Person: George Ann McKie, DVM, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1124, MSC 7846, Bethesda, MD 20892, 301–435–1049, *mckiegeo@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: May 7, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–10670 Filed 5–14–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Initial Review Group; Biological Aging Review Committee.

Date: June 5, 2008.

Time: 11 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Room 2C212, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Bita Nakhai, PhD, Scientific Review Administrator, Scientific Review Office, National Institute on Aging, Gateway Bldg., 2c212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7701, *nakhaib@nia.nih.gov.*

Name of Committee: National Institute on Aging Initial Review Group, Clinical Aging Review Committee.

Date: June 5–6, 2008.

Time: 6 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Hotel, 4300 Military Road, Washington, DC 20015.

Contact Person: Alicja L. Markowska, PhD, DSC, National Institute on Aging, National Institutes of Health, Gateway Building 2c212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–496–9666, *markowsa@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: May 7, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–10673 Filed 5–14–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; HRS 2010 Data Collection Supplement.

Date: June 5, 2008.

Time: 4 p.m. to 5:15 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015 (Telephone Conference Call).

Contact Person: Jon E. Rolf, PhD, Scientific Review Administrator, Scientific Review Office, National Institute on Aging, Bethesda, MD 20814, (301) 402–7703, *rolfj@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel; The Metabolic Syndrome of Aging.

Date: June 19, 2008.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue Suite 2C212, Bethesda, MD 20814 (Telephone Conference Call).

Contact Person: Elaine Lewis, PhD, Scientific Review Administrator, Scientific Review Office, National Institute on Aging, Gateway Building, Suite 2C212, MSC–9205, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–7707, *elainelewis@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: May 7, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–10675 Filed 5–14–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Statement of Organization, Functions, and Delegations of Authority

The Statement of Organization, Functions, and Delegations of Authority Part N, National Institutes of Health (NIH), of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (DHHS) (40 FR 22859, May 27, 1975, as amended most recently at 71 FR 46495, August 14, 2006, and redesignated from Part HN as Part N at 60 FR 56605, November 9, 1995), is amended as set forth below to reflect the establishment of the Division of Program Coordination, Planning, and Strategic Initiatives (DPCPSI), National Institutes of Health. The National Institutes of Health Reform Act of 2006 (Pub. L. 109–482) establishes and provides the authorities of DPCPSI and transfers the following organizations in their entirety to DPCPSI: Office of AIDS Research (OAR); Office of Research on Women's Health (ORWH); Office of Behavioral and Social Sciences Research (OBSSR); Office of Disease Prevention (ODP); Office of Dietary Supplements (ODS); Office of Rare Diseases (ORD), to be retitled as the Office of Rare Diseases Research (ORDR). Also transferring to DPCPSI are the Office of Portfolio Analysis and Strategic Initiatives (OPASI), Division of Resource Development and Analysis (DRDA), Division of Strategic Coordination (DSC), Division of Evaluation and Systematic Assessments (DESA), and Office of Medical Applications of Research (OMAR), ODP. The following organizations are abolished: OAR; ORWH; OBSSR; ODP; ODS, ODP; ORD, ODP; OMAR, ODP; and OPASI.

I. Section N–B, Organization and Functions, is amended as follows:

A. Immediately after the paragraph headed ''NIH Ethics Office (NAT, formerly HNAT)'' insert the following:

Division of Program Coordination, Planning, and Strategic Initiatives (NA W, formerly HNA 149). (1) Identifies and reports on research that represents important areas of emerging scientific opportunities, rising public health challenges, or knowledge gaps that deserve special emphasis and would benefit from conducting or supporting additional research that involves collaboration between two or more Institutes and Centers (ICs), or would otherwise benefit from strategic coordination and planning; and (2) coordinates research and activities related to AIDS, behavioral and social sciences, women's health, disease prevention, rare diseases, and dietary supplements.

Office of AIDS Research (NA W2, formerly HNA W2). (1) Develops a comprehensive strategic plan that identifies and establishes objectives, priorities, and policy statements governing the conduct and support of all NIH AIDS research activities; (2) develops and presents to OMB and the President an annual scientifically justified budget estimate for NIH AIDS-

related research activities; (3) submits an alternate AIDS budget to the Secretary and the Director, NIH, in accordance with the strategic plan; (4) receives and disburses all appropriated funds for NIH AIDS research activities to the NIH ICs in accordance with the strategic plan; (5) directs the planning, coordination, and integration of all AIDS research activities across and throughout the NIH ICs; (6) evaluates NIH HIV/AIDS research programs developed for the strategic plan and carried out by the ICs; (7) administers a discretionary fund for the support, through the ICs, of AIDS research; (8) advises the NIH director and senior staff on the development of NIH-wide policy issues related to AIDS research, and serves as principal liaison with HHS Operating Divisions (OPDIVs) and Staff Divisions (STAFFDIVs), other Federal Government agencies, and the Office for National AIDS Policy; (9) represents the NIH director on all outside AIDS-related committees requiring NIH participation; (10) provides staff support to the OAR Advisory Council, NIH AIDS Executive Committee, and the Coordinating Committees for each AIDS research discipline at NIH; (11) develops policy on laboratory safety for AIDS researchers and monitors the AIDS surveillance program; (12) develops and maintains an information database on intramural/extramural AIDS activities and prepares special or recurring reports as needed; (13) develops information strategies to assure that the public is informed of NIH AIDS research activities; (14) recommends solutions to ethical and legal issues arising from NIH intramural/extramural AIDS research; (15) facilitates collaboration in AIDS research between government, industry, and educational institutions; and (16) fosters and develops plans for NIH involvement in international AIDS research activities.

Office of Research on Women's Health (NA W3, formerly HNA W3). (1) Advises the NIH Director, DPCPSI Director, and other key officials on matters relating to research on women's health; (2) strengthens and enhances research related to diseases, disorders, and conditions that affect women; (3) ensures that research conducted and supported by NIH adequately addresses issues regarding women's health; (4) ensures that women are appropriately represented in biomedical and biobehavioral research studies supported by the NIH; (5) develops opportunities for and supports recruitment, retention, reentry, and advancement of women in biomedical careers; and (6) supports research on women's health issues.

Office of Behavioral and Social Sciences Research (NA W4, formerly HNA W4). (1) Advises the NIH Director, DPCPSI Director, and other key officials on matters relating to research on the role of human behavior in the development of health, prevention of disease, and therapeutic intervention; (2) coordinates research projects in the behavioral and social sciences conducted or supported by the NIH ICs; (3) identifies research projects that deserve expanded effort and support by the ICs; and (4) develops research projects in cooperation with the ICs.

Office of Disease Prevention (NA W5, formerly HNA W5). (1) Coordinates the activities of disease prevention, rare diseases, dietary supplements, and medical applications of research, and advises the NIH Director, DPCPSI Director, and other key officials on the following: (a) Research related to disease prevention, and promotion of disease prevention research; (b) research related to dietary supplements and their role in disease prevention; (c) research and activities related to rare diseases; and (d) medical applications of research, including drugs, procedures, devices and other technology developed from basic biomedical research at NIH; (2) provides guidance to the research institutes on research related to disease prevention; (3) coordinates and facilitates the systematic identification of research activities pertinent to all aspects of disease prevention, including: (a) Identification of risk factors for disease; (b) risk assessment, identification, and development of biologic, environmental, and behavioral interventions to prevent disease occurrence or progression of presymptomatic disease; and (c) the conduct of field trials and demonstrations to assess interventions and encourage their adoption, if warranted; (4) identifies, coordinates, and encourages fundamental research aimed at elucidating the chain of causation of acute and chronic diseases; (5) coordinates and facilitates clinically relevant NIH-sponsored research bearing on disease prevention, including interventions to prevent the progression of detectable but asymptomatic disease; (6) promotes the coordinating linkage for research institutes on biobehavioral modification toward prevention of disease; (7) coordinates with OMAR to promote the effective transfer of identified safe and efficacious preventive interventions to the health care community and the public; (8) works with the research institutes to initiate and develop Request for Applications (RFA), Program Announcements (PA), and Requests for Proposals (RFP) to enhance disease prevention program development; and sponsors, singly or in combination with other organizations, workshops and conferences on disease prevention; (9) provides a link between the disease prevention and health promotion activities of the research institutes of the NIH, the Surgeon General and Assistant Secretary for Health, and the Secretary, (10) monitors the effectiveness and progress of disease prevention and health promotion activities of the NIH; and (11) reports expenditures and personnel involved in prevention activities at NIH.

Office of Dietary Supplements (NA W52, formerly HNA W52). (1) Advises the Associate Director for Disease Prevention and provides guidance to the research institutes on research related to the health benefits of dietary supplements and their role in disease prevention; (2) conducts, promotes, and coordinates research at NIH relating to dietary supplements; (3) collects and compiles the results of scientific research relating to dietary supplements; (4) serves as principal advisor to the Secretary and PHS components on non-regulatory issues relating to dietary supplements; and (5) compiles and maintains a database of scientific research and funding.

Office of Rare Diseases Research (NA W53, formerly HNA W53). (1) Guides and coordinates NIH-wide activities involving research into combating and treating the broad array of rare diseases (orphan diseases); (2) manages the NIH Rare Diseases and Orphan Products Coordinating Committee; (3) develops and maintains a centralized database on rare diseases; (4) coordinates and provides liaison with Federal and non-Federal national and international organizations concerned with rare disease research and orphan products development; (5) advises the Office of the Director, NIH, on matters relating to NIH-sponsored research activities that involve rare diseases and conditions; and (6) responds to requests for information on highly technical matters and matters of public policy relative to rare diseases and orphan products.

Office of Medical Applications of Research (NA W54, formerly HNA W54). (1) Advises the Associate Director for Disease Prevention and provides guidance to the research institutes on medical applications of research; (2) coordinates, reviews, and facilitates the systematic identification and evaluation of clinically relevant NIH research program information; (3) promotes the effective transfer of this information to

the health care community and, through the Office of Health Technology Assessment, National Center for Health Services Research and Health Care Technology Assessment (NCHSRHCTA), to those agencies requiring this information; (4) provides a link between technology assessment activities of the research institutes of the NIH and the NCHSRHCTA; and (5) monitors the effectiveness and progress of the assessment and transfer activities of the NIH.

Office of Portfolio Analysis and Strategic Initiatives (NA W6, formerly HNA W6). Supports regular trans-NIH scientific planning and initiatives and the successful and adaptive priority setting process for identifying areas of scientific and health improvement opportunities.

Division of Resource Development and Analysis (NA W62, formerly HNA W62). (1) Uses resources (databases, analytic tools, and methodologies) and develops specifications for new resources, when needed, to conduct assessments based on NIH and other databases in support of portfolio analyses and priority setting in scientific areas of interest across NIH; (2) serves as a resource for portfolio management at the programmatic level; and (3) ensures that NIH addresses important areas of emerging scientific opportunities and public health challenges effectively.

Division of Strategic Coordination (NA W63, formerly HNA W63). (1) Integrates information and develops recommendations to inform NIH's priority-setting and decision making processes with respect to strategic initiatives; (2) addresses exceptional scientific opportunities and emerging public health needs; (3) provides the NIH Director with the information needed to allocate resources effectively for trans-NIH efforts; and (4) identifies trans-NIH initiatives for consideration and evaluation by both outside advisors and NIH leadership.

Division of Evaluation and Systematic Assessments (NA W64, formerly HNA W64). Plans, conducts, coordinates, and supports program evaluations, including, but not limited to, IC specific program and project evaluations; trans-NIH evaluations, including Roadmap initiatives; and systematic assessments required by the Government Performance and Results Act and the OMB Program Assessment Rating Tool.

II. Under the heading ''Office of the Director (NA, formerly HNA)'' delete in their entirety the following headed paragraphs: ''Office of Research on Women's Health (NAG, formerly HNAG)''; the ''Office of AIDS Research (NA5, formerly HNA5)''; the ''Office of Behavioral and Social Sciences Research (NAH, formerly HNAH)''; the ''Office of Disease Prevention (NA2, formerly HNA2)''; the ''Office of Medical Applications of Research (NA23, formerly HNA23)''; the ''Office of Dietary Supplements (NA25, formerly HNA25)''; the ''Office of Rare Diseases (NA26, formerly HNA26)''; the ''Office of Portfolio Analysis and Strategic Initiatives (NAU, formerly HNAU)''; the ''Division of Resource Development and Analysis (NA, formerly HNAU2)''; the ''Division of Strategic Coordination (NAU3, formerly HNAU3)''; and the ''Division of Evaluation and Systematic Assessments (NAU4, formerly HNAU4).''

III. Delegations of Authority: All delegations and redelegations of authority to officers and employees of NIH which were in effect immediately prior to the effective date of this reorganization and are consistent with this reorganization shall continue in effect in them or their successors, pending further redelegation.

Dated: May 6, 2008.

Michael O. Leavitt,

Secretary.

[FR Doc. E8–10637 Filed 5–14–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: Opioid Treatment Programs (OTPs) Mortality Reporting Form—NEW

The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Treatment (CSAT), has developed a voluntary reporting form for Opioid Treatment Programs (OTPs) to report mortality data on patients who at the time of death, were enrolled in the Programs that were certified to operate by SAMHSA.

Methadone is a Schedule II controlled substance approved by the Food and Drug Administration for the treatment of opioid dependence and pain. Although it has been proven safe and effective, it must be carefully administered and for that reason, treatment of opioid dependence with methadone is provided only through specialized and Federally regulated and accredited clinics, the OTPs. Buprenorphine, a Schedule III controlled substance, is also used in the treatment of opioid addiction by OTPs and office-based physicians.

In recent years, methadone has been associated with an increasing number of deaths around the country. Simultaneously, the use of methadone for pain has increased significantly over the last 5 to 10 years. While the Food and Drug Administration (FDA) maintains oversight of methadone for use in pain, SAMHSA provides oversight of methadone for use in opioid addiction treatment. Currently, there is no national database that tracks mortality among patients receiving methadone in OTPs and as a result, it is not clear whether and to what extent the increase in methadone-associated deaths may be related to treatment in OTPs. MedWatch, a voluntary reporting system maintained by FDA, provides information relevant to its role in its more general oversight of medication and device safety. A similar system is needed within SAMHSA to gather information directly relevant to the agency's mission of overseeing and ensuring safe and effective treatment for patients with opioid dependence.

In order to more accurately understand potential methadone-associated deaths at the OTP level, it is necessary to examine all patient deaths, including those related to buprenorphine. Understanding the actual cause of death of patients enrolled in OTPs can be a challenging task for many reasons, including inconsistencies in methods of reporting causes of deaths across different localities and officials; patients' use of other drugs, including illicit, over-the-counter, and prescription products; and other aspects of the patient's physical and mental condition. The standardized terminology to be used for reporting in the proposed system will contribute to a more precise and relevant analysis of individual cases and higher-level trends. The data will be used by SAMHSA to increase understanding of the factors contributing to these deaths, identify preventable causes of deaths, and ultimately, take appropriate action to minimize risk and help improve the quality of care. Importantly, better data

will enable the agency to more proactively manage the oversight of treatment.

The information requested from OTPs should be readily available to any OTP that has met accreditation standards. The OTP should not find any need to otherwise analyze or synthesize new data in order to complete this form.

ESTIMATED ANNUAL REPORTING REQUIREMENT BURDEN FOR OPIOID TREATMENT PROGRAMS

Form	Number of facilities (OTPs)	Responses per facility	Burden/responses (hours)	Annual burden (hours)
SAMHSA OTP Mortality Report	1,150	2	0.5	1,150

Written comments and recommendations concerning the proposed information collection should be sent by June 16, 2008 to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–6974.

Dated: May 6, 2008.

Elaine Parry,

Acting Director, Office of Program Services.

[FR Doc. E8–10855 Filed 5–14–08; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

National Protection and Programs Directorate; Submission for Review: Critical Infrastructure/Key Resources Private Sector Clearance Program (CIKR PSCP) 1670—NEW

AGENCY: National Protection and Programs Directorate, Office of Infrastructure Protection, Partnership and Outreach Division, Partnership Programs and Information Sharing Office, DHS.

ACTION: 30-Day Notice and request for comments.

SUMMARY: The Department of Homeland Security (DHS) invites the general public and other federal agencies the opportunity to comment on new information collection request 1670—NEW, Critical Infrastructure/Key Resources Private Sector Clearance Program (CIKR PSCP) Clearance Request. As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), DHS is soliciting comments for this collection. The information collection was previously published in the **Federal Register** on November 23, 2007, at 72 FR 65757 allowing for a 60-day public comment period. No comments were received on this existing information collection. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until June 16, 2008. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Officer for National Protection and Programs Directorate, DHS, or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Officer for National Protection and Programs Directorate, DHS, or via electronic mail to *oira_submission@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Analysis

Agency: Department of Homeland Security, National Protection and Programs Directorate, Partnership and Outreach Division.

Title: CIKR PSCP Clearance Request Form.

OMB Number: 1670—NEW.

Frequency: Once.

Affected Public: Private sector.

Number of Respondents: 250 responses per year.

Estimated Time per Respondent: 10 minutes.

Total Burden Hours: 42 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintaining): None.

Description: The Critical Infrastructure/Key Resources Private Sector Clearance Program (CIKR PSCP) is designed to provide private sector individuals clearances so that they can be partners with DHS. These partners are subject matter experts within specific industries and sectors. DHS has created this program to facilitate granting clearances to appropriate individuals. The CIKR PSCP requires individuals to complete a clearance request form that initiates the clearance process. Individuals are selected and then invited to become partners with DHS for a specific project or task. DHS Sector Specialists or Protective Security Advisors e-mail the form to the individual who e-mails back the completed form. The data from these forms make up the Master Roster. The Name, Social Security Number, Date of Birth and Place of Birth are entered into e-QIP—Office of Personnel Management's secure portal for investigation processing. Once the data is entered in e-QIP by the DHS Office of Security, Personnel Security Division, then the applicant can complete the rest of the e-QIP security questionnaire. The CIKR PSCP Master Roster contains all the information found on the clearance request form in addition to their clearance info (date granted, level, date

non-disclosure agreements signed.) The Administrator of the Master Roster maintains the information so as to track clearance processing and investigation information (date of investigation) and to have the most current contact information for the participants from each sector.

Dated: May 9, 2008.

Matt Coose,

Acting Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. E8–10892 Filed 5–14–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2007–0017]

Privacy Act; Office of Intelligence and Analysis Enterprise Records System

AGENCY: Privacy Office, DHS.

ACTION: Notice of Privacy Act system of records notice.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security gives notice that it proposes to add a new system of records to its inventory of record systems, namely the Office of Intelligence & Analysis Enterprise Records System (ERS). Some of the records that were previously maintained in the Homeland Security Operations Center Database (DHS/IAIP–001), the system of records notice for which was last published in full text on April 18, 2005 (70 FR 20156), will now be part of the ERS. This notice does not rescind, revoke, or supersede the HSOC system of records notice insofar as other components of DHS maintain records within that system of records, under their respective authorities.

DATES: The new system of records will be effective June 16, 2008.

ADDRESSES: You may submit comments, identified by *docket number*, by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments via docket number DHS–2007–0017.
- *Fax:* 1–866–466–5370.
- *Mail:* Comments by mail may also be submitted to Hugo Teufel III, Chief Privacy Officer, Department of Homeland Security, Washington, DC 20528.
- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.
- *Docket:* For access to the docket to read background documents or comments received go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions, please contact the Information Sharing and Knowledge Management Division, Office of Intelligence and Analysis, Department of Homeland Security, Washington, DC 20528. For privacy issues, please contact: Hugo Teufel III, Chief Privacy Officer, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

The mission of DHS under the Homeland Security Act of 2002 is to prevent terrorist attacks; reduce the vulnerability of the United States to terrorism; minimize the damage and assist in the recovery from terrorist attacks that may occur within the United States; carry out the functions of the legacy agencies and entities transferred to the Department, including by acting as a focal point regarding natural and manmade crises and emergency planning; ensure that the functions of the agencies and subdivisions within DHS not directly related to securing the homeland are not diminished or neglected; ensure that the civil rights and civil liberties of persons within, and the overall economic security of, the United States are not diminished by efforts, activities, and programs aimed at securing the homeland; and monitor the connections between illegal drug trafficking and terrorism, coordinate efforts to sever such connections, and contribute to the effort to interdict illegal drug trafficking.

Recognizing the need for intelligence support in all of the critical mission areas identified in the President's National Strategy for Homeland Security and in direct support both of the DHS mission and all elements of the Department responsible for executing the Secretary's authorities in fulfilling it, the Under Secretary for Intelligence & Analysis, as head of the DHS Office of Intelligence and Analysis (I&A), is responsible for carrying out the responsibilities of the Secretary relating to intelligence and information analysis across the Department and, as Chief Intelligence Officer of the Department, oversees the functional integration of the Department's intelligence activities, including those occurring outside of I&A. Through successive and specific delegations issued in 2006, the Under Secretary for I&A was assigned the authority and responsibility: (1) To perform the functions specified in Title II of the Homeland Security Act that relate to the Office of Information Analysis (since renamed I&A); (2) to exercise oversight and responsibility for the functions and duties necessary to lead and manage the integration of Departmental intelligence activities; and (3) to exercise the authority under section 202 of the Homeland Security Act to ensure the timely and efficient access to all information necessary to discharge the responsibilities under section 201 of the Homeland Security Act. Taken together, the Under Secretary for I&A exercises, through I&A, lead or, in some cases, shared leadership responsibility under the Homeland Security Act for the following:

A. To access, receive, and analyze law enforcement, intelligence, and other information from federal, state, and local government agencies (including law enforcement agencies), and private sector entities, and to integrate such information, in support of the mission responsibilities of the Department and the functions of the National Counterterrorism Center established under section 119 of the National Security Act of 1947 (50 U.S.C. 404o), in order to: (A) Identify and assess the nature and scope of terrorist threats to the homeland; (B) detect and identify threats of terrorism against the United States; and (C) understand such threats in light of actual and potential vulnerabilities;

B. To request additional information from other agencies of the federal government, state and local government agencies, and the private sector relating to threats of terrorism in the United States, or relating to other areas of responsibility assigned by the Secretary;

C. To establish Department-wide procedures for the review and analysis of information provided by State, local, and tribal governments and the private sector, integrate such information into the information gathered by the Department and other departments and agencies of the Federal Government, as appropriate, and make available such information, as appropriate, within the Department and to other departments and agencies of the Federal Government;

D. To ensure the timely and efficient access by the Secretary of Homeland Security and the Department to all information from other agencies of the federal government, including reports, assessments, analyses, and unevaluated intelligence related to threats of

terrorism against the United States and other areas under the responsibility of the Secretary, and to all information concerning infrastructure or other vulnerabilities of the United States to terrorism, necessary for assessing, analyzing, and integrating information for terrorism, homeland security, and related law enforcement and intelligence purposes under the Homeland Security Act;

E. To disseminate information analyzed by the Department within the Department, to other federal, state, and local government agencies, and to private sector entities with responsibilities relating to homeland security in order to assist in the deterrence, prevention, preemption of, or response to (including mitigation of) terrorist attacks against the United States;

F. To provide intelligence and information analysis and support to other elements of the Department;

G. To coordinate and enhance integration among the intelligence components of the Department, including through strategic oversight of the intelligence activities of such components;

H. To establish the intelligence collection, processing, analysis, and dissemination priorities, policies, processes, standards, guidelines, and procedures for the intelligence components of the Department, consistent with any directions from the President and, as applicable, the Director of National Intelligence;

I. To establish a structure and process to support the missions and goals of the intelligence components of the Department;

J. To integrate the information and standardize the format of the products of the intelligence components of the Department containing homeland security information, terrorism information, weapons of mass destruction information, or national intelligence (as defined in section 3(5) of the National Security Act of 1947 (50 U.S.C. 401a(5)));

K. To ensure that, whenever possible, the Department produces and disseminates unclassified reports and analytic products based on open-source information, and produces and disseminates such reports and analytic products contemporaneously with reports or analytic products concerning the same or similar information that the Department produced and disseminated in a classified format;

L. To ensure that intelligence information is shared, retained, and disseminated consistent with the authority of the Director of National Intelligence to protect intelligence sources and methods, and similar authorities of the Attorney General concerning sensitive law enforcement information;

M. To consult with the Director of National Intelligence and other appropriate intelligence, law enforcement, or other elements of the federal government to establish collection priorities and strategies for information, including law enforcement-related information, related to threats of terrorism against the United States through such means as the representation of the Department in discussions regarding requirements and priorities in the collection of such information;

N. To coordinate with elements of the intelligence community and with federal, state, and local law enforcement agencies and the private sector, as appropriate;

O. To assist in carrying out comprehensive assessments of the vulnerabilities of the key resources and critical infrastructure of the United States, including the performance of risk assessments to determine the risks posed by particular types of terrorist attacks within the United States (including an assessment of the probability of success of such attacks and the feasibility and potential efficacy of various countermeasures to such attacks);

P. To integrate relevant information, analyses, and vulnerability assessments in order to identify priorities for protective and support measures by the Department, other federal, state, and local government agencies and authorities, the private sector, and other entities;

Q. In coordination with other agencies of the federal government, to provide specific warning information and advice about appropriate protective measures and counter-measures, to state and local government agencies and authorities, the private sector, other entities, and the public;

R. To consult with state and local governments and private sector entities to ensure appropriate exchanges of information, including law enforcement-related information, related to threats of terrorism against the United States (e.g., through information sharing networks set up under state and local fusion centers, the National Infrastructure Protection Program framework, or through the release of information to the general public through the Homeland Security Alert System);

S. To review, analyze, and make recommendations for improvements to the policies and procedures governing the sharing of information within the scope of the information sharing environment established under section 1016 of the Intelligence Reform and Terrorism Prevention Act of 2004 (6 U.S.C. 485), including homeland security information, terrorism information, and weapons of mass destruction information, and any policies, guidelines, procedures, instructions, or standards established under that section;

T. To ensure that any material received through authorized DHS intelligence activities is protected from unauthorized disclosure and handled and used only for the performance of official duties;

U. To establish and utilize a secure communications and information technology infrastructure, including data-mining and other advanced analytic tools, to access, receive, and analyze data and information and to disseminate information acquired and analyzed by the Department, as appropriate;

V. To establish, consistent with the policies and procedures developed under section 1016 of the Intelligence Reform and Terrorism Prevention Act of 2004 (6 U.S.C. 485), and consistent with the enterprise architecture of the Department, a comprehensive information technology network architecture for the Office of Intelligence and Analysis that connects the various databases and related information technology assets of the Office of Intelligence and Analysis and the intelligence components of the Department in order to promote internal information sharing among the intelligence and other personnel of the Department;

W. To ensure that any information databases and analytical tools developed or utilized by the Department (A) are compatible with one another and with relevant information databases of other agencies of the federal government, and (B) treat information in such databases in a manner that complies with applicable federal law on privacy;

X. To oversee the Department's Information Sharing and Knowledge Management Officer, and those designated for each of the intelligence components of the Department, regarding coordinating the different systems used in the Department to gather and disseminate homeland security information or national intelligence (as defined in section 3(5) of the National Security Act of 1947 (50 U.S.C. 401a(5)));

Y. To coordinate training and other support to the elements and personnel of the Department, other agencies of the federal government, and state and local governments that provide information to the Department or are consumers of information provided by the Department, in order to facilitate the identification and sharing of information revealed in their ordinary duties and the optimal utilization of information received from the Department;

Z. To provide to employees of the Department opportunities for training and education to develop an understanding of the definitions of homeland security information and national intelligence (as defined in section 3(5) of the National Security Act of 1947 (50 U.S.C. 401a(5))), and how information available to such employees as part of their duties might qualify as homeland security information or national intelligence, and be relevant to the Office of Intelligence and Analysis and the intelligence components of the Department;

AA. To evaluate, on an ongoing basis, how employees of the Office of Intelligence and Analysis and the intelligence components of the Department are utilizing homeland security information or national intelligence, sharing information within the Department, and participating in the information sharing environment established under section 1016 of the Intelligence Reform and Terrorism Prevention Act of 2004 (6 U.S.C. 485); and

BB. To perform other duties relating to such responsibilities as the Secretary may provide.

In addition to assigning I&A the statutory responsibilities noted above, relevant provisions of the Homeland Security Act of 2002, which amended the National Security Act of 1947 in part, and subsequent amendments to Executive Order 12333, effectively designated I&A as an element of the National Intelligence Community (IC) and the position now occupied by the Under Secretary for I&A as a ''Senior Official of the Intelligence Community'' (SOIC). That, together with the Secretary's subsequent designation of the head of I&A as Chief Intelligence Officer of the Department—a dual-designation recently codified in statute through recent amendments to Title II of the Homeland Security Act of 2002—the Under Secretary for I&A now leads the integrated DHS intelligence enterprise in providing valuable, actionable intelligence and intelligence-related information for and among the National leadership, all components of DHS, the IC, and our other Federal, State, local, territorial, tribal, foreign and private sector partners.

In his December 16, 2005, memorandum concerning information sharing activities at DHS, the Secretary also assigned to what is now the position of Under Secretary for I&A the responsibility to ''develop[ ] and execut[e] the information sharing enterprise within the Department to ensure that the information and analysis provided by the Department is appropriate for providing security for the homeland * * * [and to] ensure that the sharing of intelligence and analysis between DHS and its Federal, State, local, tribal, and private sector partners is sufficient to meet their homeland security needs.''

On February 1, 2007, the Secretary formally issued the DHS Policy for Internal Information Exchange and Sharing, and in doing so, recognized that all elements of DHS are ''one agency'' for purposes of the Privacy Act and information sharing activities generally. Moreover, the Secretary specifically reaffirmed that, within the context of this ''one agency'' approach to information sharing, the acting incumbent to the position of Under Secretary for I&A is ''the official responsible for assessing and analyzing all terrorism, homeland security, and related law enforcement and intelligence information received by the Department.''

Thus, in accordance with the Privacy Act of 1974, and to facilitate the department-wide activities of I&A as described herein, the DHS gives notice that it proposes to add a new system of records to its inventory of record systems, namely the DHS I&A ERS to maintain those records associated with I&A operations, some of which existed previously in the Homeland Security Operations Center Database (HSOC) system of records. This notice does not rescind, revoke, or supersede the HSOC system of record or notice insofar as other components of DHS maintain records within this system of records, under their respective authorities.

The ERS will hold all records and information utilized by I&A to provide intelligence and analysis support to DHS, and from which I&A can cull, analyze, and fuse intelligence and related information properly received from other DHS components, and United States Government (USG) departments and agencies (including law enforcement agencies), elements of the IC, and our foreign, State, local, territorial, tribal, and private sector partners. A centrally managed records system, will allow I&A to access and communicate relevant information quickly and effectively to DHS leadership, and, as appropriate, the other entities listed above. Indeed, as defined in this notice, ERS which is a multi-domain (classified and sensitive-unclassified) national security system will enable I&A personnel to: (1) Manage intelligence requirements and leverage intelligence capabilities; (2) provide timely, actionable, and relevant intelligence information; (3) produce action-oriented indications and warnings, evaluations, and assessments of evolving terrorist capabilities and intent; (4) identify and disrupt terrorist activities against, and other threats to, our homeland and within our borders; (5) develop and employ techniques for alternative analysis; (6) facilitate the production of accurate, timely, and thorough finished intelligence products to the end-user; and (7) maintain an effective information sharing process, operations, and systems environment within and without DHS.

Given the nature of I&A's mission to ensure appropriate access to analytical information and source records while promoting a common and unified standard for data integrity, safeguarding, data exchange, and administrative oversight of the information maintained, by I&A, I&A has developed ERS as the single system of records to support all I&A operations.

The information in the ERS system of records includes intelligence information and other properly acquired information received from agencies and components of the federal government, foreign governments, organizations or entities, international organizations, state and local government agencies (including law enforcement agencies), and private sector entities, as well as information provided by individuals, regardless of the medium used to submit the information or the agency to which it was submitted. This system also contains: information regarding persons on watch lists with known or suspected links to terrorism; the results of intelligence analysis and reporting; ongoing law enforcement investigative information, information systems security analysis and reporting; active immigration, customs, border and transportation, security related records; historical law enforcement, operational, immigration, customs, border and transportation security, and other administrative records; relevant and appropriately acquired financial information; and public-source data such as that contained in media reports and commercially available databases, as appropriate. Data about the providers of information, including the means of

transmission of the data, is also retained.

I&A will use the information in the ERS system of records, consistent with its statutory responsibilities and functions listed above in sub-paragraphs A-BB of this section.

II. Legal Requirements

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the USG collects, maintains, uses and disseminates personally identifiable information.

The Privacy Act applies to information that is maintained in a system of records. A system of records is defined as a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifier particular to the individual.

Individuals may request their records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR part 5.

The Privacy Act requires that each agency publish in the **Federal Register** a description denoting the type and character of each system of records to provide transparency to and notify individuals about how the USG is using personally identifiable information, to assist individuals to more easily find files within the agency, and to inform the public if any applicable Privacy Act exemptions will be claimed for the system, which would affect access to certain information contained in the system.

DHS proposes to exempt the ERS system of records from certain portions of the Privacy Act to protect classified or otherwise sensitive information that is contained in the system and to protect the integrity of ongoing counterterrorism, intelligence, law enforcement and other homeland security activities. These exemptions are necessary because ERS contains information concerning certain individuals, including but not limited to known or suspected terrorists, and activities that could impact the security of people within the United States. These exemptions are necessary, moreover, because some of the information contained in the system may be derived from sensitive intelligence, law enforcement, or other operational sources and/or acquired using sensitive intelligence or law enforcement methods.

Specifically, DHS is claiming exemptions from those provisions of the Privacy Act contained at 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) pursuant to 5 U.S.C. 552a(k)(1), (2), (3) and (5).

Elsewhere in today's **Federal Register** is the Notice of Proposed Rulemaking for these exemptions.

Moreover, and notwithstanding those provisions of the Privacy Act from which DHS is seeking exemption today, I&A, as a member of the National Intelligence Community, also conducts its mission in conformance with the requirements of Executive Order 12333, as amended, ''United States Intelligence Activities,'' dated December 4, 1981. Section 2.3 of Executive Order 12333 requires that each agency head within the IC establish procedures to govern the collection, retention, and dissemination of information concerning U.S. Persons in a manner which protects the privacy and constitutional rights of U.S. Persons.

Specifically within I&A, intelligence personnel may acquire information which identifies a particular U.S. Person, retain it within or disseminate it from ERS, as appropriate, only when it is determined that the personally identifying information is necessary for the conduct of I&A's functions and otherwise falls into one of a limited number of authorized categories.

The routine uses covered by this system of records notice include the sharing of covered information by I&A with its homeland security partners, including, where and when appropriate, Federal, State, local, tribal, territorial, foreign, or multinational governments and agencies, and certain private sector individuals and organizations, for purposes of countering, deterring, preventing, preparing for, responding to, or recovering from natural or manmade threats, including acts of terrorism; for assisting in or facilitating the coordination of homeland security threat awareness, assessment, analysis, deterrence, prevention, preemption, and response; for assisting in authorized investigations, prosecutions or enforcement of the law, when acquired information indicates a violation or potential violation of law; where disclosure is in furtherance of I&A's information sharing responsibilities under statute or policy, including disclosure in support of those entities lawfully engaged in the collection of intelligence, counterterrorism, homeland security, and related law enforcement information; for making notifications and issuing warnings of serious threats to the homeland or to those specific individuals whose person or property may become the targets of a particular threat; and, as otherwise necessary, to properly manage and oversee the administration of this system of records and other organizational activities of I&A, including administrative responsibilities related to interagency support, litigation support, congressional affairs and oversight, records management, intelligence and information oversight, human capital, and internal security.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this new system of records to the Office of Management and Budget (OMB) and to the Congress.

DHS/IA–001

SYSTEM NAME:

Office of Intelligence & Analysis (I&A) Enterprise Records System.

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Records are maintained by the Office of Intelligence & Analysis (I&A), Department of Homeland Security, Washington, DC 20528, and at remote locations where I&A maintains secure facilities and/or conducts its mission.

CATEGORY OF INDIVIDUALS COVERED BY THE SYSTEM:

A. Individuals who are known, reasonably believed to be, or are suspected of being, involved in or linked to:

1. The existence, organization, capabilities, plans, communications, intentions, and vulnerabilities of, means of finance or material support for, and activities against or threats to the United States or United States persons and interests by, domestic, foreign or international terrorist groups and/or individuals involved in terrorism;

2. Groups or individuals believed to be assisting or associated with domestic, foreign, or international terrorist groups and/or individuals involved in terrorism;

3. Activities constituting a threat to homeland security, and/or activities that are preparatory to, or facilitate or support such activities, including:

a. Activities related to the violation or suspected violation of immigration or customs laws and regulations of the United States,

b. Activities, which could reasonably be expected to assist in the development or use of a weapon of mass effect;

c. Activities to identify, create, exploit, or undermine the vulnerabilities of the ''key resources'' (as defined in section 2(9) of the

Homeland Security Act of 2002) and ''critical infrastructure'' (as defined in 42 U.S.C. 5195c(c)) of the United States;

d. Activities to identify, create, exploit, or undermine the vulnerabilities of the cyber and national telecommunications infrastructure, including activities which may impact the availability of a viable national security and emergency preparedness communications infrastructure.

e. Activities detrimental to the security of transportation and transportation systems;

f. Activities which violate or are suspected of violating the laws relating to counterfeiting of obligations and securities of the United States and other financial crimes, including access device fraud, financial institution fraud, identity theft, computer fraud; and computer-based attacks on our nation's financial, banking, and telecommunications infrastructure;

g. Activities, not wholly conducted within the United States, which violate or are suspected of violating the laws which prohibit the production, transfer, or sale of narcotics or substances controlled in accordance with Title 21 of the United States Code, or those associated activities otherwise prohibited by Titles 21 and 46 of the United States Code;

h. Activities which impact or concern the security, safety, and integrity of our international borders, including any illegal activities that cross our borders such as violations of the immigration or customs laws of the United States;

i. Activities which impact, concern, or otherwise threaten the safety and security of the President and Vice President, their families, heads of state, and other designated individuals; the White House, Vice President's residence, foreign missions, and other designated buildings within the United States;

j. Activities which impact, concern, or otherwise threaten maritime safety and security, maritime mobility and navigation, or the integrity of the maritime environment;

k. Activities which impact, concern, or otherwise threaten the national operational capability of the Department to respond to natural and man-made major disasters and emergencies, including acts of terrorism, in support of impacted communities; to coordinate all Federal emergency management response operations, response planning and logistics programs; and to integrate Federal, State, tribal and local response programs to ensure the efficient and effective delivery of immediate emergency assistance to individuals and communities impacted by major disasters, emergencies or acts of terrorism.

l. Activities involving the detection of and response to unauthorized attempts to import, possess, store, develop, or transport nuclear or radiological material for use against the United States

4. The capabilities, intentions, or activities of foreign governments or elements thereof, foreign organizations, or foreign persons, where the individuals may be officers or employees of, or otherwise acting for or on behalf of, a foreign power or organization that may be owned or controlled, directly or indirectly, by a foreign power;

5. Intelligence activities, or other individuals known or suspected of engaging in intelligence activities, on behalf of a foreign power or terrorist group;

6. Activities or circumstances where the health or safety of that individual may be threatened, including information concerning these individuals that may be necessary for identifying and implementing protective security measures or other emergency preparedness activities;

B. Individuals who voluntarily request assistance or information, through any means, from I&A, or individuals who voluntarily provide information concerning any of the activities above, which may threaten or otherwise affect homeland security.

C. Individuals who are or have been associated with DHS or I&A activities or with the administration of the Department, including information about individuals that is otherwise required to be maintained by law or that is necessary for the provision of intelligence support to the Department.

CATEGORIES OF RECORDS IN THE SYSTEM:

I&A utilizes a single records system for maintaining I&A's operational and administrative records, including:

A. Classified and unclassified intelligence (includes national intelligence, foreign intelligence, and counterintelligence), counterterrorism, homeland security, and related law enforcement information, including source records and the reporting and results of any analysis of this information, obtained from all agencies, components and organizations of the Federal government, including the IC; foreign governments, organizations or entities, and international organizations; State, local, tribal and territorial government agencies (including law enforcement agencies); and private sector entities;

B. Information provided by record subjects and individual members of the public;

C. Information obtained from the Terrorist Screening Center, the National Counterterrorism Center, or from other organizations about individuals known or reasonably suspected of being engaged in conduct constituting, preparing for, aiding, or relating to terrorism;

D. Active and historical law enforcement investigative information;

E. Information related to lawful DHS Security investigations, including authorized physical, personnel, and communications security investigations, and information systems security analysis and reporting;

F. Operational and administrative records, including correspondence records;

G. Lawfully acquired financial information, when relevant to an authorized intelligence, counterterrorism, homeland security, or related law enforcement activity;

H. Public source data such as that contained in media, including periodicals, newspapers, broadcast transcripts, and other public reports and commercial databases; and

I. Data about the providers of any information otherwise contained within this system, including the means of transmission of the data.

Examples of information related to the ''Categories of Individuals'' listed above may include:

Full name, date of birth, gender, country of citizenship, country of birth, alien number, social security number, driver's license numbers, passport numbers, fingerprint identification number, or other unique identifying numbers, current and past home and work addresses, phone numbers, terrorist associations, biometric information including fingerprints and photographs, physical description, results from intelligence analysis related to terrorism, financial information, family members or associates, flight information, border crossing information, immigration information, or other personally identifiable information that is relevant and necessary.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Title II and section 892 of the Homeland Security Act of 2002, Pub. L. 107–296, 116 Stat. 2145 (Nov. 25, 2002), as amended (6 U.S.C. 121, *et seq.*); 44 U.S.C. 3101; E.O. 9397; E.O. 12333; E.O. 12958; E.O. 13356; and E.O. 13388.

PURPOSE(S):

ERS replaces the applicable portions of the DHS, Homeland Security Operations Center Database (DHS/IAIP–001) system of records notice (SORN), last published in full text on April 18, 2005 [70 F.R. 20156]. The DHS/IAIP–001 SORN previously covered the functional and organizational aspects of I&A within DHS prior to realignment by the Secretary and Congress, respectively, in 2005 and 2006.

The mission-specific purposes of ERS are as follows:

A. To manage, access, analyze, integrate, and store intelligence (including national intelligence, foreign intelligence, and counterintelligence), counterterrorism, homeland security, related law enforcement, and other information to carry out the responsibilities of the Secretary of Homeland Security and the Under Secretary for I&A, as the official responsible for assessing and analyzing all terrorism, homeland security, and related law enforcement and intelligence information received by the Department, under Title II of the Homeland Security Act (6 U.S.C. 121, *et seq.*), in support of the overall DHS mission.

B. To fulfill the need for coordinated intelligence support in all of the critical mission areas specifically identified in the President's National Strategy for Homeland Security or other related activities as defined by separate Executive Order, Homeland and/or National Security Presidential Directive, or other issuance concerning the internal management and policy of Executive Branch activities.

C. To enable the provision of intelligence and analysis support to all DHS activities, components, and organizational elements, and to maintain a record system from which I&A can cull, analyze, and fuse intelligence and related information properly received from other DHS components, other United States Government (USG) departments and agencies (including law enforcement agencies), elements of the National Intelligence Community (IC), as well as our foreign, State, local, territorial, tribal, and private sector partners.

D. To permit the Under Secretary for I&A, as Chief Intelligence Officer of the Department, to foster the development and execution of an information sharing environment within DHS; to integrate the intelligence and information sharing functions and activities of the DHS intelligence enterprise to provide the most valuable, actionable intelligence and intelligence-related information for the Nation's leadership, all components of DHS, the IC, and our other partners; and to ensure both that the information and analysis provided by the Department is appropriate for providing security for the homeland and that the sharing of intelligence and analysis between DHS and its Federal, State, local, territorial, tribal, foreign, and private sector partners is sufficient to meet their respective homeland security needs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To any Federal, State, local, tribal, territorial, foreign, or multinational government or agency, or appropriate private sector individuals and organizations, with responsibilities relating to homeland security, including responsibilities to counter, deter, prevent, prepare for, respond to, or recover from a natural or manmade threat, including an act of terrorism, or to assist in or facilitate the coordination of homeland security threat awareness, assessment, analysis, deterrence, prevention, preemption, and response;

B. To a Federal, State, local, tribal, territorial, foreign, or multinational government or agency with the responsibility and authority for investigating, prosecuting and/or enforcing a law (civil or criminal), regulation, rule, order or contract, where the record, on its face or in conjunction with other information, indicates a violation or potential violation of any such law, regulation, rule, order, or contract enforced by that government or agency;

C. To a Federal, State, local, tribal, territorial, foreign, or multinational government or agency, or other entity, including, as appropriate, certain private sector individuals and organizations, where disclosure is in furtherance of I&A's information sharing responsibilities under the Homeland Security Act of 2002, as amended, the Intelligence Reform and Terrorism Prevention Act of 2004, the National Security Act of 1947, as amended, Executive Order 12333, as amended, or any successor order, national security directive, intelligence community directive, other directive applicable to I&A, and any classified or unclassified implementing procedures promulgated pursuant to such orders and directives, or any other statute, Executive Order or directive of general applicability, and where such disclosure is otherwise compatible with the purpose for which the record was originally acquired or created by I&A;

D. To a Federal, State, local, tribal, or territorial government or agency lawfully engaged in the collection of intelligence (including national intelligence, foreign intelligence, and counterintelligence), counterterrorism, homeland security, law enforcement or law enforcement intelligence, and other information, where disclosure is undertaken for intelligence, counterterrorism, homeland security, or related law enforcement purposes, as authorized by U.S. Law or Executive Order, and in accordance with applicable disclosure policies;

E. To any other agency within the IC, as defined in section 3.4(f) of Executive Order 12333 of December 4, 1981, as amended, for the purpose of allowing that agency to determine whether the information is relevant and necessary to its mission-related responsibilities and in accordance with that agency's classified or unclassified implementing procedures promulgated pursuant to such orders promulgated pursuant to such orders and directives, or any other statute, Executive Order or directive of general applicability;

F. To foreign persons or foreign government agencies, international organizations, and multinational agencies or entities, under circumstances or for purposes mandated by, imposed by, or conferred in, Federal statute, treaty, or other international agreement or arrangement, and in accordance with applicable foreign disclosure policies, such as the National Security Decision Memorandum 119, ''Disclosure of Classified United States Military Information to Foreign Governments and International Organizations,'' which is the Presidential directive that allows for the disclosure classified information to foreign entities, and other applicable directives;

G. To any individual, organization, or entity, as appropriate, to notify them of a serious threat to homeland security for the purpose of guarding them against or responding to such a threat, or where there is a reason to believe that the recipient is or could become the target of a particular threat, to the extent the information is relevant to the protection of life, health, or property;

H. To any Federal government agency when documents or other information obtained from that agency are used in compiling the particular record, the record is also relevant to the official responsibilities of that agency, and there

otherwise exists a need for that agency to know the information in the performance of its official functions;

I. To representatives of the Department of Justice and other U.S. Government entities, to the extent necessary to obtain their advice on any matter that is within their official responsibilities to provide;

J. To the Department of Justice or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when: (a) DHS, or (b) any employee of DHS in his/her official capacity, or (c) any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee, or (d) the United States or any agency thereof, is a party to the litigation or has an interest in such litigation;

K. To a congressional office with information from the record of a particular individual, and in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains;

L. To individual members or staff of the Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence, and the House Homeland Security Subcommittee on Intelligence, Information Sharing, and Terrorism Risk Assessment, in connection with the exercise of the Committees' intelligence oversight and legislative functions, when such disclosures are necessary to a lawful activity of the United States, and the DHS Office of the General Counsel determines that such disclosures are otherwise lawful;

M. To the National Archives and Records Administration or other federal government agencies for the purpose of records management inspections being conducted under the authority of 44 U.S.C. sections 2904 and 2906;

N. To contractors, grantees, experts, consultants, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal government, when necessary to accomplish an agency function related to this system of records, in compliance with the Privacy Act of 1974, as amended;

O. To any agency, organization, or individual for the purposes of performing audit or oversight operations of DHS and/or I&A authorized by law, but only such information as is necessary and relevant to such audit or oversight function;

P. To the President's Foreign Intelligence Advisory Board, the Intelligence Oversight Board, any successor organizations, and any intelligence oversight entities established by the President, when the head of I&A determines that disclosure will assist these entities in the performance of their oversight functions; and

Q. To an appropriate Federal, State, local, tribal, territorial, foreign, or international agency, if the information is relevant and necessary to a requesting agency's decision concerning the hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit, or if the information is relevant and necessary to a DHS decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit and when disclosure is appropriate to the proper performance of the official duties of the person making the request.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored in paper and/or electronic format in secure facilities. Electronic storage is on servers, CD–ROMs, DVD–ROMs, magnetic disc, tape, and digital media.

RETRIEVABILITY:

Data may be retrieved by an individual's name or other identifier, including unique identifying numbers assigned by I&A or other government agencies.

SAFEGUARDS:

Hard copy (paper) records and information in this system are maintained in a secure facility with access limited to only authorized personnel or an authorized and escorted visitor. Physical security includes security guards and locked facilities requiring badges and passwords for access.

Hard copy records are stored in vaults, safes or locked cabinets and are accessible only to authorized government personnel and contractors who are properly screened, cleared and trained in information security and the protection of privacy information.

Electronic records are maintained on and only accessible from secured systems through hardware and software devices protected by appropriate physical and technological safeguards to prevent unauthorized access, including password protection.

Electronic or digital records or information in this system are also safeguarded in accordance with applicable laws, rules, and policies, including the DHS information technology security policies and the Federal Information Security Management Act (FISMA). The protective strategies are physical, technical, administrative and environmental in nature, which provide access control to sensitive data, physical access control to DHS facilities, confidentiality of communications, authentication of sending parties, and personnel screening to ensure that all personnel with access to data are screened through background investigations commensurate with the level of access required to perform their duties.

Strict controls have been imposed to minimize the risks of compromising the information that is being stored.

Access to the computer system containing the records in this system is limited to those individuals specifically authorized and granted access under DHS regulations, who hold appropriate security clearances, and who have a need to know the information in the performance of their official duties.

Systems are also developed with an incorporated auditing function of individual use and access.

Classified information is appropriately stored in a secured certified and accredited facility, in secured databases and containers, and in accordance with other applicable requirements, including those pertaining to classified information.

Access is strictly limited to authorized personnel only.

RETENTION AND DISPOSAL:

Records in this system will be retained and disposed of in accordance with a records retention and disposal schedule to be submitted to and approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Information Sharing and Knowledge Management, Office of Intelligence and Analysis, Department of Homeland Security, Washington, DC 20528.

NOTIFICATION PROCEDURES:

Because this system contains classified and sensitive unclassified information related to intelligence, counterterrorism, homeland security, and law enforcement programs, records in this system have been exempted from

notification, access, and amendment to the extent permitted by subsection (k) of the Privacy Act. A request for notification of any non-exempt records in this system may be made by writing to the Disclosure Officer, Office of Intelligence and Analysis, Department of Homeland Security, Washington, DC 20528, in conformance with 6 CFR Part 5, Subpart B, which provides the rules for requesting access to Privacy Act records maintained by DHS.

RECORDS ACCESS PROCEDURES:

Because this system contains classified and sensitive unclassified information related to intelligence, counterterrorism, homeland security, and law enforcement programs, records in this system have been exempted from notification, access, and amendment to the extent permitted by subsection (k) of the Privacy Act. A request for access to non-exempt records in this system may be made by writing to the Disclosure Officer, Office of Intelligence and Analysis, Department of Homeland Security, Washington, DC 20528, in conformance with 6 CFR Part 5, Subpart B, which provides the rules for requesting access to Privacy Act records maintained by DHS.

CONTESTING RECORD PROCEDURES:

Because this system contains classified and sensitive unclassified information related to intelligence, counterterrorism, homeland security, and law enforcement programs, records in this system have been exempted from notification, access, and amendment to the extent permitted by subsection (k) of the Privacy Act. A request to amend non-exempt records in this system may be made by writing to the System Manager, identified above, in conformance with 6 CFR Part 5, Subpart B, which provides the rules for requesting access to Privacy Act records maintained by DHS.

RECORD SOURCE CATEGORIES:

Information contained in this system is obtained from individuals; other government, non-government, commercial, public, and private agencies and organizations, both domestic and foreign; media, including periodicals, newspapers, and broadcast transcripts; intelligence source documents; investigative reports, and correspondence.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

DHS has exempted this system from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) of the Privacy Act, pursuant to 5 U.S.C. 552a(k)(1), (2), (3), and (5), as applicable. A Notice of Proposed Rulemaking for exempting this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c), and (e) and is being published [in 6 CFR Part 5] concurrently with publication of this Notice Establishing a New System of Records in the **Federal Register**.

Hugo Teufel III,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E8–10888 Filed 5–14–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2008–0002]

Privacy Act of 1974; System of Record

AGENCY: Privacy Office, DHS.

ACTION: Notice of Privacy system of records.

SUMMARY: Pursuant to the Privacy Act of 1974, the Department of Homeland Security, United States Coast Guard is publishing this notice of system of records entitled the Law Enforcement Information Data Base (LEIDB)/Pathfinder. A proposed rulemaking is also published in this issue of the **Federal Register** in which the Department proposes to exempt portions of this system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. Due to urgent homeland security and law enforcement mission needs, LEIDB is currently in limited operation. Recognizing that USCG is publishing a notice of system of records for an existing system, USCG will carefully consider public comments, apply appropriate revisions, and republish the LEIDB notice of system of records within 180 days of receipt of comments. Additionally, a Privacy Impact Assessment will be posted on the Department's privacy Web site. (See *http://www.dhs.gov/privacy* and follow the link to ''Privacy Impact Assessments'').

DATES: Comments must be received on or before June 16, 2008. The established system of records will be effective June 16, 2008. A revised LEIDB notice of system of records that addresses public comments and includes other USCG changes will be published not later than December 11, 2008 and will supersede this notice of system of records.

ADDRESSES: You may submit comments, identified by Docket Number DHS–2008–0002 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments. All comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.
- *Fax:* 1–866–466–5370.
- *Mail:* Hugo Teufel III, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

FOR FURTHER INFORMATION CONTACT: For system related questions please contact: Mr. Frank Sisto, Program Officer/System Manager LEIDB/Pathfinder, Office of ISR Systems and Technology, Data Analysis & Manipulation Division (CG–262), Phone 202–372–2795 or by mail correspondence, U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593–0001. For privacy issues, please contact: Hugo Teufel III, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background Information

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security is establishing Law Enforcement Information Data Base (LEIDB)/Pathfinder as a system to meet law enforcement information management and analysis requirements. LEIDB is currently in limited operation. LEIDB is receiving message traffic, however limitations on use of the data are in place. Coast Guard policy restricts LEIDB queries to searches that do not utilize U.S. Citizen or Lawful Permanent Resident Alien PII. Once the SORN is approved and published, new instructions will be published allowing PII searches.

LEIDB/Pathfinder was developed to efficiently manage field-created intelligence and law enforcement related reports. These intelligence reports vary in content but are submitted in a standard Coast Guard message format, which is electronically distributed through the Coast Guard Message System (CGMS) (and to a lesser extent the Defense Messaging System). CGMS is the system by which the Coast Guard manages all general message traffic to and from Coast Guard components and commands. After processing and delivering a message, CGMS archives the message for 30 days before they are deleted regardless of the content of the message.

The Assistant Commandant for Intelligence and Criminal Investigations (CG–2) identified a need to archive messages for more than thirty (30) days and to be able to perform analysis of the data contained within the messages to support law enforcement (LE) and intelligence activities. LEIDB/Pathfinder was developed and implemented to support these requirements.

All messages sent to the LEIDB/Pathfinder address on the CGMS are organized within LEIDB/Pathfinder based on message type (e.g. Field Intelligence Report), when the information was sent, and by whom the information may be accessed. This allows for easy segregation of information based on user access controls.

Users rely on LEIDB/Pathfinder as an archival system to find and retrieve records relevant to their analyses. Users of LEIDB/Pathfinder include intelligence analysts, watch officers, field intelligence officers and intelligence staff officers, and criminal investigators. Use of LEIDB/Pathfinder obviates the need for individual analysts to compile records in a local storage system, which reduces the risk of loss or of unauthorized access to intelligence reports. Analysts rely on LEIDB/Pathfinder as the means to retrieve records. Searching through unstructured text allows the users to develop search terms that retrieve all messages relevant to an inquiry without reviewing irrelevant records. Messages contained in LEIDB/Pathfinder are not machine processed in any fashion to enable data manipulation.

LEIDB/Pathfinder includes tools for analysts to conduct data correlation, analysis, and display of data in reports. These tools enable an analyst to sort, search, and process locally stored records. LEIDB/Pathfinder does not do predictive analysis. Any search results returned to the user are based on the search criteria entered by the user. LEIDB/Pathfinder is a repository for certain CGMS messages; users must craft their own searches.

This system will contain information about physical characteristics of ports, vessels, and other maritime infrastructure. The physical characteristics may include security vulnerabilities, strengths and natural or man made attributes. This system will also contain information about individuals. The individuals will be U.S. Citizens, Lawful Permanent Residents, as well as, foreign nationals with whom the Coast Guard interacts, or can reasonably expect to interact, in the maritime environment. These individuals will be owners and operators of vessels, maritime facilities or otherwise engaged in maritime activities.

Elsewhere in today's **Federal Register**, DHS has published a notice of proposed rulemaking (NPRM) to exempt this system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements pursuant to 5 U.S.C. 552a(j)(2), (k)(1), and (k)(2).

II. Privacy Act

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency recordkeeping practices transparent, to notify individuals of the uses to which personally identifiable information is put, and to assist the individual to more easily find such files within the agency.

In accordance with 5 U.S.C. 552a(r), a report concerning this record system has been sent to the Congress and to the Office of Management and Budget.

SYSTEM OF RECORDS:

DHS/USCG–061

SYSTEM NAME:

Law Enforcement Information Database (LEIDB)/Pathfinder.

SECURITY CLASSIFICATION:

Sensitive but unclassified to Classified, Secret.

SYSTEM LOCATION:

The computer database is located at U.S. Coast Guard Intelligence Coordination Center, Department of Homeland Security, National Maritime Intelligence Center, Washington, DC 20395.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this notice consist of:

A. Individuals, U.S. citizens, lawful permanent residents, and foreign nationals, associated with vessels, facilities, companies, and organizations, engaged in commercial and recreational maritime activity on or adjacent to waters subject to the jurisdiction of the United States.

B. Individuals, U.S. citizens, lawful permanent residents, and foreign nationals, identified during enforcement actions taken by enforcement Officials and employees of the Coast Guard while enforcing United States (U.S.) law, international law, or treaties.

C. Individuals, U.S. citizens, resident aliens, and foreign nationals, directly and indirectly associated with individuals listed in paragraphs A and B of this section

D. Individuals, U.S. citizens, resident aliens, and foreign nationals, directly and indirectly associated with vessels, maritime facilities and other maritime infrastructure which are known, suspected, or alleged to be involved in illegal activity (e.g. contraband trafficking, illegal migrant smuggling, or terrorist activity).

E. Individuals, U.S. citizens, resident aliens, and foreign nationals, identified during a terrorist screening process as a possible identity match to a known or suspected terrorist.

F. Individuals, U.S. citizens, resident aliens, and foreign nationals, identified in or reasonably believed to be related to reports submitted by Coast Guard personnel engaged in enforcement boarding's, safety inspections, aircraft over-flights or other means of observation, and other Coast Guard operational activity.

CATEGORIES OF RECORDS IN THE SYSTEM:

LEIDB/Pathfinder contains:

A. Messages delivered to the system automatically from the Coast Guard Messaging System (CGMS) or the Defense Messaging System (DMS). Additional data records may be delivered to LEIDB/Pathfinder by Coast Guard Intelligence personnel through an electronic mail interface.

B. Field Intelligence Reports (FIR) generated by any Coast Guard unit that observes or otherwise obtains information they believe may be relevant to security threats, vulnerabilities or criminal activity.

C. Request For Information (RFI) generated by any Coast Guard unit as a request for assistance from the Intelligence program to better understand a situation.

D. Intelligence Information Report (IIR) generated by select Coast Guard units and other government agencies able to issue a standardized Department of Defense message reporting

information relevant to intelligence requirements.

E. Situation Reports (SITREPS) generated by Coast Guard operational units engaged in operations providing a status update to a developing or ongoing operation.

F. Operational Status Reports (OPSTAT), generated by Coast Guard operational units to report on operational capability of personnel, units, and stations.

G. Operations Reports (OPREPS) generated by Coast Guard operational units to report the conclusion of an operation.

H. Any other operational reports in any format that contain information with intelligence value are also included and can be transmitted through CGMS or DMS.

I. Data records related to known, suspected, or alleged criminals as well as individuals associated with them (e.g., immigrants being smuggled) to include individuals engaged in terrorist activity in the Maritime domain.

J. Data records on facilities and their characteristics including: Geographic location, commodities handled, equipment, certificates, inspection data, pollution incidents, casualties, and violations of all laws and international treaties, if applicable.

K. Data records on individuals associated with facilities and information pertaining to directly and indirectly related individuals, companies, and organizations associated with those facilities such as owners, operators, managers, and employees.

The above reports may have the following types of biographical information: Names, aliases, dates of birth, phone numbers, addresses, nationality, identification numbers such as A-File Number, Social Security Number, or driver's license number, employer, boat registration numbers, and physical characteristics. No biometric data is collected or maintained.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Records Act of 1950, Title 44 U.S.C. 3101; Title 36, Code of Federal Regulations, chapter XII; The Maritime Transportation Security Act of 2002, Public Law 107–295 The Homeland Security Act of 2002, Pub. L. 107–296; 5 U.S.C. 301; 14 U.S.C. 93, 14 U.S.C. 632; 46 U.S.C. 2306, 46 U.S.C. 3717; 46 U.S.C. 12501; 33 U.S.C. 1221 *et seq.*

PURPOSE(S):

LEIDB/Pathfinder enables Coast Guard Intelligence program personnel to manage Coast Guard message traffic that contains law enforcement information collected by Coast Guard Officers and employees in the course of their statutory duties. It also enables analysis of that information to improve the effectiveness and efficiency of Coast Guard mission performance. The Coast Guard Intelligence Program supports the full range of Coast Guard missions through data collection and analysis to meet operational Commanders information requirements. One reason for collection is to improve the awareness of operational Commanders such that they will be optimally positioned to provide services to the public. Another reason is to assist in the detection, prevention, and mitigation of all unlawful acts that occur within the maritime environment and to support responses to man made or naturally occurring threats to public safety.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3):

A. To an appropriate Federal, State, territorial, tribal, local, international, or foreign government intelligence entity, counterterrorism agency, or other appropriate authority charged with investigating threats or potential threats to national or international security or assisting in counterterrorism efforts, where a record, either on its face or in conjunction with other information, identifies a threat or potential threat to national or international security, or DHS reasonably believes the information may be useful in countering a threat or potential treat, which includes terrorist and espionage activities, and disclosure is appropriate to the proper performance of the official duties of the person receiving the disclosure.

B. To a Federal, State, or local agency, or other appropriate entities or individuals, or through established liaison channels to selected foreign governments, in order to provide intelligence, counterintelligence, or other information for the purposes of intelligence, counterintelligence, or antiterrorism activities authorized by U.S. law, Executive Order, or other applicable national security directive.

C. To appropriate Federal, State, local, tribal, foreign governmental agencies, multilateral governmental organizations, and non-governmental or private organizations for the purpose of protecting the vital interests of a data subject or other persons, including to assist such agencies or organizations in preventing exposure to or transmission of a communicable or quarantinable disease or to combat other significant public health threats; appropriate notice will be provided of any identified health threat or risk.

D. To U.S. Department of Defense and related entities including, but not limited to, the Military Sealift Command and the U.S. Navy, to provide safety and security information on vessels or facilities chartered, leased, or operated by those agencies.

E. To a Federal, State, or local agency responsible for response and recovery operations caused by a man made or naturally occurring disaster for use in such operations.

F. To the National Transportation Safety Board and its related State counterparts for safety investigation and transportation safety.

G. To the International Maritime Organization (IMO), intergovernmental organizations, nongovernmental organizations, or foreign governments in order to conduct investigations, operations, and inspections pursuant to its authority.

H. To Federal, State, or local agencies or foreign government agencies pertaining to marine environmental protection activities.

I. To an organization or individual in either the public or private sector, either foreign or domestic, where there is a reason to believe that the recipient is or could become the target of a particular terrorist activity or conspiracy, to the extent the information is relevant to the protection of life or property and disclosure is appropriate to the proper performance of the official duties of the person making the disclosure.

J. To contractors, grantees, experts, and consultants, performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish a DHS function related to this system of records.

K. To an appropriate Federal, State, territorial, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

L. To the Department of Justice or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when: (a) DHS or any component thereof, or (b) any employee of DHS in his/her official capacity, or (c) any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee, or (d) the United States or any agency thereof, is a party to the litigation or has an interest in such litigation, and DHS determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DHS collected the records.

M. To the National Archives and Records Administration or other Federal government agencies pursuant to records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

N. To appropriate agencies, entities, and persons when (1) DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

O. To a Federal, State, tribal, local or foreign government agency or organization, or international organization, lawfully engaged in collecting law enforcement intelligence information, whether civil or criminal, or charged with investigating, prosecuting, enforcing or implementing civil or criminal laws, related rules, regulations or orders, to enable these entities to carry out their law enforcement responsibilities, including the collection of law enforcement intelligence.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

No disclosure.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored in electronic form in an automated data processing (ADP) system operated and maintained by the U.S. Coast Guard. Backups are performed daily. Copies of backups are stored at an offsite location. Personal, Sensitive but Unclassified (SBU), Unclassified, and Classified data and records reside commingled with each other. Classified and non-classified information are merged on a classified domain.

Data is stored electronically. Short term data extracts may be in paper or electronic form for the duration of a specific analytic project or activity. Data extracts are stored in appropriately classified storage containers or on secured electronic media in accordance with existing security requirements.

Extracted unclassified information will be stored in accordance DHS Management Directive governing the marking, storage, and handling of unclassified sensitive information. Unclassified information derived from LEIDB/Pathfinder remains U.S. Coast Guard information and is For Official Use Only. Determinations by any user to further disseminate, in any form, LEIDB/Pathfinder derived information to other entities or agencies, foreign or domestic, must include prior authorization from the appropriate supervisor authorized to make such determinations.

RETRIEVABILITY:

Information can be retrieved from LEIDB/Pathfinder via text string search submitted in Boolean language query format. Data record in LEIDB/Pathfinder do not rely on normalization or correlation to manipulate data, there are no prescribed data fields for LEIDB/Pathfinder data records.

Records retrieval through string searches enables data association by any term, including personal identifier. Unstructured text in a data record can be matched to any other data record. Specifically, information on individuals may be retrieved by matching individual name, Social Security Number, passport number, or the individual's relationship to a vessel (e.g., owner, shipper, consignee, crew member, passenger, etc.). Information may also by an innumerable amount of non-identifying information such as vessel name, vessel type, port location, port status, etc.

SAFEGUARDS:

Information in this system is safeguarded in accordance with applicable laws, rules and policies, including the DHS Information Technology Security Program Handbook. All records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. These safeguards include restricting access to authorized personnel who have a need-to-know, using locks, and password protection identification features. Physical locations are locked after normal duty hours and the facilities are protected from the outside by security personnel.

LEIDB/Pathfinder falls under the security guidelines of the National Maritime Intelligence Center (NMIC) and has its own approved System Security Plan which provides that:

All classified LEIDB/Pathfinder equipment, records and storage devices are located within facilities or stored in containers approved for the storage of all levels of classified information.

All statutory and regulatory requirements pertinent to classified and unclassified information have been identified in the LEIDB/Pathfinder System Security Plan and have been implemented.

Access to records requiring SECRET level is limited strictly to personnel with SECRET or higher level clearances and who have been determined to have the appropriate ''need to know''.

Access to records requiring CONFIDENTIAL level is limited strictly to personnel with CONFIDENTIAL or higher level clearances and who have been determined to have the appropriate ''need to know''.

Access to all records is restricted by login and password protection. The scope of access to any records via login and password is further limited based on the official need of each individual authorized access. The U.S. Coast Guard will take precautions in accordance with OMB Circular A–130, Appendix III.

The U.S. Coast Guard will operate LEIDB/Pathfinder in consonance with Federal security regulations, policy, procedures, standards and guidance for implementing the Automated Information Systems Security Program. Specific Coast Guard operating rules include Command certification that an individual Officer or employee requires access to LEIDB/Pathfinder to perform official duties. Individual Officers and employees must certify knowledge of Coast Guard policies limiting the use of PII and FOUO information. Individual Officers and employees must certify

agreement to proper use of data records contained in LEIDB/Pathfinder and must agree to meet minimum security requirements.

RETENTION AND DISPOSAL:

All records, but not including audit records maintained to document user access to information relating to specific individuals, are maintained within the system for ten (10) years. These records are then destroyed. Audit records are maintained for five years from the date of last use by any given user then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Department of Homeland Security United States Coast Guard, Assistant Commandant for Intelligence and Criminal Investigations (CG–2), Office of ISR Systems and Technology, Data Analysis and Manipulation Division (CG–262), 2100 2nd Street, SW., Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

Because this system contains classified and sensitive unclassified information related to intelligence, counterterrorism, homeland security, and law enforcement programs, records in this system have been exempted from notification, access, and amendment to the extent permitted by subsection (j)(2) and (k)(1) and (k)(2) of the Privacy Act.

General inquiries regarding LEIDB/Pathfinder may be directed to Department of Homeland Security United States Coast Guard, Assistant Commandant for Intelligence and Criminal Investigations (CG–2), Office of ISR Systems and Technology, Data Analysis and Manipulation Division (CG–262), 2100 2nd Street, SW., Washington, DC 20593–0001. Submit a written request that includes your name, mailing address, social security number to the above listed system manager.

RECORD ACCESS PROCEDURE:

Because this system contains classified and sensitive unclassified information related to intelligence, counterterrorism, homeland security, and law enforcement programs, records in this system have been exempted from notification, access, and amendment to the extent permitted by subsection (j)(2) and (k)(1) and (k)(2) of the Privacy Act. Nonetheless, DHS will examine each separate request on a case-by-case basis, and, after conferring with the appropriate component or agency, may waive applicable exemptions in appropriate circumstances and where it would not appear to interfere with or adversely affect the law enforcement or national security purposes of the systems from which the information is recompiled or in which it is contained.

Write the FOIA/Privacy Act Officer (CG–611), FOIA/Privacy Act Request at the address given above in accordance with the ''Notification Procedure''.

When seeking records about yourself from this system of records or any other Departmental system of records your request must conform with the Privacy Act regulations set forth in 6 CFR Part 5. You must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted to you under 28 U.S.C. 1746, a law that permits statements to be made under penalty or perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Director, Disclosure and FOIA, *http://www.dhs.gov/foia* or 1–866–431–0486. In addition you should provide the following:

- An explanation of why you believe the Department would have information on you,
- Identify which component(s) of the Department you believe may have the information about you,
- Specify when you believe the records would have been created,
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records,
- If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the component(s) will not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

Further information may also be found at *http://www.dhs.gov/foia.*

CONTESTING RECORD PROCEDURES:

Because this system contains classified and sensitive unclassified information related to intelligence, counterterrorism, homeland security, and law enforcement programs, records in this system have been exempted from notification, access, and amendment to the extent permitted by subsection (j)(2) and (k)(1) and (k)(2) of the Privacy Act. A request to amend non-exempt records in this system may be made by writing to the System Manager, identified above, in conformance with 6 CFR Part 5, Subpart B, which provides the rules for requesting access to Privacy Act records maintained by DHS.

RECORD SOURCE CATEGORIES:

Information contained in LEIDB/Pathfinder is gathered from a variety of sources both internal and external to the Coast Guard. Source information may come from at sea boardings, investigations, vessel notice of arrival reports, U.S. Coast Guard personnel (both direct observations and interviews of non-Coast Guard personnel), law enforcement notices, commercial sources, as well as other federal, state, local and international agencies who are related to the maritime sector and/or national security sector.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(j)(2) of the Privacy Act, the records and information in this system are exempt from 5 U.S.C. 552a(c)(3) and (4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H), and (I), (e)(5), (e)(8), (f), and (g). Pursuant to 5 U.S.C. 552a(k)(1) and (k)(2) of the Privacy Act the records and information in the system are exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f). A Notice of Proposed Rulemaking for exempting this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c), and (e) and is being published [in 6 CFR part 5] concurrently with publication of this Notice Establishing a New Systems of Records in the **Federal Register.**

Hugo Teufel III,

Chief Privacy Officer.

[FR Doc. E8–10894 Filed 5–14–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2008–0042]

Privacy Act of 1974; General Information Technology Access Account Records System

AGENCY: Privacy Office; DHS.

ACTION: Notice of Privacy Act system of records update.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security is giving notice that it proposes to update a system of records in its inventory. The Department of Homeland Security is updating the General Information Technology Access Account Records System system of records notice to include four new routine uses and to add to the categories of records covered by the system. The first new routine use

will allow for information sharing with federal agencies such as the Office of Personnel Management, the Merit Systems Protection Board, Office of Management and Budget, Federal Labor Relations Authority, Government Accountability Office, or the Equal Employment Opportunity Commission when information is requested in the performance of those agencies' official duties. The second routine use will allow for the routine sharing of business information outside of the Department for official purposes. This includes the sharing of business contact information to contacts outside of the Department. The third routine use allows for sharing for the purpose of investigating an alleged or proven act of identity fraud or theft. The fourth routine use allows sharing of information to regulatory and oversight bodies, including auditors, who are responsible for ensuring appropriate use of government resources.

The categories of records in the system have been updated to clarify that the information used to access DHS networks is logged and recorded, specifically user IDs, date and time of access, and the internet protocol (IP) address of the computer used to access the network. Further added to the categories of records are the names of senders and receivers of email on DHS networks.

DATES: Written comments must be submitted on or before June 16, 2008.

ADDRESSES: You may submit comments, identified by Docket Number DHS–2008–0042 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 1–866–466–5370
- *Mail:* Hugo Teufel III, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.
- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.
- *Docket:* For access to the docket to read background documents or comments received go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Please identify by Docket Number Dhs–2008–0042 to request further information by one of the following methods:

- *Mail:* Hugo Teufel III, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.
- *Facsimile:* 1–866–466–5370.
- *E-Mail: privacy@dhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

As part of its efforts to streamline and consolidate its record system, the Department of Homeland Security (DHS) established the agency-wide systems of records under the Privacy Act of 1974 (5 U.S.C. 552a) called the Department of Homeland Security General Information Technology Access Account Records System (GITAARS). This system of records is part of DHS's ongoing record integration and management efforts. This system consists of information collected in order to provide authorized individuals with access to DHS information technology resources. This information includes user name, business affiliation, account information and passwords.

In order to further streamline Department operations, the GITAARS system of records notice is being updated to include four new routine uses.

The first new routine use will allow for sharing with agencies such as the Office of Personnel Management (OPM), the Merit Systems Protection Board, Federal Labor Relations Authority, the Office of Management and Budget (OMB), Government Accountability Office (GAO), and the Equal Employment Opportunity Commission in the fulfillment of these agencies' official duties. For example, agencies such as OPM conduct regular workforce surveys, which involve the need of DHS to share employee data such as an employee's name, e-mail address, gender, and race/national origin. In some cases DHS must provide, in addition or in combination to the aforementioned, other information such as: Occupation group/family, organization, supervisory status, grade, work role, duty station, series, pay plan, service in government, highest level of education, years of professional service, years of service in government, projected retirement, position title, work phone number, and work address. This new routine use allows for sharing with those agencies in furtherance of those agencies' official duties.

The second routine use added to the system of records notice allows for the routine sharing of business contact information amongst contacts, which includes but is not limited to private sector companies (contractors and non-contractors), private citizens, and other Federal, state, and local employees and agencies. This type of sharing includes the exchange of contact information through e-mail, business cards, phone conversations, and other disclosures of personal information that are routine and associated with the daily official business of the Department.

The third routine use added to the system of records notice allows for any necessary sharing of information as it relates to the investigation or resolution of an alleged or proven incident of identity theft. This sharing might include e-mail address or contact information, which may help resolve an issue of identity, among other related issues related to identity theft.

The fourth routine use added to the system of records allows for sharing with government regulatory and oversight bodies, including auditing bodies, who are responsible for ensuring appropriate use of government resources. This routine use may overlap with the first routine use noted above, but this routine use is specifically related to sharing for auditing and oversight purposes.

The categories of records have been clarified to specifically state that e-mail traffic on DHS networks is recorded (sender and recipient e-mail addresses), and that all activity on DHS networks is recorded and may be used internally at DHS or for the purposes outlined in the routine uses of this system of records notices.

II. Privacy Act

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses and disseminates individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number such as property address, or mailing address symbol, assigned to the individual. The General Information Technology Access Account Records System is such a system of records.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency record keeping practices transparent, to notify individuals regarding the uses to which their records are put, and to assist individuals to more easily find such files within the agency. Below is the description of the ''General Information

Technology Access Account Records System''.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this new system of records to the Office of Management and Budget and to Congress.

DHS/ALL–004

SYSTEM NAME:

General Information Technology Access Account Records System, DHS/ALL–004.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

Records are maintained by the Department of Homeland Security at the DHS Data Center in Washington, DC, and at a limited number of remote locations where DHS components or programs maintain secure facilities and conducts its mission.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

A. All persons who are authorized to access DHS Information Technology resources, including employees, contractors, grantees, private enterprises and any lawfully designated representative of the above and including representatives of Federal, State, territorial, tribal, local, international, or foreign government agencies or entities, in furtherance of the DHS mission;

B. Individuals who serve on DHS boards and committees;

C. Individuals who have business with DHS and who have provided personal information in order to facilitate access to DHS Information Technology resources; and

D. Individuals who are points of contact provided for government business, operations, or programs, and the individual(s) they list as emergency contacts.

CATEGORIES OF RECORDS IN THE SYSTEM:

DHS/ALL–004 contains names, business affiliations, facility positions held, business telephone numbers, cellular phone numbers, pager numbers, numbers where individuals can be reached while on travel or otherwise away from the office, citizenship, home addresses, electronic mail addresses of senders and recipients, records on access to DHS computers and networks including user ID, date and time of access, IP address of access, logs of Internet activity, and records on the authentication of the access request; records on the names and phone numbers of other contacts, the positions or titles of those contacts, their business affiliations and other contact information provided to the Department that is derived from other sources to facilitate authorized access to DHS Information Technology resources.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 44 U.S.C. 3101.

PURPOSE(S):

This system will collect a discrete set of personal information in order to provide authorized individuals access to or interact with DHS information technology resources. The information collected by the system will include full name, user name, account information, citizenship, business affiliation, contact information, and passwords. Directly resulting from the use of DHS information technology resources is the collection, review, and maintenance of any logs, audits, or other such security data regarding the use of such information technology resources.

The system enables DHS to maintain: (a) Account information for gaining access to information technology; (b) lists of individuals who are appropriate organizational points of contact; and (c) lists of individuals who are emergency points of contact. The system will also enable DHS to provide individuals access to certain programs and meeting attendance and where appropriate allow for sharing of information between individuals in the same operational program to facilitate collaboration.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3), limited by privacy impact assessments, data sharing, or other agreements, as follows:

A. To DHS contractors, consultants or others, when necessary to perform a function or service related to this system of records for which they have been engaged. Such recipients are required to comply with the Privacy Act of 1974, as amended (5 U.S.C. 552a).

B. To sponsors, employers, contractors, facility operators, grantees, experts, and consultants in connection with establishing an access account for an individual or maintaining appropriate points of contact and when necessary to accomplish a DHS mission function or objective related to this system of records.

C. To other individuals in the same operational program supported by an information technology system, where appropriate notice to the individual has been made that his or her contact information will be shared with other members of the same operational program in order to facilitate collaboration.

D. To a Congressional office from the record of an individual in response to an inquiry from that Congressional office made at the written or attested to request of the individual to whom the record pertains.

E. To the National Archives and Records Administration or other Federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. Sections 2904 and 2906.

F. To the Department of Justice (DOJ), or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when: (a) DHS; (b) any employee of DHS in his/her official capacity; (c) any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee; or (d) the United States or any agency thereof, is a party to the litigation or has an interest in such litigation.

G. To federal agencies such as Office of Personnel Management, the Merit Systems Protection Board, the Office of Management and Budget, Federal Labor Relations Authority, Government Accountability Office, and the Equal Employment Opportunity Commission in the fulfillment of these agencies' official duties.

H. To international, Federal, State and local, tribal, private and/or corporate entities for the purpose of the regular exchange of business contact information in order to facilitate collaboration for official business.

I. To an appropriate Federal, State, territorial, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

J. To appropriate agencies, entities, and persons when: (1) It is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (2) DHS has determined that, as a result of the suspected or confirmed compromise, there is a risk of

harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

K. To Federal regulatory bodies, auditors, and any other oversight body charged with ensuring the appropriate use of government resources which includes but is not limited to financial, information technology, physical, and other resources.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are on paper and/or in digital or other electronic form. Digital and other electronic images are stored on a storage area network in a secured environment. Records, whether paper or electronic, may be stored at the DHS Headquarters or at the component level. See the ''System Manager'' section below for a complete list of component system managers and contact information.

RETRIEVABILITY:

Information may be retrieved, sorted, and/or searched by an identification number assigned by computer, by facility, by business affiliation, e-mail address, or by the name of the individual, or other employee data fields previously identified in this SORN.

SAFEGUARDS:

Information in this system is safeguarded in accordance with applicable laws, rules and policies, including the DHS Information Technology Security Program Handbook. Further, GITAARS security protocols will meet multiple NIST Security Standards from Authentication to Certification and Accreditation. Records in the GITAARS will be maintained in a secure, password protected electronic system that will utilize security hardware and software to include: multiple firewalls, active intruder detection, and role-based access controls. Additional safeguards will vary by component and program. All records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. These safeguards include: restricting access to authorized personnel who have a ''need to know;'' using locks; and password protection identification features. Classified information is appropriately stored in accordance with applicable requirements. DHS file areas are locked after normal duty hours and the facilities are protected from the outside by security personnel.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration's General Records Schedule 24, section 6, ''User Identification, Profiles, Authorizations, and Password Files.'' Inactive records will be destroyed or deleted 6 years after the user account is terminated or password is altered, or when no longer needed for investigative or security purposes, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

For Headquarters components of the Department of Homeland Security, the System Manager is the Director of Departmental Disclosure, U.S. Department of Homeland Security, Washington DC 20528.

For operational components that comprise the U.S. Department of Homeland Security, the System Managers are as follows:

- United States Coast Guard, FOIA Officer/PA System Manager, Commandant, CG–611, U.S. Coast Guard, 2100 2nd Street, SW., Washington, DC 20593–0001.
- United States Secret Service, FOIA/PA System Manager, Suite 3000, 950 H Street, NW., Washington, DC 20223.
- Under Secretary for Federal Emergency Management Directorate, FOIA/PA System Manager, 500 C Street, SW., Room 840, Washington, DC 20472.
- Director, Citizenship and Immigration Services, U.S. Citizenship and Immigration Services, ATTN: Records Services Branch (FOIA/PA), 111 Massachusetts Ave., NW., 2nd Floor, Washington, DC 20529.
- Commissioner, Customs and Border Protection, FOIA/PA System Manager, Disclosure Law Branch, Office of Regulations & Rulings, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW. (Mint Annex), Washington, DC 20229.
- Bureau of Immigration and Customs Enforcement, FOIA/PA System Manager, Office of Investigation, Chester Arthur Building (CAB), 425 I Street, NW., Room 4038, Washington, DC 20538.
- Assistant Secretary, Transportation Security Administration, FOIA/PA System Manager, Office of Security, West Building, 4th Floor, Room 432–N, TSA–20, 601 South 12th Street, Arlington, VA 22202–4220.
- Federal Protective Service, FOIA/PA System Manager, 1800 F Street, NW., Suite 2341, Washington, DC 20405.
- Federal Law Enforcement Training Center, Disclosure Officer, 1131 Chapel Crossing Road, Building 94, Glynco, GA 31524.
- Under Secretary for Science & Technology, FOIA/PA System Manager, Washington, DC 20528.
- Under Secretary for Preparedness, Nebraska Avenue Complex, Building 81, 1st floor, Washington, DC 20528.
- Director, Operations Coordination, Nebraska Avenue Complex, Building 3, Washington, DC 20529.
- Officer of Intelligence and Analysis, Nebraska Avenue Complex, Building 19, Washington, DC 20529.

NOTIFICATION PROCEDURE:

To determine whether this system contains records relating to you, write to the appropriate System Manager(s) identified above.

RECORD ACCESS PROCEDURES:

A request for access to records in this system may be made by writing to the System Manager, identified above, in conformance with 6 CFR Part 5, Subpart B, which provides the rules for requesting access to Privacy Act records maintained by DHS.

CONTESTING RECORD PROCEDURES:

Same as ''Records Access Procedures'' above.

RECORD SOURCE CATEGORIES:

Information contained in this system is obtained from affected individuals/organizations/facilities, public source data, other government agencies and/or information already in other DHS records systems.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Hugo Teufel III,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E8–10895 Filed 5–14–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2007–0074]

Privacy Act of 1974; System of Records

AGENCY: Privacy Office; DHS.

ACTION: Notice of Privacy Act system of records.

SUMMARY: Pursuant to the Privacy Act of 1974, the Department of Homeland Security, United States Coast Guard is updating and re-issuing a legacy system of records, Department of Transportation DOT/CG 642 System of Records Notice known as Joint Maritime Information Element, JMIE, Support System, JSS. This system of records will be replaced by DHS/USCG–061 Maritime Awareness Global Network (MAGNET).

DATES: Written comments must be submitted on or before June 16, 2008.

ADDRESSES: You may submit comments, identified by DOCKET NUMBER DHS–2007–0074 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments. All comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.
- *Fax:* 1–866–466–5370.
- *Mail:* Hugo Teufel III, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

FOR FURTHER INFORMATION CONTACT: For system related questions please contact: Mr. Frank Sisto, Program Officer, ISR Data Analysis & Manipulation Division (CG–262), Phone 202–372–2795 or by mail correspondence U.S. Coast Guard 2100 Second Street, SW., Washington, DC 20593–0001. For privacy issues, please contact: Hugo Teufel III, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background Information

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS) is replacing a legacy system of records, Department of Transportation DOT/CG 642 System of Records Notice known as Joint Maritime Information Element, JMIE, Support System, JSS (67 FR 19475). DHS/USCG–001 Maritime Awareness Global Network (MAGNET) will replace the JMIS/JSS System of Records. Coast Guard Intelligence Directorate, Office of ISR (CG–26) will serve as MAGNET's executive agent.

The JMIE JSS provided storage and access of maritime information with some basic search capabilities such as vessel searches by name, hull identification and registration number and person's searches by passport or merchant mariner license number. MAGNET will enhance JMIE/JSS capabilities by adding additional data sources, media storage, access capabilities, and infrastructure to provide rapid, near real-time data to the Coast Guard and other authorized organizations that need it. DHS, Coast Guard, and MAGNET users will have the ability to share, correlate, and provide classified/unclassified data across agency lines to provide Maritime Domain Awareness critical to homeland and national security.

Taken together the information in MAGNET establishes Maritime Domain Awareness. Maritime Domain Awareness is the collection of as much information as possible about the maritime world. In other words, MAGNET establishes a full awareness of the entities (people, places, things) and their activities within the maritime industry. MAGNET collects the information described above and connects the information in order to fulfill this need.

Coast Guard Intelligence (through MAGNET) will provide awareness to the field as well as to strategic planners by aggregating data from existing sources internal and external to the Coast Guard or DHS. MAGNET will correlate and provide the medium to display information such as ship registry, current ship position, crew background, passenger lists, port history, cargo, known criminal vessels, and suspect lists. Coast Guard Intelligence (CG–2) will serve as MAGNET's executive agent and will share appropriate aggregated data to other law enforcement and intelligence agencies.

MAGNET could relate to an individual in a few ways. As one example, MAGNET may collect information on individuals associated with ports, port facilities, and maritime vessels. Individuals may be passengers, crew, owners, operators, or any other employee in support of maritime business or other activities. The primary collection vehicle for people information is through the Ships Arrival Notification System (SANS). Certain vessels, as defined in 33 CFR part 160, are required to report arrivals to U.S. ports and included is crew and passenger information. The SANS information is replicated into MAGNET. MAGNET will also contain information about passenger ships that are required to report arrivals via SANS.

The MAGNET system receives data from several systems within DHS and outside of DHS through electronic transfers of information. These systems include Ships Arrival and Notification System (SANS), National Automated Identification System (NAIS), Maritime Information for Safety and Law Enforcement and the Coast Guard and U.S. Navy Common Operational Pictures. These electronic transfers include the use of an Internet Protocol called Secure File Transfer Protocol (SFTP), delivery of data on CD–ROM or DVD–ROM, system-to-system communications via specially written Internet Protocol socket-based data streaming, database-to-database replication of data, electronic transfer of database transactional backup files, and delivery of formatted data via electronic mail.

MAGNET will provide output to the Common Operating Picture (COP) as viewed using the Global Command and Control System, Integrated Imagery and Intelligence (GCCS–I3) platform. The COP is an integrated, or ''common'', view of the vessels operating in water that is important to the United States government, including geographic positions of the vessels, as well as, characteristics of the vessel. The COP is integrated (or ''shared'') amongst users of the GCCS–I3, which is commonly used within the U.S. Coast Guard and the Department of Defense to monitor areas of operation. The output destined for the COP may be submitted to the Common Intelligence Picture (CIP) for review prior to the data being transferred to the COP. In addition, users will be able to run queries about specific vessels or tracks from a GCCS–I3 workstation and retrieve additional information from the MAGNET database. MAGNET will be able to accept input from the GCCS–I3 environment and process this data into the MAGNET database. This will allow MAGNET to accumulate position reports from the COP.

Types of information sharing that may result from the routine uses outlined in this notice include: (1) Disclosure to individuals who are working as a contractor or with a similar relationship working on behalf of DHS; (2) sharing with Congressional offices asking on behalf of an individual; (3) sharing when there appears to be a specific violation or potential violation of law, or identified threat or potential threat to national or international security, such as criminal or terrorist

activities, based on individual records in this system; (4) sharing with the National Archives and Records Administration (NARA) for proper handling of government records; (5) sharing when relevant to litigation associated with the Federal government; (6) sharing to protect the individual who is the subject of the record from the harm of identity theft in the case of a data breach affecting this system; and (7) sharing with U.S. or foreign intelligence personnel in the development or execution of intelligence activities or exercises.

Elsewhere in today's **Federal Register**, DHS has published a notice of proposed rulemaking (NPRM) to exempt this system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements pursuant to 5 U.S.C. 552a(j)(2), (k)(1), and (k)(2).

II. Privacy Act

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass United States citizens and legal permanent residents. MAGNET involves the collection and creation of information that is maintained in a system of records.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency recordkeeping practices transparent, to notify individuals regarding the uses to which personally identifiable information is put, and to assist the individual to more easily find such files within the agency. DHS is hereby publishing a description of the system of records referred to as the Maritime Awareness Global Network (MAGNET).

In accordance with 5 U.S.C. 552a(r), a report concerning this record system has been sent to the Office of Management and Budget and to the Congress.

DHS/USCG–061

SYSTEM NAME:

Maritime Awareness Global Network (MAGNET).

SYSTEM LOCATION:

The computer database is located at U.S. Coast Guard Intelligence Coordination Center, Department of Homeland Security, National Maritime Intelligence Center, Washington, DC 20395. A redundant capability for continuity of operation in the event of a primary system failure is located at the Coast Guard Operations System Center, Martinsburg, West Virginia.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Individuals, who are U.S. citizens, lawful permanent residents, and non-citizens, associated with vessels, facilities, companies, organizations, and ports involved in the maritime sector.
2. Individuals identified through observation by and interaction with Coast Guard personnel during Coast Guard operations that include but not limited to boarding of vessels, conducting aircraft over-flights, and through Field Intelligence Support team (FIST) sightings and reports.
3. Individuals identified during Coast Guard enforcement actions as violating, suspected of violating, or witnessing the violations of United States (U.S.) laws, international laws, or treaties.
4. Individuals associated with vessels or other individuals that are known, suspected, or alleged to be involved in contraband trafficking, illegal migrant activity (smuggling, trafficking, and otherwise), or terrorist activity.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. *Information related to:* Individuals associated with vessels, companies, organizations, and ports involved in the maritime sector and this information may include: Name, nationality, address, telephone number, and taxpayer or other identification number; date of birth, relationship to vessels and facilities; the individuals' relationship to other individuals, companies, government agencies, and organizations in MAGNET; individuals involved with pollution incidents, and violations of laws and international treaties; and casualties.
2. Information on individuals who are associated with vessels involved in contraband trafficking, illegal migrant activity (smuggling, trafficking, and otherwise), or any other unlawful act within the maritime sector, and with other individuals who are known, suspected, or alleged to be involved in contraband trafficking, illegal migrant activity (smuggling, trafficking, and otherwise), terrorist activities, or any other unlawful act within the maritime sector.
3. Information on individuals, companies, vessels, or entities associated with the maritime industry to include: vessel owners, vessel operators, vessel characteristics, crewmen, passengers, facility owners, facility managers, facility employees or any other individuals affiliated with the maritime community. In addition to information on individuals, commodities handled, equipment, location, certificates, approvals, inspection data, pollution incidents, casualties, and violations of all laws and international treaties may also be included.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Records Act of 1950, Title 44 U.S.C. 3101; Title 36, Code of Federal Regulations, chapter XII; The Maritime Transportation Security Act of 2002, Pub L. 107–295 The Homeland Security Act of 2002, Pub L. 107–296; 5 U.S.C. 301; 14 U.S.C. 632; 46 U.S.C. 3717; 46 U.S.C. 12501; 33 U.S.C. 1223.

PURPOSE(S):

MAGNET will assist DHS and the United States Coast Guard in performing its mission of protecting the United States against potential terrorist threats and respond to natural and man-made disaster by providing Maritime Domain Awareness. MAGNET has been established to enable the United States Coast Guard and various United States Government agencies or military services/commands from the Law Enforcement and Intelligence Communities to share multi-source maritime information that will assist them in the performance of their missions. Most recently these missions have been expanded and are enumerated through National Security Presidential Directive NSPD 41 and Homeland Security Presidential Directive HSPD–13 and other federal instruction.

MAGNET will provide MDA to the field as well as to USCG strategic planners by aggregating data from existing sources internal and external to the Coast Guard or DHS. MAGNET will organize and provide the mechanism to display information such as ship registry, current ship position, crew background, passenger lists, port history, cargo, known criminal vessels, and suspect lists as such information is collected from various sources.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

MAGNET Records may be disclosed to the following:

A. To U.S. Department of Defense and related entities including, but not limited to, the Military Sealift Command and the U.S. Navy, to provide safety and security information on vessels chartered or operated by those agencies.

B. To a Federal State, or local agency, or other appropriate entities or individuals, or through established liaison channels to selected foreign governments, in order to provide intelligence, counterintelligence, or other information for the purposes of intelligence, counterintelligence, or antiterrorism activities authorized by U.S. law, Executive Order, or other applicable national security directive.

C. To the National Transportation Safety Board and its related State counterparts for safety investigation and transportation safety.

D. To the International Maritime Organization (IMO) or intergovernmental organizations, nongovernmental organizations, or foreign governments in order to conduct joint investigations, operations, and inspections.

E. To Federal, State, or local agencies with which the Coast Guard has a Memorandum of Understanding (MOU), Memorandum of Agreement (MOA), or Inspection and Certification Agreement (ICA) pertaining to marine safety, maritime security, maritime intelligence, maritime law enforcement, and marine environmental protection activities.

F. To an organization or individual in either the public or private sector, either foreign or domestic, where there is a reason to believe that the recipient is or could become the target of a particular terrorist activity or conspiracy, to the extent the information is relevant to the protection of life or property and disclosure is appropriate to the proper performance of the official duties of the person making the disclosure.

G. To a Congressional office from the record of an individual in response to an inquiry from that Congressional office made at the request of the individual to whom the record pertains.

H. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

I. To appropriate federal, state, local, tribal, or foreign governmental agencies or multilateral governmental organizations responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, license, or treaty where DHS determines that the information would assist in the enforcement of civil or criminal laws.

J. To the Department of Justice or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when: (a) DHS or any component thereof, or (b) any employee of DHS in his/her official capacity, or (c) any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee, or (d) the United States or any agency thereof, is a party to the litigation or has an interest in such litigation, and DHS determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DHS collected the records.

K. To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a subpoena.

L. To the National Archives and Records Administration or other Federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

M. To appropriate Federal, state, local, tribal, foreign governmental agencies, multilateral governmental organizations, and non-governmental or private organizations for the purpose of protecting the vital interests of a data subject or other persons, including to assist such agencies or organizations in preventing exposure to or transmission of a communicable or quarantinable disease or to combat other significant public health threats; appropriate notice will be provided of any identified health threat or risk.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored in electronic form in an automated data processing (ADP) system operated and maintained by the U.S. Coast Guard. Backups are performed daily. Copies of backups are stored at an offsite location. Personal, Sensitive but Unclassified (SBU), Unclassified, and classified data and records reside commingled with each other. Classified and non-classified information from member agencies and other sources may be merged into a classified domain within this data base.

Classified information, downloaded from the host and then extracted from the personal computer (PC) workstations and recorded on paper or electronic media, will be stored at user sites in appropriately classified storage containers or on secured electronic media.

Unclassified information will be stored in accordance with each user sites' handling procedures. Unclassified information derived from MAGNET remains U.S. Coast Guard information and is For Official Use Only. Determinations by any user to further disseminate, in any form, MAGNET derived information to other entities or agencies, foreign or domestic, must include prior authorization from the executive agent.

RETRIEVABILITY:

Records are retrieved by name (individual, company, government agency or organization), boat registration number, documented vessel name/number, Social Security Number, drivers license number, foreign ID number, passport number, VISA number military ID number, USCG license number, resident alien number, Merchant Mariners License number, or Merchant Mariner documentation number.

SAFEGUARDS:

Information in this system is safeguarded in accordance with applicable laws, rules and policies, including the DHS Information Technology Security Program Handbook. All records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. These safeguards include restricting access to authorized personnel who have a need-to-know, using locks, and password protection identification features. DHS

file areas are locked after normal duty hours and the facilities are protected from the outside by security personnel.

MAGNET falls under the security guidelines of the National Maritime Intelligence Center and has its own approved System Security Plan which provides that:

All classified MAGNET equipment, records and storage devices are located within facilities or stored in containers approved for the storage of all levels of classified information.

All statutory and regulatory requirements pertinent to classified and unclassified information have been identified in the MAGNET System Security Plan and have been implemented, and

Access to records requiring TOP SECRET level is limited strictly to personnel with TOP SECRET or higher level clearances and who have been determined to have the appropriate ''need to know.''

Access to records requiring SECRET level is limited strictly to personnel with SECRET or higher level clearances and who have been determined to have the appropriate ''need to know''.

Access to records requiring CONFIDENTIAL level is limited strictly to personnel with CONFIDENTIAL or higher level clearances and who have been determined to have the appropriate ''need to know''.

Access to any classified records is restricted by login and password protection. The scope of access to any records via login and password is further limited based on the official need of each individual authorized access. The U.S. Coast Guard will take precautions in accordance with OMB Circular A–130, Appendix III.

The U.S. Coast Guard will operate MAGNET in consonance with Federal security regulations, policy, procedures, standards and guidance for implementing the Automated Information Systems Security Program. Specific operating rules to ensure compliance with national policy are reflected in each site's Standard Operating Procedures. These rules include specifications that accesses to records containing information on U.S. persons are as follows:

Only authorized personnel may access such records.

MAGNET transactions that include Privacy Act and Classified data require an active pre-screened account, username and password and have a unique identifier to differentiate them from other MAGNET transactions. This allows for additional oversight and audit capabilities to ensure that the data are being handled consistent with all applicable federal laws and regulations regarding privacy and data integrity.

RETENTION AND DISPOSAL:

Dynamic information on vessel position(s) and movement(s) will be stored for not more than ten (10) years but may be reduced in detail to comply with media storage procedures and requirements. Other information such as characteristics, identification status and associate records is updated to remain current and is retained for twenty (20) years. The requirements supporting the collection and storage of data are reviewed regularly. Records will be kept accessible online for three (3) years then archived offline within MAGNET to support ongoing investigations or law enforcement activities.

Audit records, maintained to document access to information relating to specific individuals, are maintained for five (5) years or the life of the MAGNET whichever is longer. Access to audit records will only be granted to authorized personnel.

SYSTEM MANAGER(S) AND ADDRESS:

Department of Homeland Security United States Coast Guard (MAGNET Executive Agent), Intelligence Directorate, Office of ISR (CG–26), 2100 2nd Street, SW., Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

Because this system contains classified and sensitive unclassified information related to intelligence, counterterrorism, homeland security, and law enforcement programs, records in this system have been exempted from notification, access, and amendment to the extent permitted by subsections (j)(2) and (k)(1) and (2) of the Privacy Act. Nonetheless, DHS will examine each separate request on a case-by-case basis, and, after conferring with the appropriate component or agency, may waive applicable exemptions in appropriate circumstances and where it would not appear to interfere with or adversely affect the law enforcement or national security purposes of the systems from which the information is recompiled or in which it is contained.

To determine whether this system contains records relating to you, write to the System Manager identified above. Your written request should include your name and mailing address. You may also provide any additional information that will assist in determining if there is a record relating to you if applicable, such as your Merchant Mariner License or document number, the name and identifying number (documentation number, state registration number, Social Security Number, International Maritime Organization (IMO) number, etc.) of any vessel with which you have been associated and the name and address of any facility (including platforms, bridges, deep water ports, marinas, terminals and factories) with which you have been associated. The request must be signed by the individual, or his/her legal representative, and must be notarized to certify the identity of the requesting individual pursuant to 28 U.S.C. 1746 (unsworn declarations under penalty of perjury). Submit a written request identifying the record system and the category and types of records sought to the Executive Agent.

RECORD ACCESS PROCEDURES:

Because this system contains classified and sensitive unclassified information related to intelligence, counterterrorism, homeland security, and law enforcement programs, records in this system have been exempted from notification, access, and amendment to the extent permitted by subsections (j)(2) and (k)(1) and (2) of the Privacy Act. Nonetheless, DHS will examine each separate request on a case-by-case basis, and, after conferring with the appropriate component or agency, may waive applicable exemptions in appropriate circumstances and where it would not appear to interfere with or adversely affect the law enforcement or national security purposes of the systems from which the information is recompiled or in which it is contained.

Write the System Manager at the address given above in accordance with the ''Notification Procedure''. Provide your full name and a description of the information you seek, including the time frame during which the record(s) may have been generated. Individuals requesting access to their own records must comply with DHS's Privacy Act regulation on verification of identity (6 CFR 5.21(d)). Further information may also be found at *http://www.dhs.gov/foia.*

CONTESTING RECORD PROCEDURES:

Because this system contains classified and sensitive unclassified information related to intelligence, counterterrorism, homeland security, and law enforcement programs, records in this system have been exempted from notification, access, and amendment to the extent permitted by subsections (j)(2) and (k)(1) and (2) of the Privacy Act. A request to amend non-exempt records in this system may be made by writing to the System Manager, identified above, in conformance with 6 CFR Part 5, Subpart B, which provides

the rules for requesting access to Privacy Act records maintained by DHS.

RECORD SOURCE CATEGORIES:

Information contained in MAGNET is gathered from a variety of sources both internal and external to the Coast Guard. Source information may come from sensors, inspections, boardings, investigations, documentation offices, vessel notice of arrival reports, owners, operators, crew members, agents, passengers, witnesses, employees, U.S. Coast Guard personnel, law enforcement notices, commercial sources, as well as other federal, state, local and international agencies who are related to the maritime sector and/or national security sector.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The records and information in this system are exempt from 5 U.S.C. 552a(c)(3) and (4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H), and (I), (e)(5), (e)(8), (e)(12), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2), (k)(1), and (k)(2). A Notice of Proposed Rulemaking for exempting this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c), and (e) and is being published [in 6 CFR part 5] concurrently with publication of this Notice Establishing a New Systems of Records in the **Federal Register**.

Hugo Teufel, III,

Chief Privacy Officer.

[FR Doc. E8–10896 Filed 5–14–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1751–DR]

Arkansas; Amendment No. 8 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 Arkansas (FEMA–1751–DR), dated March 26, 2008, and related determinations.

DATES: *Effective Date:* May 8, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Arkansas is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 26, 2008.

Desha County for Public Assistance (already designated 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 Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–10871 Filed 5–14–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1749–DR]

Missouri; Amendment No. 6 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 Missouri (FEMA–1749–DR), dated March 19, 2008, and related determinations.

DATES: *Effective Date:* May 7, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Michael L. Karl of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Michael L. Parker as Federal Coordinating Officer for this disaster.

(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 Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–10872 Filed 5–14–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1748–DR]

Missouri; Amendment No. 1 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 Missouri (FEMA–1748–DR), dated March 12, 2008, and related determinations.

DATES: Effective Date: May 7, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Michael L. Karl, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Michael L. Parker as Federal Coordinating Officer for this disaster.

(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 Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–10873 Filed 5–14–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1742–DR]

Missouri; Amendment No. 1 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 Missouri (FEMA–1742–DR), dated February 5, 2008, and related determinations.

DATES: *Effective Date:* May 7, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Michael L. Karl, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Michael L. Parker as Federal Coordinating Officer for this disaster.

(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 Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–10878 Filed 5–14–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1752–DR]

Oklahoma; 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 Oklahoma (FEMA–1752–DR), dated May 5, 2008, and related determinations.

DATES: *Effective Date:* May 5, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 5, 2008, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Oklahoma resulting from severe storms, tornadoes, and flooding during the period of March 17–23, 2008, 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. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Oklahoma.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, except for any particular projects that are eligible for a higher Federal cost-sharing percentage under the FEMA Public Assistance Pilot Program instituted pursuant to 6 U.S.C. 777. If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funding under that program also will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Justin A. Dombrowski, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

The following areas of the State of Oklahoma have been designated as adversely affected by this declared major disaster:

Adair, Haskell, Hughes, Latimer, Mayes, McCurtain, McIntosh, Muskogee, Okfuskee, Okmulgee, Pittsburg, Pushmataha, and Sequoyah Counties for Public Assistance.

All counties within the State of Oklahoma are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–10876 Filed 5–14–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket Nos. TSA–2006–24191; Coast Guard–2006–24196]

Transportation Worker Identification Credential (TWIC); Enrollment Dates for the Ports of Manatee, FL; Marcus Hook, PA; Rochester, NY; and Greenville, MS

AGENCY: Transportation Security Administration; United States Coast Guard; DHS.

ACTION: Notice.

SUMMARY: The Department of Homeland Security (DHS) through the Transportation Security Administration (TSA) issues this notice of the dates for the beginning of the initial enrollment for the Transportation Worker Identification Credential (TWIC) for the Ports of Manatee, FL; Marcus Hook, PA; Rochester, NY; and Greenville, MS.

DATES: TWIC enrollment begins in Manatee, Marcus Hook, and Rochester on May 21, 2008; and Greenville on May 29, 2008.

ADDRESSES: You may view published documents and comments concerning the TWIC Final Rule, identified by the docket numbers of this notice, using any one of the following methods.

(1) Searching the Federal Docket Management System (FDMS) Web page at *http://www.regulations.gov*;

(2) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html*; or

(3) Visiting TSA's Security Regulations Web page at *http://www.tsa.gov* and accessing the link for ''Research Center'' at the top of the page.

FOR FURTHER INFORMATION CONTACT: James Orgill, TSA–19, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220. Transportation Threat Assessment and Credentialing (TTAC), TWIC Program, (571) 227–4545; e-mail: *credentialing@dhs.gov.*

Background

The Department of Homeland Security (DHS), through the United States Coast Guard and the Transportation Security Administration (TSA), issued a joint final rule (72 FR 3492; January 25, 2007) pursuant to the Maritime Transportation Security Act (MTSA), Public Law 107–295, 116 Stat. 2064 (November 25, 2002), and the Security and Accountability for Every Port Act of 2006 (SAFE Port Act), Public Law 109–347 (October 13, 2006). This rule requires all credentialed merchant mariners and individuals with unescorted access to secure areas of a regulated facility or vessel to obtain a TWIC. In this final rule, on page 3510, TSA and Coast Guard stated that a phased enrollment approach based upon risk assessment and cost/benefit would be used to implement the program nationwide, and that TSA would publish a notice in the **Federal Register** indicating when enrollment at a specific location will begin and when it is expected to terminate.

This notice provides the start date for TWIC initial enrollment at the Ports Manatee, FL, Marcus Hook, PA, and Rochester, NY on May 21, 2008; and Greenville, MS on May 29, 2008. The Coast Guard will publish a separate notice in the **Federal Register** indicating when facilities within the Captain of the Port Zone St. Petersburg, including those in the Port of Manatee; Captain of the Port Zone Delaware Bay, including those in the Port of Marcus Hook; Captain of the Port Zone Buffalo, including those in the Port of Rochester; and Captain of the Port Zone Lower Mississippi River, including those in the Port of Greenville must comply with the portions of the final rule requiring TWIC to be used as an access control measure. That notice will be published at least 90 days before compliance is required.

To obtain information on the pre-enrollment and enrollment process, and enrollment locations, visit TSA's TWIC Web site at *http://www.tsa.gov/twic.*

Issued in Arlington, Virginia, on May 9, 2008.

Rex Lovelady,

Program Manager, TWIC, Office of Transportation Threat Assessment and Credentialing, Transportation Security Administration.

[FR Doc. E8–10910 Filed 5–14–08; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14853–B; AK–964–1410–KC–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Hungwitchin Corporation. The lands are in the vicinity of Eagle, Alaska, and are located in:

Fairbanks Meridian, Alaska

T. 3 S., R. 32 E.,
Secs. 3 and 4;
Secs. 9 and 10;
Secs. 15 and 16.

Containing approximately 3,840 acres.

T. 2 N., R. 33 E.,
Secs. 7 to 10, inclusive;
Secs. 15 to 18, inclusive;
Sec. 22.

Containing approximately 4,940 acres.
Aggregating approximately 8,780 acres.

The subsurface estate in these lands will be conveyed to Doyon, Limited, when the surface estate is conveyed to Hungwitchin Corporation. Notice of the decision will also be published four times in the Fairbanks Daily News-Miner.

DATES: *The time limits for filing an appeal are:*

1. Any party claiming a property interest which is adversely affected by the decision shall have until June 16, 2008 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov*. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Barbara Opp Waldal,

Land Law Examiner, Land Transfer Adjudication I.

[FR Doc. E8–10851 Filed 5–14–08; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–019–1610–DO–065E]

Montana State Office; Notice of Intent To Prepare Two Resource Management Plans and Associated Environmental Impact Statement for the Billings Field Office and Pompeys Pillar National Monument, Located in South Central Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: Pursuant to the Federal Land Policy and Management Act of 1976 (FLPMA) and the National Environmental Policy Act of 1969 (NEPA), the Bureau of Land Management (BLM) Billings Field Office intends to prepare two Resource Management Plans (RMPs) with a single Environmental Impact Statement (EIS) for lands and resources managed by the Billings Field Office and for Pompeys Pillar National Monument (PPNM). Through this notice, public scoping is also being announced. The RMPs will replace the existing Billings Resource Area RMP, dated September 1984, as amended.

DATES: This notice initiates the public scoping process. Comments and resource information should be submitted to the BLM within 90 days of publication of this notice in the **Federal Register**. However, collaboration with the public will continue throughout the process. The BLM will announce public scoping meetings to identify relevant issues through local news media, newsletters, and the BLM Web site at *http://www.blm.gov/mt/st/en/fo/billings_field_office.html* at least 15 days prior to each meeting. The minutes and list of attendees for each meeting will be available to the public and open for 30 days to any participant who wishes to clarify the views they expressed. Formal opportunities for public participation will be provided upon publication of the draft RMPs/EIS.

ADDRESSES: Documents pertinent to this proposal may be examined at the Billings Field Office, 5001 Southgate Drive, Billings, MT 59101 or online at *http://www.blm.gov/mt/st/en/fo/billings_field_office.html.*

FOR FURTHER INFORMATION CONTACT: For further information, and/or to be added to the mailing list, contact Kim Prill, RMP Team Leader, Billings Field Office, at (406) 896–5199 or by e-mail to: *Billings_PompeysPillar_RMP@blm.gov.*

SUPPLEMENTARY INFORMATION: Comments may be submitted by any of the following methods:

- *Web Site: http://www.blm.gov/mt/st/en/fo/billings_field_office.html*
- *E-mail: Billings_PompeysPillar_RMP@blm.gov*
- *Fax:* (406) 896–5281.
- *Mail:* BLM Billings Field Office, Attention: Billings/PPNM RMPs, 5001 Southgate Drive, Billings, Montana 59101.

Respondents' comments, including names and street addresses, will be available for public review at the Billings Field Office during regular business hours 8 a.m.–4:30 p.m., Monday through Friday, except holidays, and may be published as part of the RMPs/EIS. Individual respondents may request confidentiality. 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. If you wish to withhold your name from public review, please state so prominently at the beginning of your written comment. Formal scoping comments should be submitted within 90 days of publication of this notice in the **Federal Register**. All submissions from organizations and businesses, and from individuals identifying themselves as representatives of organizations or businesses, will be available for public inspection in their entirety.

The BLM intends to prepare two RMPs, with one associated EIS, for the Billings Field Office RMP and the PPNM. The RMPs/EIS will fulfill the needs and obligations set forth by the Federal Land Policy and Management Act (FLPMA), the National Environmental Policy Act (NEPA), and the BLM management policies. The land-area to be covered under the Billings RMP/EIS is located in the south-central part of Montana in Carbon, Golden Valley, Musselshell, Stillwater, Sweet Grass, Wheatland and Yellowstone Counties and portions of Big Horn County. The Billings Field Office planning area also includes administration of 6,340 acres of public land inside the Pryor Mountain Wild Horse Range in Big Horn County, Wyoming. There are approximately 427,200 acres of public lands and 906,000 acres of federal mineral estate in the planning area to be addressed in the Billings RMP. Because the BLM Land Use Planning Handbook (H–1610–1) requires that all national monuments have a stand-alone RMP/EIS level plan, the PPNM RMP will be analyzed in conjunction with the Billings RMP and incorporated as a stand-alone section. The 51 acres of public land designated as the PPNM on January 17, 2001 is located along the southern bank of the Yellowstone River, about 30 miles east of Billings, Montana. Nearby communities include the towns of Pompeys Pillar, Worden, Huntley, Shepherd, and the city of Billings in Yellowstone County.

This notice also announces the public scoping for the planning efforts. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, tribal and national needs and concerns. The public scoping process will identify planning issues and develop planning criteria, including an evaluation of the existing RMP, in the context of the needs and interests of the public. These issues also guide the planning process. Comments on issues and planning criteria may be submitted in writing to the BLM at any public scoping meeting or by using one of the methods listed above.

Preliminary issues and management concerns have been identified by the BLM personnel, other agencies, and in meetings with individuals and user groups. This information represents the BLM's knowledge to date regarding the existing issues and concerns with current land management. The major issue themes that will be addressed in this planning effort include:

- Vegetation management.
- Wildlife and fisheries management.
- Special status species.
- Commercial uses:

a. Energy development (oil and gas leasing, coal leasing, wind development).

b. Livestock grazing.

c. Forest products and areas within community wildfire protection plans.

d. Rights-of-way and land use authorizations.

e. Locatable and saleable minerals.

f. Commercial special recreation permits.

- Recreation management.
- Travel management and access.
- Special management area designations, including areas of critical environmental concern (ACECs).

After public comments are gathered as to what issues the RMPs/EIS should address, they will be placed in one of three categories:

1. Issues to be resolved in the RMPs/EIS;

2. Issues to be resolved through policy or administrative action; or

3. Issues beyond the scope of the RMPs/EIS.

Rationale will be provided in the RMPs/EIS for each issue placed in category two or three. In addition to these major issues, a number of management questions and concerns will be addressed in the RMPs/EIS. The public is encouraged to help identify these questions and concerns during the scoping phase.

The BLM will use an interdisciplinary approach to develop the RMPs/EIS in order to consider the variety of resource issues and concerns identified. Specialists with expertise in the following disciplines will be involved in the planning process, including but not limited to: Rangeland management, minerals and geology, wildland fire and fuels management, outdoor recreation, archaeology, paleontology, wildlife and fisheries, lands and realty, soil, water and air, global climate change, wild horses, environmental justice, sociology and economics.

The following planning criteria have been proposed to guide development of the RMPs/EIS, avoid unnecessary data collection and analyses, and to ensure the RMPs/EIS are tailored to the issues. Other criteria may be identified during the public scoping process. After gathering comments on planning criteria, the BLM will finalize the criteria and provide feedback to the public on the criteria to be used throughout the planning process. Some of the planning criteria that are under consideration include:

- The planning process for the Billings and PPNM RMPs will include a single EIS and culminate with the issuance of two Records of Decision (RODs).
- The RMPs/EIS will be completed in compliance with FLPMA, NEPA, the Endangered Species Act (ESA), and all other applicable laws, regulations and BLM policies.
- The RMPs/EIS will establish new guidance and identify existing guidance upon which the BLM will rely in managing public lands within the Billings Field Office and the PPNM.
- The RMPs/EIS will incorporate by reference the *Standards for Rangeland Health and Guidelines for Livestock Grazing Management (August 1997); Areas of Critical Environmental Concern (ACEC) Amendment (August 1998); the Off-Highway Vehicle EIS and Plan Amendment for Montana, North Dakota, and Portions of South Dakota (June 2003); the 1992 Oil & Gas EIS/ Amendment of the Powder River, Billings, & South Dakota RMPs; the Montana Final Statewide Oil and Gas EIS and Proposed Amendment of the Powder River and Billings RMP (January 2003); the Montana/Dakotas Statewide Fire/Fuels Management Plan (September 2003); Final Programmatic EIS on Wind Energy Development (June 2005); Best Management Practices for Forestry in Montana; the Montana Streamside Management Zone Law and Rule; and, when finalized, the Supplemental EIS to the Montana Statewide Oil and Gas Amendment; and the Vegetation Treatments Using Herbicides EIS.*
- The RMPs/EIS will incorporate, by reference, all prior wilderness study area (WSA) findings that affect public lands in the planning area.
- The planning team will use a collaborative and multi-jurisdictional approach, where applicable, throughout the planning process.
- The planning process will include early consultation meetings with the United States Fish and Wildlife Service (USFWS) during the development of the RMPs/EIS.
- The RMPs/EIS will result in determinations as required by special program and resource specific guidance detailed in Appendix C of the BLM's Planning Handbook (H–1610–1).
- The Billings RMP will incorporate the requirements of the BLM Handbook H–1624–1, *Planning for Fluid Minerals.*
- The RMPs/EIS will incorporate the requirements of the interagency reference guide entitled *Reasonably Foreseeable Development Scenarios and Cumulative Effects Analysis* developed by the Rocky Mountain Federal Leadership Forum on NEPA, Oil and Gas, and Air Quality.
- The RMPs/EIS will recognize the State of Montana's responsibility to manage wildlife populations, including uses such as hunting and fishing, within the planning area.
- To the extent possible, goals and objectives in the RMPs/EIS for plants and wildlife (including special status species) will incorporate or respond to goals and objectives from established recovery plans, conservation strategies, strategic plans, etc.
- Decisions in the RMPs/EIS will strive to be compatible with the existing plans and policies of adjacent local, state, tribal, and federal agencies to the extent they are in conformance with legal mandates on management of public lands.
- The scope of analysis will be consistent with the level of analysis in approved plans and in accordance with Bureau-wide standards and program guidance.
- Geospatial data will be automated within a geographic information system (GIS) to facilitate discussions of the affected environment, alternative formulation, analysis of environmental consequences, and display of the results.
- Resource allocations must be reasonable and achievable within available technological and budgetary constraints.
- Best management practices (BMPs) for oil and gas, road drainage, grazing, wind energy, and water quality BMPs for Montana forests, fire rehab, power lines, etc. will be added.
- The planning process will involve Native American Tribal governments and will provide strategies for ensuring the Tribes' needs are considered, analyzed and that the BLM fulfills its trust responsibilities.
- The lifestyles and concerns of area residents will be recognized in the RMPs/EIS.
- The State Historic Preservation Office (SHPO) will be consulted on any potential effect of the RMPs/EIS on cultural resources under provisions of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470f) and under the National Programmatic Agreement.

Dated: May 8, 2008.

Howard A. Lemm,

Acting State Director.

[FR Doc. E8–10849 Filed 5–14–08; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–910–0777–XP–241A]

State of Arizona Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Arizona Resource Advisory Council Meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM), Arizona Resource Advisory Council (RAC), will meet on June 19, 2008, in Phoenix, Arizona, at the BLM National Training Center located at 9828 North 31st Avenue in Phoenix from 8 a.m. and conclude at 4:30 p.m. Morning agenda items include: Review of the March 6, 2008, meeting minutes for RAC and Recreation Resource Advisory Council

(RRAC) business; BLM State Director's update on statewide issues; RAC member orientation on BLM Programs and Federal Advisory Committee Act; presentations on BLM Solar Projects; and the proposed Goodyear Road; RAC questions on BLM Field Managers Rangeland Resource Team proposals; and reports by RAC working groups. A public comment period will be provided at 11:30 a.m. on June 19, 2008, for any interested publics who wish to address the Council on BLM programs and business.

Under the Federal Lands Recreation Enhancement Act, the RAC has been designated the RRAC, and has the authority to review all BLM and Forest Service (FS) recreation fee proposals in Arizona. The afternoon meeting agenda on June 19 will include review and discussion of the Recreation Enhancement Act (REA) Working Group Report, REA Work Group meeting schedule and future BLM/FS recreation fee proposals.

DATES: *Effective Date:* June 19, 2008.

FOR FURTHER INFORMATION CONTACT: Deborah Stevens, Bureau of Land Management, Arizona State Office, One North Central Avenue, Suite 800, Phoenix, Arizona 85004–4427, 602–417–9504.

Helen M. Hankins,

Acting State Director.

[FR Doc. E8–10899 Filed 5–14–08; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–922–08–1310–FI–P; NDM 87494 and NDM 87496]

Notice of Proposed Reinstatement of Terminated Oil and Gas Leases NDM 87494 and NDM 87496

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Per 30 U.S.C. 188(d), Continental Resources, Inc. timely filed a petition for reinstatement of oil and gas leases NDM 87494 and NDM 87496, McKenzie County, North Dakota. The lessee paid the required rentals accruing from the date of termination.

No leases were issued that affect these lands. The lessee agrees to new lease terms for rentals and royalties of $10 per acre and 16⅔ percent or 4 percentages above the existing competitive royalty rate. The lessee paid the $500 administration fee for the reinstatement of each lease and $163 cost for publishing this Notice.

The lessee met the requirements for reinstatement of the leases per Sec. 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). We are proposing to reinstate the leases, effective the date of termination subject to:

- The original terms and conditions of the leases;
- The increased rental of $10 per acre;
- The increased royalty of 16⅔ percent or 4 percentages above the existing competitive royalty rate; and
- The $163 cost of publishing this Notice.

FOR FURTHER INFORMATION CONTACT: Karen L. Johnson, Chief, Fluids Adjudication Section, BLM Montana State Office, 5001 Southgate Drive, Billings, Montana 59101–4669, 406–896–5098.

Dated: May 9, 2008.

Karen L. Johnson,

Chief, Fluids Adjudication Section.

[FR Doc. E8–10850 Filed 5–14–08; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Extension of Concession Contract

AGENCY: National Park Service, Interior.

ACTION: Public Notice.

EFFECTIVE DATE: June 1, 2008.

FOR FURTHER INFORMATION CONTACT: Jo A. Pendry, Concession Program Manager, National Park Service, Washington, DC, 20240, Telephone 202–513–7156.

SUMMARY: Pursuant to 36 CFR 51.23, public notice is hereby given that the National Park Service proposes to extend the following expiring concession contract for a period of up to 1 year, or until such time as a new contract is executed, whichever occurs sooner.

SUPPLEMENTARY INFORMATION: The listed concession authorization will expire by its terms on or before May 31, 2008. The National Park Service has determined that the proposed short-term extension is necessary in order to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption.

Conc ID No.	Concessioner name	Park
PORE003–98	American Youth Hostels.	Point Reyes National Seashore.

Dated: April 11, 2008.

Katherine H. Stevenson,

Acting Assistant Director, Business Services.

[FR Doc. E8–10636 Filed 5–14–08; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0067

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM or We) are announcing that the information collection request for 30 CFR 705 and the Form OSM–23, Restriction on financial interests of State employees, has been forwarded to the Office of Management and Budget (OMB) for review and reauthorization. The information collection package was previously approved and assigned clearance number 1029–0067. This notice describes the nature of the information collection activity and the expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, you should submit your comments to OMB by June 16, 2008, in order to be assured of consideration.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, by telefax at (202) 395–6566 or via e-mail to *OIRA_Docket@omb.eop.gov*. Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Room 202–SIB, Washington, DC 20240, or electronically to *jtrelease@osmre.gov*.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection package contact John A. Trelease at (202) 208–2783, or electronically to *jtrelease@osmre.gov*. You may also view the collection at

http://www.reginfo.gov/public/do/PRAMain.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. We have submitted a request to OMB to renew its approval for the collection of information for 30 CFR 705 and the Form OSM–23, Restriction on financial interests of State employees. We are requesting a 3-year term of approval for this information collection activity.

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 this collection of information is 1029–0067.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on 30 CFR 705 was published on February 12, 2008 (73 FR 8063). No comments were received. This notice provides you with an additional 30 days in which to comment on the following information collection activity:

Title: Restriction on financial interests of State employees, 30 CFR 705.

OMB Control Number: 1029–0067.

Summary: Respondents supply information on employment and financial interests. The purpose of the collection is to ensure compliance with section 517(g) of the Surface Mining Control and Reclamation Act of 1977, which places an absolute prohibition on employees of regulatory authorities having a direct or indirect financial interest in underground or surface coal mining operations.

Bureau Form Number: OSM–23.

Frequency of Collection: Entrance on duty and annually.

Description of Respondents: Any State regulatory authority employee or member of advisory boards or commissions established in accordance with State law or regulation to represent multiple interests who performs any function or duty under the Surface Mining Control and Reclamation Act.

Total Annual Responses: 3,540.

Total Annual Burden Hours: 1,184.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the addresses listed under **ADDRESSES.** Please refer to OMB control number 1029–0067 in your correspondence.

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: May 8, 2008.

John R. Craynon,

Chief, Division of Regulatory Support.

[FR Doc. E8–10731 Filed 5–14–08; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–991 (Review)]

Silicon Metal From Russia

AGENCY: United States International Trade Commission.

ACTION: Scheduling of an expedited five-year review concerning the antidumping duty order on silicon metal from Russia.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on silicon metal from Russia would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* May 6, 2008.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background. On May 6, 2008, the Commission determined that the domestic interested party group response to its notice of institution (73 FR 6204, February 1, 2008) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.[2]

Staff report. A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on June 2, 2008, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions. As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[3] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before June 5, 2008, and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by June 5, 2008. However, should the Department of Commerce extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

[2] Commissioner Deanna Tanner Okun did not participate.

[3] The Commission has found the responses submitted by Globe Metallurgical Inc. to be individually adequate. Comments from other interested parties will not be accepted (see 19 CFR 207.62(d)(2)).

results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: May 9, 2008.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–10785 Filed 5–14–08; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Proposed Administrative Settlement Agreement and Order on Consent Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

Notice is hereby given that on May 1, 2008, a proposed Settlement Agreement regarding the Asarco Hayden Plant Site in Hayden, Arizona was filed with the United States Bankruptcy Court for the Southern District of Texas in *In re Asarco LLC*, No. 05–21207 (Bankr. S.D. Tex.). The proposed Agreement, entered into by the United States Environmental Protection Agency, the Arizona Department of Environmental Quality, and Asarco LLC, provides, *inter alia*, that Asarco LLC will conduct environmental cleanup actions in Hayden and Winkelman, Arizona, including cleanup of residential areas and environmental investigative work at the Hayden Smelter.

The Department of Justice will receive comments relating to the proposed Agreement for a period of twenty (20) 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 *In re Asarco LLC*, DJ Ref. No. 90–11–3–09141/4.

The proposed Agreement may be examined at the Region 9 Office of the United States Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105. During the public comment period, the proposed Agreement may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html*. A copy of the proposed Agreement 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 $11.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert E. Maher, Jr.,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E8–10820 Filed 5–14–08; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Regal Cinemas, Inc. and Consolidated Theatres Holdings, GP; Complaint, Proposed Final Judgment, and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. Section 1 6(b)–(h), that a Complaint, proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the *United States District Court for the District of Columbia in States of America* v. *Regal Cinemas, Inc.* and Consolidated Theatres Holdings, GP, Civil Action No. 08–00746. On April 29, 2008, the United States filed a Complaint alleging that the proposed acquisition by Regal Cinemas, Inc. of Consolidated Theatres Holdings, GP, would violate Section 7 of the Clayton Act, 15 U.S.C. 18 by lessening competition for theatrical exhibition of first-run movies in Asheville, Charlotte, and Raleigh, North Carolina. The proposed Final Judgment, filed the same time as the Complaint, requires the defendants to divest first-run, commercial movie theatres, along with certain tangible and intangible assets, in those three geographic regions in order to proceed with the proposed $210 million transaction. A Competitive Impact Statement filed by the United States on April 30, 2008 describes the Complaint, the proposed Final Judgment, the industry, and the remedies available to private litigants who may have been injured by the alleged violation.

Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice in Washington, DC in Suite 1010, 450 Fifth Street, NW., Washington, DC 20530, and at the Office of the Clerk of the United States District Court for the District of Columbia, Washington, DC. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to John R. Read, Chief, Litigation III Section, Suite 4000, Antitrust Division, Department of Justice, 450 Fifth Street, NW., Washington, DC 20530, (telephone: 202 307–0468). At the conclusion of the sixty (60) day comment period, the U.S. District Court for the District of Columbia may enter the proposed consent decree upon finding that it serves the public interest.

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

United States District Court for the District of Columbia

United States of America, Plaintiff, v. Regal Cinemas, Inc., and Consolidated Theatres Holdings, GP, Defendants.

Case: 1:08-cvOQ746.
Assigned To: Leon, Richard J.
Assign. Date: 4/29/2008.
Description: Antitrust.
Filed:

Complaint

The United States of America, acting under the direction of the Attorney General of the United States, brings this

civil antitrust action to enjoin the proposed merger of Regal Cinemas, Inc. and Consolidated Theatres, GP, and to obtain equitable relief. If the merger is permitted to proceed, it would combine the two leading, and in some cases only, operators of first-run, commercial movie theatres in parts of the metropolitan areas of Charlotte, Raleigh, and Asheville, North Carolina. The merger would substantially lessen competition and tend to create a monopoly in the theatrical exhibition of commercial, first-run movies in the above listed markets in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

I. Jurisdiction and Venue

This action is filed by the United States pursuant to Section 15 of the Clayton Act, as amended, 15 U.S.C. 25, to obtain equitable relief and to prevent a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

2. One defendant operates theatres in this District; the other attracts patrons from and advertises in this District. In addition, the distribution and exhibition of commercial, first-run films is a commercial activity that substantially affects, and is in the flow of, interstate trade and commerce. Defendant's activities in purchasing equipment, services, and supplies as well as licensing films for exhibitors substantially affect interstate commerce. The Court has jurisdiction over the subject matter of this action and jurisdiction over the parties pursuant to 15 U.S.C. 22, 25, and 26, and 28 U.S.C. 1331, 1337(a), and 1345.

3. Venue in this District is proper under 15 U.S.C. 22 and 28 U.S.C. 1391(c). In addition, defendants have consented to venue and personal jurisdiction in this judicial district.

II. Defendants and the Proposed Merger

4. Regal Cinemas, Inc. (''Regal'') is a Tennessee corporation with its headquarters in Knoxville. Regal operates more than 6,400 screens at approximately 540 theatres in 39 states and the District of Columbia under the Regal, United Artists, Edwards, and Hoyts names.

5. Consolidated Theatres Holdings, GP, is a North Carolina partnership (hereinafter referred to as ''Consolidated''). Consolidated operates 400 screens at 28 theatres in Georgia, Maryland, North Carolina, South Carolina, Tennessee, and Virginia, with additional theatres projected to open in the next few years, including the Biltmore Grande 15, which is scheduled to open in Asheville, North Carolina in August 2008.

6. On January 14, 2008, Regal and Consolidated signed a purchase and sale agreement. The deal is structured as an asset purchase, with Regal acquiring Consolidated for approximately $210 million.

III. Background of the Movie Industry

7. Theatrical exhibition of feature length motion picture films (''movies'') provides a major source of out-of-home entertainment in the United States. Although they vary, ticket prices for movies tend to be significantly less expensive than many other forms of out-of-home entertainment, particularly live entertainment such as sporting events and live theatre.

8. Viewing movies in the theatre is a very popular pastime. Over 1.4 billion movie tickets were sold in the United States in 2007, with total box office revenue exceeding $9.7 billion.

9. Companies that operate movie theatres are called ''exhibitors.'' Some exhibitors own a single theatre, whereas others own a circuit of theatres within one or more regions of the United States. Established exhibitors include AMC, Carmike, and Cinemark, as well as Regal and Consolidated.

10. Exhibitors set ticket prices for each theatre based on a number of factors, including the competitive situation facing each theatre, the age of the theatres, the prices of nearby, comparable theatres, the population demographics and density surrounding the theatre, and the number and type of amenities each theatre offers, such as stadium seating.

IV. Relevant Market

A. Product Market

11. Movies are a unique form of entertainment. The experience of viewing a movie in a theatre is an inherently different experience from live entertainment (e.g., a stage production), a sporting event, or viewing a movie in the home (e.g, on a DVD or via pay-per-view).

12. Typically, viewing a movie at home lacks several characteristics of viewing a movie in a theatre, including the size of screen, the sophistication of sound systems, and the social experience of viewing a movie with other patrons. Additionally, the most popular, newly released or ''first-run'' movies are not available for home viewing. Movies are considered to be in their ''first-run'' during the four to five weeks following initial release in a given locality. If successful, a movie may be exhibited at other theatres after the first run as part of a second or subsequent run (often called a sub-run).

13. Reflecting the significant differences of viewing a movie in a theatre, ticket prices for movies are generally very different from prices for other forms of entertainment: Live entertainment is typically significantly more expensive than a movie ticket, whereas renting a DVD for home viewing is usually significantly cheaper than viewing a movie in a theatre. Going to the movies is a different experience from other forms of entertainment, and a small but significant post-acquisition increase in ticket prices, or reduction in discounts, for first-run commercial movies would not cause a sufficient number of customers to shift to other forms of entertainment to make such a price increase unprofitable.

14. Reflecting the significant difference between viewing a newly released, first-run movie and an older sub-run movie, tickets at theatres exhibiting first-run movies usually cost significantly more than tickets at sub-run theatres. Movies exhibited at sub-run theatres are no longer new releases, and moviegoers generally do not regard sub-run movies as an adequate substitute for first-run movies and a small but significant post-acquisition increase in ticket prices, or reduction in discounts, for first-run commercial movies would not cause a sufficient number of customers to switch to theatres exhibiting sub-run movies to make such a price increase unprofitable.

15. Art movies and foreign language movies are also not substitutes for commercial, first-run movies. Although art and foreign language movies appeal to some viewers of commercial movies, potential audience and demand conditions are quite distinct. For example, art movies tend to appeal more universally to mature audiences and art movie patrons tend to purchase fewer concessions. Exhibitors consider art theatre operations as distinct from the operations of theatres that exhibit commercial movies. Theatres that primarily exhibit art movies often contain auditoriums with fewer seats than theatres that primarily play commercial movies. Typically, art movies are released less widely than commercial movies. A small but significant post-acquisition increase in ticket prices, or reduction in discounts, for first-run commercial movies would not cause a sufficient number of customers to switch to theatres exhibiting art movies to make such a price increase unprofitable.

16. Similarly, foreign language movies do not widely appeal to U.S. audiences. As a result, moviegoers do not regard foreign language movies as adequate substitutes for first-run, commercial

movies. A small but significant post-acquisition increase in ticket prices, or reduction in discounts, for first-run movies would not cause a sufficient number of customers to switch to theatres exhibiting foreign language movies to make such a price increase unprofitable.

17. The relevant product market within which to assess the competitive effects of this merger is the exhibition of first-run, commercial movies.

B. Geographic Markets

18. Data show that moviegoers typically are not willing to travel very far from their homes to attend a movie. As a result, geographic markets for the exhibition of first-run, commercial movies are relatively local.

Charlotte, North Carolina Area

19. Regal and Consolidated account for the vast majority of first-run movie tickets sold in southern Charlotte, North Carolina (''Southern Charlotte''), an area which encompasses Consolidated's Philips 10 theatre, Consolidated's Arboretum 12, Regal's Crown Point 12 and Regal's Stonecrest 22 theatre. In this area, the only other theatres showing first-run, commercial movies are an independent five-plex stadium theatre and the AMC Carolina Pavilion 22, a stadium theatre.

20. Moviegoers who reside in Southern Charlotte are reluctant to travel significant distances out of that area to attend a movie except in unusual circumstances. A small but significant increase in the price of movie tickets in Southern Charlotte would not cause a sufficient number of moviegoers to travel out of Southern Charlotte to make the increase unprofitable. Southern Charlotte constitutes a relevant geographic market in which to assess the competitive effects of this merger.

Raleigh, North Carolina Area

21. Regal and Consolidated account for the vast majority of first-run movie tickets sold in Northern Raleigh, North Carolina (''Northern Raleigh''), which encompasses Regal's Brier Creek 14, Regal's North Hills 14, and Consolidated's Raleigh Grand. The only other theatres showing first-run, commercial movies in the Northern Raleigh area are the sloped-floor, six screen Six Forks and the 15-screen Carmike theatre with stadium seating.

22. Moviegoers who reside in Northern Raleigh are reluctant to travel significant distances out of their area to attend a movie except in unusual circumstances. A small but significant increase in the price of movie tickets in Northern Raleigh would not cause a sufficient number of moviegoers to travel out of Northern Raleigh to make the increase unprofitable. Northern Raleigh constitutes a relevant geographic market in which to assess the competitive effects of this merger.

23. Regal and Consolidated account for all of the first-run movie tickets sold in the suburb of Gamer to the south of Raleigh, North Carolina (''Southern Raleigh''), which encompasses Regal's Garner Towne Square 10 and Consolidated's White Oak 14. There are no other theatres showing first-run, commercial movies in Southern Raleigh.

24. Moviegoers who reside in Southern Raleigh are reluctant to travel significant distances out of their area to attend a movie except in unusual circumstances. A small but significant increase in the price of movie tickets in Southern Raleigh would not cause a sufficient number of moviegoers to travel out of Southern Raleigh to make the increase unprofitable. Southern Raleigh constitutes a relevant geographic market in which to assess the competitive effects of this merger.

Asheville, North Carolina Area

25. After the completion of Consolidated's Biltmore Grande 15 around August 2008, Regal and Consolidated will likely account for the vast majority of first-run movie tickets sold in the Asheville, North Carolina area (''Asheville''), which encompasses the area around Regal's Hollywood 14 and the developing site of Consolidated's Biltmore Grande 15. There are only two other non-Regal theatres showing first-run, commercial movies in Asheville—a Carmike theatre with 10 screens and a Fine Arts theatre with two screens.

26. Moviegoers in Asheville are reluctant to travel significant distances out of that area to attend a movie except in unusual circumstances. A small but significant increase in the price of movie tickets in Asheville would not cause a sufficient number of moviegoers to travel out of Asheville to make the increase unprofitable. Asheville constitutes a relevant geographic market in which to assess the competitive effects of this merger.

27. The exhibition of first-run, commercial movies in Southern Charlotte, Northern Raleigh, Southern Raleigh and Asheville each constitutes a relevant market (i.e., a line of commerce and a section of the country) within the meaning of Section 7 of the Clayton Act, 15 U.S.C. 18.

V. Competitive Effects

28. Exhibitors compete on multiple dimensions to attract moviegoers to their theatres over the theatres of their rivals. They compete over the quality of the viewing experience. They compete to offer the most sophisticated sound systems, best picture clarity, nicest seats with best views, and cleanest floors and lobbies for moviegoers. And, to gain market share, exhibitors seek to license the first-run movies that are likely to attract the largest numbers of moviegoers. Exhibitors also compete on price, knowing that if they charge too much (or do not offer sufficient discounted tickets for matinees, seniors, children, etc.), moviegoers will begin to frequent their rivals.

29. In the geographic markets of Southern Charlotte, Northern and Southern Raleigh, and Asheville, Regal and Consolidated compete head-to-head for moviegoers. These geographic markets are very concentrated and in each market, Regal and Consolidated are the other's most significant competitor given their close proximity to one another and to local moviegoers, and from the perspective of such moviegoers, the relative inferiority in terms of location, size or quality of other theatres in the geographic markets. Their rivalry spurs each to improve the quality of the viewing experience and keeps prices in check.

30. In Southern Charlotte, the proposed merger would give the newly merged entity control of four of the six first-run, commercial theatres in that area, with 56 out of 83 total screens and a 75% share of 2007 box office revenues, which totaled approximately $17.1 million. Using a measure of market concentration called the Herfindahl-Hirschman index (''HHI''), explained in Appendix A, the merger would yield a post-merger HHI of approximately 6,058, representing an increase of roughly 2,535 points.

31. In Northern Raleigh, the proposed merger would give the newly merged entity control of three of the five first-run, commercial theatres in that area, with 44 of 65 total screens and 79% of 2007 box office revenues, which totaled approximately $11.6 million. The merger would yield a post-merger HHI of roughly 6,523, representing an increase of around 2,315 points.

32. In Southern Raleigh, the proposed merger would give the newly merged entity control of the only two theatres in this area. Therefore, the market share of the combined entity would be 100% of screens and 100% of 2007 box office revenues, which totaled $3.5 million. The merger would yield the highest post-merger HHI number possible—10,000, representing an increase of 3,167 points.

33. In Asheville, after the completion of the Biltmore Grand 15, the proposed merger would give the newly merged entity control of four of the six first-run, commercial theatres with 41 of 53 total screens. As measured by total screens only (since Consolidated does not yet have box office revenues in Asheville), the combined entity would have a market share of approximately 77% in Asheville. The merger would yield a post-merger HHI of roughly 6,355, representing an increase of 2,777 points.

Today, were Regal or Consolidated to increase ticket prices in any of the four geographic markets at issue and the others were not to follow, the exhibitor that increased price would likely suffer financially as a substantial number of its patrons would patronize the other exhibitor. After the merger, the newly combined entity would re-capture such losses, making price increases profitable that would have been unprofitable pre-merger. Thus, the merger is likely to lead to higher ticket prices for moviegoers, which could take the form of a higher adult evening ticket price or reduced discounting, e.g., for matinees, children, seniors, and students.

35. The proposed merger would also eliminate competition between Regal and Consolidated over the quality of the viewing experience in each of the geographic markets at issue. If no longer required to compete, Regal and Consolidated would have reduced incentives to maintain, upgrade, and renovate their theatres in the relevant markets, to improve those theatres' amenities and services, and to license the highest revenue movies, thus reducing the quality of the viewing experience for a moviegoer.

36. The presence of the other theatres offering first-run, commercial movies in certain of the relevant geographic markets would be insufficient to replace the competition lost due to the merger, and thus render unprofitable post-merger increases in ticket prices or decreases in quality by the newly merged entity. For various reasons, the other theatres in the relevant geographic markets offer less attractive options for the moviegoers that are served by the Regal and Consolidated theatres. For example, they are located further away from these moviegoers than are the Regal and Consolidated theatres, they are relatively smaller size or have fewer screens than the Regal and Consolidated theatres, or they offer a lower quality viewing experience than do the Regal and Consolidated theatres.

VI. Entry

37. The entry of a first-run, commercial movie theatre is unlikely in all of the relevant markets. Exhibitors are reluctant to locate new theatres near existing theatres unless the population density and demographics make new entry viable or the existing theatres do not have stadium seating. That is not the case here. Over the next two years, the demand for more movie theatres in the areas at issue is not likely to support entry of a new theatre. And all of these markets have or will soon have theatres with stadium seating. Thus, no new first-run, commercial theatres with the capability to reduce significantly the newly merged entity's market power are likely to open within the next two years in Southern Charlotte, Northern Raleigh, Southern Raleigh, or Asheville in response to an increase in movie ticket prices or a decline in theatre quality.

VII. Violation Alleged

38. The United States hereby reincorporates paragraphs 1 through 37.

39. The effect of the proposed merger would be to lessen competition substantially in Southern Charlotte, Northern Raleigh, Southern Raleigh and Asheville in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

40. The transaction would likely have the following effects, among others: (a) Prices for first-run, commercial movie tickets would likely increase to levels above those that would prevail absent the merger, and (b) quality of theatres and the theatre viewing experience in the geographic area would likely decrease absent the merger.

VIII. Requested Relief

41. The plaintiffs request: (a) Adjudication that the proposed merger would violate Section 7 of the Clayton Act; (b) permanent injunctive relief to prevent the consummation of the proposed merger and to prevent the defendants from entering into or carrying out any agreement, understanding or plan, the effect of which would be to combine the businesses or assets of defendants; (c) an award of the plaintiff of its costs in this action; and (d) such other relief as is proper.

Dated: April 29, 2008.

For Plaintiff United States of America.

David L. Meyer (DC Bar No. 414420), Acting Assistant Attorney General, Antitrust Division.
Patricia A. Brink, Deputy Director of Operations.
John R. Read, Chief, Litigation III.
Nina B. Hale, Assistant Chief, Litigation III.
Gregg I. Malawer (DC Bar No. 481685), Jennifer Wamsley (DC Bar No. 486540), Anne Newton Mcfadden.
Attorneys for the United States, United States Department of Justice, Antitrust Division, 450 5th Street, NW., Suite 4000, Washington, DC 20530.

Exhibit A—Definition of HHI and Calculations for Market

''HHI'' means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of thirty, thirty, twenty and twenty percent, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). The HHI takes into account the relative size and distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be concentrated. Transactions that increase the HHI by more than 100 points in concentrated markets presumptively raise antitrust concerns under the Merger Guidelines. See Merger Guidelines § 1.51.

United States District Court for the District of Columbia

United States of America, Plaintiff, v. Regal Cinemas, Inc. and Consolidated Theatres Holdings, GP, Defendants.

Civil Action No:
Judge:
Filed:

Final Judgment

Whereas, Plaintiff, United States of America filed its Complaint on April 29, 2008, the United States and Defendants, Regal Cinemas, Inc. (''Regal'') and Consolidated Theatres Holdings, GP (''Consolidated''), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And whereas, Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by the Defendants to assure that competition is not substantially lessened;

And whereas, the United States requires Defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And whereas, Defendants have represented to the United States that the divestitures required below can and will be made and that Defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *ordered. Adjudged and decreed*:

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may he granted against Defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. Definitions

As used in this Final Judgment:

A. ''Acquirer'' or ''Acquirers'' means the entity or entities to whom Defendants divest the Theatre Assets.

B. ''Regal'' means Defendant Regal Cinemas Eric., a Tennessee corporation with its headquarters in Knoxville. Tennessee, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. ''Consolidated'' means defendant Consolidated Theatres Holdings, GP, a North Carolina Partnership, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

D. ''Landlord Consent'' means any contractual approval or consent that the landlord or owner of one or more of the Theatre Assets, or the property on which one or more of the Theatre Assets is situated, must grant prior to the transfer of one of the Theatre Assets to an Acquirer.

E. ''Theatre Assets'' means the first-run, commercial motion picture theatre businesses operated by Regal or Consolidated, under the following names and at the following locations:

Theatre name	Theatre address
i. Crown Point 12	9630 Monroe Road, Charlotte, NC 28270.
ii. Raleigh Grand 16 ..	4840 Grove Barton Road, Raleigh, NC 27613.
iii. Town Square 10 ...	2600 Timber Dr., Garner, NC 27529.
iv. Hollywood 14	1640 Hendersonville Rd, Asheville, NC 28803.

The term ''Theatre Assets'' includes:

1. All tangible assets that comprise the first-run, commercial motion picture theatre business including all equipment, fixed assets and fixtures, personal property, inventory, office furniture, materials, supplies, and other tangible property and all assets used in connection with the Theatre Assets: All licenses, permits and authorizations issued by any governmental organization relating to the Theatre Assets; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings, relating to the Theatre Assets, including supply agreements; all customer lists, contracts, accounts, and credit records; all repair and performance records and all other records relating to the Theatre Assets;

2. All intangible assets used in the development, production, servicing and sale of Theatre Assets, including, but not limited to all patents, licenses and sublicenses, intellectual property, technical information, computer software (except Defendants' proprietary software) and related documentation, know how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, design tools and simulation capability, all manuals and technical information Defendants provide to their own employees, customers, suppliers, agents or licensees, and all research data concerning historic and current research and development efforts relating to the Theatre Assets, provided, however, that this term does not include any right to use or interests in defendants' trademarks, trade names, service marks or service names, or copyrighted advertising materials.

III. Applicability

A. This Final Judgment applies to Regal and Consolidated, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with Section IV and V of this Final Judgment, Defendants sell or otherwise dispose of all or substantially all of their assets or of lesser business units that include the Theatre Assets, they shall require the purchaser to be bound by the provisions of this Final Judgment Defendants need not obtain such an agreement from the acquirers of the assets divested pursuant to this Final Judgment.

IV. Divestitures

A. Defendants are ordered and directed, within ninety (90) calendar days after the filing of the Complaint in this matter, or five (5) calendar days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the Theatre Assets in a manner consistent with this Final Judgment to an Acquirer(s) acceptable to the United States in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed ninety (90) calendar days in total, and shall notify the Court in such circumstances. Defendants agree to use their best efforts to divest the Theatre Assets as expeditiously as possible.

B. In accomplishing the divestitures ordered by this Final Judgment, Defendants promptly shall make known, by usual and customary means, the availability of the Theatre Assets. Defendants shall inform any person making inquiry regarding a possible purchase of the Theatre Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Theatre Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client privilege or work-product doctrine. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

C. Defendants shall provide the Acquirers and the United States information relating to the personnel involved in the operation of the Theatre Assets to enable the Acquirers to make offers of employment. Defendants will not interfere with any negotiations by the Acquirers to employ any Defendant employee whose primary responsibility is the operation of the Theatre Assets.

D. Defendants shall permit prospective Acquirers of the Theatre Assets to have reasonable access to personnel and to make inspections of

the physical facilities of the Theatre Assets; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

E. Defendants shall warrant to all Acquirers of the Theatre Assets that each asset will be operational on the date of sale.

F. Defendants shall not take any action that will impede in any way the permitting, operation. or divestitures of the Theatre Assets. At the option of the Acquirers, Defendants shall enter into an agreement for products and services, such as computer support services, that are reasonably necessary for the Acquirer(s) to effectively operate the Theatre Assets during a transition period. The terms and conditions of any contractual arrangements meant to satisfy this provision must be commercially reasonable for those products and services for which the agreement is entered and shall remain in effect for no more than three months, absent approval of the United States, in its sole discretion.

G. Defendants shall warrant to the Acquirers that there are no material defects in the environmental, zoning or other permits pertaining to the operation of each asset, and that following the sale of the Theatre Assets, Defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Theatre Assets.

H. Unless the United States otherwise consents in writing, the divestitures made pursuant to Section IV, or by trustee appointed pursuant to Section V. of this Final Judgment, shall include the entire Theatre Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion that the Theatre Assets can and will be used by the Acquirers as part of a viable, ongoing business of first-run, commercial motion picture theatres. Divestitures of the Theatre Assets may be made to one or more Acquirers, provided that in each instance it is demonstrated to the sole satisfaction of the United States that the Theatre Assets will remain viable and the divestitures of such assets will remedy the competitive harm alleged in the Complaint. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment,

(1) Shall be made to an Acquirer(s) that, in the United States's sole judgment, has the intent and capability (including the necessary managerial, operational, technical and financial capability) of competing effectively in the business of first-run, commercial motion picture theatres; and

(2) shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer(s) and Defendants give Defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer(s) to compete effectively.

V. Appointment of Trustee

A. If Defendants have not divested the Theatre Assets within the time period specified in Section IV(A), Defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestitures of the Theatre Assets.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Theatre Assets. The trustee shall have the power and authority to accomplish the divestitures to an Acquirer(s) acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV, V, VI, and VII of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section V(D) of this Final Judgment, the trustee may hire at the cost and expense of Defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture.

C. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by Defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VII.

D. The trustee shall serve at the cost and expense of Defendants, on such terms and conditions as the United States approves, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Defendants and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Theatre Assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestitures and the speed with which it is accomplished, but timeliness is paramount.

E. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestitures. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and Defendants shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestitures.

F. After its appointment, the trustee shall file monthly reports with the United States and the Court setting forth the trustee's efforts to accomplish the divestitures ordered under this Final Judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Theatre Assets, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Theatre Assets.

G. If the trustee has not accomplished the divestitures ordered under this Final Judgment within six months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestitures, (2) the reasons, in the trustee's judgment, why the required divestitures have not been accomplished, and (3) the trustee's recommendations. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the United States which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final

Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI. Landlord Consent

A. If Defendants are unable to effect the divestitures required herein due to the inability to obtain the Landlord Consent for any of the Theatre Assets, Defendants shall divest alternative Theatre Assets that compete effectively with the theatre for which the Landlord Consent was not obtained. The United States shall, in its sole discretion, determine whether such theatre competes effectively with the theatre for which landlord consent was not obtained.

B. Within five (5) business days following a determination that Landlord Consent cannot be obtained for one of the Theatre Assets, Defendants shall notify the United States and propose an alternative divestiture pursuant to Section VI(A). The United States shall have then ten (10) business days in which to determine whether such theatre is a suitable alternative pursuant to Section VI(A). If the Defendants' selection is deemed not to be a suitable alternative, the United States shall in its sole discretion select the theatre to be divested.

C. If the trustee is responsible for effecting the divestitures, it shall notify both the United States and the Defendants within five (5) business days following a determination that Landlord Consent can not be obtained for one of the Theatre Assets. Defendants shall thereafter have five (5) business days to propose an alternative divestiture pursuant to Section VI(a). The United States shall have then ten (10) business days in which to determine whether such theatre is a suitable alternative pursuant to Section VI(A). If the Defendants' selection is deemed not to be a suitable competitive alternative, the United States shall in its sole discretion select the theatre to be divested.

VII. Notice of Proposed Divestitures

A. Within two (2) business days following execution of a definitive divestiture agreement, Defendants or the trustee, whichever is then responsible for effecting the divestitures required herein, shall notify the United States of any proposed divestitures required by Sections IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify Defendants. The notice shall set forth the details of the proposed divestitures and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Theatre Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from Defendants, the proposed Acquirer(s), any other third party, or the trustee, if applicable, additional information concerning the proposed divestitures, the proposed Acquirer(s), and any other potential Acquirer. Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from Defendants, the proposed Acquirer(s), any third party, and the trustee, whichever is later, the United States shall provide written notice to Defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestitures. If the United States provides written notice that it does not object, the divestitures may be consummated, subject only to Defendants' limited right to object to the sale under Section V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer(s) or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by Defendants under Section V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VIII. Financing

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment.

IX. Hold Separate

Until the divestitures required by this Final Judgment have been accomplished, Defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestitures ordered by this Court.

X. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestitures have been completed under Sections IV or V, Defendants shall deliver to the United States an affidavit as to the fact and manner of its compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Theatre Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts Defendants have taken to solicit buyers for the Theatre Assets, and to provide required information to prospective purchasers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by defendants, including limitation on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an ongoing basis to comply with Section IX of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Theatre Assets until one year after such divestitures have been completed.

XI. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants, be permitted:

(1) Access during defendants' office hours to inspect and copy, or at the option of the United States, to require defendants to provide hard copy or electronic copies of all books, ledgers, accounts, records, data, and documents

in the possession, custody, or control of defendants, relating to any matters contained in this Final Judgment; and

(2) to interview, either informally or on the record defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit written reports or response to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States, to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to the United States, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then the United States shall give defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XII. Notification

Unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a (the ''HSR Act''), defendants, without providing advance notification to the Department of Justice, shall not directly or indirectly acquire any assets of or any interest, including any financial, security, loan, equity or management interest, in the business of first-run, commercial theatres in Mecklenburg County, North Carolina; Wake County, North Carolina; and Buncombe County, North Carolina during a ten-year period. This notification requirement shall apply only to the acquisition of any assets or any interest in the business of first-run, commercial motion picture theatres at the time of the acquisition and shall not be construed to require notification of acquisition of interest in new theatre developments or of assets not being operated as first-run commercial motion picture theatre businesses, provided, that this notification requirement shall apply to first-run, commercial theatres under construction at the time of the entering of this Final Judgment.

Such notification shall be provided to the Department of Justice in the same format as, and per the instructions relating to the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended, except that the information requested iii Items 5 through 9 of the instructions must be provided only about first-run, commercial theatres. Notification shall be provided at least thirty (30) calendar days prior to acquiring any such interest, and shall include, beyond what may be required by the applicable instructions, the names of the principal representatives of the parties to the agreement who negotiated the agreement, and any management or strategic plans discussing the proposed transaction. If within the 30-day period after notification, representatives of the Antitrust Division make a written request for additional information, defendants shall not consummate the proposed transaction or agreement until thirty (30) days after submitting all such additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder. This Section shall be broadly construed and any ambiguity or uncertainty regarding the filing of notice under this Section shall be resolved in favor of filing notice.

XIII. No Reacquisition

Defendants may not reacquire any part of the theatre assets divested under this Final Judgment during the term of this Final Judgment.

XIV. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XV. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten years from the date of its entry.

XVI. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States's responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date:

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

United States District Judge.

United States District Court for the District of Columbia

United States of America, Plaintiff, v. Regal Cinemas, Inc., and Consolidated Theatres Holdings, GP, Defendants.

Civil Action No: 1:08–cv–00746.
Judge: Leon, Richard J.
Filed: April 30, 2008.

Competitive Impact Statement

Plaintiff, the United States of America (''United States''), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On January 14, 2008, Defendant Regal Cinemas, Inc. (''Regal'') agreed to acquire Defendant Consolidated Theatres Holdings, GP (''Consolidated'') for approximately $210 million. The United States filed a civil antitrust complaint on April 29, 2008, seeking to enjoin the proposed acquisition and to obtain equitable relief. The Complaint alleges that the acquisition, if permitted to proceed, would combine the two leading, and in some cases, only operators of first-run, commercial movie theatres in parts of the metropolitan areas of Charlotte, Raleigh, and Asheville, North Carolina The likely effect of this acquisition would be to lessen competition substantially for first-run commercial motion picture

exhibition in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

At the same time the Complaint was filed, the United States also filed a Hold Separate Stipulation and Order (''Hold Separate'') and proposed Final Judgment, which are designed to eliminate the anticompetitive effects of the acquisition. Under the proposed Final Judgment, which is explained more fully below, Regal and Consolidated are required to divest four theatres located in Charlotte, Raleigh and Asheville to acquirers acceptable to the United States.

Under the terms of the Hold Separate, Defendants will take certain steps to ensure that four theatres to be divested will be maintained and operated as economically viable and ongoing business concerns.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

Regal, a Tennessee corporation, is currently the nation's largest movie theatre operator. Regal operates more than 6,400 screens at approximately 540 theatres in 39 states and the District of Columbia under the Regal, United Artists, Edwards, and Hoyts names, with revenues of approximately $2.6 billion in 2007.

Consolidated, a North Carolina partnership, operates 400 screens at 28 theatres in Georgia, Maryland, North Carolina, South Carolina, Tennessee, and Virginia, with additional theatres projected to open in the next few years, including the Biltmore Grande 15 in Asheville, which will open about August 2008. For fiscal year 2007, Consolidated generated revenues of approximately $144 million.

On January 14, 2008, Regal and Consolidated signed a purchase and sale agreement. The deal is structured as an asset purchase, with Regal acquiring Consolidated for approximately $210 million.

B. The Competitive Effects of the Transaction on the Exhibition of First-Run, Commercial Movies

The Complaint alleges that the theatrical exhibition of first-run, commercial films in each of Southern Charlotte, Northern and Southern Raleigh, and Asheville, North Carolina constitutes a line of commerce and a relevant market for antitrust purposes.

1. The Relevant Product and Geographic Markets

The Complaint alleges that the relevant product market within which to assess the competitive effects of this merger is the exhibition of first-run, commercial movies. According to the Complaint, the experience of viewing a film in a theatre is an inherently different experience from other forms of entertainment, such as a live show, a sporting event, or viewing a movie in the home (e.g., on a DVD or via pay-per-view). Reflecting the significant differences of viewing a movie in a theatre, ticket prices for movies are generally very different from prices for other forms of entertainment: Live entertainment is typically significantly more expensive than a movie ticket, whereas renting a DVD for home viewing is usually significantly cheaper than viewing a movie in a theatre. The Complaint also alleges that a small but significant post-acquisition increase in ticket prices, or reduction in discounts, for first-run commercial movies would not cause a sufficient number of customers to shift to other forms of entertainment to make such a price increase unprofitable.

The Complaint alleges that moviegoers generally do not regard sub-run movies, art movies, or foreign language movies as an adequate substitute for first-run movies and would not switch to sub-run movies, art movies, or foreign language movies if the price of viewing first-run movies was increased by a small but significant amount. Although sub-run, art and foreign language movies appeal to some viewers of commercial movies, potential audience and demand conditions are quite distinct. Exhibitors consider sub-run, art, and foreign language theatre operations as distinct from the operations of theatres that exhibit commercial movies. A small but significant post-acquisition increase in ticket prices, or reduction in discounts, for first-run commercial movies would not cause a sufficient number of customers to switch to theatres exhibiting sub-run, art, or foreign language movies to make such a price increase unprofitable. The Complaint alleges that the relevant geographic markets in which to measure the competitive effects of this merger are the parts of metropolitan areas identified as Southern Charlotte, Northern Raleigh, Southern Raleigh and Asheville.

According to the Complaint, the Southern Charlotte area encompasses Consolidated's Philips Place 10 theatre, Consolidated's Arboretum 12, Regal's Crown Point 12 and Regal's Stonecrest 22 theatre. In this area, the only other theatres showing first-run, commercial movies are an independent five-plex stadium theatre and the AMC Carolina Pavilion 22, a stadium theatre.

The Northern Raleigh area encompasses Regal's Brier Creek 14, Regal's North Hills 14, and Consolidated's Raleigh Grand. The only other theatres showing first-run, commercial movies in the Northern Raleigh area are the sloped-floor, six screen Six Forks and the 15-screen Carmike theatre with stadium seating.

The Southern Raleigh area consists of the suburb of Garner to the south of Raleigh and encompasses Regal's Garner Towne Square 10 and Consolidated's White Oak 14. There are no other theatres showing first-run, commercial movies in Southern Raleigh.

The Asheville area encompasses Regal's Hollywood 14 and the developing site of Consolidated's Biltmore Grande 15, which is scheduled to open in August of 2008. There are only two other non-Regal theatres showing first-run, commercial movies in Asheville—a Carmike theatre with 10 screens and a Fine Arts theatre with two screens.

According to the Complaint, moviegoers who reside in each of these areas are reluctant to travel significant distances out of that area to attend a movie except in unusual circumstances and would not do so in sufficient numbers to make a small but significant price increase unprofitable. As a consequence, each of these areas is a relevant geographic market in which to assess the competitive effects of the merger.

2. Competitive Effects in the Relevant Markets

The Complaint alleges that companies that operate first-run, commercial movie theatres (known as exhibitors) compete on multiple dimensions. They compete over the quality of the viewing experience. They compete to offer the most sophisticated sound systems, best picture clarity, nicest seats with best views, and cleanest floors and lobbies for moviegoers. Exhibitors also seek to license the first-run movies that are likely to attract the largest numbers of moviegoers. Exhibitors also compete on price,[1] knowing that if they charge too

[1] An example of such price competition occurred in 2006 in Southern Raleigh when Consolidated opened the White Oak 14, a stadium theatre. Regal's

much (or do not offer sufficient discounted tickets for matinees, seniors, children, etc.), moviegoers will choose to view movies at rival theatres.

According to the Complaint, the proposed merger is likely to lead to higher ticket prices for moviegoers in each of the relevant markets. The merger would also reduce the newly merged entity's incentives to maintain, upgrade, and renovate its theatres in the relevant markets, to improve its theatres' amenities and services, and to license the highest revenues movies, thus reducing the quality of the viewing experience. The Complaint alleges these outcomes are likely because, in each of the relevant markets, Regal and Consolidated are each other's most significant competitor, given their close proximity to one another and to moviegoers.

In Southern Charlotte, the proposed merger would give the newly merged entity control of four of the six first-run, commercial theatres in that area, with 56 out of 83 total screens and a 75% share of 2007 box office revenues, which totaled approximately $17.1 million. Using a measure of market concentration called the Herfmdahl-Hirschman Index (''HHI''), explained in Appendix A, the merger would yield a post-merger HHI of approximately 6058, representing an increase of roughly 2535 points.

In Northern Raleigh, the proposed merger would give the newly merged entity control of three of the five first-run, commercial theatres in that area, with 44 of 65 total screens and 79% of 2007 box office revenues, which totaled approximately $11.6 million. The merger would yield a post-merger HHI of roughly 6523, representing an increase of around 2315 points.

In Southern Raleigh, the proposed merger would give the newly merged entity control of the only two theatres in this area. Therefore, the market share of the combined entity would be 100% of screens and 100% of 2007 box office revenues, which totaled $3.5 million. The merger would yield the highest post-merger HHI number possible, 10,000, representing an increase of 3167 points.

In Asheville, after the completion of the Biltmore Grand 15, the proposed merger would give the newly merged entity control of four of the six first-run, commercial theatres with 41 of 53 total screens. As measured by total screens only (since Consolidated does not yet have box office revenues in Asheville), the combined entity would have a market share of approximately 77% in Asheville. The merger would yield a post-merger HHI of roughly 6,355, representing an increase of 2,777 points.

In each of these markets today, were Regal or Consolidated to increase ticket prices and the other were not to follow, the exhibitor that increased price would likely suffer financially as a substantial number of its patrons would patronize the other exhibitor's theatre. After the merger, the newly combined entity would re-capture such losses, making price increases profitable that would have been unprofitable pre-merger. Likewise, the proposed merger would also eliminate competition between Regal and Consolidated over the quality of the viewing experience at their theatres in each of the geographic markets at issue.

The Complaint explains that the presence of the other theatres offering first-run, commercial movies in certain of the relevant geographic markets would be insufficient to replace the competition lost due to the merger, and thus render unprofitable post-merger increases in ticket prices or decreases in quality by the newly merged entity. For various reasons, the other theatres in the relevant geographic markets offer less attractive options for the moviegoers that are served by the Regal and Consolidated theatres. For example, they are located further away from these moviegoers than are the Regal and Consolidated theatres, they are a relatively smaller size or have fewer screens than the Regal and Consolidated theatres, or they offer a lower quality a viewing experience than do the Regal and Consolidated theatres.

Finally, the Complaint alleges that the entry of a first-run, commercial movie theatre in response to an increase in movie ticket prices or a decline in theatre quality is unlikely in all of the relevant markets. Exhibitors are reluctant to locate new theatres near existing theatres unless the population density and demographics makes new entry viable or the existing theatres do not have stadium seating. That is not the case in any of the relevant markets. Over the next two years, the demand for more movie theatres in the areas at issue is not likely to support entry of a new theatre. And all of these markets have or will soon have theatres with stadium seating.

For all of these reasons, the United States has concluded that the proposed transaction would lessen competition substantially in the exhibition of first-run, commercial films in Southern Charlotte, Northern and Southern Raleigh, and Asheville, eliminate actual and potential competition between Regal and Consolidated, and likely result in increased ticket prices and lower quality theatres in those markets. The proposed merger therefore violates of Section 7 of the Clayton Act.

III. Explanation of the Proposed Final Judgment

The divestiture requirement of the proposed Final Judgment will eliminate the anticompetitive effects of the acquisitions in Southern Charlotte, Northern and Southern Raleigh, and Asheville by establishing new, independent, and economically viable competitors. The proposed Final Judgment requires Regal and Consolidated, within ninety (90) calendar days after the filing of the Complaint, or five (5) days after the notice of the entry of the Final Judgment by the court, whichever is later, to divest, as viable ongoing businesses, a total of four theatres in three metropolitan areas: Crown Point 12 (Southern Charlotte); the Raleigh Grand 16 (Northern Raleigh); Town Square 10 (Southern Raleigh); and Hollywood 14 (Asheville). Sale of these theatres will thus preserve existing competition between the defendants' theatres that are or would have been each others' most significant competitor in the theatrical exhibition of first-run films in Southern Charlotte, Northern and Southern Raleigh, and Asheville. The assets must be divested in such a way as to satisfy the United States in its sole discretion that the theatres can and will be operated by the purchaser as viable, ongoing businesses that can compete effectively as first-run commercial theatres. Defendants must use their best efforts to accomplish the divestiture quickly and shall cooperate with prospective purchasers. Until the divestitures take place, Regal and Consolidated must maintain the sales and marketing of the theatres, and maintain the theatres in operable condition at current capacity configurations. Until the divestitures take place, Regal and Consolidated must not transfer or reassign to other areas within the company their employees with primary responsibility for the operation of the Theatre Assets, except for transfer bids initiated by employees pursuant to Defendants' regular, established job posting policy.

In the event that Defendants do not accomplish the divestitures within the periods prescribed in the proposed Final Judgment, the Final Judgment provides that the Court will appoint a trustee selected by the United States to effect the divestitures. If a trustee is

Towne Square theatre in Southern Raleigh is an older sloped-floor theatre located approximately five miles away. After the White Oak 14 opened, the Towne Square theatre decreased its adult admission price substantially.

appointed, the proposed Final Judgment provides that Regal and Consolidated will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestitures are accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the Court and the United States, setting forth his or her efforts to accomplish the divestiture. At the end of six (6) months, if the divestitures have not been accomplished, the trustee and the United States will make recommendations to the Court, which shall enter such orders as appropriate, in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

If Defendants or trustee are not able to obtain a landlord's consent to sell one of the theatres to be divested, Section VI of the proposed Final Judgment permits Defendants to propose an alternative theatre to be divested. The United States shall determine whether the theatre offered competes effectively with the theatre that could not be divested due to a failure to obtain landlord consent. This provision will insure that any failure by Defendants to obtain landlord consent by Defendants does not thwart the relief obtained in the proposed Final Judgment.

The proposed Final Judgment also prohibits Defendants from acquiring any other theatres in Mecklenburg County, North Carolina; Wake County, North Carolina; and Buncombe County, North Carolina without providing at least thirty (30) days notice to the United States Department of Justice. Such acquisitions could raise competitive concerns but might be too small to be reported under the Hart-Scott-Rodino (''HSR'') premerger notification statute.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: John R. Read, Chief, Antitrust Division/Litigation III, United States Department of Justice, 450 5th Street, NW., Suite 4000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against Regal's merger with Consolidated. The United States is satisfied, however, that the divestiture of assets and other relief described in the proposed Final Judgment will preserve competition for the exhibition of first-run, commercial films in the relevant markets identified by the United States. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

(A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) The impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); see generally *United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.C. 2007) (assessing public interest standard under the Tunney Act).[2]

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the

[2] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. 16(e) (2004), *with* 15 U.S.C. 16(e)(1) (2006); *see also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that the 2004 amendments ''effected minimal changes'' to Tunney Act review.

government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. See Microsoft, 56 F.3d at 145862. With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); see also Microsoft, 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001). Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''within the reaches of the public interest.'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[3] In determining whether a proposed settlement is in the public interest, a district court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17; see also Microsoft, 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), aff'd sub nom. *Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459. Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Id.* at 1459–60. As this Court recently confirmed in *SBC Communications,* courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' *SBC Commc'ns,* 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' SBC Commc'ns, 489 F. Supp. 2d at 11.[4]

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: April 30, 2008.

Respectfully submitted,

Gregg I. Malawer (DC Bar No. 481685), Jennifer A. Warnsley (DC Bar No. 486540), Anne Newton McFadden, U.S. Department of Justice Antitrust, Division 450 S Street, NW., Suite 4000, Washington, DC 20530, (202) 514–0230, Attorneys for Plaintiff the United States.

Exhibit A—Definition of HHI and Calculations for Market

''HHI'' means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of thirty, thirty, twenty and twenty percent, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). The HHI takes into account the relative size and distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be concentrated. Transactions that increase the HHI by more than 100 points in

[3] Cf. BNS, 858 F.2d at 464 (holding that the court's ''ultimate authority under the IAPPA] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). *See generally Microsoft,* 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest''').

[4] *See United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); *United States* v. *Mid-Am. Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) section 61,508, at 71,980 (W.D. Mo. 1977) (''Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.''); S. Rep. No. 93298, 93d Cong., 1st Sess., at 6 (1973) (''Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.'').

concentrated markets presumptively raise antitrust concerns under the Merger Guidelines. *See Merger Guidelines* 1.51.

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DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of April 28 through May 2, 2008.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. *Section (a)(2)(A) all of the following must be satisfied:*

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. *Section (a)(2)(B) both of the following must be satisfied:*

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. *One of the following must be satisfied:*

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (*i.e.*, conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) of the Trade Act have been met.

None.

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–62,987; Mahle Clevite, Inc., Muskegon, MI: March 7, 2007.

TA–W–63,143; Powermate Corporation, Kearney, NE: April 4, 2007.

TA–W–63,199; Air Products and Chemicals, Inc., Morrisville, PA: April 10, 2007.

TA–W–62,762; Pembrook Chair Corporation, Claremont, NC: May 2, 2010.

TA–W–63,034; Phoenix Sewing, Equity Management Group Division, Fort Wayne, IN: March 18, 2007.

TA–W–63,035; Summit Productions, Equity Management Group Division, Fort Wayne, IN: March 18, 2007.

TA–W–63,036; Mercury Manufacturing, Equity Management Group Division, Fort Wayne, IN: March 18, 2007.

TA–W–63,066; Leggett and Platt, Inc., Branch 0612, On-Site Leased Workers of Adecco, Georgetown, KY: March 24, 2007.

TA–W–63,117; Sroufe Healthcare Products, Inc., A Subsidiary of Foot Tek Holdings LLC, Ligonier, IN: April 1, 2007.

TA–W–63,152; Troy, LLC, Harrisville, WV: April 7, 2007.

TA–W–63,172; Mueller Company Limited, A Subsidiary of Mueller Water Products, Decatur, IL: April 9, 2007.

TA–W–63,051; Surratt Hosiery Mills, Inc., Denton, NC: March 20, 2007.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–63,002; Inventec Distribution Corporation, Suite B, Houston, TX: March 7, 2007.

TA–W–63,021; Leviton Manufacturing Co., Plant #12, West Jefferson, NC: March 17, 2007.

TA–W–63,041; Saint-Gobain Performance Plastics, Elk Grove Village, IL: March 19, 2007.

TA–W–63,077; Indalex Aluminum Solutions, Girard, OH: March 26, 2007.

TA–W–63,077A; Indalex Aluminum Solutions, Girard, OH: March 26, 2007.

TA–W–63,079; Redman Homes, Inc., Division of Champion Homes, Silverton, OR: March 26, 2007.

TA–W–63,166; Westminster Ceramics, Inc., Bakersfield, CA: April 8, 2007.

TA–W–63,186; Encore Medical, L.P., Chattanooga Division, Department 10, Hixson, TN: April 10, 2007.

TA–W–63,186A; Encore Medical, L.P., Chattanooga Division, Department 15, Hixson, TN: April 10, 2007.

TA–W–63,186B; Encore Medical, L.P., Chattanooga Division, Department 17, Hixson, TN: April 10, 2007.

TA–W–63,132; Honeywell International, Inc., Honeywell Aerospace Division, Avionics Group, Integrated Supply Chain, Redmond, WA: March 26, 2007.

TA–W–63,179; Chippenhook Corporation, Designers Group International Division, North Stonington, CT: April 11, 2007.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–63,045; Mount Vernon Mills, Inc., Arkwright Division, Spartanburg, SC: March 19, 2007.

TA–W–63,088; Mount Vernon Mills, Inc., Brenham Weave Mill, Brenham, TX: March 19, 2007.

TA–W–63,108; Guy Bennett Lumber Company, Clarkston, WA: March 26, 2007.

TA–W–63,248; Polytech Coating Labs of USA, Inc., Reading, PA: April 24, 2007.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

None.

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

The Department has determined that criterion (1) of Section 246 has not been met. The firm does not have a significant number of workers 50 years of age or older.

None.

The Department has determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

None.

The Department has determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.

None.

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

None.

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–63,055; GE Zenith Controls, Bonham, TX.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–62,817; Lincoln Brass Works, A Wholly Owned Subsidiary of Mueller Gas Products, Waynesboro, TN.

TA–W–62,934; Steelcraft Industries, LLC, Miami, OK.

TA–W–63,191; Chrysler, LLC, Newark Assembly Plant, Newark, DE.

TA–W–62,985; Kone, Inc., Coal Valley Escalator Division, Coal Valley, IL.

TA–W–63,083; Performance Fibers, Winfield Division, Winfield, AL.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–62,651; Eastalco Aluminum Company, A Subsidiary of Alcoa, Inc., Frederick, MD.

TA–W–62,651A; Eastalco Aluminum Company, A Subsidiary of Alcoa, Inc., Pier Facility, Baltimore, MD.

TA–W–62,949; Freescale Semiconductor, Inc., Global Sales and Marketing Organization, Tempe, AZ.

TA–W–63,194; The Home Depot, Finance and Corporate Development, Atlanta, GA.

TA–W–63,206; Springs Global, US, Inc., Springs Direct Tunnel Road Store Division, Asheville, NC.

TA–W–63,224; Intermedia Marketing Solutions, Inc., Indiana, PA.

TA–W–63,230; Value City Department Store #152, A Subsidiary of Retail Ventures Services, Inc., Uniontown, PA.

The investigation revealed that criteria of Section 222(b)(2) has not been met. The workers' firm (or subdivision) is not a supplier to or a downstream producer for a firm whose workers were certified eligible to apply for TAA.

None.

I hereby certify that the aforementioned determinations were issued during the period of April 28 through May 2, 2008. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Date: May 8, 2008.

Erin Fitzgerald,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E8–10880 Filed 5–14–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,978]

Gil-Mar Manufacturing Company, Canton, MI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 10, 2008 in response to a petition filed by a company official on behalf of workers of Gil-Mar Manufacturing Company, Canton, Michigan.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation would serve no purpose and the investigation has been terminated.

Signed at Washington, DC, this 8th day of May 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–10884 Filed 5–14–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,316]

Maxim Integrated Products, Sunnyvale, CA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 6, 2008 in response to a petition filed by a company official on behalf of workers at Maxim Integrated Products, Sunnyvale, California. The workers at the subject facility produce semi-conductor chips.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 8th day of May 2008.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–10882 Filed 5–14–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,312]

Solon Mfg. Co.-Rhinelander, Rhinelander, WI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 6, 2008 in response to a petition filed on behalf of the workers of Solon Mfg. Co.-Rhinelander, Rhinelander, Wisconsin.

The petition has been deemed invalid. The petition is signed by an unknown individual and is not the company official identified as the petitioner.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 8th day of May 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–10885 Filed 5–14–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than May 27, 2008.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than May 27, 2008.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 7th day of May 2008.

Erin FitzGerald,

Acting Director, Division of Trade Adjustment Assistance.

APPENDIX—TAA PETITIONS INSTITUTED BETWEEN 4/28/08 AND 5/2/08

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
63253	IntraPac (Harrisonburg), Inc. (Comp)	Harrisonburg, VA	04/28/08	04/25/08
63254	Teva Neuroscience (Wkrs)	Horsham, PA	04/28/08	04/28/08
63255	Feldspar Corp. (The) (Comp)	Spruce Pine, NC	04/28/08	04/25/08
63256	Shuqualak Lumber Company, Inc. (Comp)	Shuqualak, MS	04/28/08	04/25/08
63257	Webb Wheel Products, Inc. (State)	Silam Springs, AR	04/28/08	04/25/08
63258	Pass & Seymour/Legrand (Comp)	Whitsett, NC	04/28/08	04/25/08
63259	Kenneth Gordon (State)	Harahan, LA	04/28/08	04/25/08
63260	Mark Hopkins Sculpture/Baer Bronze of Georgia (Comp)	Rome, GA	04/29/08	04/25/08
63261	Simpson Timber Company—Shelton (Union)	Shelton, WA	04/29/08	04/17/08
63262	Simpson Timber Company—Tacoma (Union)	Tacoma, WA	04/29/08	04/17/08
63263	Woodgrain Millwork, Inc. (Comp)	Nampa, ID	04/29/08	04/23/08
63264	Kenworth Truck Company (Paccar Inc.) (Wkrs)	Chillicothe, OH	04/29/08	04/13/08

APPENDIX—TAA PETITIONS INSTITUTED BETWEEN 4/28/08 AND 5/2/08—Continued

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
63265	Intel Corporation, California Technology and Manufacturing (CTM) Group (Comp).	Santa Clara, CA	04/29/08	04/24/08
63266	Lester Enterprises, Inc. dba LHP Corporation (Comp)	Hartwell, GA	04/29/08	04/28/08
63267	Shane Hunter, Inc. (Wkrs)	San Francisco, CA	04/29/08	04/18/08
63268	Key Plastics, LLC (Wkrs)	Felton, PA	04/29/08	04/28/08
63269	Daimler Trucks North America (Freight Liner LLC) (Wkrs)	Cleveland, NC	04/29/08	04/22/08
63270	Beck Manufacturing, a Div. of Anvil International, Inc. (Comp).	Santa Fe Springs, CA	04/29/08	04/15/08
63271	Horton Automatics (Comp)	Corpus Christi, TX	04/29/08	04/10/08
63272	Pfaltzgraff (Wkrs)	York, PA	04/29/08	04/24/08
63273	Sherman Textile Company (Comp)	Dallas, NC	04/29/08	04/28/08
63274	Schindler Elevator Corp (Comp)	Sidney, OH	04/29/08	04/28/08
63275	Plastic Trim International, Inc. (Comp)	Dayton, OH	04/29/08	04/28/08
63276	Quip Industries/Tim Bolk, Owner (State)	Carlyle, IL	04/29/08	04/28/08
63277	Timbuk 2 (Wkrs)	San Francisco, CA	04/29/08	04/28/08
63278	Wheeling Pittsburgh Steel Corporation (USW)	Allenport, PA	04/30/08	04/21/08
63279	Geiger (Wkrs)	Lewiston, ME	04/30/08	04/23/08
63280	Sears Holdings HR Support Center (Comp)	Tucker, GA	04/30/08	04/21/08
63281	J L Bray and Son (Union)	Salida, CA	04/30/08	04/29/08
63282	Barco, Inc. (State)	Beaverton, OR	04/30/08	04/29/08
63283	Kimball Office (Comp)	Jasper, IN	04/30/08	04/29/08
63284	Kimball International General Office (Comp)	Jasper, IN	04/30/08	04/29/08
63285	Office Furniture Group Shared Services (Comp)	Jasper, IN	04/30/08	04/29/08
63286	Brunswick Bowling (AFL–CIO)	Muskegon, MI	04/30/08	04/16/08
63287	Paulstra CRC (Comp)	Novi, MI	04/30/08	04/25/08
63288	Sigma Industries, Inc. (Comp)	Springport, MI	05/01/08	04/30/08
63289	Lakewood Engineering and Manufacturing Co. (Comp)	Chicago, IL	05/01/08	04/29/08
63290	L B Furniture Industries, LLC (IUECWA)	Hudson, NY	05/01/08	04/29/08
63291	Tanks Manufacturing (Wkrs)	Lakeview, OR	05/01/08	04/20/08
63292	Syncreon-US/Jefferson North Assembly Operation (Comp)	Detroit, MI	05/01/08	04/27/08
63293	Wausau Paper Specialty Products, LLC (Comp)	Columbus, WI	05/01/08	04/28/08
63294	Hughes Lumber Company (Wkrs)	Central Point, OR	05/01/08	05/01/08
63295	Visteon Concordia (UAW)	Concordia, MO	05/02/08	05/01/08
63296	Ornamental Products, LLC (Wkrs)	High Point, NC	05/02/08	05/01/08
63297	Snider Transportation Service (State)	Tyler, TX	05/02/08	04/30/08
63298	HD Supply, Inc. (Wkrs)	Monroe, NC	05/02/08	04/29/08
63299	Siegel Robert Automotive (State)	Farmington, MO	05/02/08	04/29/08
63300	Fisher and Company/Fisher Dynamics (Comp)	St. Clair Shores, MI	05/02/08	04/29/08

[FR Doc. E8–10881 Filed 5–14–08; 8:45 am]
BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,875]

Bolton Metal Products Co. Bellefonte, PA; Notice of Revised Determination on Reconsideration

On April 21, 2008, the Department issued an Affirmative Determination Regarding Application on Reconsideration applicable to workers and former workers of the subject firm. The notice was published in the **Federal Register** on April 25, 2008 (73 FR 22434).

The previous investigation initiated on February 21, 2008, resulted in a negative determination issued on March 19, 2008, was based on the finding that, during the relevant period, imports of brass rod, wire, and low melt alloys did not contribute importantly to worker separations at the subject firm and no shift of production to a foreign source occurred. The denial notice was published in the **Federal Register** on April 24, 2008 (73 FR 22170).

In the request for reconsideration, the petitioner provided additional information regarding production at the subject firm, imports and customers.

Upon further investigation the Department requested an additional list of customers from the subject firm. New information revealed that Bolton Metal Products Co., Bellefonte, Pennsylvania supplies brass rod, wire and low melt alloys for hydraulic fittings produced by the primary firm, and a loss of business with a domestic manufacturer (whose workers were certified eligible to apply for adjustment assistance) contributed importantly to the workers' separation or threat of separation.

In accordance with Section 246 the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor herein presents the results of its investigation regarding certification of eligibility to apply for alternative trade adjustment assistance (ATAA) for older workers.

In order for the Department to issue a certification of eligibility to apply for ATAA, the group eligibility requirements of Section 246 of the Trade Act must be met. The Department has determined in this case that the requirements of Section 246 have been met.

A significant number of workers at the firm are age 50 or over and possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the additional facts obtained on reconsideration, I determine that workers of Bolton Metal Products Co., Bellefonte, Pennsylvania qualify as adversely affected secondary workers under Section 222 of the Trade Act of 1974, as amended. In accordance

with the provisions of the Act, I make the following certification:

All workers of Bolton Metal Products Co., Bellefonte, Pennsylvania, who became totally or partially separated from employment on or after February 18, 2007, through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed in Washington, DC this 9th day of May 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–10883 Filed 5–14–08; 8:45 am]

BILLING CODE 4510–FN–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–225]

The Rensselaer Polytechnic Institute; Notice of Acceptance for Docketing of the Application and Notice of Opportunity for Hearing Regarding Renewal of the Rensselaer Polytechnic Institute Reactor Critical Facility Facility License No. CX–22 for an Additional 20-Year Period

The Nuclear Regulatory Commission (NRC or the Commission) is considering an application for the renewal of Facility License No. CX–22, which authorizes the Rensselaer Polytechnic Institute (RPI or the licensee) to operate the Rensselaer Polytechnic Institute Reactor Critical Facility (RCF) at 100 watts thermal power. The renewed license would authorize the licensee to operate the RCF for an additional 20 years from the date of issuance.

On November 19, 2002, the Commission's staff received an application from RPI filed pursuant to 10 CFR 50.51(a), to renew Facility License No. CX–22 for the RCF. Because the license renewal application was filed in a timely manner in accordance with 10 CFR 2.109, the license will not be deemed to have expired until the license renewal application has been finally determined.

Based on its initial review of the application, the Commission's staff determined that RPI submitted sufficient information in accordance with 10 CFR 50.33 and 50.34 so that the application is acceptable for docketing. The current Docket No. 50–225 for Facility License No. CX–22 will be retained. The docketing of the renewal application does not preclude requests for additional information as the review proceeds, nor does it predict whether the Commission will grant or deny the application. Prior to a decision to renew the license, the Commission will make findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations.

Within 60 days after the date of publication of this notice, the applicant may file a request for a hearing, and any person(s) whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene, via electronic submission through the NRC E-filing system. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland and on the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr.* Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner/requestor in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the licensing action (i.e., license renewal) under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

A request for hearing or a petition for leave to intervene must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated on August 28, 2007 (72 FR 49139). The E-Filing process requires participants to submit and serve documents over the Internet or in some cases to mail copies on electronic 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 of E-Filing, at least ten (10) days prior to the filing deadline, the petitioner/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 proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or

representative) already holds an NRC-issued digital ID certificate). Each petitioner/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 is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.*

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. 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 documents through EIE. To be timely, an electronic filing 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 documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can 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 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397–4209 or locally, (301) 415–4737.

Participants who believe that they have a 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.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii). To be timely, filings must be submitted no later than 11:59 p.m. Eastern Time on the due date.

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 submissions.

Detailed guidance which the NRC uses to review applications for the renewal of non-power reactor licenses can be found in the document NUREG–1537, entitled ''Guidelines for Preparing and Reviewing Applications for the Licensing of Non-Power Reactors,'' can be obtained from the Commission's PDR. The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The detailed review guidance (NUREG–1537) may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html* under ADAMS Accession No. ML041230055 for part one and ML041230048 for part two. Copies of the application to renew the facility license for the licensee are available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852–2738. The initial application and other related documents may be accessed through the NRC's Public Electronic Reading Room, at the address mentioned above, under ADAMS Accession No. ML072210835 (Redacted Version). Persons who do not have access to ADAMS, or have problems accessing the documents located in ADAMS, may contact the NRC Public Document Room Reference staff at (800) 397–4209, or locally, (301) 415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 9th day of May, 2008.

For the Nuclear Regulatory Commission.

Daniel S. Collins,

Chief, Research and Test Reactors Branch A, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. E8–10862 Filed 5–14–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–29462]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact Related to the Approval for the Department of the Navy To Issue an Amendment to a Materials Permit for the Unrestricted Release of Building 133 at the Naval Air Depot in Cherry Point, North Carolina, Under Byproduct Materials License No. 45–23645–01NA

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Environmental Assessment and Finding of No Significant Impact for License Amendment.

FOR FURTHER INFORMATION CONTACT: Orysia Masnyk Bailey, Health Physicist, Materials Security & Industrial Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania, 19406; phone number (864) 427–1032; fax number (610) 680–3497; or by e-mail: *omm@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering

allowing the Department of the Navy (Navy) to issue an amendment to a materials permit in accordance with NRC Byproduct Materials License No. 45–23645–01NA. The NRC approval would authorize the Navy to release, for unrestricted use, Building 133 at the Naval Air Depot in Cherry Point, North Carolina. The Navy requested this action in a letter dated May 21, 2006. The NRC has prepared an Environmental Assessment (EA) in support of this proposed action in accordance with the requirements of Title 10, Code of Federal Regulations (CFR), Part 51 (10 CFR Part 51). Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate with respect to the proposed action. The proposed action will be taken following the publication of this FONSI and EA in the **Federal Register**.

II. Environmental Assessment

Identification of Proposed Action

The proposed action would approve the Navy's May 21, 2006, request to release Building 133 at the Naval Air Depot in Cherry Point, North Carolina (the Facility), for unrestricted use.

Building 133 is a one-story open structure used for repair and maintenance of aircraft engines. This Facility is located within a secure military base in a rural area, and use of licensed materials was confined to three shop areas: the Aircraft and Component Clean, Strip, and Corrosion Control Shop; the Machine Repair Power Plant Shop; and the Engine Parts Repair Shop. Each shop maintained dedicated, marked 55 gallon drums for storage of low level radioactive waste (LLRW) generated from Mg-Th operations. At the end of each shift in which Mg-Th maintenance was performed, areas were cleaned with dedicated shop vacuums equipped with HEPA filters. Mg-Th components were cleaned in an enclosed parts washer to prevent the spread of contamination.

In March 2006, the Navy ceased licensed activities at the Facility, and initiated a survey and decontamination of Building 133. Based on the Navy's historical knowledge of the site and the conditions of Building 133, the Navy determined that only routine decontamination activities, in accordance with their NRC-approved, operating radiation safety procedures, were required. The Navy was not required to submit a decommissioning plan to the NRC because worker cleanup activities and procedures were consistent with those approved for routine operations. The Navy conducted Facility surveys and provided information to the NRC to demonstrate that it meets the criteria in Subpart E of 10 CFR Part 20 for unrestricted release and for permit termination.

Need for the Proposed Action

The Navy is requesting approval of this permitting action because it has ceased conducting licensed activities at its Facility, and seeks its unrestricted use and termination of the permit.

Environmental Impacts of the Proposed Action

The historical review of licensed activities conducted in Building 133 shows that such activities involved use of the following radionuclides with half-lives greater than 120 days: Thorium 232. Prior to performing the final status survey, the Navy conducted decontamination activities, as necessary, in the areas of Building 133 affected by these radionuclides.

The Navy conducted a final status survey in May 2006. This survey covered Building 133 and, conservatively, the LLRW storage room in Building 134 and the Outside LLRW Storage Pad. The final status survey report was attached to the Navy's request for permit amendment approval dated May 21, 2006. The Navy elected to demonstrate compliance with the radiological criteria for unrestricted release as specified in 10 CFR 20.1402 by developing a derived concentration guideline level (DCGL) for thorium of 450 disintegrations per minute gross alpha activity per 100 square-centimeters area (α dpm/100 cm^2) for Building 133. The past history of Building 133 suggests that use of a surface criterion is appropriate. The Navy developed their final DCGL by utilizing the DANDD code and its default industrial scenario to calculate the ''default'' DCGL for thorium. The Navy then utilized the suggested resuspension factor in NUREG–1720 ''Re-Evaluation of the Indoor Resuspension Factor for the Screening Analysis of the Building Occupancy Scenario for NRC's License Termination Rule—Draft Report'' to calculate a site-specific DCGL. The Navy developed a ratio of the default resuspension value in the code and the re-evaluated value from draft NUREG–1720 and multiplied the ''default'' DCGL for thorium by this ratio to result in a site-specific 450 α dpm/100 cm^2 DCGL for thorium. The Navy thus determined the maximum amount of residual radioactivity on building surfaces, equipment, materials, and soils that will satisfy the NRC requirements in Subpart E of 10 CFR Part 20 for unrestricted release. The NRC reviewed the Navy's methodology and proposed DCGL, and concluded that the proposed DCGL is acceptable for use as release criteria for Building 133. The Navy's final status survey results were below this DCGL, and are thus acceptable.

Based on its review, the staff has determined that the affected environment and any environmental impacts associated with the proposed action are bounded by the impacts evaluated by the ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities'' (NUREG–1496) Volumes 1–3. The staff finds there were no significant environmental impacts from the Facility's use of radioactive material. The NRC staff reviewed the docket file records and the final status survey report to identify any non-radiological hazards that may have impacted the environment surrounding Building 133. No such hazards or impacts to the environment were identified. The NRC has identified no other radiological or non-radiological activities in the area that could result in cumulative environmental impacts.

The NRC staff finds that the proposed release of Building 133 for unrestricted use and the termination of the Navy's materials permit is in compliance with 10 CFR 20.1402. Based on its review, the staff considered the impact of the residual radioactivity at Building 133 and concluded that the proposed action will not have a significant effect on the quality of the human environment.

Environmental Impacts of the Alternatives to the Proposed Action

Due to the largely administrative nature of the proposed action, its environmental impacts are small. Therefore, the only alternative the staff considered is the no-action alternative, under which the staff would leave things as they are by simply denying the amendment request. This no-action alternative is not feasible because it conflicts with 10 CFR 30.36(d), requiring that decommissioning of byproduct material facilities be completed and approved by the NRC after licensed activities cease. The NRC's analysis of the Navy's final status survey data confirmed that Building 133 meets the requirements of 10 CFR 20.1402 for unrestricted release and for permit termination. Additionally, denying the amendment request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the no-action alternative are therefore similar, and the no-action

alternative is accordingly not further considered.

Conclusion

The NRC staff has concluded that the proposed action is consistent with the NRC's unrestricted release criteria specified in 10 CFR 20.1402. Because the proposed action will not significantly impact the quality of the human environment, the NRC staff concludes that the proposed action is the preferred alternative.

Agencies and Persons Consulted

NRC provided a draft of this Environmental Assessment to the North Carolina Department of Environment and Natural Resources, Radioactive Materials Branch for review on February 13, 2008. On February 14, 2008, the North Carolina Department of Environment and Natural Resources responded by e-mail. The State agreed with the conclusions of the EA, and otherwise had no comments.

The NRC staff has determined that the proposed action is of a procedural nature, and will not affect listed species or critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. The NRC staff has also determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

III. Finding of No Significant Impact

The NRC staff has prepared this EA in support of the proposed action. On the basis of this EA, the NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a Finding of No Significant Impact is appropriate.

IV. Further Information

Documents related to this action, including the application for license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents related to this action are listed below, along with their ADAMS accession numbers.

1. NUREG–1720, ''Re-Evaluation of the Indoor Resuspension Factor for the Screening Analysis of the Building Occupancy Scenario for NRC's License Termination Rule—Draft Report;''

2. NUREG–1757, ''Consolidated NMSS Decommissioning Guidance;''

3. Title 10 Code of Federal Regulations, Part 20, Subpart E, ''Radiological Criteria for License Termination;''

4. Title 10, Code of Federal Regulations, Part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions;''

5. NUREG–1496, ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities'' Volumes 1–3 (ML042310492, ML042320379, and ML042330385);

6. NRC License No. 45–23645–01NA inspection and licensing records.

7. Department of the Navy, Termination of Naval Radioactive Materials Permit No. 32–65923–S1NP issued to Naval Air Depot, Cherry Point, North Carolina, dated March 17, 2006 (ML060890561); and

8. Department of the Navy, Request Assistance in Preparing an Environmental Assessment for Termination of Naval Radioactive Materials Permit No. 32–65923–S1NP issued to Naval Air Depot, Cherry Point, North Carolina, dated May 21, 2007 (ML071450474).

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at King of Prussia, Pennsylvania this 8th day of May 2008.

For the Nuclear Regulatory Commission.

Marie Miller,

Chief, Security and Industrial Branch, Division of Nuclear Materials Safety, Region I.

[FR Doc. E8–10860 Filed 5–14–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–305]

Dominion Energy Kewaunee, Inc; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Dominion Energy Kewaunee, Inc. (the licensee), to withdraw its November 9, 2007 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML073180499), application for proposed amendment to Facility Operating License No. DPR–43 for the Kewaunee Power Station (KPS), located in Kewaunee County, Wisconsin.

The proposed amendment would have revised the license to allow the use of a methodology not currently approved for use at KPS for performing the seismic qualification analysis of the auxiliary building crane.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on December 18, 2007 (72 FR 71707). However, by letter dated April 11, 2008 (ADAMS Accession No. ML081050011), the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated November 9, 2007, and the licensee's letter dated April 11, 2008, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 9th day of May 2008.

For the Nuclear Regulatory Commission.

Margaret H. Chernoff,

Senior Project Manager, Plant Licensing Branch III–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E8–10861 Filed 5–14–08; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP): Notice Regarding the Initiation of the 2008 Annual GSP Product and Country Eligibility Practices Review and Deadlines for Filing Petitions

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and Solicitation for Public Petitions.

SUMMARY: This notice announces that the Office of the United States Trade Representative (USTR) will receive petitions in 2008 to modify the list of products that are eligible for duty-free treatment under the GSP program and to modify the GSP status of certain GSP beneficiary developing countries because of country practices. This notice further determines that the deadline for submission of product petitions, other than those requesting competitive need limitation (CNL) waivers, and country practice petitions for the 2008 Annual GSP Product and Country Eligibility Practices Review is 5 p.m., Wednesday, June 18, 2008. The deadline for submission of product petitions requesting CNL waivers is 5 p.m., Thursday, November 13, 2008. The list of product petitions and country practice petitions accepted for review will be announced in the **Federal Register** at later dates.

FOR FURTHER INFORMATION CONTACT: Contact the GSP Subcommittee of the Trade Policy Staff Committee, Office of the United States Trade Representative, 1724 F Street, NW., Room F–220, Washington, DC 20508. The telephone number is (202) 395–6971, the facsimile number is (202) 395–9481, and the e-mail address is *FR0807@ustr.eop.gov.* (Note: the digit before the number in the e-mail address is the number ''zero,'' not a letter.) Public versions of all documents relating to this Review will be available for examination approximately 30 days after the pertinent due date, by appointment, in the USTR public reading room, 1724 F Street, NW., Washington, DC. Availability of documents may be ascertained, and appointments may be made from 9:30 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, by calling (202) 395–6186.

2008 Annual GSP Review

The GSP regulations (15 CFR part 2007) provide the timetable for conducting an annual review, unless otherwise specified by **Federal Register** notice. Notice is hereby given that, in order to be considered in the 2008 Annual GSP Product and Country Eligibility Practices Review, all petitions to modify the list of articles eligible for duty-free treatment under GSP or to review the GSP status of any beneficiary developing country, with the exception of petitions requesting CNL waivers, must be received by the GSP Subcommittee of the Trade Policy Staff Committee no later than 5 p.m. on Wednesday, June 18, 2008. Petitions requesting CNL waivers must be received by the GSP Subcommittee of the Trade Policy Staff Committee no later than 5 p.m. on Thursday, November 13, 2008, in order to be considered in the 2008 Annual Review. Petitions submitted after the respective deadlines will not be considered for review.

Interested parties, including foreign governments, may submit petitions to: (1) Designate additional articles as eligible for GSP benefits, including to designate articles as eligible for GSP benefits only for countries designated as least-developed beneficiary developing countries, or only for countries designated as beneficiary sub-Saharan African countries under the African Growth and Opportunity Act (AGOA); (2) withdraw, suspend or limit the application of duty-free treatment accorded under the GSP with respect to any article, either for all beneficiary developing countries, least-developed beneficiary developing countries or beneficiary sub-Saharan African countries, or for any of these countries individually; (3) waive the ''competitive need limitations'' for individual beneficiary developing countries with respect to specific GSP-eligible articles (these limits do not apply to either least-developed beneficiary developing countries or AGOA beneficiary sub-Saharan African countries); and (4) otherwise modify GSP coverage.

As specified in 15 CFR 2007.1, all product petitions must include a detailed description of the product and the 8-digit subheading of the Harmonized Tariff Schedule of the United States (HTSUS) under which the product is classified.

Further, product petitions requesting CNL waivers for GSP-eligible articles from beneficiary developing countries that exceed the CNLs in 2008 must be filed in the 2008 Annual Review. In order to allow petitioners an opportunity to review additional 2008 U.S. import statistics, these petitions may be filed after Wednesday, June 18, 2008, but must be received on or before the Thursday, November 13, 2008, deadline described above in order to be considered in the 2008 Annual Review. Copies will be made available for public inspection after the November 13, 2008, deadline.

Any person may also submit petitions to review the designation of any beneficiary developing country, including any least-developed beneficiary developing country, with respect to any of the designation criteria listed in sections 502(b) or 502(c) of the Trade Act (19 U.S.C. 2462(b) and (c)) (petitions to review the designation of beneficiary sub-Saharan African countries are considered in the Annual Review of the AGOA, a separate administrative process not governed by the GSP regulations). Such petitions must comply with the requirements of 15 CFR 2007.0(b).

Requirements for Submissions

All such submissions must conform to the GSP regulations set forth at 15 CFR part 2007, except as modified below. These regulations are reprinted in the ''U.S. Generalized System of Preferences Guidebook'' (''GSP Guidebook''), available at *http://www.ustr.gov/assets/Trade_Development/Preference_Programs/GSP/asset_upload_file666_8359.pdf.*

Any person or party making a submission is strongly advised to review the GSP regulations. Submissions that do not provide the information required by sections 2007.0 and 2007.1 of the GSP regulations will not be accepted for review, except upon a detailed showing in the submission that the petitioner made a good faith effort to obtain the information required. Petitions with respect to waivers of the ''competitive need limitations'' must meet the information requirements for product addition requests in section 2007.1(c) of the GSP regulations. A model petition format is available from the GSP Subcommittee and is included in the GSP Guidebook. Petitioners are requested to use this model petition format so as to ensure that all information requirements are met. Furthermore, interested parties submitting petitions that request action with respect to specific products should list on the first page of the petition the following information after typing ''2008 Annual GSP Review'': (1) The requested action; (2) the HTSUS 8-digit subheading in which the product is

classified; and (3) if applicable, the beneficiary developing country. Petitions and requests must be submitted, in English, to the Chairman of the GSP Subcommittee, Trade Policy Staff Committee. Submissions in response to this notice will be available for public inspection by appointment with the staff of the USTR Public Reading Room, except for information granted ''business confidential'' status pursuant to 15 CFR 2003.6. If the submission contains business confidential information, a non-confidential version of the submission must also be submitted that indicates where confidential information was redacted by inserting asterisks where material was deleted. In addition, the confidential submission must be clearly marked ''BUSINESS CONFIDENTIAL'' in large, bold letters at the top and bottom of each and every page of the document. The public version that does not contain business confidential information must also be clearly marked in large, bold letters at the top and bottom of each and every page (either ''PUBLIC VERSION'' or ''NON-CONFIDENTIAL''). Documents that are submitted without any marking might not be accepted or will be considered public documents.

In order to facilitate prompt consideration of submissions, USTR requires electronic mail (e-mail) submissions in response to this notice. Hand-delivered submissions will not be accepted. E-mail submissions should be single copy transmissions in English with the total submission including attachments not to exceed 30 pages in 12-point type and 3 megabytes as a digital file attached to an e-mail transmission. Submissions should use the following e-mail subject line: ''2008 Annual GSP Review-Petition.'' Documents must be submitted as either WordPerfect (''.WPD''), MSWord (''.DOC''), text (''.TXT''), or Adobe (''PDF'') files. Documents cannot be submitted as electronic image files or contain embedded images (for example, ''.JPG'', ''.TIF'', ''.BMP'', or ''.GIF''). Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel, pre-formatted for printing on 8½ x 11 inch paper. To the extent possible, any data attachments to the submission should be included in the same file as the submission itself, and not as separate files. E-mail submissions should not include separate cover letters or messages in the message area of the e-mail; information that might appear in any cover letter should be included directly in the attached file containing the submission itself, including identifying information on the sender, organization name, address, telephone number, and e-mail address. The electronic mail address for these submissions is *FR0807@ustr.eop.gov* (**Note:** The digit before the number in the e-mail address is the number ''zero,'' not a letter.) Documents not submitted in accordance with these instructions may not be considered in this review. If unable to provide submissions by e-mail, please contact the GSP Subcommittee to arrange for an alternative method of transmission.

For any document containing business confidential information submitted as an electronic attached file to an e-mail transmission, in addition to the proper marking at the top and bottom of each page as previously specified, the file name of the business confidential version should begin with the characters ''BC-'', and the file name of the public version should begin with the characters ''P-''. The ''P-'' or ''BC-'' should be followed by the name of the person or party (government, company, union, association, etc.) submitting the petition.

Public versions of all documents relating to this review will be available for public review approximately 30 days after the due date by appointment in the USTR Public Reading Room, 1724 F Street, NW., Washington, DC. Availability of documents may be ascertained, and appointments may be made from 9:30 a.m. to noon and 1 to 4 p.m., Monday through Friday, by calling 202–395–6186.

Marideth Sandler,

Executive Director, GSP Program Chairman, GSP Subcommittee of the Trade Policy Staff Committee.

[FR Doc. E8–10917 Filed 5–14–08; 8:45 am]

BILLING CODE 3190–W8–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–28265; 812–13438]

Main Street Capital Corporation, et al.; Notice of Application

May 8, 2008.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order under section 57(i) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by section 57(a)(4) of the Act and under section 17(d) of the Act and rule 17d–1 under the Act authorizing certain joint transactions.

SUMMARY OF APPLICATION: Applicants request an order to permit a business development company (''BDC'') and its wholly-owned small business investment company (''SBIC'') to co-invest with certain affiliates in portfolio companies.

APPLICANTS: Main Street Capital Corporation (the ''Company''), Main Street Mezzanine Fund, LP (''MSMF''), Main Street Capital II, LP (''MSC'') and Main Street Capital Partners, LLC (the ''Investment Adviser'').

FILING DATES: The application was filed on October 12, 2007, and amended on April 28, 2008.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief 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 June 2, 2008, 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 St., NE., Washington, DC 20549–1520. Applicants: c/o Mr. Vincent D. Foster, Main Street Capital Corporation, 1300 Post Oak Boulevard, Suite 800, Houston, TX 77056.

FOR FURTHER INFORMATION CONTACT: Jean E. Minarick, Senior Counsel, at (202) 551–6811, or Nadya B. Roytblat, Assistant Director, at (202) 551–6821 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 100 F St., NE., Washington, DC 20549–1520 (tel. 202–551–5850).

Applicants' Representations

1. The Company is an internally managed, non-diversified, closed-end management investment company that has elected to be regulated as a BDC under the Act.[1] The Company's

[1] Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the

Continued

investment objective is to maximize total return by generating current income from debt investments and realizing capital appreciation from equity-related investments. The Company's investments are managed by an investment committee (''Investment Committee''). The Company has a six-member board of directors (''Board'') of which four members are not interested persons of the Company within the meaning of section 2(a)(19) of the Act (''Independent Directors'').

2. MSMF is organized as a limited partnership that operates as an SBIC, and is excluded from the definition of investment company by section 3(c)(7) of the Act. MSMF is a wholly-owned subsidiary of the Company. MSMF has the same investment objective and strategies as the Company. Main Street Mezzanine Management, LLC is the general partner of MSMF and a wholly-owned subsidiary of the Company. The Investment Adviser, a wholly-owned subsidiary of the Company, acts as MSMF's manager and investment adviser.

3. MSC is a limited partnership that operates as an SBIC, and is excluded from the definition of investment company by section 3(c)(7) of the Act. MSC has the same investment objective and strategies as the Company and MSMF. The general partner of MSC is Main Street Capital II GP, LLC (''MSIIGP''). Certain individuals who comprise the management of the Company are also members of MSIIGP. Since its inception MSC has, and it will continue to have, the same investment objective and strategies as MSMF and the Company. As a result, prior to the Company's election to be regulated as a BDC, MSC and MSMF, as a general practice, invested jointly in portfolio companies (the ''Existing Co-Investments''). As of December 31, 2007, MSC had debt and equity investments in 17 portfolio companies with an aggregate fair market value of $67 million. In addition, MSC had $40 million of outstanding indebtedness guaranteed by the Small Business Administration, which had a weighted average annualized interest cost of 6.4% (exclusive of deferred financing costs) as of September 30, 2007. MSMF is also invested in 13 of the 17 portfolio companies in which MSC is invested.[2] The Investment Adviser manages the investment activities of MSC.

4. The Investment Adviser is a wholly owned subsidiary of the Company and is exempt from registration under the Investment Advisers Act of 1940. The management of the Investment Adviser is comprised of the same individuals who comprise the Investment Committee of the Company. The Investment Adviser may in the future advise other entities that are affiliated persons of the Company as defined in sections 2(a)(3)(C) and (D) of the Act (the ''Future Co-Investment Affiliates,'' and together with MSMF, MSC and the Company, the ''Co-Investment Affiliates'').[3] Applicants request relief permitting the Co-Investment Affiliates to co-invest in portfolio companies (the ''Co-Investment Program'' and each investment, a ''Co-Investment Transaction''). Under the Co-Investment Program, co-investment between the Company, MSMF and MSC would be the norm, rather than the exception. In selecting investments for the Company, the Investment Committee will consider only the investment objective, investment policies, investment position, capital available for investment, and other pertinent factors applicable to the Company. Under the Co-Investment Program, each co-investment would be allocated among the Company and MSMF, on the one hand, and MSC, on the other hand, based upon the relative total capital of each group (total capital being equal to raised equity plus available debt). These relative allocation percentages (''Relative Allocation Percentages'') would be approved each quarter or, as necessary or appropriate, between quarters by both the full Board and the required majority (within the meaning of Section 57(o)) (the ''Required Majority'').[4] Because MSMF and MSC are subject to SBIC regulation while the Company is not, some deviation from the Relative Allocation Percentages may be necessary (the ''SBIC Exceptions''). For example, if the Investment Committee has selected an investment for the Company and that investment does not qualify under SBIC regulations, only the Company would pursue the investment. The Co-Investment Program as a whole has been approved by both the full Board and the Required Majority. The Relative Allocation Percentages will be approved by both the full Board and the Required Majority prior to the implementation of the Co-Investment Program, and any deviations from the Relative Allocation Percentages for any investment, by any of the Company, MSMF, or MSC, except for the SBIC Exception, would require prior approval by both the full Board and the Required Majority.

Applicants' Legal Analysis

1. Section 57(a)(4) of the Act prohibits certain affiliated persons of a BDC from participating in a joint transaction with the BDC in contravention of rules as prescribed by the Commission. In addition, under section 57(b)(2) of the Act, any person who is directly or indirectly controlling, controlled by or under common control with a BDC is subject to section 57(a)(4). Because certain individuals who are the members of MSIIGP also comprise the Investment Committee and are the principals of the Investment Adviser, and collectively own approximately 18% of the outstanding voting securities of the Company, the Company, MSMF and MSC are affiliated persons within the meaning of section 2(a)(3) by reason of common control. Thus, MSC could be deemed to be a person related to the Company in a manner described by section 57(b) and therefore, is prohibited by section 57(a)(4) and rule 17d–1 under the Act from participating in the Co-Investment Program. Section 57(i) of the Act provides that, until the Commission prescribes rules under section 57(a)(4), the Commission's rules under section 17(d) of the Act applicable to registered closed-end investment companies will be deemed to apply. Because the Commission has not adopted any rules under section 57(a)(4), rule 17d–1 applies.

2. Section 17(d) of the Act and rule 17d–1 under the Act prohibit affiliated persons of a registered investment company from participating in joint transactions with the company unless the Commission has granted an order permitting such transactions. Rule 17d–1, as made applicable to BDCs by section 57(i), prohibits any person who is related to a BDC in a manner described in section 57(b), as modified by rule 57b–1, acting as principal, from participating in, or affecting any transaction in connection with, any joint enterprise or other joint arrangement or profit-sharing plan in which the BDC is a participant, absent

purpose of making investments in securities described in sections 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities.

[2] The one time that MSMF and MSC did not co-invest is during a period when MSMF was fully invested, excluding a reasonable cash cushion.

[3] Sections 2(a)(3)(C) and 2(a)(3)(D) define an ''affiliated person'' of another person as: (C) Any person directly or indirectly controlling, controlled by, or under common control with, such other person; (D) any officer, director, partner, copartner, or employee of such other person.

[4] The term ''Required Majority,'' when used with respect to the approval of a proposed transaction, plan, or arrangement, means both a majority of a BDC's directors or general partners who have no financial interest in such transaction, plan, or arrangement and a majority of such directors or general partners who are not interested persons of such company.

an order from the Commission. In passing upon applications under rule 17d–1, the Commission considers whether the company's participation in the joint transaction is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

3. Applicants state that allowing co-investment in portfolio companies by the Company, MSMF and MSC will increase favorable investment opportunities for the Company and MSMF. The Co-Investment Program has been approved by the Board and the Required Majority on the basis that it would be mutually advantageous for the Company and MSMF to have the additional capital from MSC available to meet the funding requirements of attractive investments in portfolio companies.

4. Applicants state that the formulae for the allocation of co-investment opportunities among the Company and MSMF on the one hand and MSC on the other, and the protective conditions set forth below will ensure that the Company will be treated fairly. Applicants state that the proposed relief is consistent with rule 17d–1 in that the participation of the Company and MSMF will not be on a basis different from or less advantageous than that of MSC.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Each time the Investment Adviser considers an investment for MSC, the Investment Committee, for the Company, and the Investment Adviser, for MSMF, will make an independent determination of the appropriateness of the investment for the Company and MSMF.

2. (a) If the Investment Committee, for the Company, and the Investment Adviser, for MSMF, deem that each entity's participation in the investment is appropriate, then such investment will be made pursuant to the Relative Allocation Percentages, unless either the Investment Committee or the Investment Adviser determines that investment pursuant to the Relative Allocation Percentages is not appropriate for that investment. The Relative Allocation Percentages will be determined by both the full Board and the Required Majority in advance and will be based upon the relative total capital of the Company and MSMF, on the one hand, and MSC, on the other hand (total capital being equal to raised equity plus available debt). The Relative Allocation Percentages will be approved each quarter, or as necessary or appropriate, between quarters, by both the full Board and the Required Majority, and may be adjusted, for subsequent transactions, in their sole discretion for any reason, including, among other things, changes in the relative aggregate capital of the Company and MSMF vis-à-vis the capital of MSC.

(b) If the Investment Committee, for the Company, and the Investment Adviser, for MSMF, deem that each entity's participation in the Co-Investment Transaction is appropriate, but that investment pursuant to the Relative Allocation Percentages is not appropriate, then the Investment Committee, for the Company, and the Investment Adviser, for MSMF, will recommend an appropriate level of investment for each entity. If the aggregate amount recommended by the Investment Committee, for the Company, and the Investment Adviser, for MSMF, to be invested in such Co-Investment Transaction, together with the amount proposed to be invested by MSC in the same transaction, exceeds the amount of the investment opportunity, the amount proposed to be invested by each such party will be allocated among them pro rata based on the ratio of the Company's and MSMF's total assets, on one hand, and MSC's total assets, on the other hand, to the aggregated total assets of the three parties, up to the amount proposed to be invested by each. The Investment Adviser will provide the Required Majority with information concerning MSC's total assets to assist the Required Majority with their review of the Company's and MSMF's investments for compliance with these allocation procedures. After making the determinations required in this paragraph (b), the Investment Committee and the Investment Adviser will distribute written information concerning the Co-Investment Transaction, including the amount proposed to be invested by MSC, to the Independent Directors for their consideration. Outside of the Relative Allocation Percentages, the Company and MSMF will co-invest with MSC only if, prior to the Company's and MSC's participation in the Co-Investment Transaction, a Required Majority concludes that:

(i) The terms of the transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching of the Company or its stockholders or MSMF on the part of any person concerned;

(ii) The transaction is consistent with

(A) The interests of the stockholders of the Company; and

(B) The Company's investment objectives and strategies (as described in the Company's registration statements on Form N–2 and other filings made with the Commission by the Company under the Securities Act of 1933, as amended (''Securities Act''), reports filed by the Company with the Commission under the Securities Exchange Act of 1934, as amended, and the Company's reports to stockholders);

(iii) The investment by MSC would not disadvantage the Company or MSMF, and participation by the Company and MSMF is not on a basis different from or less advantageous than that of MSC; provided, that if MSC, but not the Company or MSMF, gains the right to nominate a director for election to a portfolio company's board of directors or the right to have a board observer or any similar right to participate in the governance or management of the portfolio company, such event shall not be interpreted to prohibit the Required Majority from reaching the conclusions required by this condition (2)(b)(iii), if

(A) The Required Majority shall have the right to ratify the selection of such director or board observer, if any, and

(B) The Investment Adviser agrees to, and does, provide, periodic reports to the Company's Board with respect to the actions of such director or the information received by such board observer or obtained through the exercise of any similar right to participate in the governance or management of the portfolio company; and;

(iv) The proposed investment by the Company and MSMF will not benefit the Investment Adviser or MSC or any affiliated person of either of them (other than the Company, MSMF, and MSC), except to the extent permitted under sections 17(e) and 57(k) of the Act.

3. The Company and MSMF have the right to decline to participate in any Co-Investment Transaction or to invest less than the amount proposed.

4. Except for follow-on investments made pursuant to condition 7 below, the Company and MSC will not invest in any portfolio company in which MSC or any affiliated person of MSC is an investor.

5. The Company and MSMF will not participate in any Co-Investment Transaction unless the terms, conditions, price, class of securities to be purchased, settlement date, and registration rights will be the same for the Company and MSMF as for MSC. The grant to MSC, but not the Company

or MSMF, of the right to nominate a director for election to a portfolio company's board of directors, the right to have an observer on the board of directors or similar rights to participate in the governance or management of the portfolio company will not be interpreted so as to violate this condition 5, if conditions 2(c)(iii)(A) and (B) are met.

6. Any sale, exchange, or other disposition by the Company, MSMF, or MSC of an interest in a security that was acquired in a Co-Investment Transaction or that is an Existing Co-Investment will be accomplished pro rata based on the original investment of each participant unless the Investment Adviser and/or the Investment Committee formulate a recommendation for participation in a disposition on a non-pro rata basis and such recommendation is approved by the Required Majority on the basis that such non-pro rata disposition is in the best interest of the Company and MSMF. The Company, MSMF, and MSC will each bear its own expenses in connection with any disposition, and the terms and conditions of any disposition will apply equally to all participants.

7. Any ''follow-on investment'' (i.e., an additional investment in the same entity) by the Company, MSMF, or MSC, or any exercising of warrants or other rights to purchase securities of the issuer in a portfolio company whose securities were acquired as an Existing Co-Investment or in a Co-Investment Transaction will be accomplished pro rata based on the original investment of each participant unless the Investment Adviser and/or the Investment Committee formulate a recommendation for participation in the proposed transaction on a non-pro rata basis and such recommendation is approved by the Required Majority on the basis that such non-pro rata participation is in the best interest of the Company and MSMF. The acquisition of follow-on investments as permitted by this condition will be subject to the other conditions set forth in the application.

8. The Independent Directors will be provided quarterly for review all information concerning (1) all investments made by MSC during the preceding quarter and (2) Co-Investment Transactions during the preceding quarter, including investments made by MSC which the Company and/or MSMF considered but declined to participate in, so that the Independent Directors may determine whether the conditions of the order have been met. In addition, the Independent Directors will consider at least annually the continued appropriateness of the standards established for co-investments by the Company and MSMF, including whether the use of the standards continues to be in the best interests of the Company and its shareholders and does not involve overreaching on the part of any person concerned.

9. The Company and MSMF will maintain the records required by section 57(f)(3) of the Act as if each of the investments permitted under these conditions were approved by the Independent Directors under section 57(f).

10. No Independent Directors will also be a director, general partner or principal, or otherwise an ''affiliated person'' (as defined in the Act) of, MSC.

11. The expenses, if any, associated with acquiring, holding or disposing of any securities acquired in a Co-Investment Transaction (including, without limitation, the expenses of the distribution of any such securities registered for sale under the Securities Act) shall, to the extent not payable by the Investment Adviser under its investment advisory agreements with MSMF and MSC, be shared by the Company, MSMF, and MSC in proportion to the relative amounts of their securities to be acquired or disposed of, as the case may be.

12. Any transaction fee (including break-up or commitment fees but excluding broker's fees contemplated by section 17(e)(2) of the Act) received in connection with a Co-Investment Transaction will be distributed to the Company, MSMF, and MSC on a pro rata basis based on the amount they invested or committed, as the case may be, in such Co-Investment Transaction. MSC or any affiliated person of the Company will not receive additional compensation or remuneration of any kind (other than (i) the pro rata transaction fees described above and (ii) investment advisory fees paid in accordance with investment advisory agreements with MSMF and MSC) as a result of or in connection with a Co-Investment Transaction.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–10802 Filed 5–14–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57805; File No. SR–NYSEArca–2008–46]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to the Listing and Trading of Shares of the NETS ISEQ 20 Index Fund (Ireland)

May 8, 2008.

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 8, 2008, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange''), through its wholly owned subsidiary, NYSE Arca Equities, Inc. (''NYSE Arca Equities''), 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 substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade the shares (''Shares'') of the NETS ISEQ 20® Index Fund (Ireland) (''Fund'') issued by the NETS Trust (''Trust''). 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 Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade the Shares pursuant to NYSE Arca

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Equities Rule 5.2(j)(3), the Exchange's listing standards for Investment Company Units (''ICUs'').[3] The Fund is an ''index fund'' that seeks to provide investment results that correspond generally to the price and yield performance, before fees and expenses, of publicly-traded securities in the aggregate in the Irish market, as represented by the ISEQ 20® (''Index''). The primary market for securities in the Index is the Irish Stock Exchange.

The Exchange submits this proposed rule change because the Index for the Fund does not meet all of the ''generic'' listing requirements of Commentary .01(a)(B) to NYSE Arca Equities Rule 5.2(j)(3) applicable to the listing of ICUs based on international or global indexes. The Index meets all such requirements except for those set forth in Commentary .01(a)(B)(3).[4] The Exchange represents that: (1) Except for the requirement under Commentary .01(a)(B)(3) to NYSE Arca Equities Rule 5.2(j)(3) relating to the five most heavily weighted component stocks, the Shares of the Fund currently satisfy all of the generic listing standards under NYSE Arca Equities Rule 5.2(j)(3); (2) the continued listing standards under NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2) applicable to ICUs will apply to the Shares; and (3) the Trust is required to comply with Rule 10A–3 under the Act[5] for the initial and continued listing of the Shares. In addition, the Exchange represents that the Shares will comply with all other requirements applicable to ICUs including, but not limited to, requirements relating to the dissemination of key information such as the Index value and Intraday Indicative Value, rules governing the trading of equity securities, trading hours, trading halts, surveillance, and Information Bulletin to ETP Holders, as set forth in prior Commission orders approving the generic listing rules applicable to the listing and trading of ICUs.[6]

The Exchange states that detailed descriptions of the Fund, the Index, procedures for creating and redeeming Shares, transaction fees and expenses, dividends, distributions, taxes, and reports to be distributed to beneficial owners of the Shares can be found in the Trust's Registration Statement[7] or on the Web site for the Fund (*http://www.netsetfs.com*), as applicable.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(5) of the Act,[9] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that the proposed rule change will facilitate the listing and trading of additional types of exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace.

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

The Exchange states that written comments on the proposed rule change 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 Exchange consents, the Commission will:

A. By order approve such proposed rule change; or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

The Exchange has requested accelerated approval of this proposed rule change prior to the 30th day after the date of publication of the notice of the filing thereof. The Commission is considering granting accelerated approval of the proposed rule change at the end of a 15-day comment period.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2008–46 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2008–46. 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

[3] An ICU is a security that represents an interest in a registered investment company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities (or holds securities in another registered investment company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities). *See* NYSE Arca Equities Rule 5.2(j)(3).

[4] The Exchange states that the Index satisfies the first requirement under Commentary .01(a)(B)(3) to NYSE Arca Equities Rule 5.2(j)(3) that the most heavily weighted component stock shall not exceed 25% of the weight of the index or portfolio. However, the Index fails to meet the second requirement of Commentary .01(a)(B)(3) to NYSE Arca Equities Rule 5.2(j)(3) that the five most heavily weighted component stocks shall not exceed 60% of the weight of the Index. The Exchange states that, as of April 18, 2008, the five most heavily weighted component stocks represented 68.7% of the Index weight.

[5] *See* 17 CFR 240.10A–3.

[6] *See, e.g.*, Securities Exchange Act Release Nos. 55621 (April 12, 2007), 72 FR 19571 (April 18, 2007) (SR–NYSEArca–2006–86) (approving generic listing standards for ICUs based on international or global indexes); 44551 (July 12, 2001), 66 FR 37716 (July 19, 2001) (SR–PCX–2001–14) (approving generic listing standards for ICUs and Portfolio Depositary Receipts); and 41983 (October 6, 1999), 64 FR 56008 (October 15, 1999) (SR–PCX–98–29) (approving rules for the listing and trading of ICUs).

[7] *See* Registration Statement on Form N–1A dated February 13, 2008 (File Nos. 333–147077 and 811–22140).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

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–2008–46 and should be submitted on or before May 30, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–10803 Filed 5–14–08; 8:45 am]

BILLING CODE 8010–01–P

[10] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11202]

Arkansas Disaster Number AR–00019

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Arkansas (FEMA–1751–DR), dated 03/26/2008.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 03/18/2008 and continuing.

DATES: *Effective Date:* 05/08/2008.

Physical Loan Application Deadline Date: 05/27/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Arkansas, date 03/26/2008, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties:

Desha.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8–10866 Filed 5–14–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11233 and #11234]

Connecticut Disaster #CT–00010

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Connecticut dated 05/05/2008.

Incident: Apartment Fire.

Incident Period: 04/26/2008.

DATES: *Effective Date:* 05/05/2008.

Physical Loan Application Deadline Date: 07/07/2008.

Economic Injury (EIDL) Loan Application Deadline Date: 02/05/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

New London.

Contiguous Counties:

Connecticut: Hartford, Middlesex, Tolland, Windham.

Rhode Island: Kent, Washington.

The Interest Rates are:

	Percent
Homeowners With Credit Available Elsewhere	5.375
Homeowners Without Credit Available Elsewhere	2.687
Businesses With Credit Available Elsewhere	8.000
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	5.250
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 11233 5 and for economic injury is 11234 0.

The States which received an EIDL Declaration # are Connecticut, Rhode Island.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: May 5, 2008.

Steven C. Preston,

Administrator.

[FR Doc. E8–10864 Filed 5–14–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11235 and #11236]

Indiana Disaster #IN–00018

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Indiana dated 05/05/2008.

Incident: Severe Storms and Flooding.

Incident Period: 03/18/2008 through 03/20/2008.

DATES: *Effective Date:* 05/05/2008

Physical Loan Application Deadline Date: 07/07/2008.

Economic Injury (EIDL) Loan Application Deadline Date: 02/05/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Orange, Pike, Scott, Vanderburgh, Washington.

Contiguous Counties:

Indiana: Clark, Crawford, Daviess, Dubois, Floyd, Gibson, Harrison, Jackson, Jefferson, Jennings, Knox, Lawrence, Martin, Posey, Warrick.

Kentucky: Henderson.

The Interest Rates Are:

	Present
Homeowners With Credit Available Elsewhere	5.500
Homeowners Without Credit Available Elsewhere	2.750
Businesses With Credit Available Elsewhere	8.000
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.250
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 11235 6 and for economic injury is 11236 0.

The States which received an EIDL Declaration No. are Indiana, Kentucky.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: May 5, 2008.

Steven C. Preston,

Administrator.

[FR Doc. E8–10863 Filed 5–14–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11237 and #11238]

Mississippi Disaster #MS–00018

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Mississippi (FEMA–1753–DR), dated 05/08/2008.

Incident: Severe Storms and Flooding.

Incident Period: 03/20/2008 and continuing.

DATES: *Effective Date:* 05/08/2008.

Physical Loan Application Deadline Date: 07/07/2008.

Economic Injury (EIDL) Loan Application Deadline Date: 02/03/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: M. Mitravich, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 05/08/2008, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans):

Bolivar, Warren, Washington, Wilkinson.

Contiguous Counties (Economic Injury Loans Only):

Mississippi: Adams, Amite, Claiborne, Coahoma, Franklin, Hinds, Humphreys, Issaquena, Sharkey, Sunflower, Yazoo.

Arkansas: Chicot, Desha, Phillips.

Louisiana: Concordia, East Carroll, East Feliciana, Madison, Tensas, West Feliciana.

For Physical Damage:

	Percent
Homeowners With Credit Available Elsewhere	5.500
Homeowners Without Credit Available Elsewhere	2.750
Businesses With Credit Available Elsewhere	8.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	5.250
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000

For Economic Injury:

	Percent
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 112376 and for economic injury is 112380.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8–10865 Filed 5–14–08; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA 2007–0070]

Rescission of Social Security Acquiescence Ruling 99–1(2)

AGENCY: Social Security Administration.

ACTION: Notice of Rescission of Social Security Acquiescence Ruling 99–1(2)—*Florez on Behalf of Wallace* v. *Callahan*, 156 F.3d 438 (2d Cir. 1998).

SUMMARY: In accordance with 20 CFR 402.35(b)(1), 404.985(e) and 416.1485(e), the Commissioner of Social Security gives notice of the rescission of Social Security Acquiescence Ruling 99–1(2).

DATES: *Effective Date:* June 16, 2008.

FOR FURTHER INFORMATION CONTACT: Richard Bresnick, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–1758, for information about this notice. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov*.

SUPPLEMENTARY INFORMATION: A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act (the Act) or regulations when the Government has decided not to seek further review of the case or is unsuccessful on further review.

As provided by 20 CFR 404.985(e)(4) and 416.1485(e)(4), a Social Security Acquiescence Ruling may be rescinded as obsolete if we subsequently clarify, modify, or revoke the regulation or ruling that was the subject of a circuit court holding that we determined conflicts with our interpretation of the Act or regulations.

On February 1, 1999 we issued Acquiescence Ruling 99–1(2) to reflect the decision of the United States Court of Appeals for the Second Circuit in *Florez on Behalf of Wallace* v. *Callahan*, 156 F.3d 438 (2d Cir. 1998), in which the court held that 20 CFR 416.1101 creates a two-part test for determining whether a spouse, who lives with a child eligible for SSI, is an ineligible parent for deeming purposes under 20 CFR 416.1160: (1) The spouse must live with the natural or adoptive parent; and (2) the relationship must be as husband or wife, as further defined in 20 CFR 416.1806.

In a final rule that we also are publishing today that will be effective

on June 16, 2008, we are adopting the court's rationale and changing the SSI parent-to-child deeming rules so that we no longer will consider the income and resources of a stepparent when an eligible child resides in the household with a stepparent, but that child's natural or adoptive parent has permanently left the household. These rules respond to the circuit court decision and establish a uniform national policy with respect to this issue.

(Catalog of Federal Domestic Assistance Programs No. 96.006, Supplemental Security Income)

Dated: May 8, 2008.

Michael J. Astrue,

Commissioner of Social Security.

[FR Doc. E8–10930 Filed 5–14–08; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; Reduced Vertical Separation Minimum

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection. Aircraft operators seeking operational approval to conduct RVSM operations within the 48 contiguous United States (U.S.), Alaska and a portion of the Gulf of Mexico must submit an application to the Certificate Holding District Office.

DATES: Please submit comments by July 14, 2008.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267–9895, or by e-mail at: *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Reduced Vertical Separation Minimum.

Type of Request: Extension without change of an approved collection.

OMB Control Number: 2120–0679.

Forms(s): There are no FAA forms associated with this collection.

Affected Public: A total of 2,275 Respondents.

Frequency: The information is collected on occasion.

Estimated Average Burden Per Response: Approximately 30 hours per response.

Estimated Annual Burden Hours: An estimated 68,250 hours annually.

Abstract: Aircraft operators seeking operational approval to conduct RVSM operations within the 48 contiguous United States (U.S.), Alaska and a portion of the Gulf of Mexico must submit an application to the Certificate Holding District Office.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Mauney, Room 712, Federal Aviation Administration, IT Enterprises Business Services Division, AES–200, 800 Independence Ave., SW., Washington, DC 20591.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on May 6, 2008.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. E8–10568 Filed 5–14–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; Protection of Voluntarily Submitted Information

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection. The rule regarding the protection of voluntarily submitted information acts to ensure that certain non-required information offered by air carriers will not be disclosed.

DATES: Please submit comments by July 14, 2008.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267–9895, or by e-mail at: *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Protection of Voluntarily Submitted Information.

Type of Request: Extension without change of an approved collection.

OMB Control Number: 2120–0646.

Forms(s): There are no FAA forms associated with this collection.

Affected Public: A total of 10 Respondents.

Frequency: The information is collected on occasion.

Estimated Average Burden Per Response: Approximately 1 hour per response.

Estimated Annual Burden Hours: An estimated 5 hours annually.

Abstract: The rule regarding the protection of voluntarily submitted information acts to ensure that certain non-required information offered by air carriers will not be disclosed.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Mauney, Room 712, Federal Aviation Administration, IT Enterprises Business Services Division, AES–200, 800 Independence Ave., SW., Washington, DC 20591.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on May 6, 2008.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. E8–10570 Filed 5–14–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; Application for Certificate of Waiver or Authorization

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection. Respondents conducting general operation and flight of aircraft or any activity that could encroach on airspace must apply for approval.

DATES: Please submit comments by July 14, 2008.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267–9895, or by e-mail at: *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Application for Certificate of Waiver or Authorization.

Type of Request: Extension without change of an approved collection.

OMB Control Number: 2 120–0027.

Forms(s): 7711–2.

Affected Public: A total of 25,231 respondents.

Frequency: The information is collected on occasion.

Estimated Average Burden Per Response: Approximately 32 minutes per response.

Estimated Annual Burden Hours: An estimated 13,646 hours annually.

Abstract: U.S. Code authorizes the issuance of regulations governing the use of navigable airspace. Respondents conducting general operation and flight of aircraft or any activity that could encroach on airspace must apply for approval.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Mauney, Room 712, Federal Aviation Administration, IT Enterprises Business Services Division, AES–200, 800 Independence Ave., SW., Washington, DC 20591.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on May 6, 2008.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. E8–10571 Filed 5–14–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; Aviation Safety Counselor of the Year Award

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection. The form is used by private citizens involved in aviation to nominate private citizens for recognition of their volunteer service to the FAA.

DATES: Please submit comments by July 14, 2008.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267–9895, or by e-mail at: *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Aviation Safety Counselor of the Year Award.

Type of Request: Extension without change of an approved collection.

OMB Control Number: 2120–0574.

Form(s): 8740–14.

Affected Public: A total of 180 respondents.

Frequency: The information is collected annually.

Estimated Average Burden per Response: Approximately 1 hour per response.

Estimated Annual Burden Hours: An estimated 180 hours annually.

Abstract: The form is used by private citizens involved in aviation to nominate private citizens for recognition of their volunteer service to the FAA. The agency will use the information on the form to select winners.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Mauney, Room 712, Federal Aviation Administration, IT Enterprises Business Services Division, AES–200, 800 Independence Ave., SW., Washington, DC 20591.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on May 6, 2008.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. E8–10574 Filed 5–14–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; Development of Major Repair Data

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection. SFAR 36 (to part 121) relieves qualifying applicants involved in aircraft repair of the burden to obtain FAA approval of data developed by them for the major repairs on a case-by-case basis; and provides for one-time approvals.

DATES: Please submit comments by July 14, 2008.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267–9895, or by e-mail at: *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Development of Major Repair Data.

Type of Request: Extension without change of an approved collection.

OMB Control Number: 2120–0507.

Forms(s): 8100–8.

Affected Public: A total of 19 Respondents.

Frequency: The information is collected on occasion.

Estimated Average Burden Per Response: Approximately 14 hours per response.

Estimated Annual Burden Hours: An estimated 406 hours annually.

Abstract: SFAR 36 (to part 121) relieves qualifying applicants involved in aircraft repair of the burden to obtain FAA approval of data developed by them for the major repairs on a case-by-case basis; and provides for one-time approvals.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Mauney, Room 712, Federal Aviation Administration, IT Enterprises Business Services Division, AES–200, 800 Independence Ave., SW., Washington, DC 20591.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on May 6, 2008.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. E8–10576 Filed 5–14–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; Aircraft Registration

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection. The information collected is used by the FAA to register aircraft or hold an aircraft in trust.

DATES: Please submit comments by July 14, 2008.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267–9895, or by e-mail at: Carla.Mauney@faa.gov.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Aircraft Registration.

Type of Request: Extension without change of an approved collection.

OMB Control Number: 2120–0042.

Forms(s): AC 8050–1, 2, 4, 98, 117.

Affected Public: A total of 41,978 Respondents.

Frequency: The information is collected on occasion.

Estimated Average Burden Per Response: Approximately 42 minutes per response.

Estimated Annual Burden Hours: An estimated 82,800 hours annually.

Abstract: The information collected is used by the FAA to register aircraft or hold an aircraft in trust. The information required to register and prove ownership of an aircraft is required by any person wishing to register an aircraft.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Mauney, Room 712, Federal Aviation Administration, IT Enterprises Business Services Division, AES–200, 800 Independence Ave., SW., Washington, DC 20591.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on May 6, 2008.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. E8–10577 Filed 5–14–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Clark County, WA

AGENCY: Federal Highway Administration (FHWA), USDOT.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: The Federal Highway Administration is issuing this notice to advise the public and Indian Tribes that an Environmental Impact Statement (EIS) will be prepared for the proposed SR 502 Corridor Widening Project in Clark County, Washington.

DATES: Written comments on the purpose and need, scope of alternatives, and impacts to be considered in the EIS must be received no later than June 10, 2008 and must be sent to the Washington State Department of Transportation (WSDOT) at the address indicated below.

Scoping Meeting Date: One public information meeting will be held on May 20, 2008, 4 p.m.–7 p.m. at the Cherry Grove Friends Church, 9100 NE 219th Street, Battle Ground, Washington.

Oral and written comments may be given at the public meeting. This and all other public meetings will be accessible to persons with disabilities who may also request this information be prepared and supplied in alternate formats by calling Chris Tams at (360) 759–1310 or 1 (866) 279–0730 at least 48 hours in advance of the meeting for WSDOT to make the necessary arrangements. Persons who are deaf or hard of hearing may access Washington State Telecommunications Relay Service by dialing 7–1–1 and asking to be connected to (360) 759–1310.

ADDRESSES: Comments or questions concerning this proposal will be accepted at the public meeting or can be sent to Chris Tams, Area Engineer, Washington State Department of Transportation Southwest Region, P.O. Box 1709, Vancouver, WA 98668–1709; by Fax at (360) 905–2062; or by e-mail to *SWGorge@wsdot.wa.gov*.

FOR FURTHER INFORMATION CONTACT: Dean Moberg, Federal Highway Administration, 711 S. Capitol Way, Suite 501, Olympia, WA 98501, Telephone: (360) 534–9344 (direct) or (360) 753–9480 (general). Additional information on the SR 502 Corridor Widening Project can be found on the project Web site at: *http://www.wsdot.wa.gov/Projects/SR502/Widening/*.

SUPPLEMENTARY INFORMATION:

Proposed Action Background

The FHWA and WSDOT will prepare an EIS on the proposed widening of the SR 502 Corridor (NE 219th Street) in north Clark County from a two-lane roadway to a four lane roadway with a median barrier separating westbound and eastbound travel. The SR 502 Corridor Widening is proposed between NE 15th Avenue and NE 102nd Avenue, for a length of approximately 5 miles. The project also proposes to construct paved shoulders for pedestrian and bicycle use, stormwater facilities, and three new signalized intersections on SR 502 at NE 29th Avenue, NE 50th Avenue, and NE 92nd Avenue in addition to the existing signalized intersection on SR 502 at NE 72nd Avenue (Dollars Corner). These improvements are proposed to address the current and future deficiencies related to mobility and safety on the SR 502 corridor.

The SR 502 Corridor Widening Project began as an Environmental Assessment (EA) in early 2007. One agency scoping meeting and one public scoping meeting were held on February 22, 2007 to identify issues and concerns as well as provide input into establishing a range of alternatives for the project. A wide range of alternatives were considered between February and September 2007. Six ''on-corridor'' alternatives, including widening the existing facility directly to either the north or south of the existing facility, or equally on both sides from the centerline, were studied. Additionally, two ''off-corridor'' alternatives, which considered constructing a new roadway for SR 502 further north or south of the existing corridor, were studied. Four public open house meetings were held to gather public input on the range of alternatives being considered for the project on: March 27, 2007; May 9, 2007; June 14, 2007; and September 27, 2007. These public meetings resulted in strong public support for one ''on-corridor'' alternative, which was forwarded for further detailed environmental study along with the no action alternative. As draft environmental discipline studies of the possible effects of the potential alternatives were conducted, it was determined that the widening of the SR 502 corridor may substantially affect the quality of the human and natural environment and may benefit from a more detailed analysis. Therefore, the FHWA and WSDOT elected to prepare an EIS.

Alternatives

The ETS will address, at a minimum, the no action alternative and the following action alternative:

On-corridor Widening Alternative: This alternative would widen the existing SR 502 facility to four general purpose travel lanes from just west of NE 15th Avenue to NE 102nd Avenue. Along the entire SR 502 corridor, two lanes would be constructed in each direction with a median barrier separating westbound and eastbound travel between the four signalized intersections at NE 29th Avenue, NE 50th Avenue, NE 72nd Avenue (Dollars Corner), and NE 92nd Avenue. Paved shoulders that could be used by pedestrians and bicyclists would also be constructed the length of the corridor. Curb and sidewalk would accommodate additional pedestrian travel through the Dollars Corner rural commercial center between roughly NE 67th Avenue and the 7600 block of SR 502. Except at the four signalized intersections, turns to and from SR 502 would be restricted to right-in/right-out turning movements. Stormwater treatment facilities would collect, detain, treat, and discharge stormwater runoff from new impervious surface that results from the roadway widening.

Probable Effects

The FHWA and WSDOT will evaluate all transportation, environmental, social, and economic effects of the alternatives. Potential areas of impact include: Natural and cultural resources; land use; social and economic elements; and, traffic and noise. All effects will be evaluated for both the construction period and the long-term period of operation. Indirect and cumulative impacts will also be evaluated. Measures to avoid, minimize, and mitigate any significant effects will be developed.

Scoping

Agency Coordination: The project sponsors are working with the local, state and federal resource agencies to implement regular opportunities for coordination during the National Environmental Policy Act (NEPA) process. This process will comply with SAFETEA–LU section 6002.

Tribal Coordination: The formal Tribal government consultation will occur through government-to-government collaboration.

The date and address of the public scoping meeting is given in the **DATES** section above. The WSDOT assures full compliance with Title VI of the Civil Rights Act of 1964 by prohibiting discrimination based on race, color, national origin and sex in the provision of benefits and services. For language interpretation services please contact Chris Tams at (360) 759–1310 or 1 (866) 279–0730. For information on the WSDOT Title VI Program, please contact the Title VI Coordinator at (360) 705–7098.

To ensure that a full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from interested parties. Comments or questions concerning this proposal will be accepted at the public meeting or may be sent to the Washington State Department of Transportation Southwest Region at the address provided above.

(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.)

Issued on: May 7, 2008.

Dean Moberg,

FHW Area Engineer, Olympia.

[FR Doc. E8–10734 Filed 5–14–08; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in Lawrence, KS

AGENCY: Federal Highway Administration (FHWA).

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA and other Federal Agencies.

SUMMARY: This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to a proposed highway project, the South Lawrence Trafficway, K–10 Highway in Lawrence, Douglas County, Kansas. Those actions grant approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions of the highway project will be barred unless the claim is filed within 180 days of this notice. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For FHWA: Mr. J. Michael Bowen, P.E., Division Administrator, Federal Highway Administration, 6111 SW 29th Street, Topeka, Kansas 66509, Telephone (785) 228–2544. The Kansas Division Office's normal business hours are 7:30 a.m. to 4 p.m. (central time). For the Kansas Department of Transportation (KDOT): Mr. Joe Erskine, Deputy Secretary for Finance and Administration, 700 SW Harrison Street, Topeka, Kansas 66603–3745, Telephone (785) 296–3461. For USACE: Mark Frazier, Chief, Regulatory Branch, U.S. Army Corps of Engineers, Kansas City District, 601 E 12th Street, Attn: OD–R, Room 706, Kansas City, MO 64106; telephone (816) 389–3990.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing approvals for the following highway project in Kansas: the South Lawrence Trafficway, K–10 Highway beginning at the intersection of K–10 and US–59 highway in Lawrence, Kansas and proceeding eastward along the 32nd Street corridor to a point east of 1750 Road on existing K–10 Highway. The project will be a 5.61 mile long, access controlled four-lane highway on new alignment. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the 2002 Final Environmental Impact Statement (FEIS) and the 2007 Final Section 4(f) Evaluation for the project, and approved in the FHWA Record of Decision (ROD) issued on May 9, 2008, and in other documents in the FHWA project files. The FEIS, Section 4(f) Evaluation, ROD and other project records are available by contacting the FHWA or KDOT at the addresses provided above. The FHWA FEIS, Section 4(f) Evaluation, and ROD can be viewed and downloaded from the project Web site at *http://www.southlawrencetrafficway.org.* The USACE decision and permit (USACE Permit 200101697) are available by contacting USACE at the address provided above. This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].

2. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].

3. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]; Migratory Bird Treaty Act [16 U.S.C. 703–712].

4. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archaeological and Historic Preservation Act [16 U.S.C. 469–469(c)].

5. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

6. Safe Drinking Water Act (SDWA) [42 U.S.C. 300(f)–300(j)(6)]; Flood Disaster Protection Act [42 U.S.C. 4001–4128]; Clean Water Act (Section 404, Section 401, Section 319) [33 U.S.C. 1251–1377]; Wetlands Mitigation [23 U.S.C. 103(b)(6)(M) and 133(b)(11)].

7. *Executive Orders:* E.O. 11990, Protection of Wetlands; E.O. 11988, Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593, Protection and Enhancement of Cultural Resources; E.O. 13007, Indian Sacred Sites; E.O. 13287, Preserve America; E.O. 13175, Consultation and Coordination with Indian Tribal Governments; E.O. 11514, Protection and Enhancement of Environmental Quality; E.O. 13112, Invasive Species.

(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.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: May 9, 2008.

Norbert Muñoz,

Assistant Division Administrator, Federal Highway Administration, Topeka, Kansas.

[FR Doc. E8–10889 Filed 5–14–08; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–99–5578, FMCSA–99–6156, FMCSA–99–6480, FMCSA–00–7006, FMCSA–00–7165, FMCSA–04–17195, FMCSA–06–23773, FMCSA–06–24015]

Qualification of Drivers; Exemption Applications; Vision

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

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 25 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective June 3, 2008. Comments must be received on or before June 16, 2008.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–99–5578, FMCSA–99–6156, FMCSA–99–6480, FMCSA–00–7006, FMCSA–00–7165, FMCSA–04–17195, FMCSA–06–23773, FMCSA–06–24015, using any of the following methods.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or

postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476). This information is also available at *http://DocketInfo.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202)–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 25 individuals who have requested a renewal of their exemption in accordance with FMCSA procedures. FMCSA has evaluated these 25 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

James C. Askin
Paul J. Bannon
Ernie E. Black
Ronnie F. Bowman
Gary O. Brady
Richard J. Cummings
Stephen H. Goldcamp
Steven F. Grass
Wai F. King
Dennis E. Krone
Christopher P. Lefler
William F. Mack
Richard J. McKenzie, Jr.
Christopher J. Meerten
Craig W. Miller
William J. Miller
Robert J. Mohorter
James A. Mohr
Roderick F. Peterson
Tommy L. Ray, Jr.
Ricky L. Shepler
Donald W. Sidwell
Elmer K. Thomas
Raul R. Torres
Richard G. Wendt

These exemptions are extended subject to the following conditions: (1) That each individual have a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 25 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (64 FR 27027; 64 FR 51568; 66 FR 63289; 69 FR 8260; 71 FR 16410; 64 FR 54948; 65 FR 159; 67 FR 10475; 71 FR 26601; 64 FR 68195; 65 FR 20251; 67 FR 38311; 69 FR 26921; 71 FR 27033; 67 FR 17102; 69 FR 17267; 65 FR 20245; 65 FR 57230; 65 FR 33406; 69 FR 17263; 69 FR 31447; 71 FR 6826; 71 FR 19602; 71 FR 14566; 71 FR 30227). Each of these 25 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by June 16, 2008.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 25 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was based on the merits of each case and only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all of these drivers, are not currently achieving the statutory level of safety should immediately notify FMCSA.

The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: May 7, 2008.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E8–10824 Filed 5–14–08; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket Nos. FMCSA–99–5748, FMCSA–99–6156, FMCSA–99–6480, FMCSA–00–7363, FMCSA–01–9258, FMCSA–03–16564, FMCSA–05–23238, FMCSA–06–23773]

Qualification of Drivers; Exemption Renewals; Vision

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

ACTION: Notice of final disposition.

SUMMARY: FMCSA, in an earlier notice, announced its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 34 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has reviewed the comments submitted in response to the previous announcement and concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov.*

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. The notice was published on March 5, 2008 (FR 73 11989), and the comment period ended on April 4, 2008.

Discussion of Comments

FMCSA received one comment in this proceeding. The comment was considered and discussed below.

Advocates for Highway and Auto Safety (Advocates) expressed opposition to FMCSA's policy to grant exemptions from the FMCSR, including the driver qualification standards. Specifically, Advocates: (1) Objects to the manner in which FMCSA presents driver information to the public and makes safety determinations; (2) objects to the Agency's reliance on conclusions drawn from the vision waiver program; (3) claims the Agency has misinterpreted statutory language on the granting of exemptions (49 U.S.C. 31136(e) and 31315); and finally (4) suggests that a 1999 Supreme Court decision affects the legal validity of vision exemptions.

The issues raised by Advocates were addressed at length in 64 FR 51568 (September 23, 1999), 64 FR 66962 (November 30, 1999), 64 FR 69586 (December 13, 1999), 65 FR 159 (January 3, 2000), 65 FR 57230 (September 21, 2000), and 66 FR 13825 (March 7, 2001). We will not address these points again here, but refer interested parties to those earlier discussions.

Conclusion

The Agency has not received any adverse evidence on any of these drivers that indicates that safety is being compromised. Based upon its evaluation of the 34 renewal applications, FMCSA renews the Federal vision exemptions for Scott E. Ames, Otto J. Ammer, Jr., Nick D. Bacon, Mark A. Baisden, Johnny W. Bradford, Lawrence M. Daley, Clifford H. Dovel, Ray L. Emert, Arthur L. Fields, John W. Forgy, Daniel R. Franks, Glenn E. Gee, Rupert G. Gilmore, III, Albert L. Gschwind, Walter R. Hardiman, George A. Hoffman, III, Laurent G. Jacques, Michael W. Jones, Matthew J. Konecki, Duane R. Krug, Paul E. Lindon, Jack D. Miller, Eric M. Moats, Sr., Rick Moreno, Robert W. Nicks, Joseph S. Nix, IV., Monte L. Purciful, George S. Rayson, Luis F. Saavedra, Gerald M. Smith, Edward J. Sullivan, Steven Valley, Darel G. Wagner, and Bernard J. Wood.

In accordance with 49 U.S.C. 31136(e) and 31315, each renewal exemption will be valid for 2 years unless revoked earlier by FMCSA.

The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: May 6, 2008.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E8–10825 Filed 5–14–08; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub-No. 299X); STB Docket No. AB–1024X]

Norfolk Southern Railway Company—Discontinuance of Service Exemption—in Chesapeake, VA; Norfolk and Portsmouth Belt Line Railroad Company—Discontinuance of Trackage Rights Exemption—in Chesapeake, VA

Norfolk Southern Railway Company (NSR) and Norfolk and Portsmouth Belt Line Railroad Company (NPBL) [1] (collectively, applicants) have jointly filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments and Discontinuances of Service* for NSR to discontinue service over, and for NPBL to discontinue trackage rights over, 0.90 miles of railroad between milepost NS 1.40 and milepost NS 2.30, in Chesapeake, VA. The line traverses United States Postal Service Zip Code 23324.

NSR and NPBL have certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements of 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to these exemptions, any employee adversely affected by the service discontinuance/discontinuance of trackage rights shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this

[1] NPBL is jointly owned by NSR and CSX Transportation, Inc.

condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, these exemptions will be effective on June 14, 2008, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues and formal expressions of intent to file an OFA for continued rail service under 49 CFR 1152.27(c)(2),[2] must be filed by May 27, 2008.[3] Petitions to reopen must be filed by June 4, 2008, with: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to applicants' representatives: James R. Paschall, Three Commercial Place, Norfolk, VA 23510, and James L. Chapman, IV, 1200 Bank of America Center, One Commercial Place, Norfolk, VA 23510.

If the verified notice contains false or misleading information, the exemptions are void *ab initio*.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: May 6, 2008.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. E8–10703 Filed 5–13–08; 8:45 am]

BILLING CODE 4915–01–P

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,300. *See* 49 CFR 1002.2(f)(25).

[3] In discontinuance proceedings, trail use/rail banking and public use conditions are not appropriate. Likewise, no environmental or historical documentation is required here under 49 CFR 1105.6(c) and 1105.8(b), respectively.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35139]

Genesee & Wyoming Inc.—Control Exemption—Columbus and Greenville Railway Company, The Chattooga and Chickamauga Railway Company, and Luxapalila Valley Railroad, Inc.

Genesee & Wyoming Inc. (GWI), a noncarrier holding company, has filed a verified notice of exemption to permit GWI to acquire indirect control of Columbus and Greenville Railway Company, the Chattooga and Chickamauga Railway Company, and Luxapalila Valley Railroad, Inc. (collectively, CAGY Railroads) pursuant to a Stock Purchase and Merger Agreement (Stock Purchase Agreement).[1] CAGY Industries, Inc. (CAGY Industries) is a noncarrier holding company that directly controls the three Class III CAGY Railroads. According to GWI, CAGY Acquisition Co. (CAGY Acquisition), a noncarrier wholly owned subsidiary of GWI, CAGY Industries, and certain stockholders of CAGY Industries have entered into a Stock Purchase Agreement whereby CAGY Acquisition will obtain at least 90% of the outstanding capital stock of CAGY Industries and then merge with and into CAGY Industries. As a result, CAGY Acquisition will cease to exist and CAGY Industries will continue as the surviving corporation whose sole stockholder will be GWI. Accordingly, upon consummation of the proposed stock purchase and merger transaction, GWI will acquire direct control of CAGY Industries and indirect control of the three CAGY Railroads.

GWI directly or indirectly controls Buffalo & Pittsburgh Railroad, Inc., a Class II rail carrier, and 25 Class III rail carriers. Also, GWI controls additional rail carriers with two of its wholly owned subsidiaries that are noncarrier holding companies: RP Acquisition Company One (RP1) and RP Acquisition Company Two (RP2). GWI, along with RP1 and RP2, control one Class II rail carrier and a total of 13 Class III rail carriers.[2]

The transaction will be consummated on or after May 29, 2008 (the effective date of this exemption).

GWI represents and warrants that: (1) The CAGY Railroads do not connect with the rail lines of any existing rail carrier controlled by GWI; (2) the transaction is not part of a series of anticipated transactions that would connect the CAGY Railroads with any of the railroads in the GWI corporate family; and (3) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Because the transaction involves the control of at least one Class II and one or more Class III carriers, the exemption is subject to the labor protection requirements of 49 U.S.C. 11326(b).

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than May 22, 2008 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35139, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of all pleadings must be served on Kevin M. Sheys, Kirkpatrick & Lockhart Preston Gates Ellis LLP, 1601 K Street, NW., Washington, DC 20006.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: May 8, 2008.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. E8–10875 Filed 5–14–08; 8:45 am]

BILLING CODE 4915–01–P

[1] The full version of the agreement, as required by 49 CFR 1180.6(a)(7)(ii), was concurrently filed under seal along with a motion for protective order. The request for a protective order is being addressed in a separate decision.

[2] The members of the GWI family of railroads own and/or operate rail property located in Alabama, Arkansas, Colorado, Florida, Georgia, Illinois, Kentucky, Louisiana, Maine, Maryland, Mississippi, New Hampshire, New York, North Carolina, Oregon, Pennsylvania, Tennessee, Texas, Utah, Vermont, Virginia, and Wisconsin.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35137]

The Indiana Rail Road Company—Trackage Rights Exemption—CSX Transportation, Inc.

Pursuant to a written trackage rights agreement entered into between CSX Transportation, Inc. (CSXT), and The Indiana Rail Road Company (INRD), CSXT has agreed to grant non-exclusive, limited local trackage rights to INRD over CSXT's line of railroad between the connection of CSXT and INRD trackage at Sullivan, IN, at approximately CSXT milepost OZA 205.5, and the connection between CSXT's line and the tracks leading to the Sunrise Coal Company loading facility (Sunrise facility) at Carlisle, IN, at approximately CSXT milepost OZA 214.5, a distance of 9.0 miles (Line). According to INRD, the trackage rights are limited to empty hopper trains moving to, and loaded hopper trains carrying coal from, the Sunrise facility, located on the Line, and destined to Indianapolis Power & Light's Harding Street Plant at Indianapolis, IN,

and Hoosier Energy's Merrom Generating Station at Merrom, IN, both located on INRD's line.

The transaction is scheduled to be consummated on May 30, 2008.

The purpose of the trackage rights is to permit INRD to move loaded coal trains and empty hopper trains in single-line service between the Sunrise facility and INRD's two power plants, thus enhancing operational efficiency.

As a condition to this exemption, any employees affected by the acquisition of the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Stay petitions must be filed by May 22, 2008 (at least 7 days before the exemption becomes effective).

Pursuant to the Consolidated Appropriations Act, 2008, Public Law 110–161, section 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: Collecting, storing or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting and shredding). The term ''solid waste'' is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35137, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John Broadley, John H. Broadley & Associates, P.C., 1054 31st Street, NW., Suite 200, Washington, DC 20007.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: May 7, 2008.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. E8–10723 Filed 5–14–08; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Draft Report of the Advisory Committee on the Auditing Profession

AGENCY: Office of the Undersecretary for Domestic Finance, Treasury.

ACTION: Notice; request for comments.

SUMMARY: The Advisory Committee on the Auditing Profession is publishing a Draft Report and soliciting public comment.

DATES: Comments should be received on or before June 13, 2008.

ADDRESSES: Comments may be submitted to the Advisory Committee by any of the following methods:

Electronic Comments

- Use the Department's Internet submission form (*http://www.treas.gov/offices/domestic-finance/acap/comments*); or

Paper Comments

- Send paper comments in triplicate to Advisory Committee on the Auditing Profession, Office of Financial Institutions Policy, Room 1418, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

In general, the Department will post all comments on its Web site (*http://www.treas.gov/offices/domestic-finance/acap/comments*) without change, including any business or personal information provided such as names, addresses, e-mail addresses, or telephone numbers. The Department will also make such comments available for public inspection and copying in the Department's Library, Room 1428, Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect comments by telephoning (202) 622–0990. 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: Kristen E. Jaconi, Senior Policy Advisor to the Under Secretary for Domestic Finance, Department of the Treasury, Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, at (202) 927–6618.

SUPPLEMENTARY INFORMATION: At the request of the two Co-Chairs of the Department of the Treasury's Advisory Committee on the Auditing Profession, the Department is publishing this notice soliciting public comment on the Advisory Committee's Draft Report. The text of this Draft Report is found in the appendix to this notice and may be found on the Web page of the Advisory Committee at *http://www.treas.gov/offices/domestic-finance/acap/index.shtml.* The appendices to the Draft Report are not included in this notice, but may be found on the Web page of the Advisory Committee at *http://www.treas.gov/offices/domestic-finance/acap/index.shtml.* The Draft Report contains the Advisory Committee's developed proposals on improving the sustainability of a strong and vibrant public company auditing profession. All interested parties are invited to submit their comments in the manner described above.

Dated: May 8, 2008.

Taiya Smith,

Executive Secretary.

Appendix: Advisory Committee on the Auditing Profession, Draft Report—May 5, 2008, The Department of the Treasury

Draft Report of the Advisory Committee on the Auditing Profession to the U.S. Department of the Treasury

Table of Contents

I. Transmittal Letter [Placeholder]
II. Executive Summary [Placeholder]
III. Committee History
IV. Background [Placeholder]
V. Human Capital
VI. Firm Structure and Finances
VII. Concentration and Competition
VIII. Separate Statements [Placeholder]
IX. Appendices
- A. Official Notice of Establishment of Committee
- B. Committee Charter
- C. Treasury Secretary Henry M. Paulson, Jr., Remarks at the Economic Club of New York, New York, NY on Capital Market Competitiveness (Nov. 20, 2006)
- D. Treasury Secretary Henry M. Paulson, Jr., Opening Remarks at the Treasury Department's Capital Markets Competitiveness Conference at Georgetown University (Mar. 13, 2007)
- E. Paulson Announces First Stage of Capital Markets Action Plan, Treasury Press Release No. HP–408 (May 17, 2007)
- F. Paulson: Financial Reporting Vital to U.S. Market Integrity, Strong Economy, Treasury Press Release No. HP–407 (May 17, 2008)
- G. Paulson Announces Auditing Committee Members To Make Recommendations for a More Sustainable, Transparent Industry, Treasury Press Release No. HP–585 (Oct. 2, 2007)
- H. Under Secretary for Domestic Finance Robert K. Steel, Welcome and

Introductory Remarks Before the Initial Meeting of the Department of the Treasury's Advisory Committee on the Auditing Profession, Treasury Press Release No. HP–610 (Oct. 15, 2007)
I. Committee By-Laws
J. List of Witnesses
K. List of Committee Members, Observers, and Staff
L. Working Discussion Outline
M. Working Bibliography

I. Transmittal Letter

Advisory Committee on the Auditing Profession

[July 2008].

The Honorable Henry M. Paulson, Jr., Secretary, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Dear Secretary Paulson: On behalf of the Department's Advisory Committee on the Auditing Profession, we are pleased to submit our Final Report.

[Contents of letter to be included in Final Report.]

Respectfully Submitted on behalf of the Committee,

Arthur Levitt, Jr.,
Committee Co-Chair.

Donald T. Nicolaisen,
Committee Co-Chair.
Enclosure.
cc: Undersecretary for Domestic Finance Robert K. Steel.

II. Executive Summary

[Contents of Executive Summary to be included in subsequent drafts of this Report.]

III. Committee History

On November 20, 2006, the Secretary of the Treasury, Henry M. Paulson, Jr., delivered a speech on the competitiveness of the U.S. capital markets, highlighting the need for a sustainable auditing profession.[1] In March 2007, Secretary Paulson hosted a conference at Georgetown University with investors, current and former policy makers, and market participants to discuss issues impacting the competitiveness of the U.S. capital markets, including the sustainability of the auditing profession.[2]

On May 17, 2007, Secretary Paulson announced the Department of the Treasury's (the Department) intent to establish the Advisory Committee on the Auditing Profession (the Committee) to consider and develop recommendations relating to the sustainability of the auditing profession.[3] At the same time, Secretary Paulson announced that he had asked Arthur Levitt, Jr. and Donald T. Nicolaisen to serve as Co-Chairs of the Committee. The Department published the official notice of establishment and requested nominations for membership on the Committee in the **Federal Register** on June 18, 2007.[4] Secretary Paulson announced the Committee's membership on October 2, 2007, with members drawn from a wide range of professions, backgrounds and experiences.[5] The Department filed the Committee's Charter with the Senate Committee on Banking, Housing, and Urban Affairs, the Senate Committee on Finance, the House Committee on Financial Services and the House Committee on Ways and Means on July 3, 2007.[6]

Committee Activities

The Committee held its initial meeting on October 15, 2007 in Washington, DC.[7] Under Secretary for Domestic Finance Robert K. Steel welcomed the Committee members and provided introductory remarks.[8] Also on October 15, 2007, the Committee adopted its by-laws[9] and considered a Working Discussion Outline to be published for public comment.[10] The Working Discussion Outline identified in general terms issues for the Committee's consideration. A Working Bibliography, updated intermittently throughout the course of the Committee's deliberations, provided the members with articles, reports, studies, and other written materials relating to the auditing profession.[11] All full Committee meetings were open to the public and conducted in accordance with the requirements of the Federal Advisory Committee Act.[12] The meetings of the full Committee were also Web or audio cast over the Internet.

The Committee held its second meeting on December 3, 2007 in Washington, DC. The agenda for this meeting consisted of hearing oral statements from witnesses and considering written submissions that those witnesses had filed with the Committee. The oral statements and written submissions focused on the issues impacting the sustainability of the auditing profession, including issues mentioned in the Working Discussion Outline. Nineteen witnesses testified at this meeting.[13] The Committee held a subsequent meeting on February 4, 2008 in Los Angeles, California at the University of Southern California. The agenda for this meeting consisted of hearing oral statements from witnesses and considering written submissions that those witnesses had filed with the Committee. The oral statements and written submissions focused on the issues impacting the sustainability of the auditing profession, including issues mentioned in the Working Discussion Outline. Seventeen witnesses testified at this meeting.[14] The Committee held additional meetings on March 13, 2008, April 1, 2008, and [__]. All were face-to-face meetings held at the Department in Washington, DC, except for February 4, 2008, which was held in Los Angeles, California, and the meetings on April 1, 2008, and [__], which were telephonic meetings.

The Committee, through the Department, published [__] releases in the **Federal Register** formally seeking public comment on issues under consideration. On October 31, 2007, the Committee published a release seeking comment on the Working Discussion Outline,[15] in response to which we received seventeen written submissions. In addition, the Department announced each meeting of the Committee in the **Federal Register**, and in each announcement notice included an invitation to submit written statements to be considered in connection with the meeting.[16] In response to these meeting notices, the Committee received [__] written submissions. In total, the Committee received [__] written submissions in response to **Federal Register** releases.[17] All of the submissions made to the

[1] Treasury Secretary Henry M. Paulson, Jr., Remarks on the Competitiveness of U.S. Capital Markets at the Economic Club of New York (Nov. 20, 2006), *in* Press Release No. HP–174, U.S. Dep't of Treas. (Nov. 20, 2006) (included as Appendix C).

[2] Treasury Secretary Henry M. Paulson, Jr., Opening Remarks at Treasury's Capital Markets Competitiveness Conference at Georgetown University (Mar. 13, 2007), *in* Press Release No. HP–306, U.S. Dep't of Treas. (Mar. 13, 2007) (included as Appendix D).

[3] Press Release, U.S. Dep't of Treas., Paulson Announces First Stage of Capital Markets Action Plan (May 17, 2007) (included as Appendix E); Press Release, U.S. Dep't of Treas., Paulson: Financial Reporting Vital to U.S. Market Integrity, Strong Economy (May 17, 2008) (included as Appendix F).

[4] Notice of Intent to Establish; Request for Nominations, 72 FR 33560 (U.S. Dep't of Treas. June 18, 2007) (included as Appendix A).

[5] Press Release, U.S. Dep't of Treas., Paulson Announces Auditing Committee Members to Make Recommendations for a More Sustainable, Transparent Industry (Oct. 2, 2007) (included as Appendix G). This press release describes the diverse backgrounds of the Committee members. For a list of Members, Observers, and Staff, see Appendix K.

[6] See Committee Charter (included as Appendix B).

[7] The Record of Proceedings of this and subsequent meetings of the Committee are available on the Department's Web site at *http://www.treas.gov/offices/domestic-finance//acap/press.shtml.* See Record of Proceedings, Meeting of the Committee (Oct. 15, 2007, Dec. 3, 2007, Feb. 4, 2008, Mar. 13, 2008, Apr. 1, 2008, and [__]) [hereinafter Record of Proceedings (with appropriate date)] (on file in the Department's Library, Room 1428), *available at http://www.treas.gov/offices/domestic-finance/acap/press.shtml.*

[8] Under Secretary for Domestic Finance Robert K. Steel, Welcome and Introductory Remarks Before the Initial Meeting of the Treasury Department's Advisory Committee on the Auditing Profession (Oct. 15, 2007), *in* Press Release No. HP–610, U.S. Dep't of Treas. (Oct. 15, 2007) (included as Appendix H).

[9] The Committee By-Laws are included as Appendix I.

[10] The Working Discussion Outline is included as Appendix L.

[11] The Working Bibliography is included as Appendix M. The Working Bibliography was subsequently updated in December 2007 and February 2008.

[12] 5 U.S.C. App. 2 § 1.

[13] Appendix J contains a list of witnesses who testified before the Committee.

[14] Appendix J contains a list of witnesses who testified before the Committee.

[15] Request for Comments, 72 FR 61709 (U.S. Dep't of Treas. Oct. 31, 2007).

[16] Notice of Meeting, 72 FR 55272 (U.S. Dep't of Treas. Sept. 28, 2007); Notice of Meeting, 72 FR 64283 (U.S. Dep't of Treas. Nov. 15, 2007); Notice of Meeting, 73 FR 2981 (U.S. Dep't of Treas. Jan. 16, 2008); Notice of Meeting, 73 FR 10511 (U.S. Dep't of Treas. Feb. 27, 2008); Notice of Meeting, 73 FR 13070 (U.S. Dep't of Treas. Mar. 11, 2008); Notice of Meeting, 73 FR 21016 (U.S. Dep't of Treas. Apr. 17, 2008).

[17] All of the written submissions made to the Committee are available in the Department's Library, Room 1428 and on the Department's

Continued

Committee will be archived and available to the public through the Department's Library.

In addition to work carried out by the full Committee, fact finding and deliberations also took place within three Subcommittees appointed by the Co-Chairs. The Subcommittees were organized according to their principal areas of focus: Human Capital, Firm Structure and Finances, and Concentration and Competition.[18] Each of the Subcommittees prepared recommendations for consideration by the full Committee.

IV. Background

[Contents of Background to be included in subsequent drafts of this Report.]

V. Human Capital

The Committee devoted considerable time and effort surveying the human capital issues impacting the auditing profession, including education, licensing, recruitment, retention, and training of accounting and auditing professionals. The charter of the Committee charged its members with developing recommendations relating to the sustainability of the public company auditing profession. Likewise, the Committee directs the following recommendations and related commentary to those practicing public company auditing. However, the Committee recognizes that several of its recommendations regarding human capital matters would have impact beyond the public company auditing profession, impacting the accounting profession as a whole. The Committee views the accelerating pace of change in the global corporate environment and capital markets and the increasing complexity of business transactions and financial reporting as among the most significant challenges facing the profession as well as financial statement issuers and investors. These are directly impacted by human capital issues. To ensure its viability and resilience and its ability to meet the needs of investors, the public company auditing profession needs to continue to attract and develop professionals at all levels who are prepared to perform high quality audits in this dynamic environment. It is essential that these professionals be educated and trained to review, judge, and question all accounting and auditing matters with skepticism and a critical perspective. The recommendations presented below reflect these needs.

After receiving testimony from witnesses and from comment letters, the Committee identified specific areas where the Committee believed it could develop recommendations to be implemented in the relatively short term to enhance the sustainability of the auditing profession. These specific areas include accounting curricula, accounting faculty, minority representation and retention, and development and maintenance of human capital data. The Committee has also developed a recommendation to study the possible future of higher accounting education's institutional structure.

The Committee recommends that regulators, the auditing profession, educators, educational institutions, accrediting agencies, and other bodies, as applicable, effectuate the following:

Recommendation 1. Implement market-driven, dynamic curricula and content for accounting students that continuously evolve to meet the needs of the auditing profession and help prepare new entrants to the profession to perform high quality audits.

The Committee considered the views of all witnesses who provided input regarding accounting curricula at educational institutions.[19] The Committee believes that the accounting curricula in higher education are critical to ensuring individuals have the necessary knowledge, mindset, skills, and abilities to perform quality public company audits. In order to graduate from an educational institution with an accounting degree, students must have completed a certain number of hours in accounting and business courses. Accounting curricula typically include courses in auditing, financial accounting, cost accounting and U.S. federal income taxation. Business curricula typically include courses in ethics, information systems and controls, finance, economics, management, marketing, oral and written communication, statistics, and U.S. business law.[20] Since the 1950s, several private sector groups have studied and recommended changes to the accounting curricula,[21] but notwithstanding these pleas for reform, curricula are characteristically slow to change.[22]

In this regard, the Committee makes the following recommendations:

(a) Regularly update the accounting certification examinations to reflect changes in the accounting profession, its relevant professional and ethical standards, and the skills and knowledge required to serve increasingly global capital markets.

Accounting and auditing professionals commonly complete the requirements of professional examinations in order to comply with legal or professional association requirements. To become licensed at the state level as a certified public accountant, an individual must, among other things, pass the Uniform CPA Examination. Professional examinations, such as the Uniform CPA

Committee's Web page at *http://www.treas.gov/offices/domestic-finance/acap/press.shtml.* To avoid duplicative material in footnotes, citations to the written submissions made to the Committee in this Final Report do not reference the Department's Library, Room 1428.

[18] For a list of members and their Subcommittee assignments, see Appendix K.

[19] See, e.g., Record of Proceedings (Dec. 3, 2007) (Written Submission of Joseph V. Carcello, Director of Research, Corporate Governance, University of Tennessee, Knoxville, 8), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/12032007/Carcello120307.pdf* (noting the market's expectations that university accounting curricula will expose students to recent financial reporting developments, such as international financial reporting standards and eXtensible Business Reporting Language); Record of Proceedings (Feb. 4, 2008) (Written Submission of Cynthia Fornelli, Executive Director, Center for Audit Quality, 3) *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/02042008/Fornelli020408.pdf* (stating the need to ''[d]edicate funds and people to work with accounting professors to ensure that the curriculum is keeping pace with developments in business transactions, international economics and financial reporting'' and specifying the need to focus on ethical standards and international accounting and auditing standards); Record of Proceedings (Dec. 3, 2007) (Written Submission of Dennis Nally, Chairman and Senior Partner, PriceWaterhouseCoopers LLP, 4), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/12032007/Nally120307.pdf* (stating the need to ''[m]odernize and enhance the university accounting curriculum, which should include consideration of other global curriculum models to increase knowledge of International Financial Reporting Standards (IFRS), finance and economics, and process controls'').

[20] Record of Proceedings (Feb. 4, 2008) (Written Submission of Phillip M.J. Reckers, Professor of Accountancy, Arizona State University, 13), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/02042008/Reckers020408.pdf* (commenting that business students typically take two sophomore-level introductory accounting classes and accounting majors take six additional accounting courses in their final two years of schooling).

[21] See e.g., Franklin Pierson, et al., The Education of American Businessmen (1959) (noting that the main goal of a business education should be the development of an individual with broad training in both the humanities and principles of business); Robert A. Gordon and James E. Howell, Higher Education for Business (1959) (suggesting that accounting curriculum abandon its emphasis on financial accounting and auditing while emphasizing humanities); Robert H. Roy and James H. MacNeill, Horizons for a Profession (1967) (emphasizing the importance of a humanities background for accountants and recommending accounting graduate study); American Institute of Certified Public Accountants, Committee on Education and Experience Requirements for CPAs, Report of the Committee on Education and Experience Requirements for CPAs (1969) (recommending a five-year education requirement for accounting students); American Institute of Certified Public Accountants, Education Requirements for Entry into the Accounting Profession: A Statement of AICPA Policies (1978) (recommending a change from five years to 150 semester-hours and recommending that a graduate degree requirement at the conclusion of the 150-hours should be explicitly stated); American Accounting Association, Committee on the Future Structure, Content, and Scope of Accounting Education, *Future Accounting Education: Preparing for the Expanding Profession,* Issues in Accounting Education (Spring 1986) (examining accounting education and accounting practice since 1925 and concluding that since 1925, the profession has changed while accounting education has not changed); American Institute of Certified Public Accountants, Education Requirements for Entry into the Accounting Profession: A Statement of AICPA Policies, Second Edition, Revised (1988) (requiring that at least 150 semester hours are needed to obtain a CPA license); Perspectives on Education: Capabilities for Success in the Accounting Profession (1989) (noting that graduates entering public accounting need to have greater interpersonal, communication, and thinking skills as well as greater business knowledge); and Accounting Education Change Commission, *Objectives of Education for Accountants: Position Statement Number One,* Issues in Accounting Education (Fall 1990a) (awarding grants to schools as a catalyst for curricula changes in accounting programs).

[22] Record of Proceedings (Dec. 3, 2007) (Written Submission of Ira Solomon, R.C. Evans Distinguished Professor, and Head, Department of Accountancy, University of Illinois, 14–15), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/12032007/Solomon120307.pdf* (lamenting the slow pace of change in accounting curricula and education).

Examination, influence the content of the technical, ethical, and professional materials comprising the accounting curricula.[23]

The Committee believes that evolution of professional examination content serves as an important catalyst for curricular changes to reflect the dynamism and complexity of auditing public companies in global capital markets. The American Institute of Certified Public Accountants (AICPA) already regularly analyzes and updates its examination content, through practice content analysis and in conjunction with the AICPA Board of Examiners, which comprises members from the profession and state boards of accountancy. The Committee recommends that such changes remain a focus to ensure that examination content reflects in a timely manner important ongoing market developments and investor needs, such as the increasing use of international financial reporting standards (IFRS), expanded fair value measurement and reporting, increasingly complex transactions, new Public Company Accounting Oversight Board (PCAOB) auditing and professional standards,[24] risk-based business judgment, and technological innovations in financial reporting.

Moreover, the Committee believes that professional [25] and ethical standards [26] and subject matter relating to their application are an essential component of the accounting curricula and accordingly should be reflected in the professional examinations and throughout business and accounting coursework.

Finally, the Committee recommends that the market developments outlined in this section be reflected in professional examination content as soon as practicable, but not later than 2011. In addition, the Committee recommends that new evolving examination content be widely and promptly communicated to college and university faculty and administrators so that corresponding curricular changes in educational institutions can continually occur on a timely basis.

(b) Reflect real world changes in the business environment more rapidly in teaching materials.

Students are expected to use a variety of sources, such as textbooks and online materials, to learn. Such materials are an important element of higher education. The Committee learned that these commercial materials are generally conservatively managed and follow rather than lead recent market developments.[27] Because developing accounting materials involves a significant investment of time and resources, commercial content providers carefully consider the potential risks and rewards before publishing new materials, even where a more prompt response to new developments might be beneficial to students.

The Committee believes that accounting educational materials can contribute to inducing curricular changes that reflect the dynamism and complexity of the global capital markets and that commercial content providers should recognize the importance of capturing recent developments in their published materials. Specifically, the Committee recommends that organizations, such as the AICPA and the American Accounting Association (AAA), meet with commercial content providers and encourage them to update their materials promptly to reflect recent developments such as the increasing use of IFRS, new PCAOB auditing and professional standards, risk-based business judgment and expanded fair value reporting, as well as technological developments in financial reporting and auditing such as eXtensible Business Reporting Language (XBRL).

Further, in order to ensure access to such materials, the Committee recommends that authoritative bodies and agencies should be encouraged to provide low-cost, affordable access to digitized searchable authoritative literature and materials, such as Financial Accounting Standards Board (FASB) codification and eIFRS, to students and faculty members. Moreover, since the content of professional examinations, such as the Uniform CPA Examination, is based upon research using digitized materials, students need to have access to, among other things, searchable accounting standards.[28] The Committee believes that low-cost affordable access to such primary materials would thus enhance student learning and performance and technical research.

(c) Require that schools build into accounting curricula current market developments.

A common theme of our first set of recommendations is that accounting curricula should reflect recent developments, including globalization and evolving market factors. As a further catalyst to curricula development and evolution by educational institutions, the Committee recommends ongoing attention to responsiveness to recent developments by the bodies that accredit educational institutions. Accrediting agencies review institutions of higher education and their programs and establish that overall resources and strategies are conformed to the mission of the institutions. For example, the Association to Advance Collegiate Schools of Business (AACSB) and the Association of Collegiate Business Schools and Programs (ACBSP) accredit business administration and accounting programs. Since 1919, the AACSB has accredited business administration programs and, since 1980, accounting programs offering undergraduate and graduate degrees. The AACSB has accredited over 450 U.S. business programs and over 150 U.S. accounting programs. Since 1988, the ACBSP has accredited business programs offering associate, baccalaureate and graduate degrees. As of February 2008, over 400 educational institutions have achieved ACBSP accreditation. The accreditation standards at both accrediting agencies relate to, among other things, curricula, program and faculty resources, and faculty development.

The Committee believes that the accreditation process and appropriate accreditation standards can contribute to curricular changes. In particular, accreditation standards that embody curricular requirements to reflect the dynamism and complexity of the global capital markets and that evolve to keep pace in the future can be helpful in maintaining and advancing the quality of accounting curricula. The AACSB has emphasized in its accreditation standards that accounting curricula should reflect recent market developments. For example, educational institutions must include in their curricula international accounting issues in order to receive AACSB accreditation. The Committee supports the accrediting agencies' efforts to continually develop standards specifically emphasizing the need to update accounting programs.

Recommendation 2. Improve the representation and retention of minorities in the auditing profession so as to enrich the pool of human capital in the profession.

The auditing profession presents challenging and rewarding opportunities for those who pursue a career in auditing and the profession actively recruits talent from all backgrounds. Yet, the Committee was concerned by what it heard from individuals with various backgrounds about minority representation and retention in the auditing profession.[29] In 2004, minorities accounted for 23% of bachelor's degrees awarded in accounting, 21% of master's graduate degrees awarded in accounting, and 38% of doctoral

[23] Gary Sundem, The Accounting Education Change Commission: Its History and Impact Chapter 6 (1999), *available at http://aaahq.org/AECC/history/index.htm* (''[T]he CPA examination has certainly had a major influence on the accounting curriculum and on other aspects of accounting programs.'').

[24] See e.g., An Audit of Internal Control Over Financial Reporting That Is Integrated with An Audit of Financial Statements, Auditing Standard No. 5 (Pub. Company Accounting Oversight Bd. 2007).

[25] See PCAOB Standards and Related Rules, *available at http://www.pcaobus.org/Standards/Standards_and_Related_Rules/index.aspx.*

[26] See PCAOB Interim Ethics Standards, *availabe at http://www.pcaobus.org/Standards/Interim_Standards/Ethics/index.aspx.*

[27] Subcommittee on Human Capital Record of Proceedings (Jan. 16, 2008) (Oral Remarks of Bruce K. Behn, President, Federation of Schools of Accountancy, and Ergen Professor of Business, Department of Accounting and Information Management, University of Tennessee, Knoxville).

[28] See Record of Proceedings (Feb. 4, 2008) (Written Submission of Phillip M.J. Reckers, Professor of Accountancy, Arizona State University, 14), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/02042008/Reckers020408.pdf* (affirming the need for student access to digitized searchable accounting and auditing materials).

[29] See, e.g., Record of Proceedings (Dec. 3, 2007) (Written Submission of Ira Solomon, R.C. Evans Distinguished Professor, and Head, Department of Accountancy, University of Illinois, 13), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/12032007/Solomon120307.pdf;* Record of Proceedings (Dec. 3, 2007) (Questions for the Record of George S. Willie, Managing Partner, Bert Smith & Co., 2 (Jan. 30, 2008)), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/12032007/Willie120307.pdf;* Record of Proceedings (Dec. 3, 2007) (Written Submission of Julie K. Wood, Chief People Officer, Crowe Chizek and Company LLC, 2) *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/12032007/Wood120307.pdf.*

degrees awarded in accounting-related studies.[30] In 2004, African Americans represented 1% of all CPAs, Hispanic/Latino, 3%, and Asian/Pacific Islander, 4%.[31] African Americans accounted for 5.4% of new hires in 2007 in the largest six accounting firms, Hispanics, 4.6%, and Asians, 21.3%.[32] In 2007, 1.0% of the partners in the six largest accounting firms were African American, 1.6% were Hispanic/Latino, 3.4% were Asian, and less than 1.0% were Native Hawaiian/Pacific Islander or American Indian/Alaska Native, aggregating less than 7% of the total partners.[33]

The Committee recognizes that important groups within the minority population are significantly under-represented in the accounting and auditing profession, especially at senior levels, and this under-representation of minorities in the profession is unacceptable from both a societal and business perspective. As the demographics of the global economy continue to expand ethnic diversity, it is imperative that the profession also reflect these changes. The auditing profession's historic role in performing audits in an increasingly diverse global setting and in establishing investor trust cannot be maintained unless the profession itself is viewed as open and representative. To ensure the continued health and vibrancy of the profession, it is imperative that all participants in the financial, investor, educator, and auditor community adopt and implement policies, programs, practices, and curricula designed to attract and retain minorities. In order for minority participation in the accounting and auditing profession to grow and sustain itself, minority recruitment and retention needs to be a multi-faceted, multi-year effort, implemented and championed by community leaders, families, and most importantly business and academic leaders who educate, recruit, employ, and rely on accountants and auditors.

In this regard, the Committee recognizes the importance of setting goals and measuring progress against these goals and thus makes the following recommendations:

(a) Recruit minorities into the auditing profession from other disciplines and careers.

The Committee heard from witnesses that the auditing profession has ''fallen short'' on its minority recruitment goals.[34] Accordingly, the Committee recommends that auditing firms actively market to and recruit from minority non-accounting graduate populations, both at the entry and experienced hire level, utilizing cooperative efforts by academics and firm-based training programs to assist in this process. Generally, auditing firms hire individuals for the audit practice who are qualified to sit for the Uniform CPA Examination.[35]

Further, the Committee recommends that auditing firms expand their recruitment initiatives at historically black colleges and universities (HBCUs), and explore the use of proprietary schools as another way to recruit minorities into the profession. Currently over 100 educational institutions established before 1964 to serve the African American community are designated as HBCUs and over fifty of these HBCUs maintain accounting programs. Approximately 290,000 students are enrolled in HBCUs[36] and HBCUs enroll 14% of all African American students in higher education.[37] Twenty-seven HBCUs have one or more of the six largest accounting firms recruiting professional staff on their campus.[38] Both the number of these schools visited by the largest firms and the number of firms recruiting at these schools should increase. Proprietary schools are for-profit businesses that teach vocational or occupational skills and there are over 2,000 proprietary schools in the United States.[39] In 2005, these schools enrolled over 1 million students: African Americans accounted for 23% of these students, Hispanics, 13%, and Asian/Pacific Islander, 4%.[40]

(b) Emphasize the role of community colleges in the recruitment of minorities into the auditing profession.

Community colleges are a vital part of the postsecondary education system. They provide open access to post-secondary education, preparing students for transfer to four-year institutions, providing workforce development and skills training, and offering non-credit programs. Moreover, as the cost of higher education continues its upward climb, more and more high-achieving students are beginning their post-secondary study through the community college system.

As of January 2008, approximately 11.5 million students were enrolled in the 1,200 community colleges in the United States: African Americans accounted for 13% of these students, Hispanics, 15%, and Asian/Pacific Islander, 6%.[41]

In August 1992, the Accounting Education Change Commission (AECC), created in the late 1980s by the academic community to examine potential changes to accounting education, recognized the importance of two-year colleges in accounting education. The AECC noted that over half of all students taking their first course in accounting do so at two-year colleges and that approximately one-fourth of the students entering the accounting profession take their initial accounting coursework at two-year colleges. The AECC called for ''greater recognition within the academic and professional communities of the efforts and importance of two-year accounting programs.''[42]

The Committee also heard from witnesses emphasizing the need to expand minority recruitment initiatives at community colleges.[43]

The Committee believes that more attention to community colleges may provide, in addition to an increase in the overall supply of students, another avenue for minorities to become familiar with and attracted to the auditing profession. Currently none of the largest auditing firms recruit at community colleges because ''individuals who only have associate degrees typically will not have sufficient qualifications to satisfy state licensing requirements.''[44] The Committee recommends that accreditation of two-year college accounting programs at

[30] Beatrice Sanders, and Leticia B. Romeo, The Supply of Accounting Graduates and the Demand for Public Accounting Recruits—2005: For Academic Year 2003–2004 10 (2005), *available at http://ceae.aicpa.org/NR/rdonlyres/11715FC6-F0A7-4AD6-8D28-6285CBE77315/0/Supply_DemandReport_2005.pdf.*

[31] Beatrice Sanders, and Leticia B. Romeo, The Supply of Accounting Graduates and the Demand for Public Accounting Recruits—2005: For Academic Year 2003–2004 1 (2005), *available at http://ceae.aicpa.org/NR/rdonlyres/11715FC6-F0A7-4AD6-8D28-6285CBE77315/0/Supply_DemandReport_2005.pdf.*

[32] Center For Audit Quality, Report of the Major Public Company Audit Firms to the Department of the Treasury Advisory Committee on the Auditing Profession 59 (Jan. 23, 2008).

[33] Center For Audit Quality, Report of the Major Public Company Audit Firms to the Department of the Treasury Advisory Committee on the Auditing Profession 60 (Jan. 23, 2008).

[34] See *e.g.*, Record of Proceedings (Dec. 3, 2007) (Written Submission of Julie K. Wood, Chief People Officer, Crowe Chizek and Company LLC, 2), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/12032007/Wood120307.pdf* (admitting an auditing firm had not met its goals in minority recruitment).

[35] See Record of Proceedings (Dec. 3, 2007) (Questions for the Record of James S. Turley, Chairman and Chief Executive Officer, Ernst & Young LLP, 4 (Feb. 1, 2008)), *available at http://www.treas.gov/offices/domestic-finance/acap/QFRs-12-3-07.pdf* (noting that since 1997, Ernst & Young LLP has typically hired individuals qualified to sit for the Uniform CPA Examination).

[36] Stephen Provasnik and Linda L. Shafer, Historically Black Colleges and Universities, 1976 to 2001 2 (NCES 2004–062), *available at http://nces.ed.gov/pubs2004/2004062.pdf.*

[37] White House Initiative on Historically Black Colleges and Universities, *available at http://www.ed.gov/about/inits/list/whhbcu/edlite-index.html.*

[38] Center For Audit Quality, Supplement to Report of the Major Public Company Audit Firms to the Department of the Treasury Advisory Committee on the Auditing Profession 1 (Mar. 5, 2008).

[39] Thomas D. Snyder, Sally A. Dillow, and Charlene M. Hoffman, Digest of Education Statistics 2007 Table 5 (NCES 2008–022), *available at http://nces.ed.gov/pubs2008/2008022.pdf.*

[40] Thomas D. Snyder, Sally A. Dillow, and Charlene M. Hoffman, Digest of Education Statistics 2007 Table 220 (NCES 2008–022), *available at http://nces.ed.gov/pubs2008/2008022.pdf.*

[41] American Association of Community Colleges, *available at http://www2.aacc.nche.edu/research/index.htm.*

[42] Accounting Education Change Commission, Issues Statement Number 3: The Importance of Two-Year Colleges for Accounting Education (Aug. 1992) *available at http://aaahq.org/aecc/PositionsandIssues/issues3.htm.*

[43] Record of Proceedings (Feb. 4, 2008) (Written Submission of Gilbert R. Vasquez, Managing Partner, Vasquez & Company LLP, 4), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/02042008/Vasquez02042008.pdf* (noting that auditing firms overlook community colleges where minorities, and specifically Latinos, represent a large student population); Record of Proceedings (Dec. 3, 2007) (Questions for the Record of George S. Willie, Managing Partner, Bert Smith & Co., 2 (Jan. 30, 2008)), *available at http://www.treas.gov/offices/domestic-finance/acap/QFRs-12-3-07.pdf* (recommending that the auditing profession increase it visibility at community colleges).

[44] Center For Audit Quality, Supplement to Report of the Major Public Company Audit Firms to the Department of the Treasury Advisory Committee on the Auditing Profession 1 (Mar. 5, 2008).

community colleges be explored and implemented when viable, so that these programs can be relied upon as one of the requisite steps toward fulfilling undergraduate educational requirements. Further, the Committee recommends that auditing firms and educational institutions at all levels support and cooperate in building strong fundamental academic accounting programs at community colleges, including providing internships or financial support for students who begin their studies in two-year programs and may be seeking careers in the auditing profession. The Committee also recommends that auditing firms and four-year colleges and universities and their faculty focus on outreach to community college students in order to support students' transition from community colleges to four-year educational institutions.

(c) Emphasize the utility and effectiveness of cross-sabbaticals and internships with faculty and students at Historically Black Colleges and Universities.

As discussed above, African Americans are significantly under-represented in the auditing profession.

The Committee recommends encouraging a concerted effort to increase the focus upon HBCUs in order to raise the number of African Americans in the auditing profession and urging the HBCUs, auditing firms, corporations, federal and state governments, and other entities to emphasize the use of cross-sabbaticals. Cross-sabbaticals are interactive relationships where faculty and seasoned professionals are regularly represented in the practice and academic environments through exchanges. Evidence suggests that such exchanges can be beneficial, and continued development of such exchanges is expected to provide substantial benefits for all parties.[45] Cross-sabbaticals present an opportunity for ''reflective thinking'' for seasoned professionals.[46]

In addition, the Committee recommends that the over fifty HBCUs with accounting programs require one member of their accounting faculty annually to participate in a cross-sabbatical with a private or public sector entity. The Committee also recommends that the private and public sector entities provide these opportunities, as well as focus on other arrangements to build relationships at these educational institutions.

The Committee received testimony regarding the lack of minority mentors and role models[47] and notes that the profession has recognized this situation.[48] Thus, the Committee also recommends that public company auditing firms intensify their efforts to create internships and mentoring programs for students in accounting and other complementary disciplines, including those from HBCUs and community colleges, as a means to increase the awareness of the accounting profession and its attractiveness among minority students.

(d) Increase the numbers of minority accounting doctorates through focused efforts.

Some dedicated programs have succeeded in attracting minorities to enter and complete accounting doctoral studies.[49] In particular, the PhD Project, an effort of the KPMG Foundation, has worked to increase the diversity of business school faculty.[50] The PhD Project focuses on attracting minorities to business doctoral programs, and provides a network of peer support. Since the PhD Project's establishment in 1994, the number of minority professors at U.S. business schools has increased from 294 to 889.[51] Ninety percent who enter the PhD Project earn their doctorates, and 99% of those who completed their doctorates go on to teach.[52] The PhD Project has received over $17.5 million[53] in funding since 1994 from corporations, foundations, universities, and other interested parties.[54]

The Committee believes that programs such as these can successfully recruit minorities to accounting doctoral studies. The Committee recommends that auditing firms, corporations, and other interested parties advertise existing and successful efforts to increase the number of minority doctorates by developing further dedicated programs. Additionally, the Committee recommends that auditing firms, corporations, and other interested parties maintain and increase the funding of these programs.

Recommendation 3. Ensure a sufficiently robust supply of qualified accounting faculty to meet demand for the future and help prepare new entrants to the profession to perform high quality audits.

The Committee heard testimony from individuals regarding the need to have an adequate supply of faculty with the knowledge and experience to develop qualified professionals for the increasingly complex and global auditing profession.[55]

The Committee recognizes that there is a high level of concern about the adequacy of both the near and the long-term supply of doctoral faculty, especially given the anticipated pace of faculty retirements. According to National Study of Postsecondary Faculty data, the number of

[45] See Record of Proceedings (Feb. 4, 2008) (Written Submission of Cynthia Fornelli, Executive Director, Center for Audit Quality, 2), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/02042008/Fornelli020408.pdf* (recommending encouraging sabbaticals, internships, and fellowship opportunities, structured to give faculty opportunities to conduct research for promotion and tenure); Record of Proceedings (Feb. 4, 2008) (Oral Remarks of Phillip M.J. Reckers, Professor of Accountancy, Arizona State University, 68), *available at http://www.treas.gov/offices/domestic-finance/acap/agendas/minutes-2-4-08.pdf* (stating that sabbaticals deliver professors ''a wealth of knowledge they could bring back in the classroom'').

[46] See Record of Proceedings (Mar. 13, 2008) (Oral Remarks of H. Rodgin Cohen, Chairman, Sullivan & Cromwell LLP, 69), *available at http://www.treas.gov/offices/domestic-finance/acap/agendas/minutes-03-13-08.pdf* (noting that spending time in the classroom should ''give the [practicing accountant] the time to do the reflective thinking.''); Record of Proceedings (Mar. 13, 2008) (Oral Remarks of Zoe-Vonna Palmrose, Deputy Chief Accountant, SEC), *available at http://www.treas.gov/offices/domestic-finance/acap/agendas/minutes-03-13-08.pdf* (commenting that sabbaticals provide the ''opportunity for reflective thinking'').

[47] See Record of Proceedings (Feb. 4, 2008) (Written Submission of Gilbert R. Vasquez, Managing Partner, Vasquez & Company LLP, 4), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/02042008/Vasquez02042008.pdf* (highlighting the lack of Hispanic role models and mentors in the accounting profession).

[48] See Record of Proceedings (Dec. 3, 2007) (Questions for the Record of George S. Willie, Managing Partner, Bert Smith & Co., 2 (Jan. 30, 2008)), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/12032007/Willie120307.pdf* (recommending the establishment of a mentor program for minority accounting students); Record of Proceedings (July 12, 2006) (Written Testimony of Manuel Fernandez, National Managing Partner—Campus Recruiting, KPMG LLP, to the Subcommittee on Oversight and Investigations of the House Financial Services Committee, 5), *available at http://financialservices.house.gov/media/pdf/071206mf.pdf* (identifying the lack of minority faculty mentors and role models and noting ''[w]hen students of color do not see professors of their own ethnic background on the accounting faculty, they are less apt to consider the option of a career in accountancy'').

[49] For a list of educational support programs that auditing firms are sponsoring, see Record of Proceedings (Feb. 4, 2008) (Written Submission of Barry Salzberg, Chief Executive Officer, Deloitte LLP, Appendix A), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/02042008/Salzberg020408.pdf.*

[50] For further information on the PhD Project, see *http://www.phdproject.org/mission.html.*

[51] Record of Proceedings (Feb. 4, 2008) (Written Submission of Barry Salzberg, Chief Executive Officer, Deloitte LLP, Appendix A), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/02042008/Salzberg020408.pdf.*

[52] See Jane Porter, *Going to the Head of the Class: How the PhD Project is Helping to Boost the Number of Minority Professors in B-schools*, BUSINESS WEEK ONLINE, Dec. 27, 2006, *available at http://www.businessweek.com/bschools/content/dec2006/bs20061227_926455.htm.*

[53] See Record of Proceedings (July 12, 2006) (Written Testimony of Manuel Fernandez, National Managing Partner—Campus Recruiting, KPMG LLP, to the Subcommittee on Oversight and Investigations of the House Financial Services Committee, 5), *available at http://financialservices.house.gov/media/pdf/071206mf.pdf.*

[54] For further information on the PhD Project, see *http://www.phdproject.org/corp_sponsors.html.*

[55] See, e.g., Record of Proceedings (Dec. 3, 2007) (Written Submission of David W. Leslie, Chancellor Professor of Education, College of William and Mary), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/12032007/Leslie120307.pdf* (noting a 13.3% decline in accounting faculty from 1988 to 2004); Record of Proceedings (Feb. 4, 2008) (Written Submission of Edward E. Nusbaum, Chief Executive Officer, Grant Thornton LLP, and Chairman, Grant Thornton International Board of Governors, 5), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/02042008/Nusbaum020408.pdf* (stating that ''recent years have seen a reduction in accounting faculty, based on a wave of retirements and lack of accounting PhDs coming into the system.''); Record of Proceedings (Dec. 3, 2007) (Written Submission of Ira Solomon, R.C. Evans Distinguished Professor, and Head, Department of Accountancy, University of Illinois, 4), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/12032007/Solomon120307.pdf* (stating that ''the number of persons entering accountancy doctoral programs is too low to sustain the accountancy professoriate.'').

full- and part-time accounting faculty at all types of educational institutions fell by 13.3% from 20,321 in 1993 to 17,610 in 2004, while student (undergraduate) enrollment has increased by 12.3% over the same period.[56] Moreover, the current pipeline of doctoral faculty is not keeping pace with anticipated retirements. In November 2006, it was estimated that one-third of the approximately 4,000 accounting doctoral faculty in the United States were 60 years old or older, and one-half were 55 years old or older.[57] The average retirement age of accounting faculty was 62.4 years.

In terms of specialization within the accounting discipline, an AAA study concluded that only 22% and 27% of the projected demand for doctoral faculty in auditing and tax, respectively, will be met by expected graduations in the coming years.[58] However, 91% and 79% of the projected demand for doctoral faculty in financial accounting and managerial accounting, respectively, will be met.[59]

In addition to the accounting faculty supply issues, the Committee heard testimony from witnesses on the need to ensure faculty are qualified and able to teach students the latest market developments, such as fair value accounting and IFRS. The Committee learned that often new accounting faculty may have little practical experience.[60] Witnesses testified to the difficulty of academics' acquiring ''practice-oriented'' knowledge as the bond between the profession and academia is underdeveloped. Witnesses did suggest improving these relationships with incentives for sabbaticals and sharing practice experience.[61]

In this regard, the Committee makes the following recommendations:

(a) Increase the supply of accounting faculty through public and private funding and raise the number of professionally qualified faculty that teach on campuses.

The Committee recognizes that ensuring an adequate supply of doctoral accounting faculty in higher education is crucial to both retaining the academic standing of the discipline on campus and developing well-prepared and educated entry-level professionals. The resource represented by these professionals is essential for high quality audits. The Committee believes that high quality audits are critical to well-functioning capital markets, and therefore the funding necessary to provide the healthy pipeline of doctoral accounting faculty to assist in providing these human capital resources must be provided. The Committee therefore recommends expanding government funding, at both the federal and state level, for accounting doctoral candidates. The Committee also recommends that private sources (including corporations, institutional investors, and foundations as well as auditing firms) continue to be encouraged to fund accounting doctoral candidates. The Committee recognizes and commends the auditing firms' support of doctoral candidates.[62]

Currently, minimum accreditation requirements for accountancy faculty typically require that approximately 50% of full-time faculty have a doctoral degree. Commonly, business school deans and academic vice presidents (those making the budgetary decisions regarding faculty allotments on campuses) interpret this accreditation requirement to require that a minimum of 50% of a department's faculty hold an earned doctorate and are actively engaged in research and publication activity. Although a high percentage of faculty are expected to be professionally qualified (i.e., having recent direct business experience), at times gatekeepers for budget allocations may be less enthusiastic about maximizing the number of professionally qualified teaching slots in a given program. The Committee sees benefits to the increased participation of professionally qualified and experienced faculty, who would bring additional practical business experience to the classrooms, and notes that witnesses and commenters have underscored the benefits of professionally qualified and experienced faculty.[63]

Therefore, the Committee recommends that accrediting agencies continue to actively support faculty composed of academically and professionally qualified and experienced faculty.

(b) Emphasize the utility and effectiveness of cross-sabbaticals.

As discussed above, cross-sabbaticals are interactive relationships where faculty and seasoned professionals are regularly represented in the practice and academic environments through exchanges. For example, currently, the Securities and Exchange Commission (SEC) and the FASB offer fellowship programs for professional accountants and accounting academics. Evidence suggests that such exchanges can be beneficial, and continued development of such exchanges is expected to provide substantial benefits for all parties.[64] Cross-sabbaticals present an opportunity for ''reflective thinking'' for seasoned professionals.[65] Academics often face the disincentive of being forced to forgo their full salaries in order to engage in such sabbaticals,[66] and colleges and universities may not encourage professional practice sabbaticals, preferring that the focus of faculty be directed exclusively toward academic research and the number and placement of scholarly articles. The Committee believes that changing both the academic and practice culture will require a

[56] Record of Proceedings (Dec. 3, 2007) (Written Submission of David W. Leslie, Chancellor Professor of Education, College of William and Mary), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/12032007/Leslie120307.pdf.*

[57] James R. Hasselback, 2007 Analysis of Accounting Faculty Birthdates, *available at http://aaahq.org/temp/phd/JimHasselbackBirthdateSlide.pdf.*

[58] R. David Plumlee, Steven J. Kachelmeier, Silvia A. Madeo, Jamie H. Pratt, and George Krull, *Assessing the Shortage of Accounting Faculty*, 21 Issues in Accounting Education, No. 2, 119 (May 2006).

[59] R. David Plumlee, Steven J. Kachelmeier, Silvia A. Madeo, Jamie H. Pratt, and George Krull, *Assessing the Shortage of Accounting Faculty*, 21 Issues in Accounting Education, No. 2, 119 (May 2006).

[60] Record of Proceedings (Dec. 3, 2007) (Written Submission of Joseph V. Carcello, Director of Research, Corporate Governance, University of Tennessee, Knoxville, 21), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/12032007/Carcello120307.pdf.*

[61] Record of Proceedings (Feb. 4, 2008) (Written Submission of Cynthia Fornelli, Executive Director, Center for Audit Quality, 2), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/02042008/Fornelli020408.pdf* (noting that the auditing firms recognize the need to be more active in sharing practical experiences with academics); Record of Proceedings (Feb. 4, 2008) (Written Submission of Phillip M.J. Reckers, Professor of Accountancy, Arizona State University, 19), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/02042008/Reckers020408.pdf* (''[R]elationships between practitioners and academics have so diminished that they are little more than formal liaison assignments involving very few parties from any side * * * [w]here there have been opportunities for interaction (curriculum issues, policy deliberations, research matters), those opportunities have been embraced perceptibly less often''); ''[t]here are clearly practice professionals that make excellent contributions to some of the most highly rated accounting programs in the country''); Record of Proceedings (Feb. 4, 2008) (Written Submission of Cynthia Fornelli, Executive Director, Center for Audit Quality, 3) *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/02042008/Fornelli020408.pdf* (stating that accreditation bodies ''revise accreditation standards to allow the employment of more audit professionals, either active or retired, as adjunct professors'').

[62] See Record of Proceedings (Feb. 4, 2008) (Written Submission of Cynthia Fornelli, Executive Director, Center for Audit Quality, 2), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/02042008/Fornelli020408.pdf.*

[63] See Andrew D. Bailey, Jr., Professor of Accountancy-Emeritus, University of Illinois, and Senior Policy Advisor, Grant Thornton LLP, Comment Letter Regarding Discussion Outline 19 (Jan. 30, 2008), *available at http://comments.treas.gov/_files/BAILEYCOMMENTSONTREASURYADVISORYCOMMITTEEOUTLINEFINALSUBMISSION13008.doc* (stating that

[64] See Record of Proceedings (Feb. 4, 2008) (Written Submission of Cynthia Fornelli, Executive Director, Center for Audit Quality, 2), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/02042008/Fornelli020408.pdf* (recommending encouraging sabbaticals, internships, and fellowship opportunities, structured to give faculty opportunities to conduct research for promotion and tenure); Record of Proceedings (Feb. 4, 2008) (Oral Remarks of Phillip M.J. Reckers, Professor of Accountancy, Arizona State University, 68), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/02042008/Reckers020408.pdf* (stating that sabbaticals deliver professors ''a wealth of knowledge they could bring back in the classroom'').

[65] See Record of Proceedings (Mar. 13, 2008) (Oral Remarks of H. Rodgin Cohen, Chairman, Sullivan & Cromwell LLP, 69), *available at http://www.treas.gov/offices/domestic-finance/acap/agendas/minutes-03-13-08.pdf*; Record of Proceedings (Mar. 13, 2008) (Oral Remarks of Zoe-Vonna Palmrose, Deputy Chief Accountant, SEC, 67), *available at http://www.treas.gov/offices/domestic-finance/acap/agendas/minutes-03-13-08.pdf.*

[66] Record of Proceedings (Feb. 4, 2008) (Oral Remarks of Phillip M.J. Reckers, Professor of Accountancy, Arizona State University, 67–69), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/02042008/Reckers020408.pdf* (noting the financial disincentives associated with sabbaticals).

plan and commitment of support at the highest institutional levels.

Specifically, the Committee recommends that educational institutions, auditing firms, corporations, federal and state regulators, and others engage in a two-fold strategy to both encourage cross-sabbaticals and eliminate financial or career disincentives for participating in such experiences. Further, the Committee recommends that university administrators place as high a value on professional sabbaticals for purposes of promotion and tenure for research and scholarly publication.

The Committee also recommends that accrediting agencies establish an expectation that at least one full-time member per year of each accounting faculty group participate in a sabbatical with a private sector or a governmental entity. Auditing firms, corporations, government agencies, and universities should be expected to provide these opportunities with the elimination of any financial disincentives. Further, the Committee recommends expanding faculty fellowship programs in agencies, such as those at the SEC and the FASB, and making them available at the PCAOB. The successful long-term operation of these programs at the SEC and the FASB and the application of appropriate conflict-of-interest and recusal rules have demonstrated that these programs can be maintained and expanded while protecting against conflicts of interest.

(c) Create a variety of tangible and sufficiently attractive incentives that will motivate private sector institutions to fund both accounting faculty and faculty research, to provide practice materials for academic research and for participation of professionals in behavioral and field study projects, and to encourage practicing accountants to pursue careers as academically and professionally qualified faculty.

As discussed above, there are concerns about the adequate supply of accounting faculty and about the need to have faculty who can inject more practical experience into classroom learning. Currently, there are few specific financial incentives encouraging private sector funding of accounting doctoral faculty or sponsoring of professional accountants to teach at educational institutions. Nonetheless, the Committee notes that the profession recognizes the need to support initiatives to increase faculty and is currently directing its efforts to raise funds for such a new initiative.[67]

The Committee also heard from several witnesses regarding the unavailability of data relating to auditing practice and the impact this lack of data has on research and potentially on the profession's sustainability. In particular, witnesses stated that the decline in auditing research materials, including archival or experimental data will lead to a further decline in faculty and doctoral students specializing in auditing.[68] Since educational institutions normally require publications in top tier journals for promotion or tenure, faculty and doctoral students will conduct research in accounting areas where data are prevalent.

The Committee also heard that encouraging more professionally qualified and experienced faculty will foster a stronger relationship between academia and the profession.[69] Currently, there exists a need for more interaction between academia and the profession.[70] Encouraging practicing accountants to pursue careers as academically and professionally qualified faculty would bring practical business experience to classrooms so that students are better prepared to perform quality audits in the dynamic business environment.

Finally, the Committee recommends that Congress pass legislation creating a variety of tangible incentives for private sector institutions to establish support for accounting and auditing faculty and faculty research, to facilitate access to research data and individuals, and to sponsor transition of professional accountants from practice to teaching positions. These incentives must be sufficiently attractive to companies and auditing firms to effect rapid behavioral change, and should avoid cumbersome levels of administration. The Committee believes that these incentives would provide the necessary impetus to private sector institutions to help increase the number of accounting faculty as well as faculty with significant practical experience.

Recommendation 4. Develop and maintain consistent demographic and higher education program profile data.

The Committee heard testimony regarding the lack of consistent demographic and higher education program profile data concerning the profession.[71] The need for comparable, consistent, periodic information regarding the demographic profile of professional accountants and auditors, related higher education program capacity, entry-level supply and demand of personnel, accounting firm retention and compensation practices, and similar particulars are fundamental to a meaningful understanding of the human capital circumstances which affect the public company auditing profession and its future and sustainability.

Historically, there has been neither an ongoing collection of data nor a centralized location where the general public can access data. For instance, the AICPA publishes a supply and demand study every two years. Additionally, various other groups, such as the AAA, NASBA, colleges and universities, and individuals collect some of these data but not in a manner available and useful for research.

Materials such as those supplied by the Center for Audit Quality to the Committee,[72] previous AICPA Supply and Demand studies[73] and AAA-commissioned demographic research[74] provide examples of

[67] See Record of Proceedings (Feb. 4, 2008) (Written Submission of Cynthia Fornelli, Executive Director, Center for Audit Quality, 2), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/02042008/Fornelli020408.pdf* (stating that ''[b]ecause of the profession's concern over the shortage of qualified faculty to teach accounting, the AICPA Foundation, along with the 80 largest CPA firms, are working to raise more than $17 million to fund additional PhD candidates at participating universities'').

[68] See, e.g., Record of Proceedings (Dec. 3, 2007) (Written Submission of Joseph V. Carcello, Director of Research, Corporate Governance, University of Tennessee, Knoxville, 21), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/12032007/Carcello120307.pdf* (''[D]octoral students in * * * [a 2007] Deloitte [Foundation] study indicated that lack of access to public accounting firm and client data represented a severe obstacle to the research they want to conduct, and that this difficulty might result in them focusing on a different accounting sub-area. This issue must be addressed, or auditing may cease to exist as a discipline on many university campuses.''); Record of Proceedings (Feb. 4, 2008) (Written Submission of Phillip M.J. Reckers, Professor of Accountancy, Arizona State University, 8), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/02042008/Reckers020408.pdf* (recommending the development of a means ''for researchers to gain access to auditing related data'' and noting, without this means, interest in doctoral auditing programs will continue to decline); Record of Proceedings (Dec. 3, 2007) (Written Submission of Ira Solomon, R.C. Evans Distinguished Professor, and Head, Department of Accountancy, University of Illinois, 7), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/12032007/Solomon120307.pdf* (noting the lack of auditing research data and the ''drastic decline in auditing research among extant accountancy faculty and among accountancy doctoral students'').

[69] Record of Proceedings (Feb. 4, 2008) (Written Submission of Cynthia Fornelli, Executive Director, Center for Audit Quality, 2), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/02042008/Fornelli020408.pdf*.

[70] Record of Proceedings (Feb. 4, 2008) (Written Submission of Phillip M.J. Reckers, Professor of Accountancy, Arizona State University, 19), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/02042008/Reckers020408.pdf*.

[71] See e.g., Record of Proceedings (Dec. 3, 2007) (Questions for the Record of David A. Costello, President and Chief Executive Officer, National Association of State Board of Accountancy, 2–4 (Feb. 6, 2008)), *available at http://www.treas.gov/offices/domestic-finance/acap/QFRs-12-3-07.pdf* (stating that ''[s]ince 1970, * * * NASBA and the AICPA have recognized the need for a national database for Certified Public Accountants and have taken steps leading to the development of the database * * * [c]urrently, NASBA is not aware of a mechanism or database which would provide an accurate count of CPAs, without the effect of 'double counting.' ''); Julia Grant, *Demographic Challenges Facing the CPA Profession*, 20 Research in Accounting Regulations 5 (2007) (forthcoming); Record of Proceedings (Dec. 3, 2007) (Written Submission of Ira Solomon, R.C. Evans Distinguished Professor, and Head, Department of Accountancy, University of Illinois, 13), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/12032007/Solomon120307.pdf* (noting the lack of comprehensive accounting profession supply and demand data and recommending the ''establishment of a continuous and comprehensive system that produces more timely and reliable supply and demand data'').

[72] Center For Audit Quality, Report of the Major Public Company Audit Firms to the Department of the Treasury Advisory Committee on the Auditing Profession (Jan. 23, 2008).

[73] Beatrice Sanders and Leticia B. Romeo, The Supply of Accounting Graduates and the Demand for Public Accounting Recruits—2005: For Academic Year 2003–2004 (2005), *available at http://ceae.aicpa.org/NR/rdonlyres/11715FC6-F0A7-4AD6-8D28-6285CBE77315/0/Supply_DemandReport_2005.pdf*.

[74] David Leslie, Accounting Faculty in U.S. Colleges and Universities: Status and Trends, 1993–2004, A Report of the American Accounting Association (Feb. 19, 2008).

the necessary information. In addition, AICPA membership trends, augmented by data available from state boards of accountancy regarding numbers of licensees, may be useful data.

Therefore, the Committee recommends the establishment of a national cooperative committee, comprised of organizations such as the AICPA and the AAA, to encourage periodic consistent demographic and higher education program profile data. The Committee believes that having such data available will increase the ability of auditing firms, corporations, investors, academics, policy makers, and others to understand more fully, monitor and evaluate, and take necessary or desirable actions with respect to the human capital in the auditing profession and its future and sustainability.

Recommendation 5. Encourage the AICPA and the AAA to jointly form a commission to provide a timely study of the possible future of the higher education structure for the accounting profession.

The Committee heard testimony regarding the feasibility of establishing a free-standing, post-graduate professional educational structure.[75] Currently, there is no post-graduate institutional arrangement dedicated to accounting and auditing. Graduate programs in accounting are generally housed within business schools and linked with undergraduate accounting programs.

The history of the development of U.S. educational programs and preparation for accounting careers reveals a pattern of evolution of increasing formal higher education, with accreditation standards following and reinforcing this evolution, and with market needs providing the impetus and context. Today, accrediting agencies have recognized over 150 accounting programs as the result of these programs' improving accounting education as envisioned by prior studies and reports.

In a November 2006 Vision Statement, the chief executive officers of the principal international auditing networks noted the challenges in educating future auditing professionals, including the sheer quantity and complexity of accounting and auditing standards, rapid technological advancements, and the need for specialized industry knowledge.[76] This development in the market leads to a clear need to anticipate and enhance the human capital elements of the auditing profession. As such, this vision statement provides the impetus to commission a group to study and propose a long-term institutional arrangement for accounting and auditing education.

As in the past, in the face of challenges of the changing environment for the profession, the Committee believes that the educational system should thoughtfully consider the feasibility of a visionary educational model. Therefore, the Committee recommends that the AICPA and the AAA jointly form a body to provide a timely study of the possible future of the higher education structure for the accounting profession. This commission may include representation from higher education, practitioners from the wide spectrum of the accounting and auditing profession, regulators, preparers, users of the profession's services, and others. The commission would consider the potential role of a postgraduate professional school model to enhance the quality and sustainability of a vibrant accounting and auditing profession. The commission should consider developments in accounting standards and their application, auditing needs, regulatory framework, globalization, the international pool of candidates, and technology. Finally, a blueprint for this sort of enhanced professional educational structure would also require the consideration of long-term market circumstances, academic governance, operations, programs, funding and resources, the role of accreditation, and experiential learning processes.

Other Issues Under Consideration

The Committee is also considering and debating a variety of other issues. Further elaboration on these issues will be included in subsequent drafts of this Report.

VI. Firm Structure and Finances

In addressing the sustainability of the auditing profession, the Committee sought input on and considered a number of matters relating directly to auditing firms, including audit quality, governance, transparency, global organization, financial strength, ability to access capital, the investing public's understanding of auditors' responsibilities and communications, the limitations of audits, particularly relating to fraud detection and prevention, as well as the effect of litigation where audits are alleged to have been ineffective. The Committee also considered the regulatory system applicable to auditing firms.

While much data was available to the Committee, such information was not exhaustive. Certain information regarding auditors of public companies, the auditor of record, and audit fees is readily available. Auditing firms also provide on a voluntarily basis certain other information they believe useful to clients, regulators, and/or investors. Also, in connection with the work of the Committee, the largest firms provided certain additional input, through the Center for Audit Quality (CAQ), sometimes by individual firm and sometimes in summarized format.[77]

After reviewing these data and receiving testimony from witnesses and comment letters, the Committee focused on a few specific areas: Fraud prevention and detection; federal and state regulatory system; governance; and disclosure of auditor changes.

The Committee recommends that regulators, the auditing profession, and others, as applicable, effectuate the following:

Recommendation 1. Strengthen auditing firms' fraud detection and prevention skills and clarify communications with investors regarding auditing firms' fraud detection responsibilities.

Public Company Accounting Oversight Board (PCAOB) standards currently require auditors to plan and perform audits to obtain reasonable assurance whether financial statements are free of material misstatement, including those caused by fraud.[78] The Committee considered testimony and commentary regarding auditing firms' responsibilities and practices relating to fraud prevention and detection.[79] The auditing profession itself has recognized the significance of its duties with respect to fraud: ''Perhaps no single issue is the subject of more confusion, yet is more important, than the nature of the obligation of auditors to detect fraud—or intentional material misstatement of financial information by public companies.'' [80]

The Committee believes that continued enhancement of auditors' fraud prevention and detection skills will improve financial reporting and audit quality and enhance investor confidence in financial reporting and the auditing function. In that regard, the Committee recommends the following:

(a) Urge the creation of a national center to facilitate auditing firms' and other market participants' sharing of fraud prevention and detection experiences, practices, and data and innovation in fraud prevention and detection methodologies and technologies, and commission research and other fact-finding regarding fraud prevention and detection, and further, the development of best practices regarding fraud prevention and detection.

No formal forum currently exists where auditors and other market participants

[75] See e.g., Record of Proceedings (Dec. 3, 2007) (Oral Submission of Joseph V. Carcello, Director of Research, Corporate Governance, University of Tennessee, Knoxville, 3), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/12032007/CarcelloOral Statement120307.pdf* (recommending that ''the Advisory Committee consider a different model—an education model involving professional schools of auditing * * * ''); Record of Proceedings (Feb. 4, 2008) (Written Submission of Phillip M.J. Reckers, Professor of Accountancy, Arizona State University, 3), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/02042008/Reckers020408.pdf* (discounting the feasibility of free-standing professional schools).

[76] Global Capital Markets and the Global Economy: A Vision From the CEOs of the International Audit Networks 15 (Nov. 2006).

[77] Center For Audit Quality, Report of the Major Public Company Audit Firms to the Department of the Treasury Advisory Committee on the Auditing Profession (Jan. 23, 2008); Center for Audit Quality, Second Supplement to Report of the Major Public Company Audit Firms to the Department of the Treasury Advisory Committee on the Auditing Profession (Apr. 16, 2008).

[78] Consideration of Fraud in a Financial Statement, Interim Auditing Standard AU 316 (Pub. Company Accounting Oversight Bd. 2002).

[79] See, e.g., Andrew D. Bailey, Jr., Professor of Acountancy-Emeritus, University of Illinois, and Senior Policy Advisor, Grant Thornton LLP, Comment Letter Regarding Discussion Outline 4 (Jan. 30, 2008), *available at http://comments.treas.gov/_files/BAILEYCOMMENTS ONTREASURYADVISORYCOMMITTEEOUTLINE FINALSUBMISSION13008.doc*; Record of Proceedings (Feb. 4, 2008) (Written Submission of Dennis Johnson, Senior Portfolio Manager, Corporate Governance, California Public Employees' Retirement System, 5), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/02042008/Johnson020408.pdf.*

[80] Serving Global Capital Markets and the Global Economy: A View from the CEOs of the International Audit Networks 12 (Nov. 2006).

regularly share their views and experiences relating to fraud prevention and detection in the context of fraudulent financial reporting. The Committee received testimony that it would improve audit quality and benefit the capital markets and investors and other financial statement users for auditing firms to share their fraud detection experiences [81] and to develop best practices relating to fraud prevention and detection.[82]

The Committee believes that a collective sharing of fraud prevention and detection experiences among auditors and other market participants will provide a broad view of auditor practices and ultimately improve fraud prevention and detection capabilities and enable the development of best practices. The Committee also believes that research into industry trends and statistics will help auditors focus and develop procedures to identify areas and situations at greater risk for fraud. The Committee believes that best practices regarding fraud prevention and detection will enhance the internal processes and procedures of auditing firms.

The Committee recommends the creation of a national center both to facilitate auditing firms' sharing of fraud prevention and detection experiences, practices, and data and innovation in fraud prevention and detection methodologies and technologies and to commission research and other fact-finding regarding fraud prevention and detection. The Committee also recommends that the auditing firms, forensic accounting firms, certified fraud examiners, investors, other financial statement users, public companies, and academics develop, in consultation with the PCAOB, the Securities and Exchange Commission (SEC), international regulators, and the National Association of State Boards of Accountancy (NASBA), best practices regarding fraud prevention and detection. The Committee also recognizes that a national center and best practices will have greater impact if these concepts are ultimately extended and embraced internationally.

(b) Urge that the PCAOB and the SEC clarify in the auditor's report the auditor's role in detecting fraud under current auditing standards and further that the PCAOB periodically review and update these standards.

The Committee considered testimony and commentary regarding a long-standing ''expectations gap'' between the public's expectations regarding auditor responsibility for fraud detection and the auditor's required and capable performance of fraud detection.[83] The public may believe that auditors will detect more fraud than those in the profession believe can be reasonably expected. This belief may be unreasonable in some circumstances given the difficulties of detecting fraud, especially before it has resulted in a material misstatement. On the other hand, public investors have raised questions when large frauds have gone undetected. The auditing standard governing fraud detection, AU Section 316, *Consideration of Fraud in a Financial Statement Audit*, notes that fraud may involve deliberate concealment and collusion with third parties.[84] AU Section 316 states that the ''auditor has a responsibility to plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether caused by error or fraud.'' This gap between public expectation and the auditor's performance causes confusion and ultimately undermines investor confidence in financial reporting and the capital markets.

Commentary has suggested that auditors must more effectively communicate their responsibility regarding fraud detection and prevention with investors and the capital markets. The Committee agrees with this suggestion. Accordingly, the Committee believes that the auditor's report should articulate clearly to investors the auditor's role and limitations in detecting fraud. The Committee believes that expressly communicating to investors, other financial statement users, and the public the role of auditors in fraud detection would help narrow the ''expectations gap.''

The Committee recommends that the PCAOB and the SEC clarify in the auditor's report the auditor's role and limitations in detecting fraud under current auditing standards. In addition, the Committee recommends, in light of this continuing ''expectations gap,'' that the PCAOB review the auditing standards governing fraud detection and fraud reporting. Specifically, the Committee recommends that the PCAOB periodically review and update these standards.

Recommendation 2. Encourage greater regulatory cooperation and oversight of the public company auditing profession to improve the quality of the audit process and enhance confidence in the auditing profession and financial reporting.

The SEC, the PCAOB, and individual state boards of accountancy regulate the auditing profession. The SEC and the PCAOB enforce the securities laws and regulations addressing public company audits. Individual state accountancy laws in 55 jurisdictions in the United States govern the licensing and regulation of both individuals and firms who practice as certified public accountants.[85] State boards of accountancy enforce these laws and also administer the Uniform CPA Examination. NASBA serves as a forum for these boards to enhance their regulatory effectiveness and communication.

The Committee believes that enhancing regulatory cooperation and reducing duplicative oversight of the auditing profession by federal and state authorities and enhancing licensee practice mobility among the states are in the best interest of the public and the effective operation of the capital markets. In this regard, the Committee recommends the following:

(a) Institute the following mechanism to encourage the states to substantially adopt the mobility provisions of the Uniform Accountancy Act, Fifth Edition (UAA): [86] If states have failed to adopt the mobility provisions of the UAA by December 31, 2010, Congress should pass a federal provision requiring the adoption of these provisions.

The American Institute of Certified Public Accountants (AICPA) and NASBA jointly author the UAA, a model bill which focuses on the education, examination, and experience requirements for certified public accountants. As the name of the bill suggests, the UAA advances the goal of uniformity, in addition to protecting the public interest and promoting high professional standards. In 2006 and 2007, recognizing the changing global economy and the impact of electronic commerce, the AICPA and NASBA proposed amendments to the UAA to allow for a streamlined framework for CPA ''mobility'' of

[81] See, e.g., Record of Proceedings (Feb. 4, 2008) (Questions for the Record of Cynthia M. Fornelli, Executive Director, Center for Audit Quality, 6 (Mar. 31, 2008)), *available at http://www.treas.gov/offices/domestic-finance/acap/agendas/QFRs-2-4-08.pdf*; Record of Proceedings (Dec. 3, 2007) (Written Submission of James S. Turley, Chairman and Chief Executive Officer, Ernst & Young LLP, 7), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/12032007/Turley120307.pdf*.

[82] See, e.g., Record of Proceedings (Feb. 4, 2008) (Written Submission of Edward E. Nusbaum, Chief Executive Officer, Grant Thornton LLP, and Chairman, Grant Thornton International Board of Governors, 10), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/02042008/Nusbaum020408.pdf* (stating that ''[s]uccess also requires that the profession work with standard setters and regulators to develop best practices and the infrastructure for effective audits designed to detect material financial fraud'').

[83] See, e.g., Andrew D. Bailey, Jr., Professor of Accountancy—Emeritus, University of Illinois, and Senior Policy Advisor, Grant Thornton LLP, Comment Letter Regarding Discussion Outline 4 (Jan. 30, 2008), *available at http://comments.treas.gov/_files/BAILEYCOMMENTSONTREASURYADVISORYCOMMITTEEOUTLINEFINALSUBMISSION13008.doc* (stating that ''[i]f the discovery of material errors and fraud is not a major part of what the audit is about, it is not clear what value-added service the auditor offers the investor and capital markets''); Record of Proceedings (Feb. 4, 2008) (Questions for the Record of Cynthia M. Fornelli, Executive Director, Center for Audit Quality, 5 (Mar. 31, 2008)), *available at http://www.treas.gov/offices/domestic-finance/acap/agendas/QFRs-2-4-08.pdf* (''While auditors provide reasonable assurance that fraud material to the financial statements will be detected, they cannot be expected to provide absolute assurance that all material fraud will be found. Cost-benefit constraints and the lack of governmental subpoena and investigative powers, among other factors, make absolute assurance impossible.''); Record of Proceedings (Feb. 4, 2008) (Written Submission of Dennis Johnson, California Public Employees' Retirement System, 5), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/02042008/Johnson020408.pdf* (stating that ''[o]f critical importance to investors is the responsibility of auditors to detect fraud and improve the timely communication of these frauds to investors and shareowners.''); Serving Global Capital Markets and the Global Economy: A View from the CEOs of the International Audit Networks 12 (Nov. 2006) (''Nonetheless, there is a significant 'expectations gap' between what various stakeholders believe auditors should do in detecting fraud, and what audit networks are actually capable of doing, at the prices that companies or investors are willing to pay for audits.'').

[84] Consideration of Fraud in a Financial Statement, Interim Auditing Standard AU 316 (Pub. Company Accounting Oversight Bd. 2002).

[85] Record of Proceedings (Dec. 3, 2007) (Written Submission of David A. Costello, President and Chief Executive Officer, National Association of State Board of Accountancy, 2), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/12032007/Costello120307.pdf*.

[86] Uniform Accountancy Act (Fifth Ed. July 2007).

practice among the states; that is, a CPA's practice privileges would be valid and portable across all state jurisdictions beyond that of the CPA's resident state.[87]

According to NASBA, to date twenty-two states have passed mobility legislation. Twelve other states currently have mobility legislation introduced and other bills are anticipated in the 2008 legislative session. Almost every state is now discussing or considering mobility, and a number of other state boards of accountancy have voted to support and move forward with mobility.

The Committee considered testimony and commentary on the importance to auditing firms' multi-state practices of the adoption of the UAA's mobility provisions.[88] A NASBA representative testified, ''In order for our capital market system to continue to prosper and grow, NASBA recognized the need to ensure that an efficient, effective mobility system is in place that will allow CPAs and their firms, as professional service providers, to serve the needs of American businesses, where ever they are located.'' [89]

The Committee believes that, given the multi-state operations of many public companies and the multi-state practices of many auditing firms, practice mobility will foster a more efficient operation of the capital markets. The Committee recommends the following mechanism to encourage the states to adopt the UAA's mobility provisions: If states have failed to adopt the mobility provisions of the UAA by December 31, 2010, Congress should pass a federal provision requiring the adoption of these provisions. The Committee recognizes that some state legislatures meet biannually, and for such legislatures this deadline poses a challenge. However, such a deadline should be attainable and will encourage such legislatures to place this issue high on their agenda. The Committee also recommends that the states participate in NASBA's Accountancy Licensee Database (ALD) as a mechanism to assist in maintaining appropriate oversight of CPAs throughout the country regardless of where they practice and that appropriate authorities interpret federal and state privacy regulations to facilitate implementation of the ALD.

(b) Require regular and formal roundtable meetings of regulators and other governmental enforcement bodies in a cooperative effort to improve regulatory effectiveness and reduce the incidence of duplicative and potentially inconsistent enforcement regimes.

Under the federal securities laws, the SEC has enforcement authority over public company auditing firms and oversight authority over the PCAOB under the Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley). Sarbanes-Oxley provides the PCAOB with registration, reporting, inspection, standard-setting, and enforcement authority over public company auditing firms.[90] In addition, the fifty-five boards of accountancy license, regulate, and enforce state accountancy laws pertaining to certified public accountants and their firms. In addition, the Department of Justice (DOJ) and state attorneys general can bring enforcement actions against auditing firms and their employees.

The Committee considered testimony from auditing firms on the duplicative and sometimes inconsistent federal and state oversight of the profession.[91] The Committee does recognize that both federal and state regulators have made attempts to coordinate better their enforcement activities.[92] One witness suggested the possible formation of a commission to help improve regulatory effectiveness.[93] Another witness urged state and federal regulatory cooperation to ensure harmonized regulation and licensure.[94]

The Committee recommends mandating regular and formal roundtables of the PCAOB, the SEC, the DOJ, the state boards of accountancy, and the state attorneys general, to periodically review the overall enforcement regimes applicable to the public company auditing profession. These roundtables also should focus on regulatory coordination, improvement, and consistent approaches to enforcement to minimize duplicative efforts. Because of the difficulty and cost of bringing together many different state agencies on a regular basis, the Committee recommends that NASBA assist states by taking a leadership role in coordinating their responsibilities and interests.

(c) Urge the states to create greater financial and operational independence of their state boards of accountancy.

The Committee is concerned about the financial and operational independence of state boards of accountancy from outside influences, such as other state agencies, and the possible effect on the regulation and oversight of the accounting profession. A number of state boards are under-funded [95] and lack the wherewithal to incur the cost of investigations leading to enforcement. In addition, some state boards fall under the centralized administrative ''umbrella'' of other state agencies and lack control of financial resources and/or operational independence necessary to carry out their mandate of public protection.[96] In some

[87] See Record of Proceedings (Dec. 3, 2007) (Questions for the Record of David A. Costello, President and Chief Executive Officer, National Association of State Board of Accountancy, 1 (Feb. 6, 2008)), *available at http://www.treas.gov/offices/domestic-finance/acap/QFRs-12-3-2007.pdf* (''As the global business community continues to expand, CPAs will be required to practice beyond the state in which they reside. Inefficiencies are created when those individuals are required to complete paperwork and submit a fee for every state in which they perform professional services.'').

[88] See, e.g., Amper, Politziner and Mattia, P.C., Comment Letter Regarding Discussion Outline 2 (Nov. 14, 2007) *available at http://comments.treas.gov/_files/AmperPolitzinerMattia.pdf* (noting that ''[t]he ease of performing audits in any state by a valid CPA * * * without requiring to be licensed by each state would be beneficial.''); Record of Proceedings (Dec. 3, 2007) (Written Submission of Dennis Nally, Chairman and Senior Partner, Pricewaterhouse Coopers LLP, 5) (Dec. 3, 2008), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/12032007/Nally120307.pdf* (noting that a number of states are cooperating and working towards adopting uniform mobility requirements); Record of Proceedings (Dec. 3, 2007) (Written Sumission of James S. Turley, Chairman and Chief Executive Officer, Ernst & Young LLP, 5), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/12032007/Turley120307.pdf* (''The Treasury Committee should suggest that the states eliminate barriers to interstate practice by universal adoption of the mobility provisions of the Uniform Accountancy Act.'').

[89] Record of Proceedings (Dec. 3, 2007) (Written Submission of David A. Costello, President and Chief Executive Officer, National Association of State Board of Accountancy, 6), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/12032007/Costello120307.pdf.*

[90] Sarbanes-Oxley Act of 2002, 15 U.S.C. §§ 7211–7219.

[91] See, e.g., Record of Proceedings (Dec. 3, 2007) (Written Submission of Dennis Nally, Chairman and Senior Partner, PricewaterhouseCoopers LLP, 5), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/12032007/Nally120307.pdf*; Record of Proceedings (Feb. 4, 2008) (Written Submission of Edward E. Nusbaum, Chief Executive Officer, Grant Thornton LLP, and Chairman, Grant Thornton International Board of Governors, 7), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/02042008/Nusbaum020408.pdf*; Record of Proceedings (Feb. 4, 2008) (Questions for the Record of Barry Salzberg, Chief Executive Officer, Deloitte LLP, App. A 4 (Mar. 31, 2008)), *available at http://www.treas.gov/offices/domestic-finance/acap/agendas/QFRs-2-4-08.pdf* (criticizing duplicative auditing firm investigations by states with no nexus to alleged conduct).

[92] See, e.g., Record of Proceedings (Dec. 3, 2007) (Oral Remarks of David A. Costello, President and Chief Executive Officer, National Association of State Board of Accountancy, 98), *available at http://www.treas.gov/offices/domestic-finance/acap/agendas/minutes-12-3-07.pdf* (noting that ''[NASBA] has been working with the PCAOB very closely coordinating efforts, trying to diminish as much as possible the redundancy in enforcement'') Record of Proceedings (Dec. 3, 2007) (Written Submission of David A. Costello, President and Chief Executive Officer, National Association of State Board of Accountancy, 6), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/12032007/Costelllo120307.pdf* (stating that NASBA is assisting state boards in enforcement cases involving multi-state activities).

[93] Record of Proceedings (Feb. 4, 2008) (Written Submission of Edward E. Nusbaum, Chief Executive Officer, Grant Thornton LLP, and Chairman, Grant Thornton International Board of Governors, 7), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/02042008/Nusbaum020408.pdf* (noting that, ''it would be useful to evaluate the possibility of an interstate commission for the whole of the audit profession. Such a commission would bring together state licensing authorities, the PCAOB, and appropriate professional organizations. It would be the means to rationalize existing disparities in licensing qualifications, continuing education requirements and peer review for non-public company audit practices. It would also enable enforcement of common regulations and license discipline across state and federal jurisdictions.'').

[94] Record of Proceedings (Dec. 3, 2007) (Written Submission of Dennis Nally, Chairman and Senior Partner, PricewaterhouseCoopers LLP, 5), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/12032007/Nally120307.pdf.*

[95] National Association of State Boards of Accountancy, Submission in Connection with the December 3, 2007 Meeting of the Advisory Committee on the Auditing Profession (Jan. 2008) (documenting the wide spectrum of funding for individual state boards of accountancy and noting the number of full-time staff per state boards of accountancy office).

[96] Statement of Ronald J. Rotaru, Executive Director, Accountancy Board of Ohio, before Ohio

cases, board members are nominated by private associations whose constituencies are not necessarily focused on the protection of the public.

The Committee believes that greater independence of state boards of accountancy would enhance their regulatory effectiveness. The Committee recommends that, working with NASBA, states evaluate and develop means to make their respective state boards of accountancy more operationally and financially independent of outside influences. The Committee notes that this Recommendation to ensure the independence of state boards of accountancy is not meant to limit in any way the efforts of regulators and other governmental enforcement bodies to coordinate their regulatory and enforcement activities as recommended in Recommendation 2(b).

Recommendation 3. Urge the PCAOB and the SEC, in consultation with other federal and state regulators, auditing firms, investors, other financial statement users, and public companies, to analyze, explore, and enable, as appropriate, the possibility and feasibility of firms appointing independent members with full voting power to firm boards and/or advisory boards with meaningful governance responsibilities to improve governance and transparency at auditing firms.

In response to the recent corporate accounting scandals, related legislative and regulatory requirements and best practices, public companies enhanced their corporate governance. One of the most prominent alterations to the corporate governance scheme was the increased representation and strengthening of independent members of boards of directors. The New York Stock Exchange and the Nasdaq enhanced their public company listing standards to call for a majority of independent board members.[97] Best practices have gone even further, calling for a ''substantial majority'' of independent directors.[98]

A combination of Sarbanes-Oxley provisions and exchange listing standards mandate fully independent audit committees, nominating/corporate governance, and compensation committees.[99] In addition, independent directors' responsibilities have increased. For example, the independent audit committee now appoints, oversees, and compensates the auditor.[100] Although difficult to quantify the benefits of these enhancements, many have extolled these reforms as improving the quality of board oversight, reducing conflicts of interest, and enhancing investor confidence in public company operations and financial reporting.[101]

Public company auditing firms as private partnerships are not subject to these requirements. Instead, state laws and partnership agreements determine the governance of auditing firms.[102] Often a firm's governing body is comprised of elected firm partners.[103] Some firms are currently using advisory boards, although these may not be well-publicized or transparent.

Several witnesses testified to the benefits of improving auditing firm governance and suggested the addition of independent members to the boards of directors.[104] One witness called for an entirely independent board with enhanced responsibilities, including chief executive officer selection, determining partner compensation, and monitoring potential conflicts of interest and audit quality.[105] An auditing firm representative noted that his firm was considering adding independent members on its international governing board.[106]

The Committee believes that enhancing corporate governance of auditing firms through the appointment of independent board members, whose duties run to the auditing firm and its partners/owner, to advisory boards with meaningful governance responsibilities (possible under the current business model), and/or to firm boards could be particularly beneficial to auditing firm management and governance.[107] The Committee also believes that such advisory boards and independent board members could improve investor protection through enhanced audit quality and firm transparency. The Committee is particularly intrigued by the idea of independent board members with duties and responsibilities similar to those of public company non-executive board members.

The Committee recognizes the multiple challenges that instituting a governance structure with independent board members might entail, including compliance with state partnership laws and independence requirements, insurance availability for such directors, and liability concerns. Accordingly, the Committee recommends that the PCAOB and the SEC, in consultation with federal and state regulators, auditing firms, investors, other financial statement users, and public companies, analyze, explore, and enable, as appropriate, the possibility and feasibility, within the current context of independence requirements and the liability regime, of firms' appointing independent board members and advisory boards. The Committee notes that the PCAOB and the SEC should consider the size of auditing firms in analyzing and developing any governance proposals.

Recommendation 4. Urge the SEC to amend Form 8–K disclosure requirements to characterize appropriately and report every

H. Finance Committee of the Ohio House of Representatives 1 (Mar. 18, 2005) (''The evidence shows that 'consolidated' states have difficulty in effectively enforcing the statutes governing the profession under their central agency umbrella.'').

[97] New York Stock Exchange, Listed Company Manual § 303A.01 (2003); Nasdaq, Manual, Rule 4350(c).

[98] See, e.g., The Business Roundtable, Principles of Corporate Governance (May 2002) (recommending, among other things, a substantial majority of independent directors and fully independent audit, corporate governance/nominating, and compensation committees); The Conference Board, Commission on Public Trust and Private Enterprise (Jan. 9, 2003) (recommending, among other things, a substantial majority of independent directors and regular executive sessions of the independent directors).

[99] Sarbanes-Oxley Act, 15 U.S.C. § 78–j (2002) (mandating audit committees comprised solely of independent directors); New York Stock Exchange, Listed Company Manual § 303A.04 (2004) (requiring nominating/corporate governance committees comprised solely of independent directors); New York Stock Exchange, Listed Company Manual § 303A.05 (2004) (requiring compensation committees comprised solely of independent directors); New York Stock Exchange, Listed Company Manual § 303A.06 (2003) (mandating compliance with SEC rules requiring audit committees comprised solely of independent directors); Nasdaq, Manual, Rule 4350(d) (mandating compliance with SEC rules requiring audit committees comprised solely of independent directors). Note that the Nasdaq listing standards do not require the existence of nominating/corporate governance committees and compensation committees.

[100] Sarbanes-Oxley Act, 15 U.S.C. § 78–j (2002).

[101] For example, see the commentary accompanying New York Stock Exchange, Listed Company Manual § 303A.01 (''Requiring a majority of independent directors will increase the quality of board oversight and lessen the possibility of damaging conflicts of interest.'').

[102] Center For Audit Quality, Report of the Major Public Company Audit Firms to the Department of the Treasury Advisory Committee on the Auditing Profession 2 (Jan. 23, 2008).

[103] Center For Audit Quality, Report of the Major Public Company Audit Firms to the Department of the Treasury Advisory Committee on the Auditing Profession 2–22 (Jan. 23, 2008) (detailing the various governance structures of the largest six auditing firms); Cynthia M. Fornelli, Executive Director, Center for Audit Quality, and James S. Turley, Chair, Governing Board, Center for Audit Quality, and Chairman and CEO, Ernst & Young LLP, Comment Letter Regarding Discussion Outline 13 (Nov. 30, 2007), *available at http://comments.treas.gov/_files/Treasurycomment letterfinal11302007.pdf* (noting the largest auditing firms have supervisory boards overseeing management).

[104] See, e.g., Andrew D. Bailey, Jr., Professor of Accountancy-Emeritus, University of Illinois, and Senior Policy Advisory, Grant Thornton LLP, Comment Letter Regarding Discussion Outline 12 (Jan. 30, 2008), *available at http://comments.treas.gov/_files/BAILEYCOMMENTSONTREASURY ADVISORYCOMMITTEEOUTLINEFINALSUBMISSION13008* (''[I]ndependent board members similar to those found on public company boards would be a good governance practice and would signal the markets about the firms' positive commitment to the public good.''); Record of Proceedings (Feb. 4, 2008) (Written Submission of Dennis Johnson, Senior Portfolio Manager, Corporate Governance, California Public Employees' Retirement System, 3), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/02042008/Johnson020408.pdf* (stating that independent board of directors could possibly decrease potential conflicts of interest).

[105] Record of Proceedings (Feb. 4, 2008) (Written Submission of Paul G. Haaga Jr., Vice Chairman, Capital Research and Management Company, 2), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/02042008/Haaga020408.pdf*.

[106] Record of Proceedings (Feb. 4, 2008) (Written Submission of Edward E. Nusbaum, Chief Executive Officer, Grant Thornton LLP, and Chairman, Grant Thornton International Board of Governors, 7), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/02042008/Nusbaum020408.pdf*.

[107] Record of Proceedings (Feb. 4, 2008) (Written Submission of Edward E. Nusbaum, Chief Executive Officer, Grant Thornton LLP, and Chairman, Grant Thornton International Board of Governors, 7), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/02042008/Nusbaum020408.pdf* (''Such a change in the governance model may be one way to strengthen our ability to serve market participants and reinforce independence.'').

public company auditor change and to require auditing firms to notify the PCAOB of any premature engagement partner changes on public company audit clients.

In 2006, over 1,300 public companies changed their auditor and from 2002 to 2006 over 6,500 public companies changed their auditor.[108] Under current SEC regulations, a public company must disclose any auditor change on Form 8–K.[109] SEC regulations require disclosure of any disagreements on financial disclosures during the preceding two years prior to the resignation and whether some issue, such as the auditor's inability to rely on management's representations, may put into question financial disclosure reliability. SEC regulations also allow a public company to request that the auditor respond with a letter addressed to the SEC stating whether it agrees with the company's disclosure and, if it does not agree, stating why.

While the SEC does attempt to uncover through its rules whether the auditor change relates to disagreements over accounting and reporting matters, the SEC rules do not require a public company to provide a reason for the auditor's departure in the vast majority of cases. The limitations of the existing disclosure requirements have resulted in companies failing to disclose any reason for their auditor changes in approximately 70% of the more than 1,300 auditor changes occurring in 2006.[110]

The Committee considered testimony and commentary regarding the lack of clear disclosure surrounding auditor changes. Testimony and commentary viewed the lack of transparency surrounding auditor changes as detrimental to investor confidence in financial reporting. [111] Testimony and commentary suggested greater transparency regarding auditor changes would compel audit committees to more closely evaluate auditor selection decisions and lead to greater competition in the audit market.[112]

The Committee believes that explicitly stating the reason for an auditor change will assist investors in determining the quality of financial reporting and subsequent investment decisions. The Committee recommends that the SEC amend its Form 8–K disclosure on auditor changes by providing for the following mechanism: The public company would file within four days of an auditor change a Form 8–K disclosing that an auditor had resigned, was terminated, or did not seek reappointment; the company would appropriately characterize and state in all cases in plain English the reason or reasons for the change. The company would also disclose whether its audit committee agreed with the disclosure it has provided. The company would also provide the auditor with a copy of the disclosure and request a response as to the accuracy of the disclosure. The company would include any response as an exhibit to the company's Form 8–K filing, or if received following the due date for the Form 8–K, in a subsequent Form 8–K. As discussed above under current SEC regulations, the public company can request that the auditor respond to the company's statements in the Form 8–K regarding disagreements over accounting and financial matters.

In addition, the Committee recommends that auditing firms notify the PCAOB of any engagement partner changes on public company audits if made before the normal rotation period and, other than for retirement, the reasons for those changes.[113]

Other Issues Under Consideration

While the work of the Committee is incomplete at this point, the Committee has tentatively concluded it will not make a recommendation regarding vehicles to access outside capital. The Committee notes that some witnesses have suggested changing the capital structure of auditing firms to allow access to capital.[114]

The Committee is also considering and debating a variety of other issues. Further elaboration on these issues will be included in subsequent drafts of this Report.

VII. Concentration and Competition

The Committee analyzed public company audit market concentration and competition. In its work the Committee focused on concentration and competition in the context of their impact on audit quality and effectiveness. In turn, consideration of the sustainability of the auditing profession was also subject to examination in the context of audit quality and effectiveness. The recommendations set out below reflect this focus.

During the course of its deliberations, the Committee received testimony and commentary from the Government Accountability Office (GAO), the Public Company Accounting Oversight Board (PCAOB), academics, auditing firms, investors, and others regarding audit market concentration and competition.

In January 2008, the GAO issued Audits of Public Companies: Continued Concentration in Audit Market for Large Public Companies Does Not Call for Immediate Action,[115] updating its 2003 report on audit market concentration.[116] The GAO concluded that the four largest auditing firms continue to dominate the large public company audit market. In 2006, the four largest auditing firms audited 98% of the 1500 largest public companies with annual revenues over $1 billion and 92% of public companies with annual revenues between $500 million and $1 billion. However, concentration in the small and mid-size public company audit market has eased during the past five years. The largest firms' share in auditing small public companies with annual revenues under $100 million has declined from 44% in 2002 to 22% in 2006 and in auditing mid-size public companies with annual revenue between $100 million and $500 million from 90% in 2002 to 71% in 2006.[117]

The Committee considered the testimony of several witnesses regarding the reasons for the continued concentration in the large public company audit market. Auditing firms, public companies, market participants, academics, investors and others reasoned that large public companies with operations in multiple countries need auditing firms with global resources and technical and industry expertise to deal with an increasingly complex business and financial reporting environment.[118] These needs limit

[108] See Mark Grothe and Blaine Post, *Speak No Evil*, GLASS LEWIS & CO RESEARCH 12 (May 21, 2007).

[109] Form 8–K, *available at http://www.sec.gov/about/forms/form8-k.pdf.*

[110] See Mark Grothe and Blaine Post, *Speak No Evil*, GLASS LEWIS & CO RESEARCH 12 (May 21, 2007).

[111] See, e.g., Andrew D. Bailey, Jr., Professor of Accountancy-Emeritus, University of Illinois, and Senior Policy Advisor, Grant Thornton LLP, Comment Letter Regarding Discussion Outline 4 (Jan. 30, 2008), *available at http://comments.treas.gov/_files/BAILEYCOMMENTSONTREASURYADVISORYCOMMITTEEOUTLINEFINALSUBMISSION13008.doc* (recommending SEC and PCAOB disclosures of auditor changes to enhance the growth of smaller auditing firms); Record of Proceedings (Feb. 4, 2008) (Oral Remarks of Edward E. Nusbaum, Chief Executive Officer, Grant Thornton LLP, and Chairman, Grant Thornton International Board of Governors, 193–94), *available at http://www.treas.gov/offices/domestic-finance/acap/agendas/minutes-2-4-08.pdf* (calling for expanded Form 8–K disclosure requirements as ''in the best interest of investors'').

[112] See e.g., Record of Proceedings (Feb. 4, 2008) (Written Submission of Edward E. Nusbaum, Chief Executive Officer, Grant Thornton LLP, and Chairman, Grant Thornton International Board of Governors, 3), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/02042008/Nusbaum020408.pdf* (noting that the Committee should examine ''[c]omprehensive disclosures about reasons for auditor switches'').

[113] But cf., Record of Proceedings (Feb. 4, 2008) (Written Submission of Paul G. Haaga Jr., Vice Chairman, Capital Research and Management Company, 2), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/02042008/Haaga020408.pdf* (calling for public disclosure on audit partner changes other than for rotation requirements); Record of Proceedings (Feb. 4, 2008) (Oral Remarks of D. Paul Regan, President and Chairman, Hemming Morse Inc., 194–195 (Feb. 4, 2008)), *available at http://www.treas.gov/offices/domestic-finance/acap/agendas/minutes-2-4-08.pdf* (commenting that ''if an audit partner is * * * rotated [early] off of an issuer, there ought to be a disclosure, and there ought to be communication from the partner who was rotated off early as to [the reason for the early rotation] * * * because in many instances * * * there [i]s controversy* * *'').

[114] See, e.g., Record of Proceedings (Dec. 3, 2007) (Questions for the Record of James R. Doty, Partner, Baker Botts LLP, 3 (Feb. 19, 2008)), *available at http://www.treas.gov/offices/domestic-finance/acap/QFRs-12-3-2007.pdf* (suggesting allowing auditing firms to organize as limited liability companies or corporate entities to allow for the issuance of equity or debt securities).

[115] U.S. Government Accountability Office, Audits of Public Companies: Continued Concentration in Audit Market for Large Public Companies Does Not Call for Immediate Action, GAO–08–163 (Jan. 2008) [hereinafter 2008 GAO Report].

[116] GAO, Public Accounting Firms: Mandated Study on Consolidation and Competition, GAO–03–864 (July 2003) (finding that ''although audits for large public companies were highly concentrated among the largest accounting firms, the market for audit services appeared competitive according to various indicators'').

[117] 2008 GAO Report 19. The GAO also found that the largest firms collected 94% of all audit fees paid by public companies in 2006, slightly less than the 96% they collected in 2002. 2008 GAO Report 16.

[118] See, e.g., 2008 GAO Report 21 (surveyed companies most frequently cited size and complexity of their operations (92%), the auditor's technical capability with accounting principles and auditing standards (80%), and the need for industry

auditor choice to only the largest auditing firms for many large public companies. The Committee heard from witnesses who also described barriers to the growth of smaller auditing firms, including the behavior of underwriters and other capital market participants.[119]

In analyzing these data on concentration and limited auditor choice in the large public company audit market, the Committee focused on the potential negative impact of concentration on audit quality. Some have suggested the lack of competition may not provide sufficient incentive for the dominant auditing firms to deliver high quality and innovative audit services.[120] Notwithstanding the increasing number of public company financial restatements,[121] the Committee heard from several witnesses that audit quality had improved.[122] For example, the GAO observed that market participants and public company officials had noted improvement in recent years in audit quality, including auditing firm staff's technical expertise, responsiveness to client needs, and ability to identify material financial reporting matters.[123] Much of the improvement was credited to the Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley), which enhanced auditor independence, replaced the self-regulation of the auditing profession with the PCAOB, mandated evaluation and disclosure of the effectiveness of internal controls over financial reporting,[124] and strengthened audit committee membership, independence, and responsibilities.

Although industry concentration can lead to increased prices, the Committee notes that the GAO concluded that higher audit market concentration has not been associated with higher fees. Public companies, auditing firms, and other market participants believe the considerable increase in audit fees in recent years is due not to market power of a concentrated industry, but to the increased requirements under Sarbanes-Oxley, the complexity of accounting and financial reporting standards, the need to hire and retain qualified audit staff, and the independence requirements (which have led to the possible re-pricing of audits to their unbundled market price).[125] The Committee also considered the impact of the possible loss of one of the four largest accounting firms in light of the high degree of concentration of public company auditing, and especially large public company auditing, in those firms. The GAO noted the possibility of this loss due to issues arising out of firm conduct, such as civil litigation, federal or state regulatory action or criminal prosecution, or economic events, such as a merger.[126] The GAO posited potential negative effects of such a loss, including the following: Further limitations on large public company auditor choice, costs associated with changing auditors, and companies' inability to obtain timely financial statement audits.[127] However, the GAO did not recommend insulating auditing firms directly from either the legal or market consequences of their actions.

With the above considerations in mind, the Committee recommends that regulators, the auditing profession, and other bodies, as applicable, effectuate the following:

Recommendation 1. Reduce barriers to the growth of smaller auditing firms consistent with an overall policy goal of promoting audit quality. Because smaller auditing firms are likely to become significant competitors in the market for larger company audits only in the long term, the Committee recognizes that Recommendation 2 will be a higher priority in the near term.

The GAO concluded that concentration in the large public company audit market will not be reduced in the near term by smaller auditing firms. The Committee considered testimony regarding the reasons that smaller auditing firms are unable or unwilling to enter the large public company audit market. Challenges facing these firms' entry into this market typically include the following: lack of staffing and geographic limitations on both the physical span of their practices and experience and expertise with global auditing complexities; inability to create global networks necessary to serve global clients, due to lack of auditing firms abroad to act as potential partners; the need for greater technical capability and industry specialization; lack of name recognition and reputation; and limited access to capital.[128] In addition, expanding into the large public company audit market may be unattractive for some smaller auditing firms for a variety of reasons,[129] including increased exposure to litigation, the possibility that their business model is not scaleable, and the fact that for some smaller firms other aspects of their business (such as private company auditing and other work) has greater potential for expansion.

To address these issues, the Committee recommends that policy makers press for the reduction of barriers, to the extent consistent with audit quality and other public interest factors, to the growth of smaller auditing firms. For smaller firms, this includes encouraging and promoting development of technical resources in such areas as international financial reporting standards and fair value accounting, and development of specialized or ''niche'' practices or industry ''verticals'' where they are in the best interests of investors and can lead to more effective competition. Pressure also should be applied against non-justifiable resistance to using smaller firms on the part of a variety of market actors.

The Committee believes that the following specific and incremental actions would assist in the growth of the smaller firms and their entry into the large public company audit market:

(a) Require disclosure by public companies in their annual reports and proxy statements of any provisions in agreements with third parties that limit auditor choice.

The Committee considered testimony and commentary that certain market participants, such as underwriters, banks, and lenders, may influence and effectively limit public company auditor selection decisions.[130] For instance, certain contractual arrangements limit public companies' auditor choice.[131]

specialization or expertise (67%)); Record of Proceedings (Dec. 3, 2007) (Written Submission of Wayne Kolins, National Director of Assurance and Chairman, BDO Seidman LLP, 2), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/12032007/Kolins120307.pdf*; Record of Proceedings (Feb. 4, 2008) (Written Submission of Neal D. Spencer, Managing Partner, BKD, LLP, 1–4), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/02042008/Spencer020408.pdf*.

[119] Record of Proceedings (Feb. 4, 2008) (Oral Remarks of Brad Koenig, Former Managing Director and Head of Global Technology Investment Banking, Goldman Sachs, 219–220), *available at http://www.treas.gov/offices/domestic-finance/acap/Koenig020408.pdf* (describing underwriters' views of auditing firms other than the largest four auditing firms).

[120] 2008 GAO Report 31–32.

[121] See, e.g., Susan Scholz, The Changing Nature and Consequences of Public Company Financial Restatements 1997–2006 (April 2008).

[122] 2008 GAO Report 5; Public Company Accounting Oversight Board, Report on the PCAOB's 2004, 2005, and 2006 Inspections of Domestic Triennially Inspected Firms, PCAOB Rel. No. 2007–010 (Oct. 22, 2007).

[123] Record of Proceedings (Dec. 3, 2007) (Questions for the Record of Ms. Jeanette M. Franzel, Director, Financial Management and Assurance Team, U.S. Government Accountability Office, 2 (Jan. 30, 2008)), *available at http://www.treas.gov/offices/domestic-finance/acap/QFRs-12-3-2007.pdf* (observing that the market believes the ''bar had been raised'' on audit quality). See also Center for Audit Quality, Report on the Survey of Audit Committee Members (March 2008) (concluding that: 17% of surveyed audit committee members view audit quality as good, 53% as very good, 25% as excellent, while 82% say overall quality has improved somewhat/significantly over the past several years).

[124] 2008 GAO Report 32.

[125] 2008 GAO Report 27–29. On the re-pricing of audits, see also James D. Cox, *The Oligopolistic Gatekeeper: The U.S. Accounting Profession*, in After Enron: Improving Corporate Law and Modernizing Securities Regulation in Europe and the U.S., Chapter 9, Oxford, forthcoming, *available at http://ssrn.com/abstract=926360*.

[126] 2008 GAO Report 34–35.

[127] 2008 GAO Report 35–36.

[128] 2008 GAO Report 37. See also Record of Proceedings (Dec. 3, 2007) (Written Submission of Wayne Kolins, National Director of Assurance and Chairman, BDO Seidman LLP, 2), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/12032007/Kolins120307.pdf* (describing as barriers for smaller auditing firms liability risks, overly complex independence rules, and an array of factors that audit committees may review in choosing an auditor that best matches the company); Record of Proceedings (Feb. 4, 2008) (Written Submission of Neal D. Spencer, Managing Partner, BKD, LLP, 1), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/02042008/Spencer020408.pdf* (noting that barriers include resources, institutional bias, insurability, and liability).

[129] 2008 GAO Report 38.

[130] See, e.g., Record of Proceedings (Feb. 4, 2008) (Written Submission of Edward E. Nusbaum, Chief Executive Officer, Grant Thornton LLP, and Chairman, Grant Thornton International Board of Governors, 3), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/02042008/Nusbaum020408.pdf* (noting that transparency regarding ''restrictive contracts with underwriters'' could improve auditor choice). See also 2008 GAO Report 47.

[131] See, e.g., Record of Proceedings (Dec. 3, 2007) (Written Submission of Lewis H. Ferguson, III, Partner, Gibson Dunn & Crutcher, 2), *available at*

Continued

Consistent with the large public company audit market, this practice is particularly prevalent in the initial public offering (IPO) arena, where an underwriter may include in the underwriting agreement a provision limiting the company's auditor choice to a specified group of auditing firms.[132] Evidence suggests that auditor choice may be more limited among the largest IPOs: While midsize and smaller firms' combined share of the IPO market (by number of IPOs) has increased progressively (rising from 18% in 2003 to 40% in 2007),[133] the largest firms continue to audit the majority of the largest IPOs.[134]

The Committee believes these provisions impair competition by limiting public company auditor choice and the ability of smaller auditors to serve a greater share of the public company audit market. Accordingly, the Committee recommends that the Securities and Exchange Commission (SEC) require public companies to disclose any provisions in agreements limiting auditor choice. The disclosure should identify the agreement and include the names of the parties to the agreement and the actual provisions limiting auditor choice.[135]

(b) Include representatives of smaller auditing firms in committees, public forums, fellowships, and other engagements.

The Committee considered testimony that the lack of smaller firms' name recognition and reputation have hindered smaller auditing firms' ability to compete in the large public company audit market. The GAO noted that name recognition, reputation, and credibility were significant barriers to smaller auditing firm expansion.[136] The PCAOB has registered and oversees 982 U.S. auditing firms and 857 foreign auditing firms.[137] While it is not possible to include all smaller firms, the Committee received testimony and comment letters suggesting that there should be greater inclusion and participation of smaller firms in public and private sector committees, roundtables, and fellowships.[138] One auditing firm representative suggested the creation of a PCAOB professional practice fellowship program, reaching out to professionals from auditing firms of various sizes.[139]

The Committee believes increasing name recognition and reputation could promote audit market competition and auditor choice. Accordingly, the Committee recommends that regulators and policymakers, such as the SEC, the PCAOB, and the Financial Accounting Standards Board, include representatives of smaller auditing firms in committees, public forums, fellowships, and other engagements.[140]

Recommendation 2. Monitor potential sources of catastrophic risk faced by public company auditing firms and create a mechanism for the preservation and rehabilitation of troubled larger public company auditing firms.

The Committee considered testimony regarding the variety of potentially catastrophic risks that public company auditing firms face. These risks include general financial risks and risks relating to failure in the provision of audit services and non-audit services, including civil litigation, regulatory actions, and loss of customers, employees, or auditing network partners due to a loss of reputation.[141]

The Committee believes these risks are real and notes that over the past two decades two large auditing firms have gone out of existence. In 1990, Laventhol & Horwath, at the time the seventh largest auditing firm in the United States, filed for bankruptcy protection due in part to a failure in the provision of non-audit services, and subsequent class action litigation, loss of reputation, and inability to attract and retain clients.[142] In 2002, Arthur Andersen, at the time one of the five largest auditing firms in the United States, dissolved. The Department of Justice (DOJ) had criminally indicted the auditing firm on obstruction of justice charges relating to the audit of Enron. The resulting inability to retain clients and partners and keep together its global affiliate network led to the collapse of Arthur Andersen.[143]

In addition, KPMG recently faced the possibility of criminal indictment relating to its provision of tax-related services. In the end, KPMG entered into a deferred prosecution agreement with the DOJ.[144] Many have suggested that a criminal indictment would have led to the dissolution of the firm.

Currently, BDO Seidman is appealing a $521 million state judgment involving a private company audit client. The auditing firm's chief executive has publicly stated that

http://www.treas.gov/offices/domestic-finance/acap/submissions/12032007/Ferguson120307.pdf (''Sometimes lenders, investors, investment bankers or credit rating agencies will insist that a company seeking to access the capital markets have its financial statements audited by one of the largest accounting firms, adding a bias that has the practical effect of being a barrier to entry.'').

[132] See, e.g., Record of Proceedings (Feb. 4, 2008) (Oral Remarks of Brad Koenig, Former Managing Director and Head of Global Technology Investment Banking, Goldman Sachs, 219–220), *available at http://www.treas.gov/offices/domestic-finance/acap/Koenig020408.pdf* (noting underwriter practices in auditor selection). See also Edwin J. Kliegman, CPA, Comment Letter Regarding Discussion Outline 2 (Nov. 26, 2007).

[133] 2008 GAO Report 44.

[134] Record of Proceedings (Feb. 4, 2008) (Written Submission of Brad Koenig, Former Managing Director and Head of Global Technology Investment Banking, Goldman Sachs, 2), *available at http://www.treas.gov/offices/domestic-finance/acap/Koenig020408.pdf* (noting that from 2002–2007 the largest four auditing firms had an 87% market share of the 817 initial public offerings that exceeded $20 million). See also 2008 GAO Report 44 (''Staff from some investment firms that underwrite stock issuances for public companies told [GAO] that in the past they generally had expected the companies for which they raised capital to use one of the largest firms for IPOs but that now these organizations were more willing to accept smaller audit firms * * *. However, * * * most of the companies that went public with a mid-size or smaller auditor were smaller. In addition, these firms' share of IPOs of larger companies (those with revenues greater than $150 million) rose from none in 2003 to about 13 percent in 2007.'').

[135] The Committee notes that a group of market participants put together by the United Kingdom's Financial Reporting Council to study audit market competition has suggested similar disclosure of contractual obligations limiting auditor choice. See Financial Reporting Council, FRC Update: Choice in the UK Audit Market 4 (Apr. 2007) [hereinafter FRC Update] (recommending that ''when explaining auditor selection decisions, Boards should disclose any contractual obligations to appoint certain types of audit firms'').

[136] 2008 GAO Report 44 (''Fifty percent of accounting firms responding to [GAO's] survey that want to audit large companies said that name recognition or reputation with potential clients was a great or very great impediment to expansion. Similarly, 54 percent of these firms cited name recognition or credibility with financial markets and investment bankers as a great or very great impediment to expansion.''). See also Edward J. Kliegman, Comment Letter Regarding Discussion Outline (Nov. 16, 2007).

[137] Data are as of Feb. 21, 2008.

[138] See, e.g., Andrew D. Bailey, Jr., Professor of Accountancy—Emeritus, University of Illinois, and Senior Policy Advisor, Grant Thornton LLP, Comment Letter Regarding Discussion Outline 16 (Jan. 30, 2008), *available at http://comments.treas.gov/_files/BAILEYCOMMENTSONTREASURYADVISORYCOMMITTEEOUTLINEFINALSUBMISSION13008.doc*; Record of Proceedings (Dec. 3, 2007) (Questions for the Record of James S. Turley, Chairman and Chief Executive Officer, Ernst & Young LLP, 4 (Feb. 1, 2008)), *available at http://www.treas.gov/offices/domestic-finance/acap/QFRs-12-3-2007.pdf.*

[139] Record of Proceedings (Dec. 3, 2007) (Written Submission of Wayne Kolins, National Director of Assurance and Chairman, BDO Seidman LLP, 4), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/12032007/Kolins120307.pdf.* See Chapter V (recommending the creation of a PCAOB fellowship program). While maintenance and extension of professional fellowship programs are also considered in the Committee's recommendations relating to human capital matters, extending these opportunities increasingly to firms of various sizes could assist smaller firms in their ability to compete in the public company audit market.

[140] For a similar recommendation, see SEC Advisory Committee on Smaller Public Companies, Final Report 114 (Apr. 23, 2006).

[141] See, e.g., 2008 GAO Report 32–36; Zoe-Vonna Palmrose, *Maintaining the Value and Viability of Independent Auditors as Gatekeepers under SOX: An Auditing Master Proposal,* in Brookings-Nomura Seminar: After the Horses Have Left the Barn: The Future Role of Financial Gatekeepers 12–13 (Sept. 28, 2005). Civil litigation was the risk most often cited by witnesses before the Committee. See, e.g., Record of Proceedings (Dec. 3, 2007) (Written Submission of James D. Cox, Brainerd Currie Professor of Law, Duke University School of Law), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/12032007/Cox120307.pdf.* See also Eric R. Talley, *Cataclysmic Liability Risk among Big Four Auditors,* 106 Colum. L. Rev. 1641 (Nov. 2006)(''On one hand, the pattern of liability exposure during the last decade does not appear to be the type that would, at least on first blush, imperil the entire profession. On the other hand, if one predicts historical liability exposure patterns into the future, the risk of another firm exiting due to liability concerns appears to be more than trivial.'').

[142] See, e.g, 2008 GAO Report 33.

[143] See, e.g., U.S. Government Accountability Office, Public Accounting Firms: Mandated Study on Consolidation and Competition 12 (July 2003) (''The criminal indictment of fourth-ranked Andersen for obstruction of justice stemming from its role as auditor of Enron Corporation led to a mass exodus of Andersen partners and staff as well as clients.'').

[144] 2008 GAO Report 56–57, n. 60. Note that the Department of Justice did indict several individuals.

such a judgment amount would threaten the firm's viability.[145]

As discussed above, the Committee believes that the loss of one of the larger auditing firms would likely have a significant negative impact on the capital markets. Of greatest concern is the potential disruption to capital markets that the failure of a large auditing firm would cause, due to the lack of sufficient capacity to audit the largest public companies and the possible inability of public companies to obtain timely audits.[146] The Committee believes these concerns must be balanced against the importance of auditing firms and their partners, as private, for-profit businesses, being exposed to the consequences of failure, including both the legal consequences and economic consequences.

In consideration of these competing concerns, the Committee makes the following recommendations:

(a) As part of its current oversight over registered auditing firms, the PCAOB should monitor potential sources of catastrophic risk which would threaten audit quality.

The PCAOB's mission is to oversee auditing firms conducting audits of public companies. Its audit quality-focused mission is intertwined with issues of catastrophic risk, as most often risks to firms' survival historically have been largely the result of significant audit quality failures or serious compliance issues in the non-audit services aspect of their business.

Sarbanes-Oxley provides the PCAOB with registration, reporting, inspection, standard-setting, and enforcement authority over public company auditing firms.[147] Under its inspection authority, the PCAOB inspects audit engagements, evaluates quality control systems, and tests as necessary audit, supervisory, and quality control procedures. For example, in its inspection of an auditing firm's quality control systems, the PCAOB reviews the firm's policies and procedures related to partner evaluation, partner compensation, new partner nominations and admissions, assignment of responsibilities, disciplinary actions, and partner terminations; compliance with independence requirements; client acceptance and retention policies and procedures; compliance with professional requirements regarding consultations on accounting, auditing, and SEC matters; internal inspection program; processes for establishing and communicating audit policies, procedures, and methodologies; processes related to review of a firm's foreign affiliate's audit performance; and tone at the top.[148]

The PCAOB also has authority to require registered auditing firms to provide annual and periodic reports. In May 2006, the PCAOB issued *Proposed Rules on Periodic Reporting by Registered Public Accounting Firms* requiring annual and periodic reporting.[149] The PCAOB has not yet finalized this proposal.

The Committee therefore recommends that the PCAOB, in furtherance of its objective to enhance audit quality and effectiveness, exercise its authority to monitor meaningful sources of catastrophic risk that potentially impact audit quality through its programs, including inspections, registration and reporting, or other programs, as appropriate. The objective of PCAOB monitoring would be to alert the PCAOB to situations in which auditing firm conduct is resulting in increased catastrophic risk which is impairing or threatens to impair audit quality.

(b) Establish a mechanism to assist in the preservation and rehabilitation of a troubled larger auditing firm. A first step would encourage larger auditing firms to adopt voluntarily a contingent streamlined internal governance mechanism that could be triggered in the event of threatening circumstances. If the governance mechanism failed to stabilize the firm, a second step would permit the SEC to appoint a court-approved trustee to seek to preserve and rehabilitate the firm by addressing the threatening situation, including through a reorganization, or if such a step were unsuccessful, to pursue an orderly transition.

The Committee considered testimony regarding the importance of the viability of the larger auditing firms and the negative consequences of the loss of one of these firms on the capital markets. The Committee also considered commentary regarding issues auditing firms faced in addressing circumstances that threatened their viability, including, in particular, problems arising from the need to work with regulators and law enforcement agencies.[150] Several witnesses suggested the development of a mechanism to allow auditing firms facing threatening circumstances to emerge from those situations.[151] Committee member and former Federal Reserve Chairman Paul Volcker opined that, ''[I]f we had [such an] arrangement at the time Andersen went down, we would have saved it.'' [152] The Committee recommends the following two-step mechanism described below.

First Step—Internal Governance Mechanism

The Committee notes that auditing firms operate as partnerships, generally led by a centralized management team, with a supervisory board of partners overseeing management's strategy and performance.[153] In the event of threatening circumstances at a larger auditing firm, the Committee believes that a lack of effective centralized governance mechanisms may delay crucial decision making, impede difficult decisions that could sustain the firm and its human assets, and lessen the firm's ability to communicate with maximum responsiveness and effectiveness with private, regulatory and judicial bodies.

The Committee therefore recommends that larger auditing firms (those with 100 or more public company audit clients that the PCAOB inspects annually) establish in their partnership agreements a contingent internal governance mechanism, involving the creation of an Executive Committee (made up of partners or outsiders) with centralized firm management powers to address threatening circumstances. The centralized governance mechanism would have full authority to negotiate with regulators, creditors, and others, and it would seek to hold the firm's organization intact, including preserving the firm's reputation, until the mitigation of the threat, or, failing that, the implementation of

[145] *Jury Awards Rise Against BDO Seidman,* Assoc. Press, Aug. 15, 2007.

[146] See 2008 GAO Report 35, 36 (observing that further audit market concentration would ''leave large companies with potentially only one or two choices for a new auditor'' and that ''the market disruption caused by a firm failure or exit from the market could affect companies' abilities to obtain timely audits of their financial statements, reducing the audited financial information available to investors''). See also London Economics, Final Report to EC–DG Internal Market and Services, Study on the Economic Impact of Auditors' Liability Regimes 24 (Sept. 2006) (''The adjustment to a situation in which one of the Big-4 networks fails is unlikely to be smooth. But the long run consequences are likely to be limited provided the overall statutory audit capacity does not fall significantly. Among the various economic sectors, financial institutions may find such a situation particularly difficult as their statutory audits are viewed as more risky and * * * two Big-4 firms dominate the market for statutory audits of financial institutions. The situation is likely to be much direr if a second Big-4 network fails shortly after the first one. Investors' confidence will be in all likelihood seriously affected and the adjustment to the new situation is likely to be difficult.'').

[147] Sarbanes-Oxley Act of 2002, 15 U.S.C. 7211–7219.

[148] See, e.g., PCAOB, Observations on the Initial Implementation of the Process for Addressing Quality Control Criticisms within 12 Months after an Inspection Report, PCAOB Release No. 104–2006–078 (Mar. 21, 2006). See also the PCAOB's completed inspection reports at *http://www.pcaobus.org/Inspections/Public_Reports/index.aspx#k.*

[149] PCAOB Release No. 2006–004 (May 23, 2006).

[150] See, e.g., Securities and Exchange Commission, Temporary Final Rule and Final Rule: Requirements for Arthur Andersen LLP Auditing Clients, SEC Release No. 33–8070 (Mar. 18, 2002); Securities and Exchange Commission, Press Rel. No. 2002–39 and Order Rel. No. 33–8070 (March 18, 2002) (indictment of Arthur Andersen); SEC Staff Accounting Bulletin No. 90 (Feb. 7, 1991) (bankruptcy of Laventhol & Horwath).

[151] Record of Proceedings (Dec. 3, 2007) (Written Submission of James R. Doty, Partner, Baker Botts L.L.P., 11–13), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/12032007/Doty120307.pdf* (suggesting that the Bankruptcy Code be amended to prevent creditors whose claims relate to violations of professional standards from opposing reorganization under a court-approved plan; an automatic stay against partners facilitating partner retention; expanding the SEC's emergency powers to enable the SEC to act by summary order to address the registered firm's ability to continue to provide audit services; and encouraging the SEC or PCAOB to discourage ''client poaching'' by requiring public companies to show that switching auditors was not related to mega-judgments against audit affiliates in other jurisdictions). See also Record of Proceedings (Dec. 3, 2007) (Written Submission of Peter S. Christie, Principal, Friemann Christie, LLC, 6), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/12032007/Christie120307.pdf* (''If it remains possible that a firm can fail for reasons other than liability claims it may be attention needs to be given to devices that will permit a firm to re-emerge.'').

[152] Record of Proceedings (Mar. 13, 2008) (Oral Remarks of Committee Member Paul Volcker, 317), *available at http://www.treas.gov/offices/domestic-finance/acap/agendas/minutes-03–13–08.pdf.*

[153] Center for Audit Quality, Report of the Major Public Company Audit Firms to the Department of the Treasury Advisory Committee on the Auditing Profession 13 (Jan. 23, 2008).

the second step outlined below. The auditing firm voluntarily would trigger the operation of this mechanism upon the occurrence of potentially catastrophic events specified in the partnership agreement, such as civil litigation or actual or significantly threatened government or regulatory action. If necessary, the SEC and the PCAOB could encourage the firm to trigger the mechanism through private communications, public statements, or other means. Regulators could also assist in maintaining the firm's organization intact by, for example, increasing the time period for registrants that are audit clients to have audits or reviews completed and providing accelerated consultative guidance to registrants that are audit clients.[154] The Committee recognizes the precise details of such a mechanism would vary from auditing firm to auditing firm, depending on firm structures, history, and culture.

Second Step—External Preservation Mechanism

The Committee also recommends that the larger auditing firms establish in their partnership agreements a rehabilitation mechanism under SEC oversight. The failure of the internal governance mechanism to preserve the auditing firm outlined in the first step above would trigger this second step, which would require legislation. Upon triggering of the second step, either voluntarily by the firm or by the SEC, the SEC would appoint a trustee, subject to court approval, whose mandate would be to seek to address the circumstances that threaten survival, and failing that, to pursue a reorganization that preserves and rehabilitates the firm to the extent practicable, and finally, if reorganization fails, to pursue an orderly transition. If this second mechanism is to include an element that addresses claims of creditors (which could include investors with claims, audit and other clients, partners, other employees, and others), legislation to integrate this mechanism with the judicial bankruptcy process may be necessary.

It is important that this mechanism not be used as insurance for partner capital; that is, this mechanism should not be developed to ''bail out'' a larger auditing firm, but rather to preserve and rehabilitate the firm in order to ensure the stable functioning of the capital markets and the timely delivery of audited financial statements to investors and other financial statement users. Accordingly, there must be powers that can be exercised in furtherance of the objective of holding the firm together.[155]

The Committee also notes that the larger auditing firms are members or affiliates of global networks of firms and rely on these networks to serve their global clients. Since the networks are maintained through voluntary contractual agreements, the fact that a U.S.-based firm may be facing threatening circumstances could lead to the disintegration of the network. In this regard, in developing this mechanism, auditing firms, regulators, policy-makers, and other market participants must consider the practical implications resulting from the relationship between the U.S.-based firms and the global networks.

Recommendation 3. Recommend the PCAOB, in consultation with auditors, investors, public companies, audit committees, boards of directors, academics, and others, determine the feasibility of developing key indicators of audit quality and effectiveness and requiring auditing firms to publicly disclose these indicators. Assuming development and disclosure of indicators of audit quality are feasible, require the PCAOB to monitor these indicators.

A key issue in the public company audit market is what drives competition for audit clients and whether audit quality is the most significant driver. Currently, there is minimal publicly available information regarding indicators of audit quality at individual auditing firms. Consequently, it is difficult to determine whether audit committees, who ultimately select the auditor, and management are focused and have the tools that are useful in assessing audit quality that would contribute to making the initial auditor selection and subsequent auditor retention evaluation processes more informed and meaningful.[156] In addition, with the majority of public companies currently putting shareholder ratification of auditor selection to an annual vote, shareholders may also lack audit quality information important in making such a ratification decision.[157]

The Committee believes that requiring firms to disclose indicators of audit quality may enhance not only the quality of audits provided by such firms, but also the ability of smaller auditing firms to compete with larger auditing firms, auditor choice, shareholder decision-making related to ratification of auditor selection, and PCAOB oversight of registered auditing firms.

The Committee recognizes the challenges of developing and monitoring indicators of audit quality, especially in light of the complex factors driving the potential impact on the incentives of market actors, and the resulting effect on competitive dynamics among auditors.[158]

The Committee has considered testimony and comment letters [159] as well as other studies and reports in developing this recommendation. A possible framework for PCAOB consideration is reviewing annual auditing firm reports in other jurisdictions. For example, one auditing firm's United Kingdom affiliate lists in its annual report nine ''key performance indicators, including average headcount, staff turnover, diversity, client satisfaction, audit and non-audit work, proposal win rate, revenue, profit, and profit per partner.'' [160] The Financial Reporting Council recently published a paper setting out drivers of audit quality.[161] In addition, the PCAOB also could consider some of the factors that auditing firms present to audit committees, such as engagement team composition, the nature and extent of firm training programs, and the nature and reason for client restatements.[162]

The Committee therefore recommends that the PCAOB, in consultation with auditors, investors, public companies, audit committees, boards of directors, academics, and others, determine the feasibility of developing key indicators of audit quality

[154] See, e.g., Securities and Exchange Commission, Temporary Final Rule and Final Rule: Requirements for Arthur Andersen LLP Auditing Clients, SEC Release No. 33–8070 (Mar. 18, 2002); Securities and Exchange Commission, Press Rel. No. 2002–39 and Order Rel. No. 33–8070 (March 18, 2002) (indictment of Arthur Andersen); SEC Staff Accounting Bulletin No. 90 (Feb. 7, 1991) (bankruptcy of Laventhol & Horwath).

[155] Record of Proceedings (Dec. 3, 2007) (Written Submission of James R. Doty, Partner, Baker Botts L.L.P., 11), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/12032007/Doty120307.pdf* (Dec. 3, 2007) (''It is an anecdotal but firmly held perception of the profession that no accounting firm has entered bankruptcy and emerged to continue its practice. The hard assets of the firm are not significant: the professionals and the clients are the lifeblood of the registered firm. With any anticipation of bankruptcy, these mobile assets are gone.'').

[156] See, e.g., New York Stock Exchange, Listed Company Manual § 303A, which the SEC approved on November 4, 2003, for the responsibilities of exchange-listed companies' audit committees.

[157] Institutional Shareholder Services, U.S. Corporate Governance Policy—2007 Updates 3 (2006).

[158] If the idea proves to be workable, implementation could be a major undertaking for the PCAOB. Developing meaningful quality indicators, defining how they should be measured, and rolling out the measurement process could take significant PCAOB time and effort. Auditing firms, public companies, investors, and academics would all likely have valuable ideas as to approaches the PCAOB could take. However the indicators were devised, firms would have to build their internal processes for measuring the audit quality indicators and the PCAOB would have to develop procedures and training to monitor those processes.

[159] See, e.g., Record of Proceedings (Dec. 3, 2007) (Written Submission of Wayne Kolins, National Director of Assurance and Chairman, BDO Seidman LLP, 4), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/12032007/Kolins120307.pdf* (recommending the issuance of regulatory guidance on qualitative factors to be used to evaluate auditing firms); Record of Proceedings (Dec. 3, 2007) (Written Submission of Dennis M. Nally, Chairman and Senior Partner, PricewaterhouseCoopers LLP, 6), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/12032007/Nally120307.pdf* (suggesting that disclosure of '' key elements that drive audit quality would be a useful benefit to the capital markets'' and could include a ''discussion of the levels of partner and staff turnover, average hours of professional training, risk management and compliance measurements, and metrics related to the quality of management and firm governance processes''); Anonymous Retired Big 4 partner, Comment Letter Regarding Discussion Outline (Nov. 2007) (recommending public disclosure of the following audit quality drivers: (1) Average years of experience of audit professionals, (2) ratio of professional staff to audit partners, (3) chargeable hours per audit professional, (4) professional chargeable hours managed per audit partner, (5) annual professional staff retention, and (6) average annual training hours per audit professional).

[160] See KPMG LLP, UK Annual Report 2007 46.

[161] FRC Update 4.

[162] Record of Proceedings (Dec. 3, 2007) (Written Submission of Wayne Kolins, National Director of Assurance and Chairman, BDO Seidman LLP, 2), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/12032007/Kolins120307.pdf.*

and requiring auditing firms to publicly disclose these indicators. Testimonies and comment letters have suggested specific audit quality indicators, such as the average experience level of auditing firm staff on individual engagements, the average ratio of auditing firm professional staff to auditing firm partners on individual engagements, and annual staff retention. The Committee also recommends that, if the proposal is feasible, the PCAOB, through its inspection process, should monitor these indicators.

Recommendation 4. Promote the understanding of and compliance with auditor independence requirements among auditors, investors, public companies, audit committees, and boards of directors, in order to enhance investor confidence in the quality of audit processes and audits.

The Committee considered testimony and comment letters regarding the significance of the independence of the public company auditor—both in fact and appearance—to the credibility of financial reporting, investor protection, and the capital formation process.[163] The auditor is expected to offer critical and objective judgment on the financial matters under consideration, and actual and perceived absence of conflicts is critical to that expectation.

The Committee believes that auditors, investors, public companies, and other market participants must understand the independence requirements and their objectives, and that auditors must adopt a mindset of skepticism when facing situations that may compromise their independence. In that regard, the Committee makes the following recommendations:

(a) Compile the SEC and PCAOB independence requirements into a single document and make this document Web site accessible. The American Institute of Certified Public Accountants (AICPA) and states should clarify and prominently note that differences exist between the SEC and PCAOB standards (applicable to public companies) and the AICPA and state standards (applicable in all circumstances, but subject to SEC and PCAOB standards, in the case of public companies) and indicate, at each place in their standards where differences exist, that stricter SEC and PCAOB independence requirements applicable to public company auditors may supersede or supplement the stated requirements. This compilation should not require rulemaking by either the SEC or the PCAOB because it only calls for assembly and compilation of existing rules.

In the United States, various oversight bodies have authority to promulgate independence requirements, including the SEC and PCAOB for public company auditors, and the AICPA and states for public and private company auditors.[164] The Committee recommends that the SEC and PCAOB compile and publish their independence requirements in a single document and make this document easily accessible on their Web sites. The Committee recommends that the AICPA and states clarify and prominently state that differences exist between their standards and those of the SEC and the PCAOB and indicate, at each place in their standards where differences exist, that additional SEC and PCAOB independence requirements applicable to public company auditors may supersede or supplement the stated requirements.[165]

(b) Develop training materials to help foster and maintain the application of healthy professional skepticism with respect to issues of independence and other conflicts among public company auditors, and inspect auditing firms, through the PCAOB inspection process, for independence training of partners and mid-career professionals.

The Committee considered testimony and commentary that, to comply with the detailed and complex[166] requirements, some auditors may be taking a ''check the box'' approach to compliance with independence requirements, and losing focus on the critical need to exercise independent judgment or professional skepticism about whether the substance of a potential conflict of interest may compromise integrity or objectivity, or create an appearance of doing so.[167]

The Committee recommends that auditing firms develop appropriate independence training materials for auditing firms, especially partners and mid-career professionals, that help to foster a healthy professional skepticism with respect to issues of independence that is objectively focused and extends beyond a ''check the box'' mentality. The training materials should focus on lessons learned and best practices observed by the PCAOB in its inspection process and the experience of other relevant regulators as appropriate. To ensure the implementation of this training on an overall basis, the PCAOB should review this training as part of its inspection program.

Recommendation 5. Adopt annual shareholder ratification of public company auditors by all public companies.

Although not statutorily required, the majority of public companies in the United States—nearly 95% of S&P 500 and 70%–80% of smaller companies—put auditor ratification to an annual shareholder vote.[168] Even though ratification of a company's auditor is non-binding, the Committee learned that corporate governance experts consider this a best practice serving as a ''check'' on the audit committee.[169] Pursuant to Sarbanes-Oxley, audit committees of exchange-listed companies must appoint, compensate, and oversee the auditor.[170] SEC rules implementing Sarbanes-Oxley specifically permit shareholder ratification of auditor selection.[171] Ratification allows shareholders to voice a view on the audit committee's work, including the reasonableness of audit fees and apparent conflicts of interest.

The Committee believes shareholder ratification of auditor selection through the annual meeting and proxy process can enhance the audit committee's oversight to ensure that the auditor is suitable for the

[163] See, e.g., Record of Proceedings (Dec. 3, 2007) (Written Submission of Dennis M. Nally, Chairman and Senior Partner, PricewaterhouseCoopers LLP, 5) *available at, http://www.treas.gov/offices/domestic-finance/acap/submissions/12032007/Nally120307.pdf* (''Independence forms the bedrock of credibility in the auditing profession, and is essential to the firms' primary function in the capital markets.''); Record of Proceedings (Feb. 4, 2008) (Written Submission of Edward E. Nusbaum, Chief Executive Officer, Grant Thornton LLP, and Chairman, Grant Thornton International Board of Governors, 3), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/02042008/Nusbaum020408.pdf.*

[164] See, e.g., SEC Regulation S–X, Article 2, Rule 2–01—Qualifications of Accountants, 17 CFR § 210.2–01; SEC Financial Reporting Policies, Sec. 602.01—Interpretations Relating to Independence; SEC Final Rule, Amendments to SEC Auditor Independence Requirements ''Strengthening the Commission's Requirements Regarding Auditor Independence'', SEC Rel. No 33–8183 (2003); SEC Final Rule, Revision of the Commission's Auditor Independence Requirements, SEC Rel. No. 33–7919 (2001); PCAOB, Interim Independence Standards, ET Sections 101 and 191; Independence Standards Board, Independence Standards Nos. 1, 2, and 3, and ISB Interpretations 99–01, 00–1, and 00–2; PCAOB Bylaws and Rules, Section 3, Professional Standards; AICPA Code of Professional Conduct, ET Sections 100–102.

[165] The Committee took note of concerns expressed regarding independence issues from a variety of perspectives. See, e.g., Andrew D. Bailey, Jr., Professor of Accountancy—Emeritus, University of Illinois, and Senior Policy Advisor, Grant Thornton LLP, Comment Letter Regarding Discussion Outline 9 (Jan. 30, 2008), *available at http://comments.treas.gov/_files/BAILEYCOMMENTSONTREASURYADVISORYCOMMITTEEOUTLINEFINALSUBMISSION13008.doc* (suggesting simplifying the current SEC independence standards); Dana R. Hermanson, Kennesaw State University, Comment Letter Regarding Discussion Outline 1 (Oct. 4, 2007), *available at http://comments.treas.gov/_files/HermansonStatement10407.pdf* (stating that consulting and auditing were incompatible and posed a significant threat to the long-term sustainability of the profession); Record of Proceedings (Dec. 3, 2007) (Written Submission of Dennis M. Nally, Chairman and Senior Partner, PricewaterhouseCoopers LLP, 5), *availabe at http http://www.treas.gov/offices/domestic-finance/acap/submissions/12032007/Nally120307.pdf* (''The independence rules should be re-evaluated periodically to examine whether the rules continue to strike the right balance between cost burden and benefit.''); Record of Proceedings (Dec. 3, 2007) (Written Submission of James S. Turley, Chairman and Chief Executive Officer, Ernst & Young LLP, 5), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/12032007/Turley120307.pdf* (recommending consideration of potential changes to aspects of independence rules).

[166] See, e.g., Record of Proceedings (Dec. 3, 2007) (Written Submission of Michael P. Cangemi, President and Chief Executive Officer, Financial Executives International), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/12032007/Cangemi120307.pdf;* Financial Executives International, Recommendations to Address Complexity in Financial Reporting (March 2007).

[167] See. e.g., Consideration of Fraud in a Financial Statement, Interim Auditing Standard AU 316, Paragraph .13 (Pub. Company Accounting Oversight Bd. 2002) (''Professional skepticism is an attitude that includes a questioning mind and a critical assessment of audit evidence.'').

[168] Institutional Shareholder Services, ISS U.S. Corporate Governance Policy—2007 Update 3 (Nov. 15, 2006).

[169] Institutional Shareholder Services, Request for Comment—Ratification of Auditors on the Ballot 1.

[170] Sarbanes-Oxley Act, 15 U.S.C. § 78j–1 (2002).

[171] SEC, Final Rule: Standards Related to Listed Audit Committees. Release No. 33–8220 (Apr. 9, 2003).

company's size and financial reporting needs.[172] This may enhance competition in the audit industry. Accordingly, the Committee encourages such an approach as a best practice for all public companies. The Committee also urges exchange self-regulatory organizations to adopt such a requirement as a listing standard. In addition, to further enhance audit committee oversight and auditor accountability, the Committee recommends that disclosure in the company proxy statement regarding shareholder ratification include the name(s) of the senior auditing partner(s) staffed on the engagement.[173]

Recommendation 6. Enhance regulatory collaboration and coordination between the PCAOB and its foreign counterparts, consistent with the PCAOB mission of promoting quality audits of public companies in the United States.

The globalization of the capital markets has compelled regulatory coordination and collaboration across jurisdictions. Regulators of public company auditors are no exception, as companies increasingly seek investor capital outside their home jurisdictions and the larger auditing firms create, expand, and, in some audits, increasingly rely on global networks of affiliates in order to provide auditing and other services to companies operating in multiple jurisdictions.[174] The Committee considered commentary regarding the PCAOB's regulatory role on a global basis.[175]

The PCAOB has the statutory responsibility for ensuring quality audits of public companies. In a world of global business operations and globalized capital markets, the PCAOB benefits from cooperation with foreign auditing firm regulators (many created and modeled after the PCAOB) to accomplish its inspections of registered foreign auditing firms, including firms that are members of global auditing firm networks.

In May 2007, the PCAOB hosted its first International Auditor Regulatory Institute where representatives from more than 40 jurisdictions gathered to learn more about PCAOB operations. In 2006, the PCAOB formally joined the International Forum of Independent Audit Regulators, created to encourage regulatory collaboration and sharing of regulatory knowledge and experience.

The Committee believes that these types of global regulatory coordination and cooperation are important elements in making sure public company auditing firms of all sizes are contributing effectively to audit quality. The Committee strongly supports the efforts of the PCAOB to enhance the efficiency and effectiveness of its programs by communicating with foreign regulators and participating in global regulatory bodies. The Committee urges the PCAOB and its foreign counterparts to continue to improve regulatory cooperation and coordination on a global basis.

Other Issues Under Consideration

The Committee is also considering and debating a variety of other issues. Further elaboration on these issues will be included in subsequent drafts of this Report.

VIII. Separate Statements

[The contents of Separate Statements to be included in subsequent drafts of this Report.]

[FR Doc. E8–10818 Filed 5–14–08; 8:45 am]

BILLING CODE 4810–25–P

[172] See also FRC Update 5, 7 (recommending that ''the FRC should amend the section of the Smith Guidance dealing with communications with shareholders to include a requirement for the provision of information relevant to the auditor re-selection decision,'' and that ''investor groups, corporate representatives, firms and the FRC should promote good practices for shareholder engagement on auditor appointment and re-appointments'').

[173] As discussed above, the Committee also believes that this ratification process would be made more meaningful if accompanied by the development and disclosure of key indicators of audit quality.

[174] See Record of Proceedings (Feb. 4, 2008) (Written Submission of Cynthia M. Fornelli, Executive Director, Center for Audit Quality, 16), *available at http://www.treas.gov/offices/domestic-finance/acap/submissions/02042008/Fornelli 020408.pdf* (noting the ''growing consensus that regulators on every continent would be well served by working more closely together in the interest of improving worldwide audit quality''); PCAOB Press Release, PCAOB Meets with Asian Counterparts to Discuss Cooperation on Auditor Oversight (Mar. 23, 2007), *available at http://www.pcaobus.org/News_and_Events/News/2007/03–23.aspx* (''The PCAOB strongly believes that dialogue and cooperation among auditor regulators are critical to every regulator's ability to meet the challenges that come with the increasingly complicated and global capital markets.'').

[175] See, e.g., PCAOB Briefing Paper, Oversight of Non-U.S. Public Accounting Firms (Oct. 28, 2003); PCAOB Final Rules Relating to the Oversight of Non-U.S. Public Accounting Firms, PCAOB Rel. No. 2004–005 (June 9, 2004); Request for Public Comment on Proposed Policy Statement: Guidance Regarding Implementation of PCAOB Rule 4012, PCAOB Rel. No. 2007–001 (Dec. 5, 2007); PCAOB Chairman Mark Olson and EU Commissioner Charlie McCreevy Meet to Discuss Furthering Cooperation in the Oversight of Audit Firms, PCAOB Press Rel. (March 6, 2007); PCAOB Meets with Asian Counterparts to Discuss Cooperation on Auditor Oversight, PCAOB Press Rel. (Mar. 23, 2007); Establishment of the International Forum of Independent Audit Regulators, Haut Conseil du Commissariat aux Comptes Press Rel. (Sep. 15, 2006); PCAOB Enters into Cooperative Arrangement with the Australian Securities and Investments Commission, PCAOB Press Rel. (July 16, 2007); Board Establishes Standing Advisory Group, PCAOB Press Rel. (Apr. 15, 2004).

DEPARTMENT OF THE TREASURY

Open Meeting of the Advisory Committee on the Auditing Profession

AGENCY: Office of the Undersecretary for Domestic Finance, Treasury.

ACTION: Notice of meeting.

SUMMARY: The Department of the Treasury's Advisory Committee on the Auditing Profession will convene a meeting on June 3, 2008, in the Cash Room of the Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC, beginning at 10 a.m. Eastern Time. The meeting will be open to the public.

DATES: The meeting will be held on Tuesday, June 3, 2008, at 10 a.m. Eastern Time.

ADDRESSES: The Advisory Committee will convene a meeting in the Cash Room of the Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC. The public is invited to submit written statements with the Advisory Committee by any of the following methods:

Electronic Statements

- Use the Department's Internet submission form (*http://www.treas.gov/offices/domestic-finance/acap/comments*); or

Paper Statements

- Send paper statements in triplicate to Advisory Committee on the Auditing Profession, Office of Financial Institutions Policy, Room 1418, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

In general, the Department will post all statements on its Web site (*http://www.treas.gov/offices/domestic-finance/acap/comments*) without change, including any business or personal information provided such as names, addresses, e-mail addresses, or telephone numbers. The Department will also make such statements available for public inspection and copying in the Department's Library, Room 1428, Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect statements by telephoning (202) 622–0990. All statements, 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: Kristen E. Jaconi, Senior Policy Advisor to the Under Secretary for Domestic Finance, Department of the Treasury, Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, at (202) 927–6618.

SUPPLEMENTARY INFORMATION: In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 2 and the regulations thereunder, David G. Nason, Designated Federal Officer of the Advisory Committee, has ordered publication of

this notice that the Advisory Committee will convene a meeting on Tuesday, June 3, 2008, in the Cash Room in the Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC, beginning at 10 a.m. Eastern Time. The meeting will be open to the public. Because the meeting will be held in a secured facility, members of the public who plan to attend the meeting must contact the Office of Domestic Finance, at (202) 622–4944, by 5 p.m. Eastern Time on May 30, 2008, to inform the Department of the desire to attend the meeting and to provide the information that will be required to facilitate entry into the Main Department Building. The agenda for this meeting consists of further consideration of a Draft Report of the Advisory Committee and hearing oral testimony from witnesses and considering written statements that those witnesses have filed with the Advisory Committee on the Draft Report.

Dated: May 8, 2008.

Taiya Smith,

Executive Secretary.

[FR Doc. E8–10817 Filed 5–14–08; 8:45 am]

BILLING CODE 4810–25–P

Federal Register

Thursday,
May 15, 2008

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for the Polar Bear (Ursus maritimus) Throughout Its Range; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS-R7-ES-2008-0038; 1111 FY07 MO-B2]

RIN 1018-AV19

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for the Polar Bear (Ursus maritimus) Throughout Its Range

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine threatened status for the polar bear (*Ursus maritimus*) under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 et seq.). Polar bears evolved to utilize the Arctic sea ice niche and are distributed throughout most ice-covered seas of the Northern Hemisphere. We find, based upon the best available scientific and commercial information, that polar bear habitat—principally sea ice—is declining throughout the species' range, that this decline is expected to continue for the foreseeable future, and that this loss threatens the species throughout all of its range. Therefore, we find that the polar bear is likely to become an endangered species within the foreseeable future throughout all of its range. This final rule activates the consultation provisions of section 7 of the Act for the polar bear. The special rule for the polar bear, also published in today's edition of the **Federal Register**, sets out the prohibitions and exceptions that apply to this threatened species.

DATES: This rule is effective May 15, 2008. The U.S. District Court order in *Center for Biological Diversity* v. *Kempthorne,* No. C 08–1339 CW (N.D. Cal., April 28, 2008) ordered that the 30-day notice period otherwise required by the Administrative Procedure Act be waived, pursuant to 5 U.S.C. 553(d)(3).

ADDRESSES: Comments and materials received, as well as supporting scientific documentation used in the preparation of this rule, will be available for public inspection, by appointment, during normal business hours at: U.S. Fish and Wildlife Service, Marine Mammals Management Office, 1011 East Tudor Road, Anchorage, AK 99503. Copies of this final rule are also available on the Service's Marine Mammal website: *http://alaska.fws.gov/fisheries/mmm/polarbear/issues.htm.*

FOR FURTHER INFORMATION CONTACT: Scott Schliebe, Marine Mammals Management Office (see **ADDRESSES** section) (telephone 907–786–3800). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

Background

Information in this section is summarized from the following sources: (1) The Polar Bear Status Review (Schliebe et al. 2006a); (2) information received from public comments in response to our proposal to list the polar bear as a threatened species published in the **Federal Register** on January 9, 2007 (72 FR 1064); (3) new information published since the proposed rule (72 FR 1064), including additional sea ice and climatological studies contained in the Intergovernmental Panel on Climate Change (IPCC) *Fourth Assessment Report* (AR4) and other published papers; and (4) scientific analyses conducted by the U.S. Geological Survey (USGS) and co-investigators at the request of the Secretary of the Department of the Interior specifically for this determination. For more detailed information on the biology of the polar bear, please consult the Status Review and additional references cited throughout this document.

Species Biology

Taxonomy and Evolution

Throughout the Arctic, polar bears are known by a variety of common names, including nanook, nanuq, ice bear, sea bear, isbjørn, white bears, and eisbär. Phipps (1774, p. 174) first proposed and described the polar bear as a species distinct from other bears and provided the scientific name *Ursus maritimus*. A number of alternative names followed, but Harington (1966, pp. 3–7), Manning (1971, p. 9), and Wilson (1976, p. 453) (all three references cited in Amstrup 2003, p. 587) subsequently promoted the name *Ursus maritimus* that has been used since.

The polar bear is usually considered a marine mammal since its primary habitat is the sea ice (Amstrup 2003, p. 587), and it is evolutionarily adapted to life on sea ice (see further discussion under General Description section). The polar bear is included on the list of species covered under the U.S. Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 et seq.) (MMPA).

Polar bears diverged from grizzly bears (*Ursus arctos*) somewhere between 200,000 and 400,000 years ago (Talbot and Shields 1996a, p. 490; Talbot and Shields 1996b, p. 574). However, fossil evidence of polar bears does not appear until after the Last Interglacial Period (115,000 to 140,000 years ago) (Kurten 1964, p. 25; Ingolfsson and Wiig 2007). Only in portions of northern Canada, Chukotka, Russia, and northern Alaska do the ranges of polar bears and grizzly bears overlap. Cross-breeding of grizzly bears and polar bears in captivity has produced reproductively viable offspring (Gray 1972, p. 56; Stirling 1988, p. 23). The first documented case of cross-breeding in the wild was reported in the spring of 2006, and Wildlife Genetics International confirmed the cross-breeding of a female polar bear and male grizzly bear (Paetkau, pers. comm. May 2006).

General Description

Polar bears are the largest of the living bear species (DeMaster and Stirling 1981, p. 1; Stirling and Derocher 1990, p. 190). They are characterized by large body size, a stocky form, and fur color that varies from white to yellow. They are sexually dimorphic; females weigh 181 to 317 kilograms (kg) (400 to 700 pounds (lbs)), and males up to 654 kg (1,440 lbs). Polar bears have a longer neck and a proportionally smaller head than other members of the bear family (Ursidae) and are missing the distinct shoulder hump common to grizzly bears. The nose, lips, and skin of polar bears are black (Demaster and Stirling 1981, p. 1; Amstrup 2003, p. 588).

Polar bears evolved in sea ice habitats and as a result are evolutionarily adapted to this habitat. Adaptations unique to polar bears in comparison to other Ursidae include: (1) White pelage with water-repellent guard hairs and dense underfur; (2) a short, furred snout; (3) small ears with reduced surface area; (4) teeth specialized for a carnivorous rather than an omnivorous diet; and (5) feet with tiny papillae on the underside, which increase traction on ice (Stirling 1988, p. 24). Additional adaptations include large, paddle-like feet (Stirling 1988, p. 24), and claws that are shorter and more strongly curved than those of grizzly bears, and larger and heavier than those of black bears (*Ursus americanus*) (Amstrup 2003, p. 589).

Distribution and Movements

Polar bears evolved to utilize the Arctic sea ice niche and are distributed throughout most ice-covered seas of the Northern Hemisphere. They occur throughout the East Siberian, Laptev, Kara, and Barents Seas of Russia; Fram Strait (the narrow strait between northern Greenland and Svalbard),

Greenland Sea and Barents Sea of northern Europe (Norway and Greenland (Denmark)); Baffin Bay, which separates Canada and Greenland, through most of the Canadian Arctic archipelago and the Canadian Beaufort Sea; and in the Chukchi and Beaufort Seas located west and north of Alaska.

Over most of their range, polar bears remain on the sea ice year-round or spend only short periods on land. However, some polar bear populations occur in seasonally ice-free environs and use land habitats for varying portions of the year. In the Chukchi Sea and Beaufort Sea areas of Alaska and northwestern Canada, for example, less than 10 percent of the polar bear locations obtained via radio telemetry were on land (Amstrup 2000, p. 137; Amstrup, USGS, unpublished data); the majority of land locations were bears occupying maternal dens during the winter. A similar pattern was found in East Greenland (Wiig et al. 2003, p. 511). In the absence of ice during the summer season, some populations of polar bears in eastern Canada and Hudson Bay remain on land for extended periods of time until ice again forms and provides a platform for them to move to sea. Similarly, in the Barents Sea, a portion of the population is spending greater amounts of time on land.

Although polar bears are generally limited to areas where the sea is ice-covered for much of the year, they are not evenly distributed throughout their range on sea ice. They show a preference for certain sea ice characteristics, concentrations, and specific sea ice features (Stirling et al. 1993, pp. 18–22; Arthur et al. 1996, p. 223; Ferguson et al. 2000a, p. 1,125; Ferguson et al. 2000b, pp. 770–771; Mauritzen et al. 2001, p. 1,711; Durner et al. 2004, pp. 18–19; Durner et al. 2006, p. pp. 34–35; Durner et al. 2007, pp. 17 and 19). Sea-ice habitat quality varies temporally as well as geographically (Ferguson et al. 1997, p. 1,592; Ferguson et al. 1998, pp. 1,088–1,089; Ferguson et al.2000a, p. 1,124; Ferguson et al.2000b, pp. 770–771; Amstrup et al. 2000b, p. 962). Polar bears show a preference for sea ice located over and near the continental shelf (Derocher et al. 2004, p. 164; Durner et al. 2004, p. 18–19; Durner et al. 2007, p. 19), likely due to higher biological productivity in these areas (Dunton et al. 2005, pp. 3,467–3,468) and greater accessibility to prey in near-shore shear zones and polynyas (areas of open sea surrounded by ice) compared to deep-water regions in the central polar basin (Stirling 1997, pp. 12–14). Bears are most abundant near the shore in shallow-water areas, and also in other areas where currents and ocean upwelling increase marine productivity and serve to keep the ice cover from becoming too consolidated in winter (Stirling and Smith 1975, p. 132; Stirling et al. 1981, p. 49; Amstrup and DeMaster 1988, p. 44; Stirling 1990, pp. 226–227; Stirling and Øritsland 1995, p. 2,607; Amstrup et al. 2000b, p. 960).

Polar bear distribution in most areas varies seasonally with the seasonal extent of sea ice cover and availability of prey. The seasonal movement patterns of polar bears emphasize the role of sea ice in their life cycle. In Alaska in the winter, sea ice may extend 400 kilometers (km) (248 miles (mi)) south of the Bering Strait, and polar bears will extend their range to the southernmost proximity of the ice (Ray 1971, p. 13). Sea ice disappears from the Bering Sea and is greatly reduced in the Chukchi Sea in the summer, and polar bears occupying these areas move as much as 1,000 km (621 mi) to stay with the pack ice (Garner et al. 1990, p. 222; Garner et al. 1994, pp. 407–408). Throughout the polar basin during the summer, polar bears generally concentrate along the edge of or into the adjacent persistent pack ice. Significant northerly and southerly movements of polar bears appear to depend on seasonal melting and refreezing of ice (Amstrup 2000, p. 142). In other areas, for example, when the sea ice melts in Hudson Bay, James Bay, Davis Strait, Baffin Bay, and some portions of the Barents Sea, polar bears remain on land for up to 4 or 5 months while they wait for winter and new ice to form (Jonkel et al. 1976, pp. 13–22; Schweinsburg 1979, pp. 165, 167; Prevett and Kolenosky 1982, pp. 934–935; Schweinsburg and Lee 1982, p. 510; Ferguson et al. 1997, p. 1,592; Lunn et al. 1997, p. 235; Mauritzen et al. 2001, p. 1,710).

In areas where sea ice cover and character are seasonally dynamic, a large multi-year home range, of which only a portion may be used in any one season or year, is an important part of the polar bear life history strategy. In other regions, where ice is less dynamic, home ranges are smaller and less variable (Ferguson et al. 2001, pp.51–52). Data from telemetry studies of adult female polar bears show that they do not wander aimlessly on the ice, nor are they carried passively with the ocean currents as previously thought (Pedersen 1945 cited in Amstrup 2003, p. 587). Results show strong fidelity to activity areas that are used over multiple years (Ferguson et al. 1997, p. 1,589). All areas within an activity area are not used each year.

The distribution patterns of some polar bear populations during the open water and early fall seasons have changed in recent years. In the Beaufort Sea, for example, greater numbers of polar bears are being found on shore than recorded at any previous time (Schliebe et al. 2006b, p. 559). In Baffin Bay, Davis Strait, western Hudson Bay and other areas of Canada, Inuit hunters are reporting an increase in the numbers of bears present on land during summer and fall (Dowsley and Taylor 2005, p. 2; Dowsley 2005, p. 2). The exact reasons for these changes may involve a number of factors, including changes in sea ice (Stirling and Parkinson 2006, p. 272).

Food Habits

Polar bears are carnivorous, and a top predator of the Arctic marine ecosystem. Polar bears prey heavily throughout their range on ice-dependent seals (frequently referred to as ''ice seals''), principally ringed seals (*Phoca hispida*), and, to a lesser extent, bearded seals (*Erignathus barbatus)*. In some locales, other seal species are taken. On average, an adult polar bear needs approximately 2 kg (4.4 lbs) of seal fat per day to survive (Best 1985, p. 1035). Sufficient nutrition is critical and may be obtained and stored as fat when prey is abundant.

Although seals are their primary prey, polar bears occasionally take much larger animals such as walruses (*Odobenus rosmarus*), narwhal (*Monodon monoceros*), and belugas (*Delphinapterus leucas*) (Kiliaan and Stirling 1978, p. 199; Smith 1980, p. 2,206; Smith 1985, pp. 72–73; Lowry et al. 1987, p. 141; Calvert and Stirling 1990, p. 352; Smith and Sjare 1990, p. 99). In some areas and under some conditions, prey other than seals or carrion may be quite important to polar bear sustenance as short-term supplemental forms of nutrition. Stirling and Øritsland (1995, p. 2,609) suggested that in areas where ringed seal populations were reduced, other prey species were being substituted. Like other ursids, polar bears will eat human garbage (Lunn and Stirling 1985, p. 2,295), and when confined to land for long periods, they will consume coastal marine and terrestrial plants and other terrestrial foods (Russell 1975, p. 122; Derocher et al. 1993, p. 252); however the significance of such other terrestrial foods to the long-term welfare of polar bears may be limited (Lunn and Stirling 1985, p. 2,296; Ramsay and Hobson 1991, p. 600; Derocher et al. 2004, p. 169) as further expanded under the section entitled ''Adaptation'' below.

Reproduction

Polar bears are characterized by late sexual maturity, small litter sizes, and extended parental investment in raising young, all factors that contribute to a low reproductive rate (Amstrup 2003, pp. 599–600). Reproduction in the female polar bear is similar to that in other ursids. Females generally mature and breed for the first time at 4 or 5 years and give birth at 5 or 6 years of age. Litters of two cubs are most common, but litters of three cubs are seen sporadically across the Arctic (Amstrup 2003, p. 599). When foraging conditions are difficult, polar bears may ''defer'' reproduction in favor of survival (Derocher et al. 1992, p. 564).

Polar bears enter a prolonged estrus between March and June, when breeding occurs. Ovulation is induced by mating (Wimsatt 1963, p. 72), and implantation is delayed until autumn. The total gestation period is 195 to 265 days (Uspenski 1977, cited in Amstrup 2003, p. 599), although active development of the fetus is suspended during most of this period. The timing of implantation, and therefore the timing of birth, is likely dependent on body condition of the female, which depends on a variety of environmental factors. Pregnant females that spend the late summer on land prior to denning may not feed for 8 months (Watts and Hansen 1987, p. 627). This may be the longest period of food deprivation of any mammal, and it occurs at a time when the female gives birth to and then nourishes new cubs.

Newborn polar bears are helpless and have hair, but are blind and weigh only 0.6 kg (1.3 lb) (Blix and Lentfer 1979, p. 68). Cubs grow rapidly, and may weigh 10 to 12 kg (22 to 26 lbs) by the time they emerge from the den in the spring. Young bears will stay with their mothers until weaning, which occurs most commonly in early spring when the cubs are 2.3 years of age. Female polar bears are available to breed again after their cubs are weaned; thus the reproductive interval for polar bears is 3 years.

Polar bears are long-lived mammals not generally susceptible to disease, parasites, or injury. The oldest known female in the wild was 32 years of age and the oldest known male was 28, though few polar bears in the wild live to be older than 20 years (Stirling 1988, p. 139; Stirling 1990, p. 225). Due to extremely low reproductive rates, polar bears require a high survival rate to maintain population levels (Eberhardt 1985, p. 1,010; Amstrup and Durner 1995, pp. 1,313, 1,319). Survival rates increase up to a certain age, with cubs-of-the-year having the lowest rates and prime age adults (between 5 and 20 years of age) having survival rates that can exceed 90 percent. Amstrup and Durner (1995, p. 1,319) report that high survival rates (exceeding 90 percent for adult females) are essential to sustain populations.

Polar Bear—Sea Ice Habitat Relationships

Polar bears are distributed throughout the ice-covered waters of the circumpolar Arctic (Stirling 1988, p. 61), and rely on sea ice as their primary habitat (Amstrup 2003, p. 587). Polar bears depend on sea ice for a number of purposes, including as a platform from which to hunt and feed upon seals; as habitat on which to seek mates and breed; as a platform to move to terrestrial maternity denning areas, and sometimes for maternity denning; and as a substrate on which to make long-distance movements (Stirling and Derocher 1993, p. 241). Mauritzen et al. (2003b, p. 123) indicated that habitat use by polar bears during certain seasons may involve a trade-off between selecting habitats with abundant prey availability versus the use of safer retreat habitats (i.e., habitats where polar bears have lower probability of becoming separated from the main body of the pack ice) of higher ice concentrations with less prey. Their findings indicate that polar bear distribution may not be solely a reflection of prey availability, but other factors such as energetic costs or risk may be involved.

Stirling et al. (1993, p. 15) defined seven types of sea ice habitat and classified polar bear use of these ice types based on the presence of bears or bear tracks in order to determine habitat preferences. The seven types of sea ice are: (1) stable fast ice with drifts; (2) stable fast ice without drifts; (3) floe edge ice; (4) moving ice; (5) continuous stable pressure ridges; (6) coastal low level pressure ridges; and (7) fiords and bays. Polar bears were not evenly distributed over these sea ice habitats, but concentrated on the floe ice edge, on stable fast ice with drifts, and on areas of moving ice (Stirling 1990 p. 226; Stirling et al. 1993, p. 18). In another assessment, categories of ice types included pack ice, shore-fast ice, transition zone ice, polynyas, and leads (linear openings or cracks in the ice) (USFWS 1995, p. 9). Pack ice, which consists of annual and multi-year older ice in constant motion due to winds and currents, is the primary summer habitat for polar bears in Alaska. Shore-fast ice (also known as ''fast ice'', it is defined by the *Arctic Climate Impact Assessment* (2005, p. 190) as ice that grows seaward from a coast and remains in place throughout the winter; typically it is stabilized by grounded pressure ridges at its outer edge) is used for feeding on seal pups, for movement, and occasionally for maternity denning. Open water at leads and polynyas attracts seals and other marine mammals and provides preferred hunting habitats during winter and spring. Durner et al. (2004, pp. 18–19; Durner et al. 2007, pp. 17–18) found that polar bears in the Arctic basin prefer sea ice concentrations greater than 50 percent located over the continental shelf with water depths less than 300 m (984 feet (ft)).

Polar bears must move throughout the year to adjust to the changing distribution of sea ice and seals (Stirling 1988, p. 63; USFWS 1995, p. 4). In some areas, such as Hudson Bay and James Bay, polar bears remain on land when the sea ice retreats in the spring and they fast for several months (up to 8 months for pregnant females) before fall freeze-up (Stirling 1988, p. 63; Derocher et al. 2004, p. 163; Amstrup et al. 2007, p. 4). Some populations unconstrained by land masses, such as those in the Barents, Chukchi, and Beaufort Seas, spend each summer on the multi-year ice of the polar basin (Derocher et al. 2004, p. 163; Amstrup et al. 2007, p. 4). In intermediate areas such as the Canadian Arctic, Svalbard, and Franz Josef Land archipelagos, bears stay on the sea ice most of the time, but in some years they may spend up to a few months on land (Mauritizen et al. 2001, p. 1,710). Most populations use terrestrial habitat partially or exclusively for maternity denning; therefore, females must adjust their movements in order to access land at the appropriate time (Stirling 1988, p. 64; Derocher et al. 2004, p. 166).

Sea ice changes between years in response to environmental factors may have consequences for the distribution and productivity of polar bears as well as their prey. In the southern Beaufort Sea, anomalous heavy sea ice conditions in the mid-1970s and mid-1980s (thought to be roughly in phase with a similar variation in runoff from the Mackenzie River) caused significant declines in productivity of ringed seals (Stirling 2002, p. 68). Each event lasted approximately 3 years and caused similar declines in the birth rate of polar bears and survival of subadults, after which reproductive success and survival of both species increased again.

Maternal Denning Habitat

Throughout the species' range, most pregnant female polar bears excavate

dens in snow located on land in the fall-early winter period (Harington 1968, p. 6; Lentfer and Hensel 1980, p. 102; Ramsay and Stirling 1990, p. 233; Amstrup and Gardner 1994, p. 5). The only known exceptions are in western and southern Hudson Bay, where polar bears first excavate earthen dens and later reposition into adjacent snow drifts (Jonkel et al. 1972, p. 146; Ramsay and Stirling 1990, p. 233), and in the southern Beaufort Sea, where a portion of the population dens in snow caves located on pack and shore-fast ice. Successful denning by polar bears requires accumulation of sufficient snow for den construction and maintenance. Adequate and timely snowfall combined with winds that cause snow accumulation leeward of topographic features create denning habitat (Harington 1968, p. 12).

A great amount of polar bear denning occurs in core areas (Harington 1968, pp. 7–8), which show high use over time (see Figure 8). In some portions of the species' range, polar bears den in a more diffuse pattern, with dens scattered over larger areas at lower density (Lentfer and Hensel 1980, p. 102; Stirling and Andriashek 1992, p. 363; Amstrup 1993, p. 247; Amstrup and Gardner 1994, p. 5; Messier et al. 1994, p. 425; Born 1995, p. 81; Ferguson et al. 2000a, p. 1125; Durner et al. 2001, p. 117; Durner et al. 2003, p. 57).

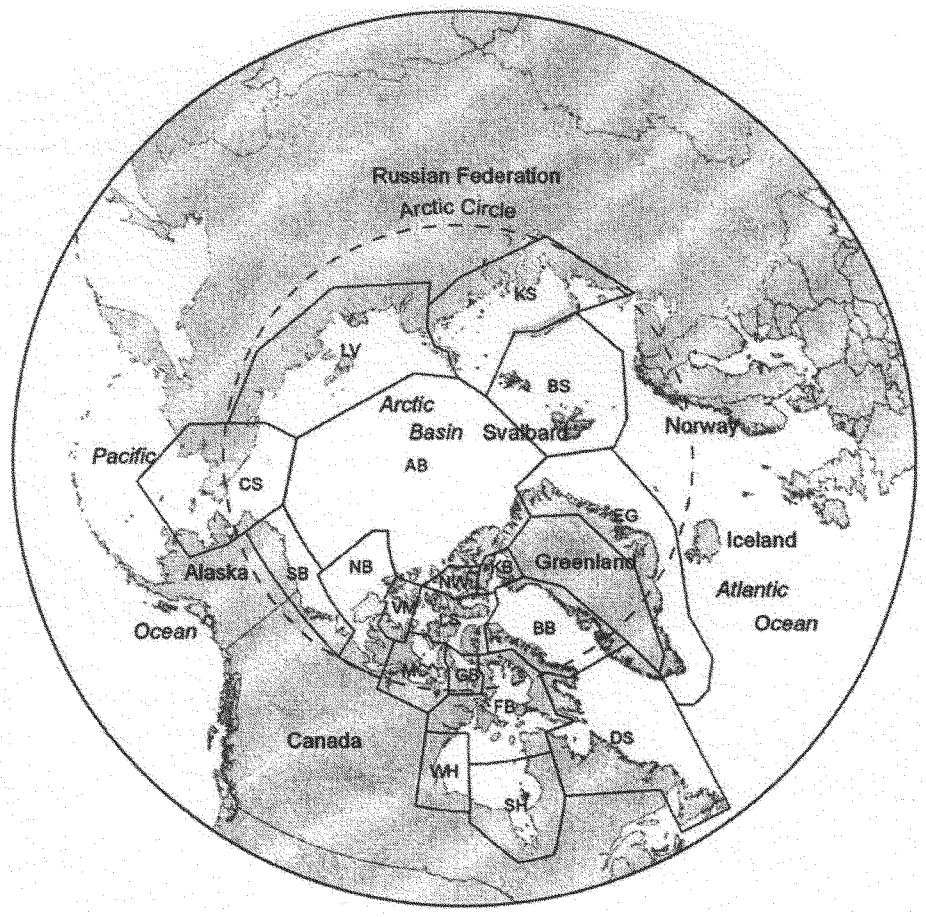
Habitat characteristics of denning areas vary substantially from the rugged mountains and fjordlands of the Svalbard archipelago and the large islands north of the Russian coast (Lønø 1970, p. 77; Uspenski and Kistchinski 1972, p. 182; Larsen 1985, pp. 321–322), to the relatively flat topography of areas such as the west coast of Hudson Bay (Ramsay and Andriashek 1986, p. 9; Ramsay and Stirling 1990, p. 233) and north slope of Alaska (Amstrup 1993, p. 247; Amstrup and Gardner 1994, p. 7; Durner et al. 2001, p. 119; Durner et al. 2003, p. 61), to offshore pack ice-pressure ridge habitat (Amstrup and Gardner 1994, p. 4; Fischbach et al. 2007, p. 1,400). The key characteristic of all denning habitat is topographic features that catch snow in the autumn and early winter (Durner et al. 2003, p. 61). Across the range, most polar bear dens occur relatively near the coast. The main exception to coastal denning occurs in the western Hudson Bay area, where bears den farther inland in traditional denning areas (Kolenosky and Prevett 1983, pp. 243–244; Stirling and Ramsay 1986, p. 349).

Current Population Status and Trend

The total number of polar bears worldwide is estimated to be 20,000–25,000 (Aars et al. 2006, p. 33). Polar bears are not evenly distributed throughout the Arctic, nor do they comprise a single nomadic cosmopolitan population, but rather occur in 19 relatively discrete populations (Aars et al. 2006, p. 33). The use of the term ''relatively discrete population'' in this context is not intended to equate to the Act's term ''distinct population segments'' (Figure 1). Boundaries of the 19 polar bear populations have evolved over time and are based on intensive study of movement patterns, tag returns from harvested animals, and, to a lesser degree, genetic analysis (Aars et al. 2006, pp. 33–47). The scientific studies regarding population bounds began in the early 1970s and continue today. Within this final rule we have adopted the use of the term ''population'' to describe polar bear management units consistent with their designation by the World Conservation Union-International Union for Conservation of Nature and Natural Resources (IUCN), Species Survival Commission (SSC) Polar Bear Specialist Group (PBSG) with information available as of October 2006 (Aars et al. 2006, p. 33), and to describe a combination of two or more of these populations into ''ecoregions,'' as discussed in following sections. Although movements of individual polar bears overlap extensively, telemetry studies demonstrate spatial segregation among groups or stocks of polar bears in different regions of their circumpolar range (Schweinsburg and Lee 1982, p. 509; Amstrup et al. 1986, p. 252; Amstrup et al., 2000b, pp. 957–958.; Garner et al. 1990, p. 224; Garner et al. 1994, pp.112–115; Amstrup and Gardner 1994, p. 7; Ferguson et al. 1999, pp. 313–314; Lunn et al. 2002, p. 41). These patterns, along with information obtained from survey and reconnaissance, marking and tagging studies, and traditional knowledge, have resulted in recognition of 19 relatively discrete polar bear populations (Aars et al. 2006, p. 33). Genetic analysis reinforces the boundaries between some designated populations (Paetkau et al. 1999, p. 1,571; Amstrup 2003, p. 590) while confirming the existence of overlap and mixing among others (Paetkau et al. 1999, p. 1,571; Cronin et al. 2006, p. 655). There is considerable overlap in areas occupied by members of these groups (Amstrup et al. 2004, p. 676; Amstrup et al. 2005, p. 252), and boundaries separating the groups are adjusted as new data are collected. These boundaries, however, are thought to be ecologically meaningful, and the 19 units they describe are managed as populations, with the exception of the Arctic Basin population where few bears are believed to be year-round residents.

Figure 1. Distribution of Polar Bear Populations

Throughout the Arctic Circumpolar Basin



Legend: CS = Chukchi Sea; SB = Southern Beaufort Sea; NB = Northern Beaufort Sea; VM = Viscount Melville Sound, NW = Norwegian Bay; LS = Lancaster Sound; MC = M'Clintock Channel; GB = Gulf of Boothia; FB = Foxe Basin; WH = Western Hudson Bay; SH = Southern Hudson Bay; KB = Kane Basin; BB = Baffin Bay; DS = Davis Strait; EG = East Greenland; BS = Barents Sea; KS = Kara Sea; LV = Laptev Sea; AB = Arctic Basin

Population size estimates and qualitative categories of current trend and status for each of the 19 polar bear populations are discussed below. This discussion was derived from information presented at the IUCN/SSC PBSG meeting held in Seattle, Washington, in June 2005, and updated with results that became available in October 2006 (Aars et al. 2006, p. 33). The following narrative incorporates results from two recent publications (Stirling et al. 2007; Obbard et al. 2007). The remainder of the information on each population is based on the available status reports and revisions given by each nation, as reported in Aars et al. (2006).

Status categories include an assessment of whether a population is believed to be not reduced, reduced, or severely reduced from historic levels of abundance, or if insufficient data are available to estimate status. Trend categories include an assessment of whether the population is currently increasing, stable, or declining, or if insufficient data are available to estimate trend. In general, an assessment of trend requires a monitoring program or data to allow population size to be estimated at more than one point in time. Information on the date of the current population estimate and information on previous population estimates and the basis for

those estimates is detailed in Aars et al. (2006, pp. 34–35). In some instances a subjective assessment of trend has been provided in the absence of either a monitoring program or estimates of population size developed for more than one point in time. This status and trend analysis only reflects information about the past and present polar bear populations. Later in this final rule a discussion will be presented about the scientific information on threats that will affect the species within the foreseeable future. The Act establishes a five-factor analysis for using this information in making listing decisions.

Populations are discussed in a counterclockwise order from Figure 1, beginning with East Greenland. There is no population size estimate for the East Greenland polar bear population because no population surveys have been conducted there. Thus, the status and trend of this population have not been determined. The Barents Sea population was estimated to comprise 3,000 animals based on the only population survey conducted in 2004. Because only one abundance estimate is available, the status and trend of this population cannot yet be determined. There is no population size estimate for the Kara Sea population because population surveys have not been conducted; thus status and trend of this population cannot yet be determined. The Laptev Sea population was estimated to comprise 800 to 1,200 animals, on the basis of an extrapolation of historical aerial den survey data (1993). Status and trend cannot yet be determined for this population.

The Chukchi Sea population is estimated to comprise 2,000 animals, based on extrapolation of aerial den surveys (2002). Status and trend cannot yet be determined for this population. The Southern Beaufort Sea population is comprised of 1,500 animals, based on a recent population inventory (2006). The predicted trend is declining (Aars et al. 2006, p.33), and the status is designated as reduced. The Northern Beaufort Sea population was estimated to number 1,200 animals (1986). The trend is designated as stable, and status is believed to be not reduced. Stirling et al. (2007, pp. 12–14) estimated long-term trends in population size for the Northern Beaufort Sea population. The model-averaged estimate of population size from 2004 to 2006 was 980 bears, and did not differ in a statistically significantly way from estimates for the periods of 1972 to 1975 (745 bears) and 1985 to 1987 (867 bears), and thus the trend is stable. Stirling et al. (2007, p. 13) indicated that, based on a number of indications and separate annual abundance estimates for the study period, the population estimate may be slightly biased low (i.e., might be an underestimate) due to sampling issues.

The Viscount Melville Sound population was estimated to number 215 animals (1992). The observed or predicted trend based on management action is listed as increasing (Aars et al. 2006, p. 33), although the status is designated as severely reduced from prior excessive harvest. The Norwegian Bay population estimate was 190 animals (1998); the trend, based on computer simulations, is noted as declining, while the status is listed as not reduced. The Lancaster Sound population estimate was 2,541 animals (1998); the trend is thought to be stable, and status is not reduced. The M'Clintock Channel population is estimated at 284 animals (2000); the observed or predicted trend based on management actions is listed as increasing although the status is severely reduced from excessive harvest. The Gulf of Boothia population estimate is 1,523 animals (2000); the trend is thought to be stable, and status is designated as not reduced. The Foxe Basin population was estimated to number 2,197 animals in 1994; the population trend is thought to be stable, and the status is not reduced. The Western Hudson Bay population estimate is 935 animals (2004); the trend is declining, and the status is reduced. The Southern Hudson Bay population was estimated to be 1,000 animals in 1988 (Aars et al. 2006, p. 35); the trend is thought to be stable, and status is not reduced. In a more recent analysis, Obbard et al. (2007) applied open population capture-recapture models to data collected from 1984–86 and 1999–2005 to estimate population size, trend, and survival for the Southern Hudson Bay population. Their results indicate that the size of the Southern Hudson Bay population appears to be unchanged from the mid-1980s. From 1984–1986, the population was estimated at 641 bears; from 2003–2005, the population was estimated at 681 bears. Thus, the trend for this population is stable. The Kane Basin population was estimated to be comprised of 164 animals (1998); its trend is declining, and status is reduced. The Baffin Bay population was estimated to be 2,074 animals (1998); the trend is declining, and status is reduced. The Davis Strait population was estimated to number 1,650 animals based on traditional ecological knowledge (TEK) (2004); data were unavailable to assess trends or status. Preliminary information from the second of a 3-year population assessment estimates the population number to be 2,375 bears (Peacock et al. 2007, p. 7). The Arctic Basin population estimate, trend, and status are unknown (Aars et al. 2006, p. 35).

On the basis of information presented above, two polar bear populations are designated as increasing (Viscount Melville Sound and M'Clintock Channel-both were severely reduced in the past and are recovering under conservative harvest limits); six populations are stable (Northern Beaufort Sea, Southern Hudson Bay, Davis Strait, Lancaster Sound, Gulf of Bothia, Foxe Basin); five populations are declining (Southern Beaufort Sea, Norwegian Bay, Western Hudson Bay, Kane Basin, Baffin Bay); and six populations are designated as data deficient (Barents Sea, Kara Sea, Laptev Sea, Chukchi Sea, Arctic Basin, East Greenland) with no estimate of trend. The two populations with the most extensive time series of data, Western Hudson Bay and Southern Beaufort Sea, are both considered to be declining.

As previously noted, scientific information assessing this species in the foreseeable future is provided later in this final rule.

Polar Bear Ecoregions

Amstrup et al. (2007, pp. 6–8) grouped the 19 IUCN-recognized polar bear populations (Aars et al. 2006, p. 33) into four physiographically different functional groups or ''ecoregions'' (Figure 2) in order to forecast future polar bear population status on the basis of current knowledge of polar bear populations, their relationships to sea ice habitat, and predicted changes in sea ice and other environmental variables. Amstrup et al. (2007, p. 7) defined the ecoregions ''on the basis of observed temporal and spatial patterns of ice formation and ablation (melting or evaporation), observations of how polar bears respond to those patterns, and how general circulation models (GCMs) forecast future ice patterns.''

The *Seasonal Ice Ecoregion* includes the Western and Southern Hudson Bay populations, as well as the Foxe Basin, Baffin Bay, and Davis Strait populations. These 5 IUCN-recognized populations are thought to include a total of about 7,200 polar bears (Aars et al. 2006, p. 34–35). The 5 populations experience sea ice that melts entirely in summer, and bears spend extended periods of time on shore.

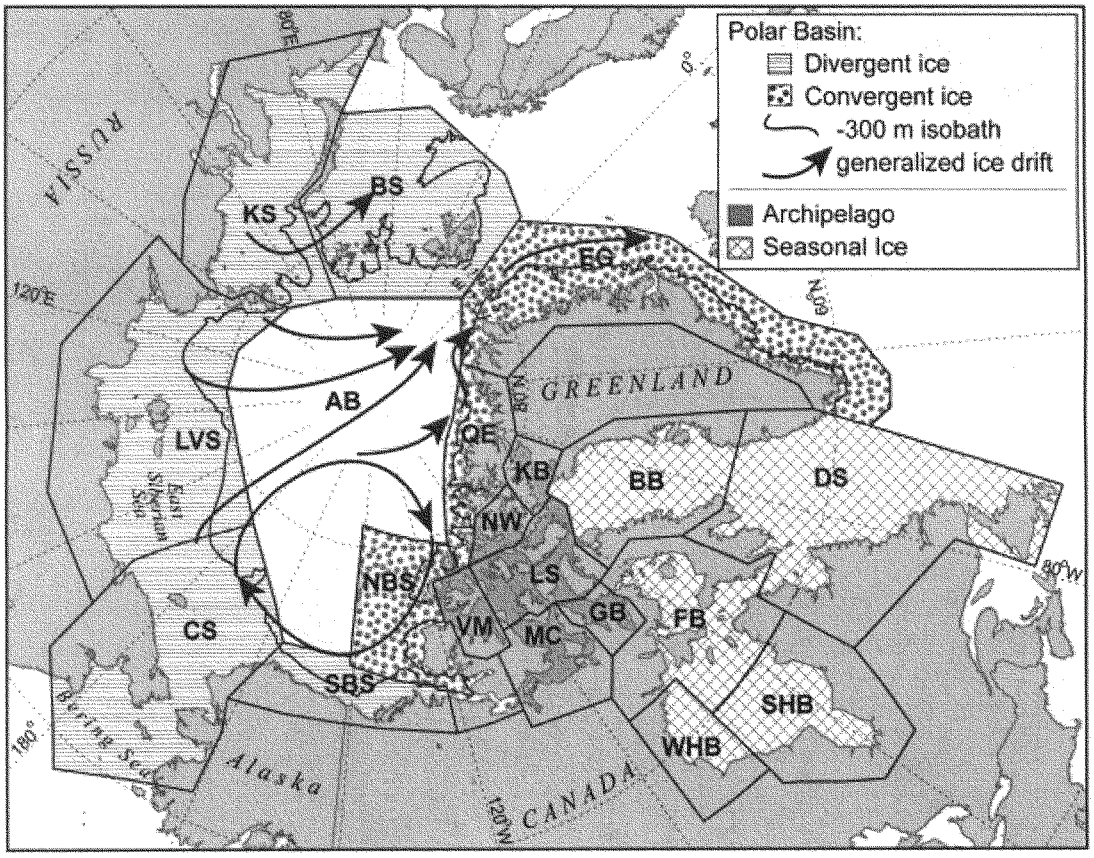


Figure 2. Map of four polar bear ecoregions in Amstrup et al. (2007)(used with permission).

The *Archipelago Ecoregion,* islands and channels of the Canadian Arctic, has approximately 5,000 polar bears representing 6 populations recognized by the IUCN (Aars et al. 2006, p. 34–35). These populations are Kane Basin, Norwegian Bay, Viscount Melville Sound, Lancaster Sound, M'Clintock Channel, and the Gulf of Boothia. Much of this region is characterized by heavy annual and multi-year ice that fills the inter-island channels year round and polar bears remain on the sea ice throughout the year.

The polar basin was split into a *Convergent Ecoregion* and a *Divergent Ecoregion,* based upon the different patterns of sea ice formation, loss (via melt and transport) (Rigor et al. 2002, p. 2,658; Rigor and Wallace 2004, p. 4; Maslanik et al. 2007, pp. 1–3; Meier et al. 2007, pp. 428–434; Ogi and Wallace 2007, pp. 2–3).

The *Divergent Ecoregion* is characterized by extensive formation of annual sea ice that is transported toward the Canadian Arctic islands and Greenland, or out of the polar basin through Fram Strait. The Divergent ecoregion includes the Southern Beaufort, Chukchi, Laptev, Kara, and Barents Seas populations, and is thought to contain up to 9,500 polar bears. In the Divergent Ecoregion, as in the Archipelago Ecoregion, polar bears mainly stay on the sea ice year-round.

The *Convergent Ecoregion,* composed of the Northern Beaufort Sea, Queen Elizabeth Islands (see below), and East Greenland populations, is thought to contain approximately 2,200 polar bears. Amstrup et al. (2007, p. 7) modified the IUCN-recognized population boundaries (Aars et al. 2006, pp. 33,36) of this ecoregion by redefining a Queen Elizabeth Islands population and extending the original boundary of that population to include northwestern Greenland (see Figure 2). The area contained within this boundary is characterized by heavy multi-year ice, except for a recurring lead system that runs along the Queen Elizabeth Islands from the northeastern Beaufort Sea to northern Greenland (Stirling 1980, pp. 307–308). The area may contain over 200 polar bears and some bears from other regions have been recorded moving through the area (Durner and Amstrup 1995, p. 339; Lunn et al. 1995, pp. 12–13). The Northern Beaufort Sea and Queen Elizabeth Islands populations occur in a region of the polar basin that accumulates ice (hence, the Convergent Ecoregion) as it is moved from the polar basin Divergent Ecoregion, while the East Greenland population occurs in area where ice is transported out of the polar basin through the Fram Strait (Comiso 2002, pp. 17–18; Rigor and Wallace 2004, p. 3; Belchansky et al. 2005, pp. 1–2; Holland et al. 2006, pp. 1–5; Durner et al. 2007, p. 3; Ogi and Wallace 2007, p. 2; Serreze et al. 2007, pp. 1,533–1536).

Amstrup et al. (2007) do not incorporate the central Arctic Basin population into an ecoregion. This population was defined by the IUCN in 2001 (Lunn et al. 2002, p.29) to recognize polar bears that may reside outside the territorial jurisdictions of the polar nations. The Arctic Basin region is characterized by very deep water, which is known to be unproductive (Pomeroy 1997, pp. 6–7). Available data indicate that polar bears prefer sea ice over shallow water (less then 300 m (984 ft) deep) (Amstrup et

al. 2000b, p. 962; Amstrup et al. 2004, p. 675; Durner et al. 2007, pp. 18–19), and it is thought that this preference reflects increased hunting opportunities over more productive waters. Also, tracking studies indicate that few if any bears are year-round residents of the central Arctic Basin, and therefore this relatively unpopulated portion of the Arctic was not designated as an ecoregion.

Sea Ice Environment

As described in detail in the ''Species Biology'' section of this rule, above, polar bears are evolutionarily adapted to life on sea ice (Stirling 1988, p. 24; Amstrup 2003, p. 587). They need sea ice as a platform for hunting, for seasonal movements, for travel to terrestrial denning areas, for resting, and for mating (Stirling and Derocher 1993, p. 241). Moore and Huntington (in press) classify the polar bear as an ''ice-obligate'' species because of its reliance on sea ice as a platform for resting, breeding, and hunting, while Laidre et al. (in press) similarly describe the polar bear as a species that principally relies on annual sea ice over the continental shelf and areas toward the southern edge of sea ice for foraging. Some polar bears use terrestrial habitats seasonally (e.g., for denning or for resting during open water periods). Open water is not considered to be an essential habitat type for polar bears, because life functions such as feeding, reproduction, or resting do not occur in open water. However, open water is a fundamental part of the marine system that supports seal species, the principal prey of polar bears, and seasonally refreezes to form the ice needed by the bears (see ''Open Water Habitat'' section for more information). Further, the open water interface with sea ice is an important habitat used to a great extent by polar bears. In addition, the extent of open water is important because vast areas of open water may limit a bear's ability to access sea ice or land (see ''Open Water Swimming'' section for more detail). Snow cover, both on land and on sea ice, is an important component of polar bear habitat in that it provides insulation and cover for young polar bears and ringed seals in snow dens or lairs (see ''Maternal Denning Habitat'' section for more detail).

Sea Ice Habitat

Overview of Arctic Sea Ice

According to the *Arctic Climate Impact Assessment* (ACIA 2005), approximately two-thirds of the Arctic is ocean, including the Arctic Ocean and its shelf seas plus the Nordic, Labrador, and Bering Seas (ACIA 2005, p. 454). Sea ice is the defining characteristic of the marine Arctic (ACIA 2005, p. 30). The Arctic sea ice environment is highly dynamic and follows annual patterns of expansion and contraction. Sea ice is typically at its maximum extent (the term ''extent'' is formally defined in the ''Observed Changes in Arctic Sea Ice'' section) in March and at its minimum extent in September (Parkinson et al. 1999, p. 20,840). The two primary forms of sea ice are seasonal (or first year) ice and perennial (or multi-year) ice (ACIA 2005, p. 30). Seasonal ice is in its first autumn/winter of growth or first spring/summer of melt (ACIA 2005, p. 30). It has been documented to vary in thickness from a few tenths of a meter near the southern margin of the sea ice to 2.5 m (8.2 ft) in the high Arctic at the end of winter (ACIA 2005, p. 30), with some ice also that is thinner and some limited amount of ice that can be much thicker, especially in areas with ridging (C. Parkinson, NASA, in litt. to the Service, November 2007). If first-year ice survives the summer melt, it becomes multi-year ice. This ice tends to develop a distinctive hummocky appearance through thermal weathering, becoming harder and almost salt-free over several years (ACIA 2005, p. 30). Sea ice near the shore thickens in shallow waters during the winter, and portions become grounded. Such ice is known as shore-fast ice, land-fast ice, or simply fast ice (ACIA 2005, p. 30). Fast ice is found along much of the Siberian coast, the White Sea (an inlet of the Barents Sea), north of Greenland, the Canadian Archipelago, Hudson Bay, and north of Alaska (ACIA 2005, p. 457).

Pack ice consists of seasonal (or first-year) and multi-year ice that is in constant motion caused by winds and currents (USFWS 1995, pp. 7–9). Pack ice is used by polar bears for traveling, feeding, and denning, and it is the primary summer habitat for polar bears, including the Southern Beaufort Sea and Chukchi Sea populations, as first year ice retreats and melts with the onset of spring (see ''Polar Bear-Sea Ice Habitat Relationships'' section for more detail on ice types used by polar bears). Movements of sea ice are related to winds, currents, and seasonal temperature fluctuations that in turn promote its formation and degradation. Ice flow in the Arctic often includes a clockwise circulation of sea ice within the Canada Basin and a transpolar drift stream that carries sea ice from the Siberian shelves to the Barents Sea and Fram Strait.

Sea ice is an important component of the Arctic climate system (ACIA 2005, p. 456). It is an effective insulator between the oceans and the atmosphere. It also strongly reduces the ocean-atmosphere heat exchange and reduces wind stirring of the ocean. In contrast to the dark ocean, pond-free sea ice (i.e., sea ice that has no meltwater ponds on the surface) reflects most of the solar radiation back into space. Together with snow cover, sea ice greatly restricts the penetration of light into the sea, and it also provides a surface for particle and snow deposition (ACIA 2005, p. 456). Its effects can extend far south of the Arctic, perhaps globally, e.g., through impacting deepwater formation that influences global ocean circulation (ACIA 2005, p. 32).

Sea ice is also an important environmental factor in Arctic marine ecosystems. ''Several physical factors combine to make arctic marine systems unique including: a very high proportion of continental shelves and shallow water; a dramatic seasonality and overall low level of sunlight; extremely low water temperatures; presence of extensive areas of multi-year and seasonal sea-ice cover; and a strong influence from freshwater, coming from rivers and ice melt'' (ACIA 2005, p. 454). Ice cover is an important physical characteristic, affecting heat exchange between water and atmosphere, and light penetration to organisms in the water below. It also helps determine the depth of the mixed layer, and provides a biological habitat above, within, and beneath the ice. The marginal ice zone, at the edge of the pack ice, is important for plankton production and plankton-feeding fish (ACIA 2005, p. 456)

Observed Changes in Arctic Sea Ice

Sea ice is the defining physical characteristic of the marine Arctic environment and has a strong seasonal cycle (ACIA 2005, p. 30). There is considerable inter-annual variability both in the maximum and minimum extent of sea ice, but it is typically at its maximum extent in March and minimum extent in September (Parkinson et al. 1999, p. 20, 840). In addition, there are decadal and inter-decadal fluctuations to sea ice extent due to changes in atmospheric pressure patterns and their associated winds, river runoff, and influx of Atlantic and Pacific waters (Gloersen 1995, p. 505; Mysak and Manak 1989, p. 402; Kwok 2000, p. 776; Parkinson 2000b, p. 10; Polyakov et al. 2003, p. 2,080; Rigor et al. 2002, p. 2,660; Zakharov 1994, p. 42). Sea ice ''extent'' is normally defined as the area of the ocean with at least 15 percent ice coverage, and sea ice ''area'' is normally defined as the integral sum of areas actually covered by sea ice

(Parkinson et al. 1999). ''Area'' is a more precise measure of the areal extent of the ice itself, since it takes into account the fraction of leads (linear openings or cracks in the ice) within the ice, but ''extent'' is more reliably observed (Zhang and Walsh 2006). The following sections discuss specific aspects of observed sea ice changes of relevance to polar bears.

Summer Sea Ice

Summer sea ice area and sea ice extent are important factors for polar bear survival (see ''Polar Bear-Sea Ice Habitat Relationships'' section). Seasonal or first-year ice that remains at the end of the summer melt becomes multi-year (or perennial) ice. The amount and thickness of perennial ice is an important determinant of future sea ice conditions (i.e., gain or loss of ice) (Holland and Bitz 2003; Bitz and Roe 2004). Much of the following discussion focuses on summer sea ice extent (rather than area).

Prior to the early 1970s, ice extent was measured with visible-band satellite imagery and aircraft and ship reports. With the advent of passive microwave (PM) satellite observations, beginning in December 1972 with a single channel instrument and then more reliably in October 1978 with a multi-channel instrument, we have a more accurate, 3-decade record of changes in summer sea ice extent and area. Over the period since October 1978, successive papers have documented an overall downward trend in Arctic sea ice extent and area. For example, Parkinson et al. (1999) calculated Arctic sea ice extents, areas, and trends for late 1978 through the end of 1996, and documented a decrease in summer sea ice extent of 4.5 percent per decade. Comiso (2002) documented a decline of September minimum sea ice extent of 6.7 percent plus or minus 2.4 percent per decade from 1981 through 2000. Stroeve et al. (2005) analyzed data from 1978 through 2004, and calculated a decline in minimum sea ice extent of 7.7 percent plus or minus 3 percent per decade. Comiso (2006, p. 72) included observations for 2005, and calculated a per-decade decline in minimum sea ice extent of up to 9.8 percent plus or minus 1.5 percent. Most recently, Stroeve et al. (2007, pp. 1–5) estimated a 9.1 percent per-decade decline in September sea ice extent for 1979–2006, while Serreze et al. (2007, pp. 1,533–1,536) calculated a per-decade decline of 8.6 percent plus or minus 2.9 percent for the same parameter over the same time period. These estimates differ only because Serreze et al. (2007, pp. 1,533–1,536) normalized the trend by the 1979–2000 mean, in order to be consistent with how the National Snow and Ice Data Center [1] calculates its estimates (J. Stroeve, in litt. to the Service, November 2007). This decline translates to a decrease of 60,421 sq km (23,328 sq mi) per year (NSIDC Press Release, October 3, 2006).

The rate of decrease in September sea ice extent appears to have accelerated in recent years, although the acceleration to date has not been shown to be statistically significant (C. Bitz, in litt. to the Service, November 2007). The years 2002 through 2007 all exceeded previous record lows (Stroeve et al. 2005; Comiso 2006; Stroeve et al. 2007, pp. 1–5; Serreze et al. 2007, pp. 1,533–1,536; NSIDC Press Release, October 1, 2007), and 2002, 2005, and 2007 had successively lower record-breaking minimum extent values (*http://www.nsidc.org*). The 2005 absolute minimum sea ice extent of 5.32 million sq km (2.05 million sq mi) for the entire Arctic Ocean was a 21 percent reduction compared to the mean for 1979 to 2000 (Serreze et al. 2007, pp. 1,533–1,536). Nghiem et al. (2006) documented an almost 50 percent reduction in perennial (multi-year) sea ice extent in the East Arctic Ocean (0 to 180 degrees east longitude) between 2004 and 2005, while the West Arctic Ocean (0 and 180 degrees west longitude) had a slight gain during the same period, followed by an almost 70 percent decline from October 2005 to April 2006. Nghiem et al. (2007) found that the extent of perennial sea ice was significantly reduced by 23 percent between March 2005 and March 2007 as observed by the QuikSCAT/SeaWinds satellite scatterometer. Nghiem et al. (2006) presaged the extensive decline in September sea ice extent in 2007 when they stated: ''With the East Arctic Ocean dominated by seasonal ice, a strong summer melt may open a vast ice-free region with a possible record minimum ice extent largely confined to the West Arctic Ocean.''

Arctic sea ice declined rapidly to unprecedented low extents in summer 2007 (Stroeve et al. 2008). On August 16–17, 2007, Arctic sea ice surpassed the previous single-day (absolute minimum) record for the lowest extent ever measured by satellite (set in 2005), and the sea ice was still melting (NSIDC Arctic Sea Ice News, August 17, 2007). On September 16, 2007 (the end of the melt season), the 5-day running mean sea ice extent reported by NSIDC was 4.13 million sq km (1.59 million sq mi), an all-time record low. This was 23 percent lower than the previous record minimum reported in 2005 (see Figure 3) (Stroeve et al. 2008) and 39 percent below the long-term average from 1979 to 2000 (see Figure 4) (NSIDC Press Release, October 1, 2007). Arctic sea ice receded so much in 2007 that the so-called ''Northwest Passage'' through the straits of the Canadian Arctic Archipelago completely opened for the first time in recorded history (NSIDC Press Release, October 1, 2007). Based on a time-series of data from the Hadley Centre, extending back before the advent of the PM satellite era, sea ice extent in mid-September 2007 may have fallen by as much as 50 percent from the 1950s to 1970s (Stroeve et al. 2008). The minimum September Arctic sea ice extent since 1979 is now declining at a rate of approximately 10.7 percent per decade (Stroeve et al. 2008), or approximately 72,000 sq km (28,000 sq mi) per year (see Figure 3 below) (NSIDC Press Release, October 1, 2007).

[1] The NSIDC is part of the University of Colorado Cooperative Institute for Research in Environmental Sciences (CIRES), is funded largely by the National Aeronautics and Space Administration (NASA), and is affiliated with the National Oceanic and Atmospheric Administration (NOAA) National Geophysical Data Center through a cooperative agreement. A large part of NSIDC is the Polar Distributed Active Archive Center, which is funded by NASA.

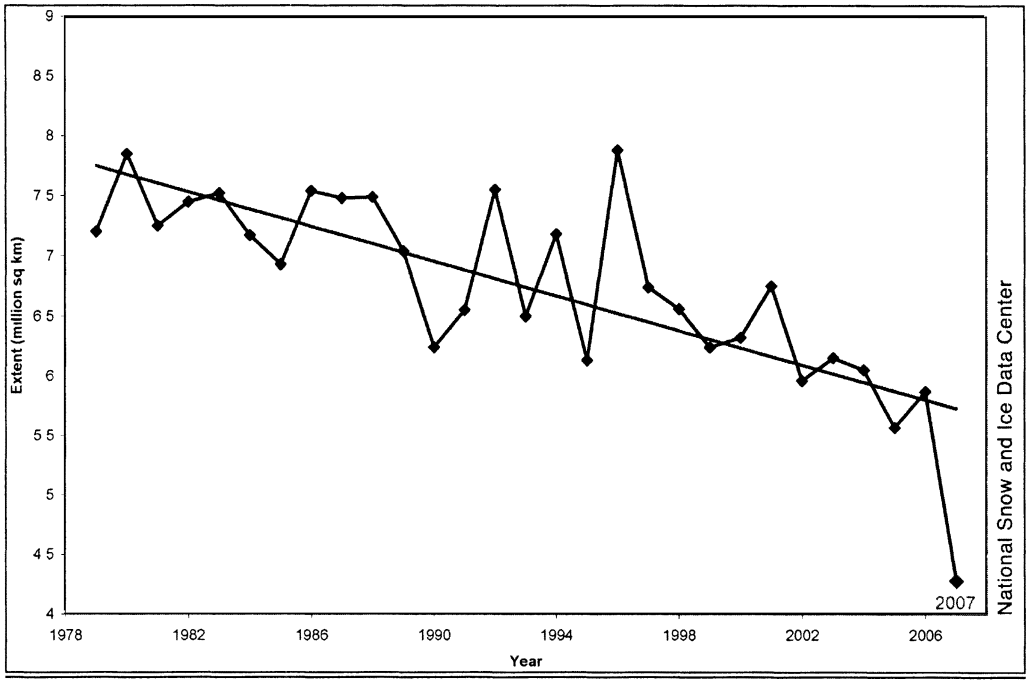


Figure 3. Trends in sea ice cover in the Arctic in September, 1978-2007 (NSIDC Press Release, October 1, 2007).

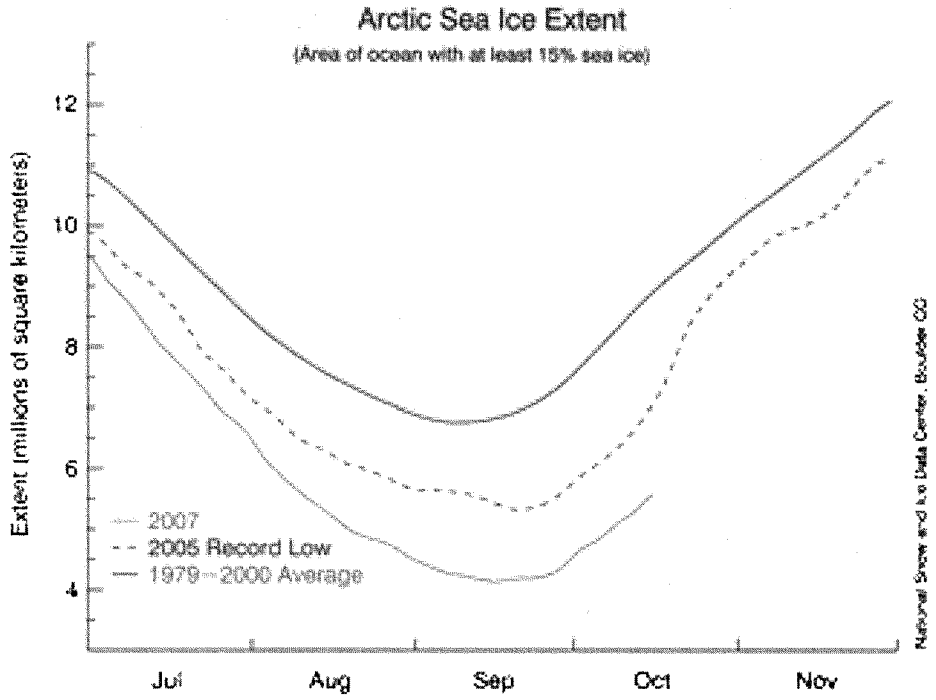


Figure 4. Time series plots showing 2007 minimum Arctic sea ice extent compared with other years. The times series for 2007 (bottom line) is far below the previous record year of 2005, shown as a dashed line. The 1979-2000 average is the top line (NSIDC Arctic Sea Ice News, October 17, 2007).

In August 2007, Arctic sea ice area (recall that ''area'' is a different metric than ''extent'' used in the preceding paragraphs) also broke the record for the minimum Arctic sea ice area in the period since the satellite PM record began in the 1970s (University of Illinois Polar Research Group 2007 web site; *http://arctic.atmos.uiuc.edu/cryosphere/*). The new record was set a full month before the historic summer minimum typically occurs, and the record minimum continued to decrease over the next several weeks (University of Illinois Polar Research Group 2007 web site). The Arctic sea ice area reached an historic minimum of 2.92 million sq km (1.13 million sq mi) on September 16, 2007, which was 27 percent lower than the previous (2005) record Arctic ice minimum area (University of Illinois Polar Research Group 2007 web site). In previous record sea ice minimum years, ice area anomalies were confined to certain sectors (North Atlantic, Beaufort/Bering Sea, etc.), but the character of the 2007 summer sea ice melt was unique in that it was both dramatic and covered the entire Arctic Basin. Atlantic, Pacific, and the central Arctic sectors all showed large negative sea ice area anomalies (University of Illinois Polar Research Group 2007 web site).

Two key factors contributed to the September 2007 extreme sea ice minimum: thinning of the pack ice in recent decades and an unusual pattern of atmospheric circulation (Stroeve et al. 2008). Spring 2007 started out with less ice and thinner ice than normal. Ice thickness estimates from the ICESat satellite laser altimeter instrument indicated ice thicknesses over the Arctic Basin in March 2007 of only 1 to 2 m (3.3 to 6.6 ft) (J. Stroeve, in litt. to the Service, November 2007). Thinner ice takes less energy to melt than thicker ice, so the stage was set for low levels of sea ice in summer 2007 (J. Stroeve, quoted in NSIDC Press Release, October 1, 2007). In general, older sea ice is thicker than younger ice. Maslanik et al. (2007) used an ice-tracking computer algorithm to estimate changes in the distribution of multi-year sea ice of various ages. They estimated: that the area of sea ice at least 5 years old decreased by 56 percent between 1985 and 2007; that ice at least 7 years old decreased from 21 percent of the ice cover in 1988 to 5 percent in 2007; and that sea ice at least 9 years old essentially disappeared from the central Arctic Basin. Maslanik et al. (2007) attributed thinning in recent decades to both ocean-atmospheric circulation patterns and warmer temperatures. Loss of older ice in the late 1980s to mid-1990s was accentuated by the positive phase of the Arctic Oscillation during that period, leading to increased ice export through the Fram Strait (Stroeve et al. 2008). Another significant change since the late 1990s has been the role of the Beaufort Gyre, ''the dominant wind and ice drift regime in the central Arctic'' (Maslanik et al. 2007). ''Since the late 1990s * * * ice typically has not survived the transit through the southern portion of the Beaufort Gyre,'' thus not allowing the ice to circulate in its formerly typical clockwise pattern for years while it aged and thickened (Maslanik et al. 2007). Temperature changes in the Arctic are discussed in detail in the section entitled ''Air and Sea Temperatures.''

Another factor that contributed to the sea ice loss in the summer of 2007 was an unusual atmospheric pattern, with persistent high atmospheric pressures over the central Arctic Ocean and lower pressures over Siberia (Stroeve et al. 2008). The skies were fairly clear under the high-pressure cell, promoting strong melt. At the same time, the pattern of winds pumped warm air into the region. While the warm winds fostered further melt, they also helped push ice away from the Siberian shore.

Winter Sea Ice

The maximum extent of Arctic winter sea ice cover, as documented with PM satellite data, has been declining at a lower rate than summer sea ice (Parkinson et al. 1999, p. 20,840; Richter-Menge et al. 2006, p. 16), but that rate appears to have accelerated in recent years. Parkinson and Cavalieri (2002, p. 441) reported that winter sea ice cover declined at a rate of 1.8 percent plus or minus 0.6 percent per decade for the period 1979 through 1999. More recently, Richter-Menge et al. (2006, p. 16) reported that March sea ice extent was declining at a rate of 2 percent per decade based on data from 1979–2005, Comiso (2006) calculated a decline of 1.9 plus or minus 0.5 percent per decade for 1979–2006, and J. Stroeve (in litt. to the Service, November 2007) calculated a decline of 2.5 percent per decade, also for 1979–2005.

In 2005 and 2006, winter maximum sea ice extent set record lows for the era of PM satellite monitoring (October 1978 to present). The 2005 record low winter maximum preceded the then-record low summer minimum during the same year, while winter sea ice extent in 2006 was even lower than that of 2005 (Comiso 2006). The winter 2007 Arctic sea ice maximum was the second-lowest in the satellite record, narrowly missing the March 2006 record (NSIDC Press Release, April 4, 2007). J. Stroeve (in litt. to the Service, November 2007) calculated a rate of decline of 3.0 plus or minus 0.8 percent per decade for 1979–2007.

Cumulative Annual Sea Ice

Parkinson et al. (1999) documented that Arctic sea ice extent for all seasons (i.e., annual sea ice extent) declined at a rate of 2.8 percent per decade for the period November 1978 through December 1996, with considerable regional variation (the greatest absolute declines were documented for the Kara and Barents Sea, followed by the Seas of Okhotsk and Japan, the Arctic Ocean, Greenland Sea, Hudson Bay, and Canadian Archipelago; percentage declines were greatest in the Seas of Okhotsk and Japan, at 20.1 percent per decade, and the Kara and Barents Seas, at 10.5 percent per decade). More recently, Comiso and Nishio (2008) utilized satellite data gathered from late 1978 into 2006, and estimated an annual rate decline of 3.4 percent plus or minus 0.2 percent per decade. They also found regions where higher negative trends were apparent, including the Greenland Sea (8.0 percent per decade), the Kara/Barents Seas (7.2 percent per decade), the Okhotsk Sea (8.7 percent per decade), and Baffin Bay/Labrador Sea (8.6 percent per decade). Comiso et al. (2008) included satellite data from 1979 through early September 2007 in their analyses. They found that the trend of the entire sea ice cover (seasonal and perennial sea ice) has accelerated from a decline of about 3 percent per decade in 1979–1996 to a decline of about 10 percent per decade in the last 10 years. Statistically significant negative trends in Arctic sea ice extent now occur n all calendar months (Serreze et al. 2007, pp. 1,533–1,536).

Sea Ice Thickness

Sea ice thickness is an important element of the Arctic climate system. The sea ice thickness distribution influences the sea ice mass budget and ice/ocean/atmosphere exchange (Holland et al. 2006a). Sea ice thickness has primarily been measured with upward-looking sonar on submarines and on moored buoys; this sonar provides information on ice draft, the component of the total ice thickness (about 90 percent) that projects below the water surface (Serreze et al. 2007, pp. 1,533–1,536). Rothrock et al. (1999, p. 3,469) compared sea-ice draft data acquired on submarine cruises between 1993 and 1997 with similar data acquired between 1958 and 1976, and concluded that the mean sea-ice draft at

the end of the melt season (i.e., perennial or multi-year ice) had decreased by about 1.3 m (4.3 ft) in most of the deep water portion of the Arctic Ocean. One limitation of submarine sonar data is sparse sampling, which complicates interpretation of the results (Serreze et al. 2007, pp. 1,533–1,536). Holloway and Sou (2002) noted concerns regarding the temporal and spatial sampling of ice thickness data used in Rothrock et al. (1999), and concluded from their modeling exercise that ''a robust characterization over the half-century time series consists of increasing volume to the mid-1960s, decadal variability without significant trend from the mid-1960s to the mid-1980s, then a loss of volume from the mid-1980s to the mid-1990s.'' Rothrock et al. (2003, p. 28) conducted further analysis of the submarine-acquired data in conjunction with model simulations and review of other modeling studies, and concluded that all models agree that sea ice thickness decreased between 0.6 and 0.9 m (2 and 3 ft) from 1987 to 1996. Their model showed a modest recovery in thickness from 1996 to 1999. Yu et al. (2004, p. 11) further analyzed submarine sonar data and concluded that total ice volume decreased by 32 percent from the 1960s and 1970s to the 1990s in the central Arctic Basin.

Fowler et al. (2004) utilized a new technique for combining remotely-sensed sea ice motion and sea ice extent to ''track'' the evolution of sea ice in the Arctic region from October 1978 through March 2003. Their analysis revealed that the area of the oldest sea ice (i.e., sea ice older than 4 years) was decreasing in the Arctic Basin and being replaced by younger (first-year) ice. The extent of the older ice was retreating to a relatively small area north of the Canadian Archipelago, with narrow bands spreading out across the central Arctic (Fowler et al. 2004, pp. 71–74). More recently, Maslanik et al. (2007) documented a substantial decline in the percent coverage of old ice within the central Arctic Basin. In 1987, 57 percent of the ice pack in this area was 5 or more years old, with 25 percent of this ice at least 9 years old. By 2007, only 7 percent of the ice pack in this area was 5 or more years old, and ice at least 9 years old had completely disappeared. This is significant because older ice is thicker than younger ice, and therefore requires more energy to melt. The reduction in the older ice types in the Arctic Basin translates into a reduction in mean ice thickness from 2.6 m in March 1987 to 2.0 m in March 2007 (Stroeve et al. 2008).

Kwok (2007, p. 1) studied six annual cycles of perennial (multi-year) Arctic sea ice coverage, from 2000 to 2006, and found that after the 2005 summer melt, only about four percent of the thin, first-year ice that formed the previous winter survived to replenish the multi-year sea ice area (NASA/JPL News Release, April 3, 2007). That was the smallest amount of multi-year ice replenishment documented in the study, and resulted in perennial ice coverage in January 2006 that was 14 percent smaller than in January 2005. Kwok (2007, p. 1) attributed the decline to unusually high amounts of ice exported from the Arctic in the summer of 2005, and also to an unusually warm winter and summer prior to September 2005.

Length of the Melt Period

The length of the melt period (or season) affects sea ice cover (extent and area) and sea ice thickness (Hakkinen and Mellor 1990; Laxon et al. 2003). In general terms, earlier onset of melt and lengthening of the melt season result in decreased total sea ice cover at the end of summer (i.e., the end of the melt season) (Stroeve et al. 2005, p. 3). Belchansky et al. (2004, p. 1) found that changes in multi-year ice area measured in January were significantly correlated with duration of the intervening melt season. Kwok found a correlation between the number of freezing and melting temperature days and area of multi-year sea ice replenished in a year (NASA/JPL News Release, April 3, 2007).

Comiso (2003, p. 3,506), using data for the period 1981–2001, calculated that the Arctic sea ice melt season was increasing at a rate of 10 to 17 days per decade during that period. Including additional years in his analyses, Comiso (2005, p. 50) subsequently found that the length of the melt season was increasing at a rate of approximately 13.1 days per decade. Stroeve et al. (2006 pp. 367–374) analyzed melt season duration and melt onset and freeze-up dates from satellite passive microwave data for the period 1979 through 2005, and found that the Arctic is experiencing an overall lengthening of the melt season at a rate of about 2 weeks per decade.

The NSIDC documented a trend of earlier onset of the melt season for the years 2002 through 2005; the melt season arrived earliest in 2005, occurring approximately 17 days before the mean date of onset of the melt season (NSIDC 2005, p. 6). In 2007, in addition to the record-breaking September minimum sea ice extent, NSIDC scientists noted that the date of the lowest sea ice extent shifted to later in the year (NSIDC Press Release, October 1, 2007). The minimum sea ice extent occurred on September 16, 2007; from 1979 to 2000, the minimum usually occurred on September 12. This is consistent with a lengthening of the melt season.

Parkinson (2000) documented a clear decrease in the length of the sea ice season throughout the Greenland Sea, Kara and Barents Seas, Sea of Okhotsk, and most of the central Arctic Basin. On the basis of observational data, Stirling et al. (cited in Derocher et al. 2004) calculated that break-up of the annual ice in Western Hudson Bay is occurring approximately 2.5 weeks earlier than it did 30 years ago. Consistent with these results, Stirling and Parkinson (2006) analyzed satellite data for Western Hudson Bay for November 1978 through 2004 and found that, on average, ice break-up has been occurring about 7 to 8 days earlier per decade. Stirling and Parkinson (2006) also investigated ice break-up in Foxe Basin, Baffin Bay, Davis Strait, and Eastern Hudson Bay in Canada. They found that ice break-up in Foxe Basin has been occurring about 6 days earlier each decade and ice break-up in Baffin Bay has been occurring 6 to 7 days earlier per decade. Long-term results from Davis Strait were not conclusive, particularly because the maximum percentage of ice cover in Davis Strait varies considerably more between years than in western Hudson Bay, Foxe Basin, or Baffin Bay. Conversely, Stirling and Parkinson (2006) documented a negative short-term trend from 1991 to 2004 in Davis Strait. In eastern Hudson Bay, there was not a statistically significant trend toward earlier break-up.

Understanding Observed Declines in Arctic Sea Ice

The observed declines in the extent of Arctic sea ice are well documented, and more pronounced in the summer than in the winter. There is also evidence that the rate of sea ice decline is increasing. This decline in sea ice is of great importance to our determination regarding the status of the polar bear. Understanding the causes of the decline is also of great importance in assessing what the future might hold for Arctic sea ice, and, thus, considerable effort has been devoted to enhancing our understanding. This understanding will inform our determination regarding the status of the polar bear within the foreseeable future as determined in this rule.

In general terms, sea ice declines can be attributed to three conflated factors: warming, atmospheric changes (including circulation and clouds), and changes in oceanic circulation (Stroeve and Maslowski 2007). Serreze et al.

(2007, pp. 1,533–1,536) characterize the decline of sea ice as a conflation of thermodynamic and dynamic processes: ''Thermodynamic processes involve changes in surface air temperature (SAT), radiative fluxes, and ocean conditions. Dynamic processes involve changes in ice circulation in response to winds and ocean currents.'' In the following paragraphs we discuss warming, changes in the atmosphere, and changes in oceanic circulation, followed by a synthesis. It is critically important that we understand the dynamic forces that govern all aspects of sea ice given the polar bear's almost exclusive reliance on this habitat.

Air and Sea Temperatures

Estimated rates of change in surface air temperature (SAT) over the Arctic Ocean over the past 100 or more years vary depending on the time period, season, and data source used (Serreze et al. 2007, pp. 1,533–1,536). Serreze et al. (2007, pp. 1,533–1,536) note that, although natural variability plays a large role in SAT variations, the overall pattern has been one of recent warming.

Polyakov et al. (2003) compiled SAT trends for the maritime Arctic for the period 1875 through 2000 (as measured by coastal land stations, drifting ice stations, and Russian North Pole stations) and found that, since 1875, the Arctic has warmed by 1.2 degrees Celsius (C), an average warming of 0.095 degree C per decade over the entire period, and an average warming of 0.05 ± 0.04 degree C per decade during the 20th century. The increases were greatest in winter and spring, and there were two relative maxima during the century (the late 1930s and the 1990s). The ACIA analyzed land-surface air temperature trends as recorded in the Global Historical Climatology Network (GHCN) database, and documented a statistically significant warming trend of 0.09 degree C per decade during the period 1900–2003 (ACIA 2005, p. 35). For periods since 1950, the rate of temperature increase in the marine Arctic documented in the GHCN (ACIA 2005, p. 35) is similar to the increase noted by Polyakov et al. (2003).

Rigor et al. (2000) documented positive trends in SAT for 1979 to 1997; the trends were greatest and most widespread in spring. Comiso (2006) analyzed data from the Advanced Very High Resolution Radiometer (AVHRR) for 1981 to 2005, and documented an overall warming trend of 0.54 ± 0.11 degrees C per decade over sea ice. Comiso noted that ''it is apparent that significant warming has been occurring in the Arctic but not uniformly from one region to another.'' The Serreze et al. (2007, pp. 1,533–1,536) assessment of data sets from the National Centers for Environmental Prediction and the National Center for Atmospheric Research indicated strong surface and low-level warming for the period 2000 to 2006 relative to 1979 to 1999, consistent with the observed sea ice losses.

Stroeve and Maslowski (2007) noted that anomalously high temperatures have been consistent throughout the Arctic since 2002. Further support for warming comes from studies indicating earlier onset of spring melt and lengthening of the melt season (e.g., Stroeve et al. 2006, pp. 367–374), and data that point to increased downward radiation toward the surface, which is linked to increased cloud cover and water vapor (Francis and Hunter 2006, cited in Serreze et al. 2007, pp. 1,533–1,536).

According to the IPCC AR4 (IPCC 2007, p. 36), 11 of 12 years from 1995 to 2006 (the exception being 1996) were among the 12 warmest years on record since 1850; 2005 and 1998 were the warmest two years in the instrumental global surface air temperature record since 1850. Surface temperatures in 1998 were enhanced by the major 1997–1998 El Niño but no such large-scale atmospheric anomaly was present in 2005. The IPCC AR4 concludes that the ''warming in the last 30 years is widespread over the globe, and is greatest at higher northern latitudes (IPCC 2007, p. 37).'' Further, the IPCC AR4 states that greatest warming has occurred in the northern hemisphere winter (December, January, February) and spring (March, April, May). Average Arctic temperatures have been increasing at almost twice the rate of the rest of the world in the past 100 years. However, Arctic temperatures are highly variable. A slightly longer Arctic warm period, almost as warm as the present, was observed from 1925 to 1945, but its geographical distribution appears to have been different from the recent warming since its extent was not global.

Finally, Comiso (2005, p. 43) determined that for each 1 degree C increase in surface temperature (global average) there is a corresponding decrease in perennial sea ice cover of about 1.48 million sq km (0.57 million sq mi).

Changes in Atmospheric Circulation

Links have also been established between sea ice loss and changes in sea ice circulation associated with the behavior of key atmospheric patterns, including the Arctic Oscillation (AO; also called the Northern Annular Mode (NAM)) (e.g., Thompson and Wallace 2000; Limpasuvan and Hartmann 2000) and the more regional, but closely related North Atlantic Oscillation (NAO; e.g., Hurrell 1995). First described in 1998 by atmospheric scientists David Thompson and John Wallace, the Arctic Oscillation is a measure of air-pressure and wind patterns in the Arctic. In the so-called ''positive phase'' (or high phase), air pressure over the Arctic is lower than normal and strong westerly winds occur in the upper atmosphere at high latitudes. In the so-called ''negative phase'' (or low phase), air pressure over the Arctic is higher than normal, and the westerly winds are weaker.

Rigor et al. (2002, cited in Stroeve and Maslowski 2007) showed that when the AO is positive in winter, altered wind patterns result in more offshore ice motion and ice divergence along the Siberian and Alaskan coastlines; this leads to the production of more extensive areas of thinner, first-year ice that requires less energy to melt. Rigor and Wallace (2004, cited in Deweaver 2007) suggested that the recent reduction in September ice extent is a delayed reaction to the export of multi-year ice during the high-AO winters of 1989 through 1995. They estimated that the recovery of sea ice to its normal extent should take between 10 and 15 years. However, Rigor and Wallace (2004) estimated that the combined winter and summer AO-indices can explain less than 20 percent of the variance in summer sea ice extent in the western Arctic Ocean where most of the recent reductions in sea ice cover have occurred. The notion that AO-related export of multi-year ice from the Arctic is the principal cause of observed declines in Arctic sea ice extent has been questioned by several authors, including Overland and Wang (2005), Comiso (2006), Stroeve and Maslowski (2007), Serreze et al. (2007, pp. 1,533–1,536), and Stroeve et al. (2008) who note that sea ice extent has not recovered despite the return of the AO to a more neutral state since the late 1990s. Overland and Wang (2005) noted that the return of the AO to a more neutral state was accompanied by southerly wind anomalies from 2000–2005 which contributed to reducing the ice cover over time and ''conditioning'' the Arctic for the extensive summer sea ice reduction in 2007 (J. Overland NOAA, pers. comm. to FWS, 2007). Maslanik et al. (2007) reached a similar conclusion that despite the return of the AO to a more neutral state, wind and ice transport patterns that favor reduced ice cover in the western and central Arctic continued to play a role in the loss of sea ice in those regions. Maslanik et al.

(2007) believe that circulation patterns such as the Beaufort Gyre, which in the past helped to maintain old ice in the Arctic Basin, are now acting to export ice, as the multi-year ice is no longer surviving the transport through the Chukchi and East Siberian Seas.

According to DeWeaver (2007): ''Recognizing the need to incorporate AO variability into considerations of recent sea ice decline, Lindsay and Zhang (2005) used an ocean-sea ice model to reconstruct the sea ice behavior of the satellite era and identify separate contributions from ice motion and thermodynamics. Similar experiments with similar results were also reported by Rothrock and Zhang (2005) and Koberle and Gerdes (2003).'' Rothrock and Zhang (2005, cited in Serreze et al. 2007, pp. 1,533–1,536), using a coupled ice-ocean model, argued that although wind forcing was the dominant driver of declining ice thickness and volume from the late 1980s through the mid-1990s, the ice response to generally rising air temperatures was more steadily downward over the study period (1948 to 1999). ''In other words, without wind forcing, there would still have been a downward trend in ice extent, albeit smaller than that observed'' (Serreze et al. 2007, pp. 1,533–1,536). Lindsay and Zhang (2005, cited in Serreze et al. 2007, pp. 1,533–1,536) came to similar conclusions in their modeling study: ''Rising air temperature reduced ice thickness, but changes in circulation also flushed some of the thicker ice out of the Arctic, leading to more open water in summer and stronger absorption of solar radiation in the upper (shallower depths of the) ocean. With more heat in the ocean, thinner ice grows in autumn and winter.''

Changes in Oceanic Circulation

According to Serreze et al. (2007, pp. 1,533–1,536), it appears that changes in ocean heat transport have played a role in declining Arctic sea ice extent in recent years. Warm Atlantic waters enter the Arctic Ocean through the Fram Strait and Barents Sea (Serreze et al. 2007, pp. 1,533–1,536). This water is denser than colder, fresher (less dense) Arctic surface waters, and sinks (subducts) to form an intermediate layer between depths of 100 and 800 m (328 and 2,624 ft) (Quadfasel et al. 1991) with a core temperature significantly above freezing (DeWeaver 2007; Serreze et al. 2007, pp. 1,533–1,536). Hydrographic data show increased import of Atlantic-derived waters in the early to mid-1990s and warming of this inflow (Dickson et al. 2000; Visbeck et al. 2002). This trend has continued, characterized by pronounced pulses of warm inflow (Serreze et al. 2007, pp. 1,533–1,536). For example, strong ocean warming in the Eurasian Basin of the Arctic Ocean in 2004 can be traced to a pulse entering the Norwegian Sea in 1997–1998 and passing through Fram Strait in 1999 (Polyakov et al. 2007). The anomaly found in 2004 was tracked through the Arctic system and took about 1.5 years to travel from the Norwegian Sea to the Fram Strait region, and an additional 4.5–5 years to reach the Laptev Sea slope (Polyakov et al. 2007).

Polyakov et al. (2007) reported that mooring-based records and oceanographic surveys suggest that a new pulse of anomalously warm water entered the Arctic Ocean in 2004. Further Polyakov et al. (2007) stated that: ''combined with data from the previous warm anomaly * * * this information provides evidence that the Nansen Basin of the Arctic Ocean entered a new warm state. These two warm anomalies are progressing towards the Arctic Ocean interior * * * but still have not reached the North Pole observational site. Thus, observations suggest that the new anomalies will soon enter the central Arctic Ocean, leading to further warming of the polar basin. More recent data, from summer 2005, showed another warm anomaly set to enter the Arctic Ocean through the Fram Strait (Walczowski and Piechura 2006). These inflows may promote ice melt and discourage ice growth along the Atlantic ice margin (Serreze et al. 2007, pp. 1,533–1,536).

Once Atlantic water enters the Arctic Ocean, the cold halocline layer (CHL) separating the Atlantic and surface waters largely insulates the ice from the heat of the Atlantic layer. Observations suggest a retreat of the CHL in the Eurasian basin in the 1990s (Steele and Boyd 1998, cited in Serreze et al. 2007, pp. 1,533–1,536). This likely increased Atlantic layer heat loss and ice-ocean heat exchange (Serreze et al. 2007, pp. 1,533–1,536), which would serve to erode the edge of the sea ice on a year-round basis (C. Bitz, in litt. to the Service, November 2007). Partial recovery of the CHL has been observed since 1998 (Boyd et al. 2002, cited in Serreze et al. 2007, pp. 1,533–1,536), and future behavior of the CHL is an uncertainty in projections of future sea ice loss (Serreze et al. 2007, pp. 1,533–1,536).

Synthesis

From the previous discussion, surface air temperature warming, changes in atmospheric circulation, and changes in oceanic circulation have all played a role in observed declines of Arctic sea ice extent in recent years.

According to DeWeaver (2007): ''Lindsay and Zhang (2005) propose a three-part explanation of sea ice decline,'' which incorporates both natural AO variability and warming climate. In their explanation, a warming climate preconditions the ice for decline as warmer winters thin the ice, but the loss of ice extent is triggered by natural variability such as flushing by the AO. Sea ice loss continues after the flushing because of the sea-ice albedo feedback mechanism which warms the sea even further. In recent years, flushing of sea ice has continued through other mechanisms despite a relaxation of the AO since the late 1990s. The sea-ice albedo feedback effect is the result of a reduction in the extent of brighter, more reflective sea ice or snow, which reflects solar energy back into the atmosphere, and a corresponding increase in the extent of darker, more absorbing water or land that absorbs more of the sun's energy. This greater absorption of energy causes faster melting, which in turn causes more warming, and thus creates a self-reinforcing cycle or feedback loop that becomes amplified and accelerates with time. Lindsay and Zhang (2005, p. 4,892) suggest that the sea-ice albedo feedback mechanism caused a tipping point in Arctic sea ice thinning in the late 1980s, sustaining a continual decline in sea ice cover that cannot easily be reversed. DeWeaver (2007) believes that the work of Lindsay and Zhang (2005) suggests that the observed record of sea ice decline is best interpreted as a combination of internal variability and external forcing (via GHGs), and raises the possibility that the two factors may act in concert rather than as independent agents.

Evidence that warming resulting from GHG forcing has contributed to sea ice declines comes largely from model simulations of the late 20th century climate. Serreze et al. (2007, pp. 1,533–1,536) summarized results from Holland et al. (2006, pp. 1–5) and Stroeve et al. (2007, pp. 1–5), and concluded that the qualitative agreement between model results and actual observations of sea ice declines over the PM satellite era is strong evidence that there is a forced component to the decline. This is because each of these models would be in its own phase of natural variability and thus could show an increase or decrease in sea ice, but the fact that they all show a decrease indicates that more than natural variability is involved, i.e., that external forcing by GHGs is a factor. In addition, the model results do not show a decline if they are not forced with the observed GHGs. Serreze et al.

(2007, pp. 1,533–1,536) concluded: ''These results provide strong evidence that, despite prominent contributions of natural variability in the observed record, GHG loading has played a role.''

Hegerl et al. (2007) used a new approach to reconstruct and attribute a 1,500-year temperature record for the Northern Hemisphere. Based on their analysis to detect and attribute temperature change over that period, they estimated that about a third of the warming in the first half of the 20th century can be attributed to anthropogenic GHG emissions. In addition, they estimated that the magnitude of the anthropogenic signal is consistent with most of the warming in the second half of the 20th century being anthropogenic.

Observed Changes in Other Key Parameters

Snow Cover on Ice

Northern Hemisphere snow cover, as documented by satellite over the 1966 to 2005 period, decreased in every month except November and December, with a step like drop of 5 percent in the annual mean in the late 1980s (IPCC 2007, p. 43). April snow cover extent in the Northern Hemisphere is strongly correlated with temperature in the region between 40 and 60 degrees N Latitude; this reflects the feedback between snow and temperature (IPCC 2007, p. 43).

The presence of snow on sea ice plays an important role in the Arctic climate system (Powell et al. 2006). Arctic sea ice is covered by snow most of the year, except when the ice first forms and during the summer after the snow has melted (Sturm et al. 2006). Warren et al. (1999, cited in IPCC 2007 Chapter 4) analyzed 37 years (1954–1991) of snow depth and density measurements made at Soviet drifting stations on multi-year Arctic sea ice. They found a weak negative trend for all months, with the largest being a decrease of 8 cm (3.2 in) (23 percent) in May.

Precipitation

The Arctic Climate Impact Assessment (2005) concluded that ''overall, it is probable that there was an increase in arctic precipitation over the past century.'' An analysis of data in the Global Historical Climatology Network (GHCN) database indicated a significant positive trend of 1.4 percent per decade (ACIA 2005) for the period 1900 through 2003. New et al. (2001, cited in ACIA 2005)) used uncorrected records and found that terrestrial precipitation averaged over the 60 degree to 80 degree N latitude band exhibited an increase of 0.8 percent per decade over the period from 1900 to 1998. In general, the greatest increases were observed in autumn and winter (Serreze et al. 2000). According to the ACIA (2005) calculations: (1) during the Arctic warming in the first half of the 20th century (1900–1945), precipitation increased by about 2 percent per decade, with significant positive trends in Alaska and the Nordic region; (2) during the two decades of Arctic cooling (1946–1965), the high-latitude precipitation increase was roughly 1 percent per decade, but there were large regional contrasts with strongly decreasing values in western Alaska, the North Atlantic region, and parts of Russia; and (3) since 1966, annual precipitation has increased at about the same rate as during the first half of the 20th century. The ACIA report (2005) notes that these trends are in general agreement with results from a number of regional studies (e.g., Karl et al. 1993; Mekis and Hogg 1999; Groisman and Rankova 2001; Hanssen-Bauer et al. 1997; Førland et al. 1997; Hanssen-Bauer and Førland 1998). In addition to the increase, changes in the characteristics of precipitation have also been observed (ACIA 2005). Much of the precipitation increase appears to be coming as rain, mostly in winter and to a lesser extent in autumn and spring. The increasing winter rains, which fall on top of existing snow, cause faster snowmelt. Increased rain in late winter and early spring could affect the thermal properties of polar bear dens (Derocher et al. 2004), thereby negatively impacting cub survival. Increased rain in late winter and early spring may even cause den collapse (Stirling and Smith 2004).

According to the IPCC AR4 (2007, pp. 256–258), distinct upward trends in precipitation are evident in many regions at higher latitudes, especially from 30 to 85 degrees N latitude. Winter precipitation has increased at high latitudes, although uncertainties exist because of changes in undercatch, especially as snow changes to rain (IPCC 2007, p. 258). Annual precipitation for the circumpolar region north of 50 degrees N has increased during the past 50 years by approximately 4 percent but this increase has not been homogeneous in time and space (Groisman et al. 2003, 2005, both cited in IPCC 2007, p. 258). According to the IPCC AR4: ''Statistically significant increases were documented over Fennoscandia, coastal regions of northern North America (Groisman et al. 2005), most of Canada (particularly northern regions) up until at least 1995 when the analysis ended (Stone et al. 2000), the permafrost-free zone of Russia (Groisman and Rankova 2001) and the entire Great Russian Plain (Groisman et al. 2005, 2007).'' That these trends are real, extending from North America to Europe across the North Atlantic, is also supported by evidence of ocean freshening caused by increased freshwater run-off (IPCC 2007, p. 258).

Rain-on-snow events have increased across much of the Arctic. For example, over the past 50 years in western Russia, rain-on-snow events have increased by 50 percent (ACIA 2005). Groisman et al. (2003) considered rain-on-snow trends over a 50-year period (1950–2000) in high latitudes in the northern hemisphere and found an increasing trend in western Russia and decreases in western Canada (the decreasing Canadian trend was attributed to decreasing snow pack). Putkonen and Roe (2003), working on Spitsbergen Island, where the occurrence of winter rain-on-snow events is controlled by the North Atlantic Oscillation, demonstrated that these events are capable of influencing mean winter soil temperatures and affecting ungulate survival. These authors include the results of a climate modeling effort (using the earlier-generation Geophysical Fluid Dynamics Laboratory climate model and a 1 percent per year increase in CO_2 forcing scenario) that predicted a 40 percent increase in the worldwide area of land affected by rain-on-snow events from 1980–1989 to 2080–2089. Rennert et al. (2008) discussed the significance of rain-on-snow events to ungulate survival in the Arctic, and used the dataset European Center for Medium-range Weather Forecasting (ECMWF) European 40 Year (ERA40) Reanalysis (Uppala et al. 2005) to create a climatology of rain-on-snow events for thresholds that impact ungulate populations and permafrost. In addition to contributing to increased incidence of polar bear den collapse, increased rain-on-snow events during the late winter or early spring could also damage or eliminate snow-covered pupping lairs of ringed seals (the polar bear's principal prey), thereby increasing pup exposure and the risk of hypothermia, and facilitating predation by polar bears and Arctic foxes. This could negatively impact ringed seal recruitment.

Projected Changes in Arctic Sea Ice

Background

To make projections about future ecosystem effects that could result from climate change, one must first make projections of changes in physical

climate parameters based on changes in external factors that can affect the physical climate (ACIA 2005). Climate models use the laws of physics to simulate the main components of the climate system (the atmosphere, ocean, land surface, and sea ice) (DeWeaver 2007), and make projections of future climate scenarios-plausible representations of future climate-that are consistent with assumptions about future emissions of GHGs and other pollutants (these assumptions are called ''emissions scenarios'') and with present understanding of the effects of increased atmospheric concentrations of these components on the climate (ACIA 2005).

Virtually all climate models use emissions scenarios developed as part of the IPCC effort; specifically the IPCC's *Special Report on Emissions Scenarios* (SRES) (IPCC 2000) details a number of plausible future emissions scenarios based on assumptions on how societies, economies, and energy technologies are likely to evolve. The SRES emissions scenarios were built around four narrative storylines that describe the possible evolution of the world in the 21st century (ACIA 2005, p.119). Around these four narrative storylines the SRES constructed six scenario groups and 40 different emissions scenarios. Six scenarios (A1B, A1T, A1FI, A2, B1, and B2) were then chosen as illustrative ''marker'' scenarios. These scenarios have been used to estimate a range of future GHG emissions that affect the climate. The scenarios are described on page 18 of the *AR4 Working Group I: Summary for Policymakers* (IPCC 2007), and in greater detail in the SRES Report (IPCC 2000).

The most commonly-used scenarios for current-generation climate modeling are the B1, A1B, and A2 scenarios. In the B1 scenario, CO_2 concentration is around 549 parts per million (ppm) by 2100; this is often termed a 'low' scenario. In the A1B scenario, CO_2 concentration is around 717 ppm by the end of the century; this is a 'medium' or 'middle-of-the-road' scenario. In the A2 scenario, CO_2 concentration is around 856 ppm at the end of the 21st century; this is considered a 'high' scenario with respect to GHG concentrations. It is important to note that the SRES scenarios include no additional mitigation initiatives, which means that no scenarios are included that explicitly assume the implementation of the United Nations Framework Convention on Climate Change (UNFCC) or the emission targets of the Kyoto Protocol.

Of the various types of climate models, the Atmosphere-Ocean General Circulation Models (AOGCMs, also known as General Circulation Models (GCMs)) are acknowledged as the principal and most rapidly-developing tools for simulating the response of the global climate system to various GHG and aerosol emission scenarios. The climates simulated by these models have been verified against observations in several model intercomparison programs (e.g., Achuta Rao et al. 2004; Randall et al. 2007) and have been found to be generally realistic (DeWeaver 2007). Additional confidence in model simulations comes from experiments with a hierarchy of simpler models, in which the dominant processes represented by climate models (e.g., heat and momentum transport by mid-latitude weather systems) can be isolated and studied (DeWeaver 2007).

For projected changes in climate and Arctic sea ice conditions, our proposed rule (72 FR 1064) relied primarily on results in the IPCC's *Third Assessment Report* (TAR) (IPCC 2001b), the *Arctic Climate Impact Assessment* (ACIA 2005, p. 99), and selected peer-reviewed papers (e.g., Johannessen et al. 2004; Holland et al. 2006, pp. 1–5). The IPCC TAR used results derived from 9-AOGCM ensemble (i.e, averaged results from 9 AOGCMs) and three SRES emissions scenarios (A2, B2, and IS92a). The ACIA (2005, p. 99) used a 5-AOGCM ensemble under two SRES emissions scenarios (A2 and B2); however, the B2 emissions scenario was chosen as the primary scenario for use in ACIA analyses (ACIA 2005). These reports relied on ensembles rather than single models, because ''no one model can be chosen as 'best' and it is important to use results from a range of models'' (IPCC 2001, Chapter 8). The other peer-reviewed papers used in the proposed rule (72 FR 1064) tend to report more-detailed results from a one or two model simulations using one SRES scenario.

After the proposed rule was published (72 FR 1064), the IPCC released its *Fourth Assessment Report* (AR4) (IPCC 2007), a detailed assessment of current and predicted future climates around the globe. Projected changes in climate and Arctic sea ice conditions presented in the IPCC AR4 have been used extensively in this final rule. The IPCC AR4 used results from state-of-the-art climate models that have been substantially improved over the models used in the IPCC TAR and ACIA reports (M. Holland, NCAR, in litt. to the Service, 2007; DeWeaver 2007). In addition, the IPCC AR4 used results from a greater number of models (23) than either the IPCC TAR or ACIA reports. ''This larger number of models running the same experiments allows better quantification of the multi-model signal as well as uncertainty regarding spread across the models, and also points the way to probabilistic estimates of future climate change'' (IPCC 2007, p. 761). Finally, the IPCC AR4 used a greater number of emissions scenarios (4) than either the IPCC TAR or ACIA reports. The emission scenarios considered in the AR4 include A2, A1B, and B1, as well as a ''year 2000 constant concentration'' scenario; this choice was made solely due to the limited computational resources for multi-model simulations using comprehensive AOGCMs, and ''does not imply any preference or qualification of these three scenarios over the others'' (IPCC 2007, p.761). For all of these reasons, there is considerable confidence that the AOGCMs used in the IPCC AR4 provide credible quantitative estimates of future climate change, particularly at continental scales and above (IPCC 2007, p. 591), and we have determined that these results are rightly included in the category of best available scientific information upon which to base a listing decision for the polar bear.

In addition to the IPCC AR4 results, this final rule utilizes results from a large number of peer-reviewed papers (e.g., Parkinson et al. 2006; Zhang and Walsh 2006; Arzel et al. 2006; Stroeve et al. 2007, pp. 1–5; Holland et al. 2006, pp. 1–5; Wang et al. 2007, pp. 1,093–1,107; Overland and Wang 2007a, pp. 1–7; Chapman and Walsh 2007) that provide more detailed information on climate change projections for the Arctic.

Uncertainty in Climate Models

The fundamental physical laws reflected in climate models are well established, and the models are broadly successful in simulating present-day climate and recent climate change (IPCC 2007, cited in DeWeaver 2007). For Arctic sea ice, model simulations unanimously project declines in areal coverage and thickness due to increased GHG concentrations (DeWeaver 2007). They also agree that GHG-induced warming will be largest in the high northern latitudes and that the loss of sea ice will be much larger in summer than in winter (Meehl et al. 2007, cited in DeWeaver 2007). However, despite the qualitative agreement among climate model projections, individual model results for Arctic sea ice decline span a considerable range (DeWeaver 2007). Thus, projections from models are often expressed in terms of the typical

behavior of a group (ensemble) of simulations (e.g., Arzel et al. 2006; Flato et al. 2004; Holland et al. 2006, pp. 1–5).

DeWeaver (2007) presents a detailed analysis of uncertainty associated with climate models and their projections for Arctic sea ice conditions. He concludes that two main sources of uncertainty should be considered in assessing Arctic sea ice simulations: uncertainties in the construction of climate models and unpredictable natural variability of the climate system. DeWeaver (2007) states that while most aspects of climate simulations have some degree of uncertainty, projections of Arctic climate change have relatively higher uncertainty. This higher level of uncertainty is, to some extent, a consequence of the smaller spatial scale of the Arctic, since climate simulations are believed to be more reliable at continental and larger scales (Meehl et al. 2007, IPCC 2007, both cited in DeWeaver 2007). The uncertainty is also a consequence of the complex processes that control the sea ice, and the difficulty of representing these processes in climate models. The same processes which make Arctic sea ice highly sensitive to climate change, the ice-albedo feedback in particular, also make sea ice simulations sensitive to any uncertainties in model physics (e.g., the representation of Arctic clouds) (DeWeaver 2007).

DeWeaver (2007) also discusses natural variability of the climate system. He states that the atmosphere, ocean, and sea ice comprise a ''nonlinear chaotic system'' with a high level of natural variability unrelated to external climate forcing. Thus, even if climate models perfectly represented all climate system physics and dynamics, inherent climate unpredictability would limit our ability to issue highly, detailed forecasts of climate change, particularly at regional and local spatial scales, into the middle and distant future (DeWeaver 2007).

DeWeaver (2007) states that the uncertainty in model simulations should be assessed through detailed model-to-model and model-to-observation comparisons of sea ice properties like thickness and coverage. In principle, inter-model sea ice variations are attributable to differences in model construction, but attempts to relate simulation differences to specific model differences generally have not been successful (e.g., Flato et al. 2004, cited in DeWeaver 2007). A practical consequence of uncertainty in climate model simulations of sea ice is that a mean and spread of an ensemble of simulations should be considered in deciding the likely fate of Arctic sea ice. Some model-to-model variation (or spread) in future sea ice behaviors is expected even among high-quality simulations due to natural variability, but spread that is a consequence of poor simulation quality should be avoided. Thus, it is desirable to define a selection criterion for membership in the ensemble, so that only those models that demonstrate sufficient credibility in present-day sea ice simulation are included. Fidelity in sea ice hindcasts (i.e., the ability of models to accurately simulate past to present-day sea ice conditions) is an important consideration. This same perspective is shared by other researchers, including Overland and Wang (2007a, p. 1), who state: ''Our experience (Overland and Wang 2007b) as well as others (Knutti et al. 2006) suggest that one method to increase confidence in climate projections is to constrain the number of models by removal of major outliers through validating historical simulations against observations. This requirement is especially important for the Arctic.''

Projection Results in the IPCC TAR and ACIA

This section briefly summarizes the climate model projections of the IPCC TAR and the ACIA, the principal reports used in the proposed rule (72 FR 1064), while the following section presents detailed results published subsequent to those reports, including in the IPCC AR4.

All models in the IPCC TAR predicted continued Arctic warming and continued decreases in the Arctic sea ice cover in the 21st century due to increasing global temperatures, although the level of increase varied between models. The TAR projected a global mean temperature increase of 1.4 degree C by the mid-21st century compared to the present climate for both the A2 and B2 scenarios (IPCC 2001b). Toward the end of the 21st century (2071 to 2100), the mean change in global average surface air temperature, relative to the period 1961–1990, was projected to be 3.0 degrees C (with a range of 1.3 to 4.5 degrees C) for the A2 scenario, and 2.2 degrees C (with a range of 0.9 to 3.4 degrees C) for the B2 scenario. Relative to glacier and sea ice change, the TAR reported that ''The representation of sea-ice processes continues to improve, with several climate models now incorporating physically based treatments of ice dynamics * * *. Glaciers and ice caps will continue their widespread retreat during the 21st century and Northern Hemisphere snow cover and sea ice are projected to decrease further.''

The ACIA concluded that, for both the A2 and B2 emissions scenarios, models projected mean temperature increases of 2.5 degrees C for the region north of 60 degrees N latitude by the mid-21st century (ACIA 2005, p. 100). By the end of the 21st century, Arctic temperature increases were projected to be 7 degrees C and 5 degrees C for the A2 and B2 scenarios, respectively, compared to the present climate (ACIA 2005, p. 100). Greater warming was projected for the autumn and winter than for the summer (ACIA 2005, p. 100).

The ACIA utilized projections from the five ACIA-designated AOGCMs to evaluate changes in sea ice conditions for three points in time (2020, 2050, and 2080) relative to the climatological baseline (2000) (ACIA 2005, p. 192). In 2020, the duration of the sea ice freezing period was projected to be shorter by 10 days; winter sea ice extent was expected to decline by 6 to 10 percent from baseline conditions; summer sea ice extent was expected to decline such that continental shelves were likely to be ice free; and there would be some reduction in multi-year ice, especially on shelves (ACIA 2005, Table 9.4). In 2050, the duration of the sea ice freezing period was projected to be shorter by 15 to 20 days; winter sea ice extent was expected to decline by 15 to 20 percent; summer sea ice extent was expected to decline 30 to 50 percent from baseline conditions; and there would be significant loss of multi-year ice, with no multi-year ice on shelves. In 2080, the duration of the sea ice freezing period was projected to be shorter by 20 to 30 days; winter sea ice extent was expected to decline such that there probably would be open areas in the high Arctic (Barents Sea and possibly Nansen Basin); summer sea ice extent was expected to decline 50 to 100 percent from baseline conditions; and there would be little or no multi-year ice.

According to ACIA (2005, p. 193), one model indicated an ice-free Arctic during September by the mid-21st century, but this model simulated less than half of the observed September sea-ice extent at the start of the 21st century. None of the other models projected ice-free summers in the Arctic by 2100, although the sea-ice extent projected by two models decreased to about one-third of initial (2000) and observed September values by 2100.

Projection Results in the IPCC AR4 and Additional Projections

The IPCC AR4, released a few months after publication of our proposed listing

rule for the polar bear (72 FR 1064), presents results from state-of-the-art climate models that are substantially improved over models used in the IPCC TAR and ACIA reports (M. Holland, NCAR, in litt. to the Service FWS, 2007; DeWeaver 2007). Results of the AR4 are presented in this section, followed by discussion of several key, peer-reviewed articles that discuss results presented in the AR4 in greater detail or use AR4 simulations to conduct additional, in-depth analyses.

In regard to surface air temperature changes, the IPCC AR4 states that the range of expected globally averaged surface air temperature warming shows limited sensitivity to the choice of SRES emissions scenarios for the early 21st century (between 0.64 and 0.69 degrees C for 2011 to 2030 compared to 1980 to 1999, a range of only 0.05 °C), largely due to climate change that is already committed (IPCC 2007, p. 749). By the mid-21st century (2046–2065), the choice of SRES scenario becomes more important for globally averaged surface air temperature warming (with increases of 1.3 degree C for the B1 scenario, 1.8 degree C for A1B, and 1.7 degree C for A2). During this time period, about a third of that warming is projected to be due to climate change that is already committed (IPCC 2007, p. 749).

The ''limited sensitivity'' of the results is because the state-of-the-art climate models used in the AR4 have known physics in connecting increases in GHGs to temperature increases through radiation processes (Overland and Wang 2007a, pp. 1–7, cited in J. Overland, NOAA, in litt. to the Service, 2007), and the GHG levels used in the SRES emissions scenarios are relatively similar until around 2040–2050 (see Figure 5). Because increases in GHGs have lag effects on climate and projections of GHG emissions can be extrapolated with greater confidence over the next few decades, model results projecting out for the next 40 to 50 years (near-term climate change estimates) have greater credibility than results projected much further into the future (long-term climate change) (J. Overland, NOAA, in litt. to the Service, 2007). Thus, the uncertainty associated with emissions is relatively smaller for the 45-year ''foreseeable future'' for the polar bear listing. After 2050, uncertainty associated with various climate mechanisms and policy/societal changes begins to increase, as reflected in the larger confidence intervals around the trend lines in Figure 5 beyond 2050.

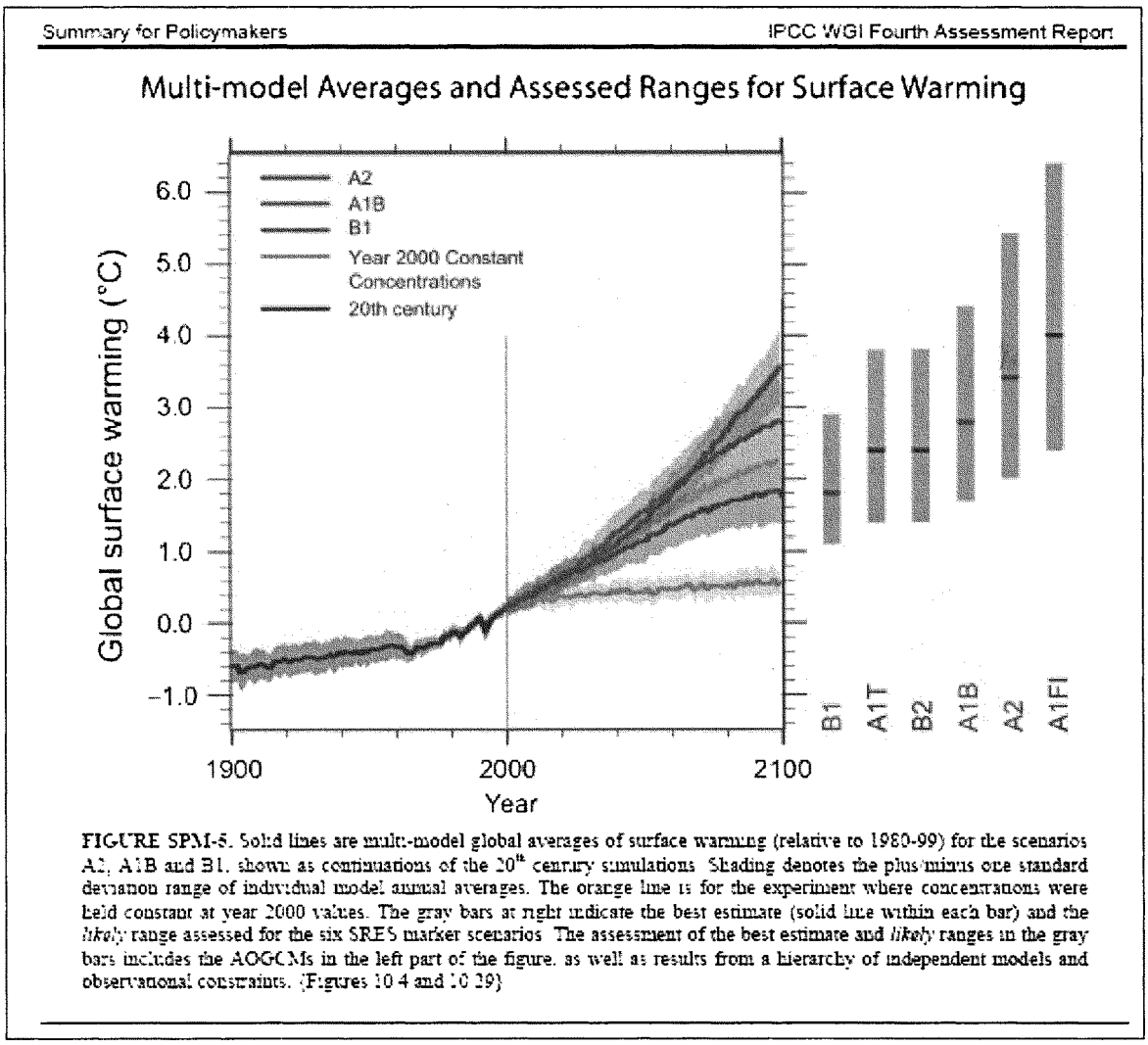


Figure 5. Average projected global surface warming for SRES emissions scenarios in a multiple model ensemble (from IPCC 2007, p. 14).

However, even if GHG emissions had stabilized at 2000 levels, the global climate system would already be committed to a warming trend of about 0.1 degree C per decade over the next two decades, in the absence of large changes in volcanic or solar forcing. Meehl et al. (2006) conducted climate change scenario simulations using the Community Climate System Model, version 3 (CCSM3, National Center for Atmospheric Research), with all GHG emissions stabilized at 2000 levels, and found that the global climate system would already be committed to 0.40 degree C more warming by the end of the 21st century.

With respect to warming in the Arctic itself, the AR4 concludes: ''At the end of the 21st century, the projected annual warming in the Arctic is 5 degrees C, estimated by the multi-model A1B ensemble mean projection'' (see IPCC 2007, p. 908, Fig. 11.21). The across-model range for the A1B scenario varied from 2.8 to 7.8 degrees C. Larger mean warming was found for the A2 scenario (5.9 degrees C), and smaller mean warming was found for the B1 scenario (3.4 degrees C); both with proportional across-model ranges. Chapman and Walsh (2007, cited IPCC 2007, p. 904) concluded that the across-model and across-scenario variability in the projected temperatures are both considerable and of comparable amplitude.

In regard to changes in sea ice, the IPCC AR4 concludes that, under the A1B, A2, and B1 SRES emissions scenarios, large parts of the Arctic Ocean are expected to be seasonally ice free by the end of the 21st century (IPCC 2007, p. 73). Some projections using the A2 and A1B scenarios achieve a seasonally ice-free Arctic by as early as 2080–2090 (IPCC 2007, p.771, Figure 10.13a, b). Sea ice reductions are greater in summer than winter, thus it is summer sea ice cover that is projected to be lost in some models by 2080–2090, not winter sea ice cover. The reduction in sea ice cover is accelerated by positive feedbacks in the climate system, including the ice-albedo feedback (which allows open water to receive more heat from the sun during summer, the insulating effect of sea ice is reduced and the increase in ocean heat transport to the Arctic further reduces ice cover) (IPCC 2007, p. 73).

While the conclusions of the IPCC TAR and AR4 are similar with respect to the Arctic, the confidence level associated with independent reviews of AR4 is greater, owing to improvements in the models used and the greater number of models and emissions scenarios considered (J. Overland, NOAA, in litt. to the Service, 2007). Climate models still have challenges modeling some of the regional differences caused by changing decadal climate patterns (e.g., Arctic Oscillation). To help improve the models further, the evaluation of AR4 models has been on-going both for how well they represent conditions in the 20th century and how their predicted results for the 21st century compare (Parkinson et al. 2006; Zhang and Walsh 2006; Arzel et al. 2006; Stroeve et al. 2007, pp. 1–5; Holland et al. 2006, pp. 1–5; Wang et al. 2007, pp. 1,093–1,107; Chapman and Walsh 2007).

Arzel et al. (2006) and Zhang and Walsh (2006) evaluate the sea ice results from the IPCC AR4 models in more detail. Arzel et al. (2006) investigated projected changes in sea ice extent and volume simulated by 13 AOGCMs (also known as GCMs) driven by the SRES A1B emissions scenario. They found that the models projected an average relative decrease in sea ice extent of 15.4 percent in March, 61.7 percent in September, and 27.7 percent on an annual basis when comparing the periods 1981–2000 and 2081–2100; the average relative decrease in sea ice volume was 47.8 percent in March, 78.9 percent in September, and 58.8 percent on an annual basis when comparing the periods 1981–2000 and 2081–2100. More than half the models (7 of 13) reach ice-free September conditions by 2100, as reported in some previous studies (Gregory et al. 2002, Johannessen et al. 2004, both cited in Arzel et al. 2006).

Zhang and Walsh (2006) investigated changes in sea ice area simulated by 14 AOGCMs driven by the SRES A1B, A2, and B1 emissions scenarios. They found that the annual mean sea ice area during the period 2080–2100 would be decreased by 31.1 percent in the A1B scenario, 33.4 percent in the A2 scenario, and 21.6 percent in the B1 scenario relative to the observed sea ice area during the period 1979–1999. They further determined that the area of multi-year sea ice during the period 2080–2100 would be decreased by 59.7 percent in the A1B scenario, 65.0 percent in the A2 scenario, and 45.8 percent in the B1 scenario relative to the ensemble mean multi-year sea ice area during the period 1979–1999.

Dumas et al. (2006) generated projections of future landfast ice thickness and duration for nine sites in the Canadian Arctic and one site on the Labrador coast using the Canadian Centre for Climate Modelling and Analysis global climate model (CGCM2). For the Canadian Arctic sites the mean maximum ice thickness is projected to decrease by roughly 30 cm (11.8 in) from 1970–1989 to 2041–2060 and by roughly 50–55 cm (19.7–21.7 in) from 1970–1989 to 2081–2100. Further, they projected a reduction in the duration of sea ice cover of 1 and 2 months by 2041–2060 and 2081–2100, respectively, from the baseline period of 1970–1989. In addition simulated changes in freeze-up and break-up revealed a 52-day later freeze-up and 30-day earlier break-up by 2081–2100.

Holland et al. (2006, pp. 1–5) analyzed an ensemble of seven projections of Arctic summer sea ice from the Community Climate System Model, version 3 (CCSM3; National Center for Atmospheric Research, USA) utilizing the SRES A1B emissions scenario. CCSM3 is the model that performed best in simulating the actual observations for Arctic ice extent over the PM satellite era (Stroeve et al. 2007, pp. 1–5). Holland et al. (2006, pp. 1–5) found that the CCSM3 simulations compared well to actual observations for Arctic ice extent over the PM satellite era, including the rate of its recent retreat. They also found that the simulations did not project that sea ice retreat would continue at a constant rate into the future. Instead, the CCSM3 simulations indicate abrupt shifts in the ice cover, with one CCSM3 simulation showing an abrupt transition starting around 2024 with continued rapid retreat for around 5 years. Every CCSM3 run had at least one abrupt event (an abrupt event being defined as a time when a 5-year running mean exceeded three times the 2001–2005 observed retreat) in the 21st century, indicating that near ice-free Septembers could be reached within 30–50 years from now.

Holland et al. (2006, pp. 1–5) also discussed results from 15 additional models used in the IPCC AR4, and concluded that 6 of 15 other models ''exhibit abrupt September ice retreat in the A1B scenario runs.'' The length of the transition varied from 3 to 8 years among the models. Thus, in these model simulations, it was found that once the Arctic ice pack thins to a vulnerable state, natural variability can trigger an abrupt loss of the ice cover so that seasonally ice-free conditions can happen within a decade's time (J. Stroeve, in litt. to the Service, November 2007).

Finally, Holland et al. (2006, pp. 1–5) noted that the emissions scenario used in the model affected the likelihood of future abrupt transitions. In models using the SRES B1 scenario (i.e., with GHG levels increasing at a slower rate), only 3 of 15 models show abrupt declines lasting from 3 to 5 years. In models using the A2 scenario (i.e., with

GHG levels increasing at a faster rate), 7 of 11 models with available data obtain an abrupt retreat in the ice cover; the abrupt events last from 3 to 10 years (Holland et al. 2006, pp. 1–5).

In order to increase confidence in climate model projections, several studies have sought to constrain the number of models used by validating climate change in the models simulations against actual observations (Knutti et al. 2006; Hall and Ou 2006). The concept is to create a shorter list of ''higher confidence'' models by removing outlier model projections that do not perform well when compared to 20th century observational data (Overland and Wang 2007a, pp. 1–7). This has been done for temperatures (Wang et al. 2007, pp. 1,093–1,107), sea ice (Overland and Wang 2007a, pp. 1–7; Stroeve et al. 2007, pp. 1–5), and sea level pressure (SLP; defined as atmospheric pressure at sea level) and precipitation (Walsh and Chapman, pers. comm. with J. Overland, NOAA, cited in litt. to the Service, 2007).

Overland and Wang (2007a, pp. 1–7) investigated future regional reductions in September sea ice area utilizing a subset of AR4 models that closely simulate observed regional ice concentrations for 1979–1999 and were driven by the A1B emissions scenario. They used a selection criterion, similar to Stroeve et al. (2007, pp. 1–5), to constrain the number of models used by removing outliers so as to increase confidence in the projections used. Out of an initial set of 20 potential models, 11 models were retained for the Arctic-wide area, 4 were retained for the Kara/Laptev Sea area, 8 were retained for the East Siberian/Chukchi Sea, and 11 were retained for the Beaufort Sea (Overland and Wang 2007a, pp. 1–7). Using these constrained subsets, Overland and Wang (2007a, pp. 1–7) found that there is: ''considerable evidence for loss of sea ice area of greater than 40 percent by 2050 in summer for the marginal seas of the Arctic basin. This conclusion is supported by consistency in the selection of the same models across different regions, and the importance of thinning ice and increased open water at mid-century to the rate of ice loss.'' More specifically, Overland and Wang (2007a, pp. 1–7) found that ''By 2050, 7 of 11 models estimate a loss of 40 percent or greater of summer Arctic ice area. Six of 8 models show a greater than 40 percent ice loss in the East Siberian/Chukchi Seas and 7 of 11 models show this loss for the Beaufort Sea. The percentage of models with major ice loss could be considered higher, as two of the models that retain sea ice are from the same Canadian source and thus cannot be considered to be completely independent. These results present a consistent picture: there is a substantial loss of sea ice for most models and regions by 2050'' (see Figure 6). With less confidence, they found that the Bering, Okhotsk, and Barents seas have a similar 40 percent loss of sea ice area by 2050 in winter; Baffin Bay/Labrador shows little change compared to current conditions (Overland and Wang 2007a, pp. 1–7). Overland and Wang (2007a, pp. 1–7) also note that the CCSM3 model (Holland et al. 2006, pp. 1–5) is one of the models with the most rapid ice loss in the 21st century; this model is also one of the best at simulating historical 20th century observations (also see Figure 12 in DeWeaver (2007)).

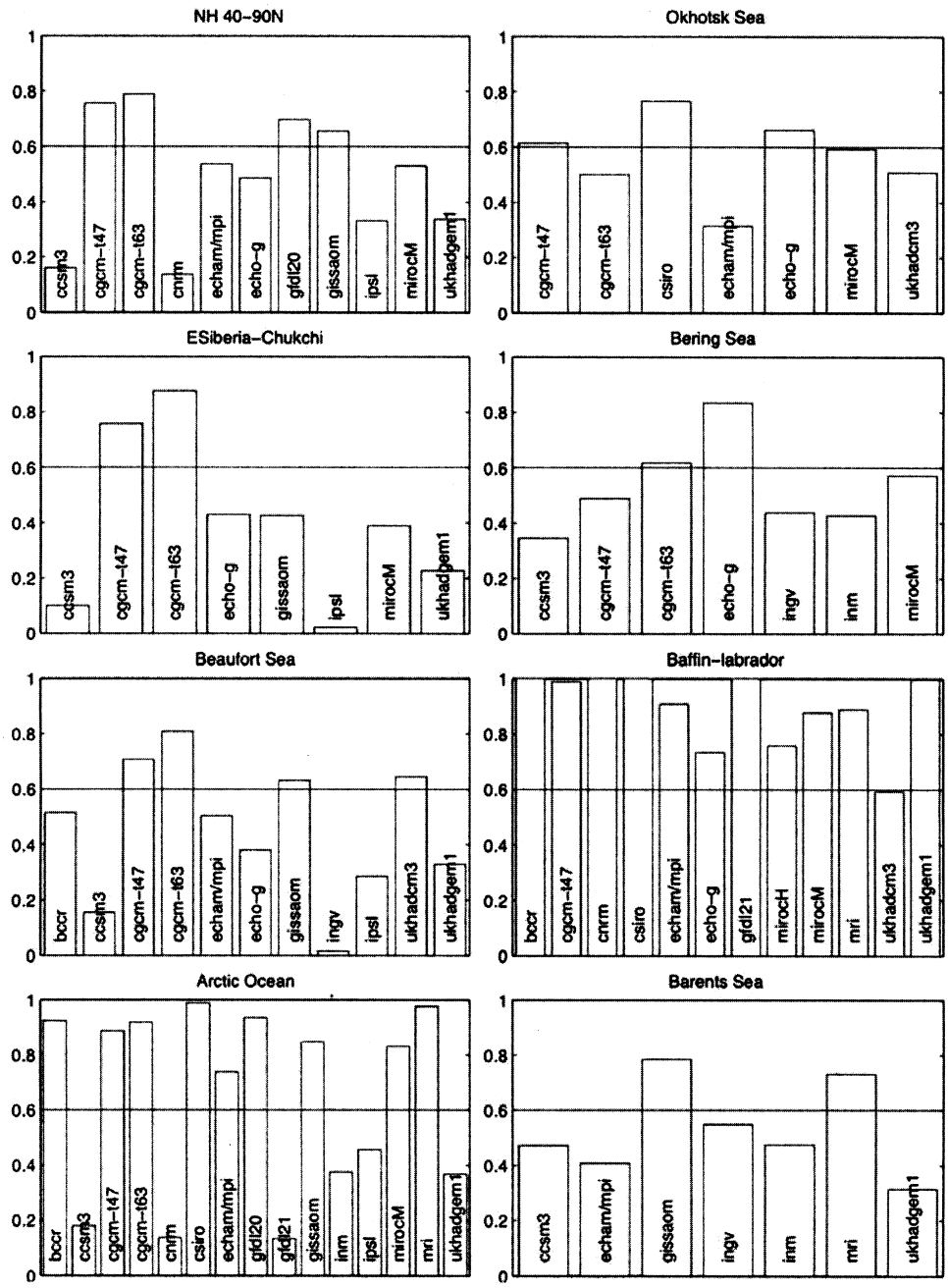


Figure 6. Change of summer sea ice area between 1979–1999 and 2045–2054, given as a fraction of ice remaining in various water bodies, and the northern hemisphere as a whole (NH 40-90N). The models that passed the selection criteria are shown for each water body. The line in each plot indicates a 40 percent reduction in the area of summer sea ice at 2050 versus the baseline period of 1979-1999 (figure from Overland and Wang 2007a, pp. 1-7, used with permission).

DeWeaver (2007), applying a similar conceptual approach as Overland and Wang (2007a, pp. 1–7) and Stroeve et al. (2007, pp. 1–5), used a selection criterion to construct an ensemble of 10 climate models that most accurately depicted sea-ice extent, from the 20 models that contributed sea ice data to the AR4. This 10-model ensemble was used by the USGS for assessing potential polar bear habitat loss (Durner et al. 2007). DeWeaver's selection criterion was to include only those models for which the mean 1953–1995 simulated September sea ice extent is within 20 percent of its actual observed value (as taken from the Hadley Center Sea Ice and Sea Surface Temperature (HadISST) data set (Raynor et al. 2003)). DeWeaver (2007) then investigated the future performance of his 10-model

ensemble driven by the SRES A1B emissions scenario. He found that: all 10 models projected declines of September sea ice extent of over 30 percent by the middle of the 21st century (i.e., 2045–2055); 4 of 10 models projected declines September sea ice in excess of 80 percent by mid-21st century; and 7 of 10 models lose over 97 percent of their September sea ice by the end of the 21st century (i.e., 2090–2099) (DeWeaver 2007).

Stroeve et al. (2007, pp. 1–5) compared observed Arctic sea ice extent from 1953–2006 with 20th and 21st century simulation results from an ensemble of 18 AR4 models forced with the SRES A1B emission scenario. Like Overland and Wang (2007a) and DeWeaver (2007), Stroeve et al. (2007, pp. 1–5) applied a selection criterion to limit the number of models used for comparison. Of the original 18 models in the ensemble, 13 were selected because their performance simulating 20th century September sea ice extent satisfied the selection criterion established by the authors (i.e., model simulations for the the period 1953–1995 had to be within 20 percent of observations). The observational record for the Arctic by Stroeve et al. (2007, pp. 1–5) made use of a blended record of PM satellite-era (post November 1978) and pre-PM satellite era data (early satellite observation, aircraft and ship reports) described by Meier et al. (2007, pp. 428–434) and spanning the years 1953–2006 (Stroeve et al. 2007, pp. 1–5).

Stroeve et al.'s (2007, pp. 1–5) results revealed that the observed trend of September sea ice from 1953–2006 (a decline of 7.8 ± 0.6 percent per decade) is three times larger than the 13-model mean trend (a decline of 2.5 ± 0.2 percent per decade). In addition, none of the 13 models or their individual ensemble members has trends in September sea ice as large as the observed trend for the entire observation period (1953–2006) or the 11-year period 1995–2006 (Stroeve et al. 2007, pp. 1–5) (see Figure 7). March sea ice trends are not as dramatic, but the modeled decreases are still smaller than observed (Stroeve et al. 2007, pp. 1–5). Stroeve et al. (2007, pp. 1–5) offer two alternative interpretations to explain the discrepancies between the modeled results and the observational record. The first is that the ''observed September trend is a statistically rare event and imprints of natural variability strongly dominate over any effect of GHG loading'' (Stroeve et al. 2007, pp. 1–5). The second is that, if one accepts that the suite of simulations is a representative sample, ''the models are deficient in their response to anthropogenic forcing'' (Stroeve et al. 2007, pp. 1–5). Although there is some evidence that natural variability is influencing the sea ice decrease, Stroeve et al. (2007, pp. 1–5) believe that ''while IPCC AR4 models incorporate many improvements compared to their predecessors, shortcomings remain'' (Stroeve et al. 2007, pp. 1–5) when they are applied to the Arctic climate system, particularly in modeling Arctic Oscillation variability and accurately parameterizing sea ice thickness.

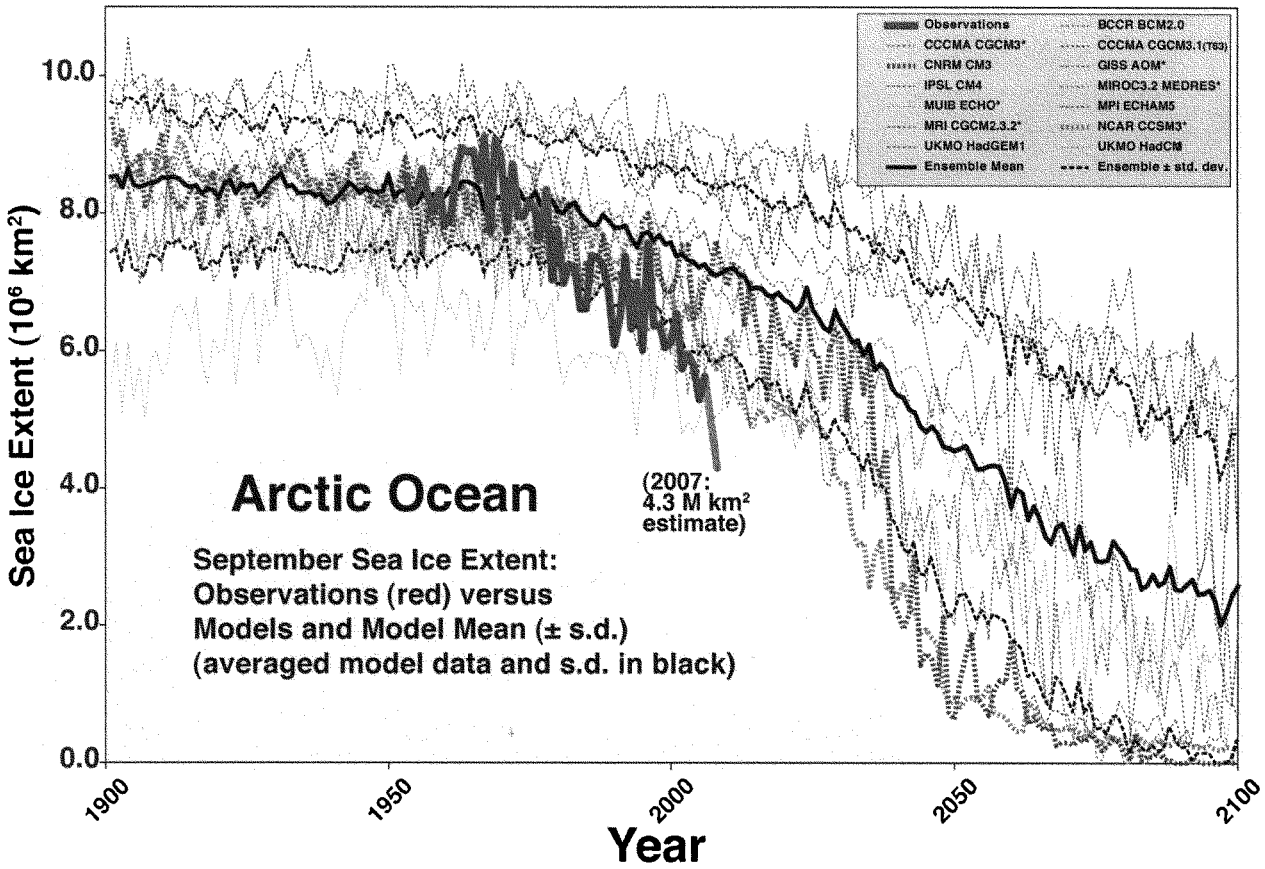


Figure 7. Arctic September sea ice extent. Comparison of observations with results of model runs (updated from Stroeve et al. 2007, pp. 1-5, used with permission).

The observational record indicates that current summer sea ice losses appear to be about 30 years ahead of the ensemble of modeled values, which suggests that a transition towards a seasonally ice-free Arctic might occur sooner than the models indicate (J. Stroeve, in litt. to the Service, November 2007). However, Stroeve et al. (2007, pp. 1–5) note that the two models that best match observations over the PM satellite era-CCSM3 and UKMO_HADGEM1 (Hadley Center for Climate Prediction and Research, UK)-incorporate relatively sophisticated sea ice models (McLaren et al. 2006 and Meehl et al. 2006, both cited in Stroeve et al. 2007, pp. 1–5). The same two models were mentioned by Gerdes and Koberle (2007) as having the most realistic sea ice thickness simulations. If only the results of CCSM3 are considered, as in Holland et al. (2006, pp. 1–5), model simulations compare well to actual observations for Arctic ice extent over the PM satellite era, including the rate of its recent retreat, and simulations of future conditions indicate that near ice-free Septembers could be reached within 30–50 years from now. If the record ice losses from the summer of 2007 are considered, it appears more likely the transition towards a seasonal ice cover will occur during the first half of this century (Stroeve et al. 2007, pp. 1–5) (see Figure 7). DeWeaver (2007) cautions that reliance on a multi-model ensemble is preferred to a single model, because the ensemble represents a balance between the desire to focus on the most credible models and the competing desire to retain a large enough sample to assess the spread of possible outcomes.

Projected Changes in Other Parameters

Air Temperature

As previously noted, IPCC AR4 simulations using a multi-model ensemble and the A1B emissions scenario project that, at the end of the 21st century (i.e., the period 2080–2099), the Arctic will be approximately 5 degrees C warmer, on an annual basis, than in the earlier part of 20th century (i.e., the period 1980–1999) (IPCC 2007, p. 904). Larger mean warming of 5.9 degrees C is projected for the A2 scenario, while smaller mean warming of 3.4 degrees C is projected for the B1 scenario. J. Overland (NOAA, in litt. to the Service, 2007) and associates recently estimated Arctic land temperatures north of 60 degrees N latitude out to 2050 for the 12 models selected in Wang et al. (2007, pp. 1,093–1,107). The average warming from this reduced set of models is an increase of 3 degrees C in surface temperatures; the range of model projections is 2–4 degrees C, which is an estimate of the range of uncertainly in scientists' ability to model Arctic climate. An increase in surface temperatures of 3 degrees C by 2050 will have a major impact on the timing of snowmelt timing (i.e., will lead to earlier snowmelt) (J. Overland, NOAA, in litt. to the Service, 2007).

Precipitation

The IPCC AR4 simulations show a general increase in precipitation over the Arctic at the end of the 21st century (i.e., the period 2080–2099) in comparison to the 20th century (i.e., the period 1980–1999) (IPCC 2007, p. 906). According to the AR4 report (IPCC 2007, p. 906), ''the precipitation increase is robust among the models and qualitatively well understood, attributed to the projected warming and related increased moisture convergence.'' Differences between the projections for different emissions scenarios are small in the first half of the 21st century but increase later. ''The spatial pattern of the projected change shows the greatest percentage increase over the Arctic Ocean (30 to 40 percent) and smallest (and even slight decrease) over the northern North Atlantic (less then 5 percent). By the end of the 21st century, the projected change in the annual mean arctic precipitation varies from 10 to 28 percent, with an ensemble median of 18 percent in the A1B scenario'' (IPCC 2007, p. 906). Larger mean precipitation increases are found for the A2 scenario with 22 percent; smaller mean precipitation increases are found for the B1 scenario with 13 percent. The percentage precipitation increase is largest in winter and smallest in summer, consistent with the projected warming. The across-model scatter of the precipitation projections is substantial.

Putkonen and Roe (2003) presented the results of a global climate modeling effort using an older simulation model (from the TAR era) that predicted a 40 percent increase in the worldwide area of land affected by rain-on-snow events from 1980–1989 to 2080–2089. Rennert et al. (2008) refined the estimate in Putkonen and Roe (2003) using daily data from a 5-member ensemble of the CCSM3 for the periods 1980–1999 and 2040–2059. The future scenario indicated increased frequency of rain-on-snow events in much of Alaska and far eastern Siberia. Decreases in rain-on-snow were shown broadly to be due to projected decreases in snow pack in the model, not a decrease in rain events.

Previous Federal Actions

Information about previous Federal actions for the polar bear can be found in our proposed rule and 12-month finding published in the **Federal Register** on January 9, 2007 (72 FR 1064), and the ''Summary of Comments and Recommendations'' section below.

On April 28, 2008, the United States District Court for the Northern District of California ordered us to publish the final determination on whether the polar bear should be listed as an endangered or threatened species by May 15, 2008. AS part of its order, the Court ordered us to waive the standard 30-day effective date for the final determination.

Summary of Comments and Recommendations

In the January 9, 2007, proposed rule to list the polar bear as a threatened species under the Act (72 FR 1064), we opened a 90-day public comment period and requested that all interested parties submit factual reports, information, and comments that might contribute to development of a final determination for polar bear. The public comment period closed on April 9, 2007. We contacted appropriate Federal and State agencies, Alaska Native Tribes and tribal organizations, governments of polar bear range countries (Canada, Russian Federation, Denmark (Greenland) and Norway), city governments, scientific organizations, peer reviewers (see additional discussion below regarding peer review of proposed rule), and other interested parties to request comments. The Secretary of the Interior also announced the proposed rule and public comment period in a press release issued on December 27, 2006. Newspaper articles appeared in the *Anchorage Daily News, Washington Post, New York Times, Los Angeles Times, Wall Street Journal,* and many local or regional papers across the country, as well as local, national, and international television and radio news programs that also notified the public about the proposed listing and comment period.

In response to requests from the public, public hearings were held in Washington, DC (March 5, 2007), Anchorage, Alaska (March 1, 2007), and Barrow, Alaska (March 7, 2007). These hearings were announced in the **Federal Register** of February 15, 2007 (72 FR 7381), and in the Legal Section of the *Anchorage Daily News* (February 2, 2007). For the Barrow, Alaska, public hearing we established teleconferencing capabilities to provide an opportunity to receive testimony from outlying

communities. The communities of Kaktovik, Gambell, Kotzebue, Shishmaref, and Point Lay, Alaska, participated in this public hearing via teleconference. The public hearings were attended by a total of approximately 305 people.

In addition, the Secretary of the Interior, at the time the proposal to list the polar bear as a threatened species was announced, asked the U.S. Geological Survey (USGS) to assist the Service by collecting and analyzing scientific data and developing models and interpretations that would enhance the base of scientific data for the Service's use in developing the final decision. On September 7, 2007, the USGS provided the Service with its analyses in the form of nine scientific reports that analyze and integrate a series of studies on polar bear population dynamics, range-wide habitat use, and changing sea ice conditions in the Arctic. The Service, in turn, reopened the public comment period on September 20, 2007 (72 FR 53749), for 15 days to notify the public of the availability of these nine reports, to announce our intent to consider the reports in making our final listing determination, and to ask the public for comments on the reports. On the basis of numerous requests from the public, including the State of Alaska, the public comment period on the nine reports was extended until October 22, 2007 (72 FR 56979).

While some commenters provided extensive technical comments on the reports, a thorough evaluation of comments received found no significant scientific disagreement regarding the adequacy or accuracy of the scientific information used in the reports. In general, comments on the nine reports raised the following themes: assertions that loss of sea ice reflects natural variability and not a trend; current population status or demographics do not warrant listing; new information justifies listing as endangered; and additional information is needed because of uncertainty associated with future climate scenarios. Commenters also re-iterated concerns and issues raised during the public comment period on the proposed rule. New, supplementary information became available following publication of the proposed rule that supports the climate models used in the nine USGS reports, and helps clarify the relative contribution of natural variability in future climate scenarios provided by the climate models. Comments on the significance of the status and demographic information helped clarify our analyses. We find that the USGS reports, in concert with additional new information in the literature, clarify our understanding of polar bears and their environment and support our initial conclusions regarding the status of the species. We believe the information presented by USGS and other sources provides a broad and solid scientific basis for the analyses and findings in this rule. Technical comments received from the public on the USGS reports and our responses to those comments are available on our website at: *http://alaska.fws.gov/fisheries/mmm/polarbear/issues.htm.*

During the public comment periods, we received approximately 670,000 comments including letters and post cards (43,513), e-mail (626,947), and public hearing testimony (75). We received comments from Federal agencies, foreign governments, State agencies, Alaska Native Tribes and tribal organizations, Federal commissions, local governments, commercial and trade organizations, conservation organizations, non-governmental organizations, and private citizens.

Comments received provided a range of opinions on the proposed listing, as follows: (1) unequivocal support for the listing with no additional information included; (2) unequivocal support for the listing with additional information provided; (3) equivocal support for the listing with or without additional information included; (4) unequivocal opposition to the listing with no additional information included; and (5) unequivocal opposition to the listing with additional information included. Outside the public comment periods, we received an additional approximately 58,000 cards, petitions, and letters pertaining to the proposed listing of the polar bear as a threatened species. We reviewed those submissions in detail for content and found that they did not provide information that was substantively diiferent from what we had already received. Therefore, we determined that reopening the comment period was not necessary.

To accurately review and incorporate the publicly-provided information in our final determination, we worked with the eRulemaking Research Group, an academic research team at the University of Pittsburgh that has developed the *Rule-Writer's Workbench* (RWW) analytical software. The RWW enhanced our ability to review and consider the large numbers of comments, including large numbers of similar comments, on our proposed listing, allowing us to identify similar comments as well as individual ideas, data, recommendations, or suggestions on the proposed listing.

Peer Review of the Proposed Rule

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited expert opinion on information contained in the proposed rule from 14 knowledgeable individuals with scientific expertise that includes familiarity with the polar bear, the geographic region in which the polar bear occurs, Arctic ecology, climatology, and Traditional Ecological Knowledge (TEK). The selected polar bear specialists included scientists from all polar bear range countries, and who work in both academia and in government. The selected climate scientists are all active in research and published in Arctic climate systems and sea ice dynamics. We sought expertise in TEK from internationally recognized native organizations.

We received responses from all 14 peer reviewers. Thirteen peer reviewers found that, in general, the proposed rule represented a thorough, clear, and balanced review of the best scientific information available from both published and unpublished sources of the current status of polar bears. The one exception expressed concern that the proposed rule was flawed, biased, and incomplete, that it would do nothing to address the underlying issues associated with global warming, and that a listing would be detrimental to the Inuit of the Arctic. In addition, peer reviewers stated that the background material on the ecology of polar bears represents a solid overview of the species' ecology relevant to the issue of population status. They also stated that information about the five natural or manmade factors that may already have affected polar bear populations, or may affect them in the future, is presented and evaluated in a fair and balanced way and is based on scientifically sound data. They further stated that the information as presented justified the conclusion that polar bears face threats throughout their range. Several peer reviewers provided additional insights to clarify points in the proposed rule, or references to recently-published studies that update material in the proposal.

Several peer reviewers referenced the *Fourth Assessment Report of the Intergovernmental Panel on Climate Change* (IPCC AR4). Reports from Working Groups I, II, and III of the IPCC AR4 were published earlier in 2007, and the AR4 Synthesis Report was released in November 2007. The Working Group I report updates information in the proposed rule with considerable new observational information on global

climate change, as well results from independent scientific review of the results from over 20 current-generation climate models. The significance of the Working Group I report, as noted by the peer reviewers with climatological expertise, is that the spatial resolution and physics of climate models have improved such that uncertainties associated with various model components, including prescribed ocean conditions, mobile sea ice, clouds/radiation, and land/atmosphere exchanges, have been reduced significantly from previous-generation models (i.e., those used in the IPCC *Third Assessment Report*).

One peer reviewer recommended that appropriate effort should be made to integrate the existing sources of Alaska native and other indigenous traditional and contemporary ecological knowledge (TEK) into our final rule. In addition, the peer reviewer recommended that we actively conduct community outreach to obtain this information from Alaska villages located within the range of the polar bear.

One peer reviewer opposed the listing and asserted that existing regulatory mechanisms are adequate because the Inuit people will account for climate change in setting harvest quotas for polar bears.

Peer Review Comments

We reviewed all comments received from peer reviewers for substantive issues and new information regarding the proposed designation of the polar bear as a threatened species. Comments and responses have been consolidated into key issues in this section.

Comment PR1: The importance of sea ice to polar bears is not well articulated in the proposed rule, and the consequences of polar bears using land as an alternative ''platform'' are understated.

Our response: We recognize the vital importance of sea ice as habitat for polar bears. New information and analyses of specific sea ice characteristics important to polar bears has been prepared by USGS (Durner et al. 2007), and incorporated into this final rule. Projections of changes to sea ice and subsequent effects on resource values to polar bears during the foreseeable future have also been included in the analyses in this final rule (see ''Polar Bear—Sea Ice Habitat Relationships'' section). The consequences of prolonged use of terrestrial habitats by polar bears are also discussed in detail in the ''Effects of Sea Ice Habitat Change on Polar Bears'' section of this final rule. We believe that we have objectively assessed these consequences, and have not under- or overstated them.

Comment PR2: The importance of snow cover to successful reproduction by polar bears and their primary prey, ringed seals, should receive greater emphasis.

Our response: We recognize the importance of snow cover for denning polar bears and pupping ringed seals. Additional new information has been included in the sections on climate and the section ''Effects of Sea Ice Habitat Changes on Polar Bear Prey,'' ''Maternal Denning Habitat,'' and ''Access to and Alteration of Denning Areas'' sections.

Comment PR3: Harvest programs in Canada provide conservation benefits for polar bears and are therefore important to maintain. In addition, economic benefits from subsistence hunting and sport hunting occur.

Our response: We recognize the important contribution to conservation that scientifically based sustainable use programs can have. We further recognize the past significant benefits to polar bear management in Canada that have accrued as a result of the 1994 amendments to the MMPA that allow U.S. citizens who legally sport-harvest a polar bear from an MMPA-approved population in Canada to bring their trophies back into the United States. In addition, income from fees collected for trophies imported into the United States are directed by statute to support polar bear research and conservation programs that have resulted in conservation benefits to polar bears in the Chukchi Sea region.

We recognize that hunting provides direct economic benefits to local native communities that derive income from supporting and guiding hunters, and also to people who conduct sport hunting programs for U.S. citizens. However these benefits cannot be and have not been factored into our listing decision for the polar bear.

We note that, under the MMPA, the polar bear will be considered a ''depleted'' species on the effective date of this listing. As a depleted species, imports could only be authorized under the MMPA if the import enhanced the survival of the species or was for scientific research. Therefore, authorization for the import of sport-hunted trophies will no longer be available under section 104(c)(5) of the MMPA. Neither the Act nor the MMPA restricts take beyond the United States and the high seas, so otherwise legal take in Canada is not affected by the threatened listing.

Comment PR4: The ability of polar bears to adapt to a changing environment needs to be addressed directly, with a focus on the importance of rates of environmental change relative to polar bear generation time.

Our response: We have addressed this issue by adding a section to the final rule entitled ''Adaptation'' under ''Summary of Factors Affecting the Polar Bear.'' Information regarding how polar bears survived previous warming events is scant, but some evidence indicates that polar bears survived by altering their geographic range, rather than evolving through natural selection. The pace at which ice conditions are changing and the long generation time of polar bears appear to preclude adaptation of new physiological mechanisms and physical characteristics through natural selection. In addition, the known current physiological, physical, and behavioral characteristics of polar bears suggest that behavioral adaptation will be insufficient to prevent a pronounced reduction in polar bear distribution, and therefore abundance, as a result of declining sea ice. Current evidence suggests there is little likelihood that extended periods of torpor, consumption of terrestrial foods, or capture of seals in open water will be sufficient mechanisms to counter the loss of sea ice as a platform for hunting seals. Projections of population trends based upon habitat availability, as discussed in the USGS reports by Durner et al. (2007) and Amstrup et al. (2007) serve to further clarify the changes currently occurring, or expected to occur, as sea ice declines.

Comment PR5: Harvest levels for some polar bear populations in Nunavut (Canada) are not sustainable and should be discussed; however, these concerns do not materially alter the primary finding of the proposed rule.

Our response: Although we have some concerns about the current harvest levels for some polar populations in Nunavut, we agree that these concerns do not materially alter the primary finding of the proposed rule. As discussed in Factors B and D, impacts from sport hunting or harvest are not threats to the species throughout its range. We recognize that, as discussed in detail in this final rule, the management of polar bears in Canada and other countries is evolving. We believe that our evaluation of the management of the polar bear populations in Canada, which includes participation in the annual Canadian Polar Bear Technical Committee (PBTC) meeting, provides us with the best available information upon which to base future management decisions.

Comment PR6: The most important aspect relative to climate change is that

the most recent assessment of the IPCC (AR4) includes projections that climate warming and sea ice decline are likely to continue. This new information as well as other new sea ice information needs to be incorporated into the final analysis.

Our response: We agree that new information on climate warming and sea ice decline, as discussed in the IPCC AR4 as well as numerous other recent scientific papers, is of great significance relative to assessing polar bear habitat and population status and trends. Our final analysis has been updated to incorporate this new information (see ''Sea Ice Habitat'' and ''Polar Bear—Sea Ice Habitat Relationships'' sections).

Comment PR7: Polar bear population status information needs to highlight areas of both population decline and population increase, and the relationship of the two to overall status of the species.

Our response: Our final analysis has been updated with new population information (see ''Current Population Status and Trend'' section).

Comment PR8: The Service did not consider the impacts of listing the polar bear on Inuit economies.

Our response: Under section 4(b)(1)(A) of the Act, we must base a listing decision solely on the best scientific and commercial data available as it relates to the listing five factors in section 4(a)(1) of the Act. The legislative history of this provision clearly states the intent of Congress to ensure that listing decisions are ''* * * based solely on biological criteria and to prevent non-biological criteria from affecting such decisions * * *'' (House of Representatives Report Number 97–835, 97th Congress, Second Session 19 (1982)). As further stated in the legislative history, ''* * * economic considerations have no relevance to determinations regarding the status of species * * *'' (Id. at 20).

Comment PR9: Concerning sport hunting, listing will not help reduce take of polar bears.

Our response: As discussed under Factors B and D below, we recognize that sport hunting or other forms of harvest (both legal and illegal) may be affecting several polar bear populations, but we have determined that overutilization is not a threat to the species throughout all or a significant portion of its range. Amstrup et al. (2007) found that the impact of harvest on the status of polar bear populations is far outweighed by the effects of sea ice losses projected into the future. In addition, we have concluded that, in general, national and local management regimes established for the sustainable harvest of polar bears are adequate. We have determined that polar bear harvest by itself, in the absence of declines due to changes in sea ice habitat, would not be a sufficient threat to justify listing the species in all or a significant portion of its range. However, we have also concluded that harvest may become a more important factor in the future for populations experiencing nutritional stress.

Comment PR10: Inuit will account for climate change in setting subsistence harvest quotas, thus the existing regulatory mechanism is adequate.

Our response: As discussed in this final rule (see ''Polar Bear—Sea Ice Habitat Relationships'' section), the loss of sea ice habitat is considered to threaten the polar bear throughout its range. Adjusting harvest levels based on the consequences of habitat loss and corresponding reduction in physical condition, recruitment, and survival rates is prudent and precautionary, and such adjustments may be addressed through existing and future harvest management regimes. However, we find that these steps will not be sufficient to offset population declines resulting from loss of sea ice habitat.

Comment PR11: The proposed rule does not adequately reflect the state of traditional and contemporary indigenous knowledge regarding polar bears and climate change.

Our response: We have further expanded this rule to include information obtained from Kavry's work in Chukotka, Russia (Kochnev et al. 2003) and Dowsley and Taylor's work in Nunavut, Canada (Dowsley and Taylor 2005), as well as information received during our public hearings. Additionally, we have reviewed information available on polar bears and climate change from the Alaska Native Science Commission (*http://www.nativescience.org/issues/climatechange.htm*). Discussion documents available on their web page generally support the conclusions reached in this document; for example, they observe that: ''Saami are seeing their reindeer grazing pastures change, Inuit are watching polar bears waste away because of a lack of sea ice, and peoples across the Arctic are reporting new species, particularly insects'' (*http://www.arcticpeoples.org/KeyIssues/ClimateChange/Start.html*). Thus, traditional and contemporary indigenous knowledge recognizes that climate-related changes are occurring in the Arctic and that these changes are negatively impacting polar bears.

Comment PR12: The proposed rule does not sufficiently question the reliability of scientific models used. Science is not capable of responding to vague terms such as ''it is likely'' ''foreseeable future.''

Our response: Literature used in the proposed rule was the best available peer-reviewed scientific information at the time. The proposed rule was based largely on results presented in the *Arctic Climate Impact Assessment* (ACIA 2005) and the IPCC *Third Assessment Report* (TAR) (IPCC 2001), plus several individual peer-reviewed journal articles. The ACIA and IPCC TAR are synthesis documents that present detailed information on climate observations and projections, and represent the consensus view of a large number of climate change scientists. Thus, they constituted the best scientific information available at the time the proposed rule was drafted. The proposed rule contained a determination of ''foreseeable future'' (i.e., 45 years) as it pertains to a possible listing of polar bears under the Act, and an explanation of how that 45-year timeframe was determined. This final rule contains the same determination of ''foreseeable future'' (i.e., 45 years), as well as an explanation of how that 45-year timeframe was determined (through a consideration of reliable data on changes currently being observed and projected for the polar bear's sea ice habitat, and supported by information on the life history (generation time) and population dynamics of polar bears). Thus, we disagree with the commenter that this is a vague term.

The final rule has been revised to reflect the most current scientific information, including the results of the IPCC AR4 plus a large number of peer-reviewed journal articles. The IPCC AR4 assigns specific probability values to terms such as ''unlikely,'' ''likely,'' and ''very likely.'' We have attempted to use those terms in a manner consistent with how they are used in the IPCC AR4.

We have taken our best effort to identify the limitations and uncertainties of the climate models and their projections used in the proposed rule. In this final rule, we have provided a more detailed discussion to ensure a balanced analysis regarding the causes and potential impacts of climate change, and have discussed the limitations and uncertainties in the information that provided the basis for our analysis and decision.

Public Comments

We reviewed all comments received from the public for substantive issues and new information regarding the proposed designation of the polar bear as a threatened species. Comments and

responses have been consolidated into key issues in this section.

Issue 1: Polar Bear Population Decline

Comment 1: Current polar bear populations are stable or increasing and the polar bear occupies its entire historical range. As such, the polar bear is not in imminent danger of extinction and, therefore, should not be listed under the Act.

Our response: We agree that polar bears presently occupy their available range and that some polar bear populations are stable or increasing. As discussed in the ''Current Population Status and Trend'' section of the rule, two polar bear populations are designated by the PBSG as increasing (Viscount Melville Sound and M'Clintock Channel); six populations are stable (Northern Beaufort Sea, Southern Hudson Bay, Davis Strait, Lancaster Sound, Gulf of Bothia, Foxe Basin); five populations are declining (Southern Beaufort Sea, Norwegian Bay, Western Hudson Bay, Kane Basin, Baffin Bay), and six populations are designated as data deficient (Barents Sea, Kara Sea, Laptev Sea, Chukchi Sea, Arctic Basin, East Greenland) with no estimate of trend (Aars et al. 2006). The two populations with the most extensive time series of data, Western Hudson Bay and Southern Beaufort Sea, are considered to be declining. The two increasing populations (Viscount Melville Sound and M'Clintock Channel) were severely reduced in the past as a result of overharvest and are now recovering as a result of coordinated international efforts and harvest management.

The current status must be placed in perspective, however, as many populations were declining prior to 1973 due to severe overharvest. In the past, polar bears were harvested extensively throughout their range for the economic or trophy value of their pelts. In response to the population declines, five Arctic nations (Canada, Denmark on behalf of Greenland, Norway, Union of Soviet Socialist Republics, and the United States), recognized the polar bear as a significant resource and adopted an inter-governmental approach for the protection and conservation of the species and its habitat, the 1973 Agreement on the Conservation of Polar Bears (1973 Agreement). This agreement limited the use of polar bears for specific purposes, instructed the Parties to manage populations in accordance with sound conservation practices based on the best available scientific data, and called the range States to take appropriate action to protect the ecosystems upon which polar bears depend. In addition, Russia banned harvest in 1956, harvest quotas were established in Canada in 1968, and Norway banned hunting in 1973. With the passage of the MMPA in 1972, the United States banned sport hunting of polar bears and limited the hunt to Native people for subsistence purposes. As a result of these coordinated international efforts and harvest management leading to a reduction in harvest, polar bear numbers in some previously-depressed populations have grown during the past 30 years.

We have determined that listing the polar bear as a threatened species under the Act is appropriate, based on our evaluation of the actual and projected effects of the five listing factors on the species and its habitat. While polar bears are currently distributed throughout their range, the best available scientific information, including new USGS studies relating status and trends to loss of sea ice habitat (Durner et al. 2007; Amstrup et al. 2007), indicates that the polar bear is not currently in danger of extinction throughout all or a significant portion of their range, but are likely to become so within the 45-year ''foreseeable future'' that has been established for this rule. This satisfies the definition of a threatened species under the Act; consequently listing the species as threatened is appropriate. For additional information on factors affecting, or projected to affect, polar bears, please see the ''Summary of Factors Affecting the Polar Bear'' section of this final rule.

Comment 2: The perceived status of the Western Hudson Bay population is disputed because data are unreliable, earlier population estimates cannot be compared to current estimates, and factors other than climate change could contribute to declines in the Western Hudson Bay population.

Our response: The Western Hudson Bay population is the most extensively studied polar bear population in the world. Long-term demographic and vital rate (e.g., survival and recruitment) data on this population exceed those available for any other polar bear population. Regehr et al. (2007a) used the most advanced analysis methods available to conduct population analyses of the Western Hudson Bay population. Trend data demonstrate a statistically-significant population decline over time with a substantial level of precision. The authors attributed the population decline to increased natural mortality associated with earlier sea ice breakup and to the continued harvest of approximately 40 polar bears per year. Other factors such as the effects of research, tourism harassment, density dependence, or shifts in distribution were not demonstrated to impact this population. Regehr et al. (2007a) indicated that overharvest did not cause the population decline; however, as the population declined, harvest rates could have contributed to further depressing the population. Additional information has been included in the ''Western Hudson Bay'' section of this final rule that provides additional details on these points.

Comment 3: The apparent decline in the Southern Beaufort Sea population is not significantly different from the previous population estimate.

Our response: The Southern Beaufort Sea and Western Hudson Bay populations are the two most studied polar bear populations. Regehr et al. (2006) found no statistically significant difference between the most recent and earlier population estimates for the Southern Beaufort Sea population due to the large confidence interval for the earlier population estimate, which caused the confidence intervals for both estimates to overlap. However, we note that the Southern Beaufort Sea population has already experienced decreases in cub survival, significant decreases in body weights for adult males, and reduced skull measurements (Regehr et al. 2006; Rode et al. 2007). Similar changes were documented in the Western Hudson Bay population before a statistically significant decline in that population was documented (Regehr et al. 2007a). The status of the Southern Beaufort Sea population was determined to be declining on the basis of declines in vital rates, reductions in polar bear habitat in this area, and declines in polar bear condition, factors noted by both the Canadian Polar Bear Technical Committee (PBTC 2007) and the IUCN Polar Bear Specialist Group (Aars et al. 2006).

Comment 4: Population information from den surveys of the Chukchi Sea polar bear population is not sufficiently reliable to provide population estimates.

Our response: We recognize that the population estimates from previous den and aerial surveys of the Chukchi Sea population (Chelintsev 1977; Derocher et al. 1998; Stishov 1991a, b; Stishov et al. 1991) are quite dated and have such wide confidence intervals that they are of limited value in determining population levels or trends for management purposes. What the best available information indicates is that, while the status of the Chukchi Sea population is thought to have increased following a reduction of hunting pressure in the United States, this

population is now thought to be declining due primarily to overharvest. Harvest levels for the past 10–15 years (150–200 bears per year), which includes the legal harvest in Alaska and an illegal harvest in Chukoktka, Russia, are probably unsustainable. This harvest level is close to or greater than the unsustainable harvest levels experienced prior to 1972 (when approximately 178 bears were taken per year). Furthermore, this population has also been subject to unprecedented summer/autumn sea ice recessions in recent years, resulting in a redistribution of more polar bears to terrestrial areas in some years. Please see additional discussion of this population in the ''Current Population Status and Trend'' section of this document.

Comment 5: Interpretation of population declines is questionable due, in some cases, to the age of the data and in other cases the need for caution due to perceived biases in data collection.

Our response: We used the best available scientific information in assessing population status, recognizing the limitations of some of the information. This final rule benefits from new information on several populations (Obbard et al. 2007; Stirling et al. 2007; Regehr et al. 2007a, b) and additional analyses of the relationship between polar bear populations and sea ice habitat (Durner et al. 2007). New information on population status and trends is included in the ''Current Population Status and Trend'' section of this rule.

Comment 6: Polar bear health and fitness parameters do not provide reliable insights into population trends.

Our response: We recognize there are limits associated with direct correlations between body condition and population dynamics; however changes in body condition have been shown to affect reproduction and survival, which in turn can have population level effects. For example, the survival of polar bear cubs-of-the-year has been directly linked to their weight and the weight of their mothers, with lower weights resulting in reduced survival (Derocher and Stirling 1996; Stirling et al. 1999). Changes in body condition indices were documented in the Western Hudson Bay population before a statistically significant decline in that population was documented (Regehr et al. 2007a). Thus, changes in these indices serve as an ''early warning'' that may signal imminent population declines. New information from Rode et al. (2007) on the relationship between polar bear body condition indices and sea ice cover is also included in the ''Effects of Sea Ice Habitat Change on Polar Bears'' section of this final rule.

Comment 7: Polar bears have survived previous warming events and therefore can adapt to current climate changes.

Our response: We have addressed this issue by adding two sections to the final rule entitled ''Adaptation'' and ''Previous Warming Periods and Polar Bears'' under ''Summary of Factors Affecting the Polar Bear.'' To summarize these sections, we find that the long generation time of polar bears and the known physiological and physical characteristics of polar bears significantly constrain their ability to adapt through behavioral modification or natural selection to the unprecedentedly rapid loss of sea ice habitat that is occurring and is projected to continue throughout the species' range. Derocher et al. (2004, p. 163, 172) suggest that this rate of change will limit the ability of polar bears to respond and survive in large numbers. In addition, polar bears today experience multiple stressors (e.g., harvest, contaminants, oil and gas development, and additional interactions with humans) that were not present during historical warming periods. Thus, both the cumulative effects of multiple stressors and the rapid rate of climate change today create a unique and unprecedented challenge for present-day polar bears in comparison to historical warming events. See also above response to Comment PR4.

Comment 8: Polar bears will adapt and alternative food sources will provide nutrition in the future. There are many food resources that polar bears could exploit as alternate food sources.

Our response: New prey species could become available to polar bears in some parts of their range as climate change affects prey species distributions. However, polar bears are uniquely adapted to hunting on ice and need relatively large, stable seal populations to survive (Stirling and Øritsland 1995). The best available evidence indicates that ice-dependent seals (also called ''ice seals'') are the only species that would be accessible in sufficient abundance to meet the high energetic requirements of polar bears. Polar bears are not adapted to hunt in open water, therefore, predation on pelagic (open-ocean) seals, walruses, and whales, is not likely due to the energetic effort needed to catch them in an open-water environment. Other ice-associated seals, such as harp or hooded seals, may expand their ranges and provide a near-term source of supplemental nutrition in some areas. Over the long term, however, extensive periods of open water may ultimately stress seals as sea ice (summer feeding habitat) retreats further north from southern rookeries. We found no new evidence suggesting that seal species with expanding ranges will be able to compensate for the nutritional loss of ringed seals throughout the polar bear's current range. Terrestrial food sources (e.g., animal carcasses, birds, musk oxen, vegetation) are not likely to be reliably available in sufficient amounts to provide the caloric value necessary to sustain polar bears. For additional information on this subject, please see the expanded discussion of ''Adaptation'' under ''Summary of Factors Affecting the Polar Bear.''

Comment 9: Commenters expressed a variety of opinions on the determination of ''foreseeable future'' for the polar bear, suggesting factors such as the number and length of generations as well as the timeframe over which the threat can be analyzed be used to identify an appropriate timeframe.

Our response: ''Foreseeable future'' for purposes of listing under the Act is determined on the basis of the best available scientific data. In this rule, it is based on the timeframe over which the best available scientific data allow us to reliably assess the effect of threats—principally sea ice loss—on the polar bear, and is supported by species-specific factors, including the species' life history characteristics (generation time) and population dynamics. The timeframe over which the best available scientific data allow us to reliably assess the effect of threats on the species is the critical component for determining the foreseeable future. In the case of the polar bear, the key threat is loss of sea ice, the species' primary habitat. Available information, including results of the IPCC AR4, indicates that climate change projections over the next 40–50 years are more reliable than projections over the next 80–90 years. On the basis of our analysis, as reinforced by conclusions of the IPCC AR4, we have determined that climate changes projected within the next 40–50 years are more reliable than projections for the second half of the 21stcentury, for a number of reasons (see section on ''Projected Changes in Arctic Sea Ice'' for a detailed explanation). For this final rule, we have also identified three polar bear generations (adapted from the IUCN Red List criteria) or 45 years as an appropriate timeframe over which to assess the effects of threats on polar bear populations. This timeframe is long enough to take into account multi-generational population dynamics, natural variation inherent with populations, environmental and habitat

changes, and the capacity for ecological adaptation (Schliebe et al. 2006a). The 45-year timeframe coincides with the timeframe within which climate model projections are most reliable. This final rule provides a detailed explanation of the rationale for selecting 45 years as the foreseeable future, including its relationship to observed and projected changes in sea ice habitat (as well as the precision and certainty of the projected changes) and polar bear life history and population dynamics. Therefore, this period of time is supported by species-specific aspects of polar bears and the time frame of projected habitat loss with the greatest reliability.

One commenter erroneously identified Congressional intent to limit foreseeable future to 10 years. We reviewed the particular document provided by the commenter-a Congressional Question & Answer response, dated September 26, 1972, which was provided by the U.S. Department of Commerce's National Oceanic and Atmospheric Administration's Deputy Administrator Pollock. Rather than expressing Congressional intent, this correspondence reflects the Commerce Department's perspective at that time about foreseeable future and not Congressional intent. Furthermore, Mr. Pollock's generic observations in 1972 are not relevant to the best scientific data available regarding the status of the polar bear, which has been recognized by leading polar bear biologists as having a high degree of reliability out to 2050.

Issue 2: Changes in Environmental Conditions

Comment 10: An increase in landfast ice will result in increased seal productivity and, therefore, increased feeding opportunities for polar bears.

Our response: We agree that future feeding opportunities for polar bears will in part relate to how climate change affects landfast ice because of its importance as a platform for ringed seal lairs. As long as landfast ice is available, ringed seals probably will be available to polar bears. Research by Rosing-Asvid (2006) documented a strong increase in the number of polar bears harvested in Greenland during milder climatic periods when ringed seal habitat was reduced (less ice cover) and lair densities were higher because seals were concentrated; these two factors provide better spring hunting for polar bears. In contrast to periodic warming, however, climate models project continued loss of sea ice and changes in precipitation patterns in the Arctic. Seal lairs require sufficient snow cover for lair construction and maintenance, and snow cover of adequate quality that persists long enough to allow pups to wean prior to onset of the melt period. Several studies described in this final rule have linked declines in ringed seal survival and recruitment with climate change that has resulted in increased rain events (which has lead to increased predation on seals) and decreased snowfall. Therefore, while polar bears may initially respond favorably to a warming climate due to an increased ability to capture seals, future reductions in seal populations will ultimately lead to declines in polar bear populations. Additional information was added to the section ''Effects of Sea Ice Habitat Changes on Polar Bear Prey'' to clarify this point.

Comment 11: Polar bears will have increased hunting opportunities as the amount of marginal, unconsolidated sea ice increases.

Our response: Marginal ice occurs at the edge of the polar basin pack ice; ice is considered unconsolidated when concentrations decline to less than 50 percent. The ability of polar bears to catch a sufficient number of seals in marginal sea ice will depend upon both the characteristics of the sea ice and the abundance of and access to prey. Loss of sea ice cover will reduce seal numbers and accessibility to polar bears, as discussed in ''Reduced prey availability'' section of this final rule. Even if ringed seals maintained their current population levels, which is unlikely, Harwood and Stirling (2000) suggest that ringed seals would remain near-shore in open water during summer ice recession, thereby limiting polar bear access to them. Benthic (ocean bottom) feeders, such as bearded seals and walruses, may also decrease in abundance and/or accessibility as ice recedes farther away from shallow continental shelf waters. Increased open water and reduced sea ice concentrations will provide seals with additional escape routes, diminish the need to maintain breathing holes, and serve to make their location less predictable and less accessible to polar bears, resulting in lowered hunting success. Polar bears would also incur higher energetic costs from additional movements required for hunting in or swimming through marginal, unconsolidated sea ice. Additional information from Derocher et al. (2004) was added to the section ''Effects of Sea Ice Habitat Changes on Polar Bear Prey'' to clarify this point.

Comment 12: Polar bears will benefit from increased marine productivity as ocean waters warm farther north.

Our response: If marine productivity in the Arctic increases, polar bears may benefit from increased seal productivity initially, provided that sea ice habitat remains available. As previously mentioned, polar bears need sea ice as a platform for hunting. Evidence from Western Hudson Bay, Southern Hudson Bay, and Southern Beaufort Sea populations indicates that reductions in polar bear body condition in these populations are the result of reductions in sea ice. Additional new information on the relationship between body condition, population parameters, and sea ice habitat for the Southern Beaufort Sea population (Rode et al. 2007) has been incorporated into the section on effects of sea ice change on polar bears.

The extent to which marine productivity increases may benefit polar bears will be influenced, in part, by ringed seals' access to prey. Arctic cod (*Boreogadus saida*), which are the dominant prey item in many areas, depend on sea ice cover for protection from predators (Gaston et al. 2003). In western Hudson Bay, Gaston et al. (2003) detected Arctic cod declines during periods of reduced sea ice habitat. Should Arctic cod abundance decline in other areas, we do not know whether ringed seals will be able to switch to other pelagic prey or whether alternate food sources will be adequate to replace the reductions in cod.

Comment 13: Sufficient habitat will remain in the Canadian Arctic and polar region to support polar bears for the next 40–50 years; therefore, listing is not necessary.

Our response: Both the percentage of sea ice habitat and the quality of that habitat will be significantly reduced from historic levels over the next 40–50 years (Meehl et al. 2007; Durner et al. 2007; IPCC 2007). New information on the extent and magnitude of sea ice loss is included previously in the section entitled ''Observed Changes in Arctic Sea Ice'' of this rule. Reductions in the area, timing, extent, and types of sea ice,among other effects, are expected to increase the energetic costs of movement and hunting to polar bears, reduce access to prey, and reduce access to denning areas. The ultimate effect of these impacts are likely to result in reductions in reproduction and survival, and corresponding decreases in population numbers. We agree that receding sea ice may affect archipelagic polar bear populations later than populations inhabiting the polar basin, because seasonal ice is projected to remain present longer in the archipelago than in other areas of the polar bear's range. The high Arctic archipelago is limited however, in its ability to sustain

a large number of polar bears because: (1) changes in the extent of ice and precipitation patterns are already occurring in the region; (2) the area is characterized by lower prey productivity (e.g., lower seal densities); and (3) polar bears moving into this area would increase competition among bears and ultimately affect polar bear survival. In addition, a small, higher-density population of polar bears in the Canadian Arctic would be subject to increased vulnerability to perturbations such as disease or accidental oil discharge from vessels. Because of the habitat changes anticipated in the next 40–50 years, and the corresponding reductions in reproduction and survival, and, ultimately, population numbers, we have determined that the polar bear is likely to be in danger of extinction throughout all or a significant portion of its range by 2050.

Issue 3: Anthropogenic Effects

Comment 14: Disturbance from and cumulative effects of oil and gas activities in the Arctic are underestimated or incompletely addressed.

Our response: Oil and gas activities will likely continue in the future in the Arctic. Additional, updated information has been included in the section ''Oil and Gas Exploration, Development, and Production'' in Factor A. We acknowledge that disturbance from oil and gas activities can be direct or indirect and may, if not subject to appropriate mitigation measures, displace bears or their primary prey (ringed and bearded seals). Such disturbance may be critical for denning polar bears, who may abandon established dens before cubs are ready to leave due to direct disturbance. We note that incidental take of polar bears due to oil and gas activities in Alaska are evaluated and regulated under the MMPA (Sec. 101a(5)A) and incidental take regulations are in place based on an overall negligible effect finding. Standard and site specific mitigation measures are prescribed by the Service and implemented by the industry (see detailed discussion in the section ''Marine Mammal Protection Act of 1972, as amended'' under Factor D).

Indirect and cumulative effects of the myriad of activities associated with major oil and gas developments can be a concern regionally. However, the effects of oil and gas activities, such as oil spills, are generally associated with low probabilities of occurrence, and are generally localized in nature, We acknowledge that the sum total of documented impacts from these activities in the past have been minimal (see discussion in the ''Oil and Gas Exploration, Development, and Production'' section). Therefore, we do not believe that we have underestimated or incompletely addressed disturbance from or cumulative effects of oil and gas activities on polar bears, and have accurately portrayed the effect of oil and gas activities on the status of the species within the foreseeable future.

Comment 15: The potential effects of oil spills on polar bears are underestimated, particularly given the technical limitations of cleaning up an oil spill in broken ice.

Our response: We do not wish to minimize our concern for oil spills in the Arctic marine environment. We agree that the effects of a large volume oil spill to polar bears could be significant within the specific area of occurrence, but we believe that the probability of such a spill in Alaska is generally very low. At a regional level we have concerns over the high oil spill probabilities in the Chukchi Sea under hypothetical future development scenarios (Minerals Management Service (MMS) 2007). An oil spill in this area could have significant consequences to the Chukchi Sea polar bear population (MMS 2007). However, under the MMPA, since 1991 the oil and gas industry in Alaska has sought and obtained incidental take authorization for take of small numbers of polar bears. Incidental take cannot be authorized under the MMPA unless the Service finds that any take that is likely to occur will have no more than a negligible impact on the species. Through this authorization process, the Service has consistently found that a large oil spill is unlikely to occur. The oil and gas industry has incorporated technological and response measures that minimize the risk of an oil spill. A discussion of potential additive effects of mortalities associated with an oil spill in polar bear populations where harvest levels are close to the maximum sustained yield has been included in this final rule (see discussion in the ''Oil and Gas Exploration, Development, and Production'' section).

Comment 16: The effects to polar bears from contaminants other than hydrocarbons are underestimated.

Our response: We added information on the status of regulatory mechanisms pertaining to contaminants, which summarizes what is currently known about the potential threat of each class of contaminants with respect to current production and future trends in production and use. Based on a thorough review of the scientific information on their sources, pathways, geographical distribution, and biological effects, and as discussed in the analysis section of this final rule, we do not believe that contaminants currently threaten the polar bear.

Comment 17: Cumulative effects of threat factors on polar bear populations are important, and need a more indepth analysis than presented in the proposed rule.

Our response: The best available information on the potential cumulative effects from oil and gas activities in Alaska to polar bears and their habitat was incorporated into the final rule (National Research Council (NRC) 2003). We also considered the cumulative effects of hunting, contaminants, increased shipping, increases in epizootic events, and inadequacy of existing regulatory mechanisms in our analyses. We have determined that there are no known regulatory mechanisms in place at the national or international level that directly and effectively address the primary threat to polar bears-the rangewide loss of sea ice habitat within the foreseeable future. We also acknowledge that there are some existing regulatory mechanisms to address anthropogenic causes of climate change, and these mechanisms are not expected to be effective in counteracting the worldwide growth of GHG emissions within the foreseeable future. In addition, we have determined that overutilization does not currently threaten the species throughout all or a significant portion of its range. However, harvest is likely exacerbating the effects of habitat loss in several populations. In addition, continued harvest and increased mortality from bear-human encounters or other forms of mortality may become a more significant threat factor in the future, particularly for populations experiencing nutritional stress or declining population numbers as a consequence of habitat change. We have found that the other factors, while not currently rising to a level that threatens the species, may become more significant in the future as populations face stresses from habitat loss. Modeling of potential effects on polar bears of various factors (Amstrup et al. 2007) identified loss of sea ice habitat as the dominant threat. Therefore, our analysis in this final rule has focused primarily on the ongoing and projected effects of sea ice habitat loss on polar bears within the foreseeable future.

Issue 4: Harvest

Comment 18: Illegal taking of bears is a significant issue that needs additional management action.

Our response: We recognize that illegal take has an impact on some polar bear populations, especially for the Chukchi Sea population and possibly for other populations in Russia. We also believe that a better assessment of the magnitude of illegal take in Russia is needed, and that illegal harvest must be considered when developing sustainable harvest limits. We also conclude that increased use of coastal habitat by polar bears could increase the impact of illegal hunting in Russia, by bringing bears into more frequent contact with humans. However, available scientific information indicates that poaching and illegal international trade in bear parts do not threaten the species throughout all or a significant portion of its range.

Comment 19: The Service should not rely solely on the Bilateral Agreement to remedy illegal take in Russia. Listing under the Act is necessary to allow for continued legal subsistence hunting.

Our response: As discussed in the ''Summary of Factors Affecting the Polar Bear'' section of this rule, we have found that harvest and poaching affect some polar bear populations, but those effects are not significant enough to threaten the species throughout all or a significant portion of its range. To the extent that poaching is affecting local populations in Russia, the Service believes that the best tool to address these threats is the Agreement between the United States of America and the Russian Federation on the Conservation and Management of the Alaska-Chukotka Polar Bear Population (Bilateral Agreement), which was developed and is supported by both government and Native entities and includes measures to reduce poaching. The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) would address attempted international trade of unlawfully taken polar bears (or parts), and the MMPA would address attempted import into the United States of unlawfully taken animals or their parts. Subsistence hunting by natives in the United States is exempt from prohibitions under both the MMPA and the Act. Subsistence harvest does not require action under the Act to ensure its continuation into the future.

Comment 20: The Service should prohibit the importation into the United States of polar bear trophies taken in Canada, and should amend the MMPA to prohibit sport hunting of polar bears.

Our response: The polar bear is currently listed in Appendix II of CITES. Section 9(c)(2) of the Act provides that the non-commercial import of threatened and Appendix-II species, including their parts, that were taken in compliance with CITES is not presumed to be in violation of the Act. Thus, an import permit would not ordinarily be required under the Act. We note that the MMPA does not allow sport hunting of polar bears within the United States. In addition, we note that, under the MMPA, the polar bear will be considered a ''depleted'' species on the effective date of this listing. As a depleted species, imports could only be authorized under the MMPA if the import enhanced the survival of the species or was for scientific research. Therefore, authorization for the import of sport-hunted trophies would no longer be available under section 104(c)(5) of the MMPA.

Comment 21: The Service failed to consider the negative impacts of listing on the long-term management of polar bears developed in Canada that integrates subsistence harvest allocations with a token sport harvest.

Our response: We acknowledge the important contribution to conservation from scientifically-based sustainable use programs. Significant benefits to polar bear management in Canada have accrued as a result of the 1994 amendments to the MMPA that allow U.S. citizens who legally sport-harvest a polar bear from an MMPA-approved population in Canada to bring their trophies back into the United States. These benefits include economic revenues to native hunters and communities; enhanced funding a support for research; a United States conservation fund derived from permit fees that is used primarily on the Chukchi Sea population; and increased local support of scientifically-based conservation programs. Without this program, there would be a loss of funds derived from import fees; loss of economic incentives that promote habitat protection and maintain sustainable harvest levels in Canada; and loss of research opportunities in Canada and Russia, which are funded through sport-hunting revenue. While we recognize these benefits, the Service must list a species when the best scientific and commercial information available shows that the species meets the definition of endangered or threatened. The effect of the listing, in this case an end to the import provision under Section 104(c)(5) of the MMPA, is not one of the listing factors. Furthermore, the benefits accrued to the species through the import program do not offset or reduce the overall threat to polar bears from loss of sea ice habitat.

Comment 22: The Service should promulgate an exemption under section 4(d) of the Act that would allow importation of polar bear trophies.

Our response: We recognize the role that polar bear sport harvest has played in the support of subsistence, economic, and cultural values in northern communities, and we have supported the program where scientific data have been available to ensure sustainable harvest. We again note that, under the MMPA, the polar bear will be considered a ''depleted'' species on the effective date of this listing. The MMPA contains provisions that prevent the import of sport-hunted polar bear trophies from Canada once the species is designated as depleted. A 4(d) rule under the Act cannot affect existing requirements under the MMPA.

Comment 23: The rights of Alaska Natives to take polar bears should be protected.

Our response: We recognize the social and cultural importance of polar bears to coastal Alaska Native communities, and we anticipate continuing to work with the Alaska Native community in a co-management fashion to address subsistence-related issues. Section 101(b) of the MMPA already exempts take of polar bears by Native people for subsistence purposes as long as the take is not accomplished in a wasteful manner. Section 10(e) of the Act also provides an exemption for Alaska Natives that allows for taking as long as such taking is primarily for subsistence purposes and the taking is not accomplished in a wasteful manner. In addition, non-edible byproducts of species taken in accordance with the exemption, when made into authentic native articles of handicraft and clothing, may be transported, exchanged, or sold in interstate commerce. Since 1987, we have monitored the Alaska Native harvest of polar bears through our Marking, Tagging and Reporting program [50 CFR 18.23(f)]. The reported harvest of polar bears by Alaska Natives is 1,614 animals during this nearly 20-year period, of which 965 were taken from the Chukchi Sea population and 649 were taken from the Southern Beaufort Sea population.

Alaska Natives' harvest of polar bears from the Southern Beaufort and Chukchi Seas is not exclusive, since both of these populations are shared across international boundaries with Canada and Russia respectively, where indigenous populations in both countries also harvest animals. Since 1988, the Inuvialuit Game Council (IGC) (Canada) and the North Slope Borough (NSB) (Alaska) have implemented an Inuvialuit-Inupiat Polar Bear Management Agreement for harvest of polar bears in the Southern Beaufort

Sea. The focus of this agreement is to ensure that harvest of animals from this shared population is conducted in a sustainable manner. The Service works with the parties of this agreement, providing technical assistance and advice regarding, among other aspects, information on abundance estimates and sustainable harvest levels. We expect that future harvest levels may be adjusted as a result of discussions at the meeting between the IGC and NSB, held in February 2008.

We do have concerns regarding the harvest levels of polar bears from the Chukchi Sea, where a combination of Alaska Native harvest and harvest occurring in Russia may be negatively affecting this population. However, implementation of the recently ratified ''Agreement between the United States of America and the Russian Federation on the Conservation and Management of the Alaska-Chukotka Polar Bear Population'' (Bilateral Agreement), with its provisions for establishment of a shared and enforced quota system between the United States and Russia, should ensure that harvest from the Chukchi Sea population is sustainable.

Comment 24: If the polar bear is listed, subsistence hunting should be given precedence over other forms of take.

Our response: As noted above, Alaska Native harvest of polar bears for subsistence is currently exempt under both the MMPA and the Act. Sport hunting of polar bears is not allowed in the United States under the MMPA, and take for other purposes is tightly restricted. For polar bears, the other primary type of take is incidental harassment during otherwise lawful activities. The Service has issued incidental take regulations under the MMPA since 1991, and these regulations include a finding that such takings will not have an adverse impact on the availability of polar bears for subsistence uses. Thus, the needs of the Alaska Native community, who rely in part on the subsistence harvest of polar bears, are addressed by existing provisions under both the MMPA and the Act.

Issue 5: Climate Change

Comment 25: The accuracy and completeness of future climate projections drawn from climate models are questionable due to the uncertainty or incompleteness of information used in the models.

Our response: Important new climate change information is included in this final rule. The Working Group I Report of the IPCC AR4, published in early 2007, is a key part of the new information, and represents a collaborative effort among climate scientists from around the world with broad scientific consensus on the findings. In addition, a number of recent publications are used in the final rule to supplement and expand upon results presented in the AR4; these include Parkinson et al. (2006), Zhang and Walsh (2006), Arzel et al. (2006), Stroeve et al. (2007, pp. 1–5), Wang et al. (2007, pp. 1,093–1,107), Chapman and Walsh (2007), Overland and Wang (2007a, pp. 1–7), DeWeaver (2007), and others. Information from these publications has been incorporated into appropriate sections of this final rule.

Atmosphere-ocean general circulation models (AOGCMs, also known as General Circulation Models (GCMs)) are used to provide a range of projections of future climate. GCMs have been consistently improved over the years, and the models used in the IPCC AR4 are significantly improved over those used in the IPCC TAR and the ACIA report. There is ''considerable confidence that the GCMs used in the AR4 provide credible quantitative estimates of future climate change, particularly at continental scales and above'' (IPCC 2007, p. 591). This confidence comes from the foundation of the models in accepted physical principles and from their ability to reproduce observed features of current climate and past climate changes. Additional confidence comes from considering the results of suites of models (called ensembles) rather than the output of a single model. Confidence in model outcomes is higher for some climate variables (e.g., temperature) than for others (e.g., precipitation).

Despite improvements in GCMs in the last several years, these models still have difficulties with certain predictive capabilities. These difficulties are more pronounced at smaller spatial scales and longer time scales. Model accuracy is limited by important small-scale processes that cannot be represented explicitly in models and so must be included in approximate form as they interact with larger-scale features. This is partly due to limitations in computing power, but also results from limitations in scientific understanding or in the availability of detailed observations of some physical processes. Consequently, models continue to display a range of outcomes in response to specified initial conditions and forcing scenarios. Despite such uncertainties, all models predict substantial climate warming under GHG increases, and the magnitude of warming is consistent with independent estimates derived from observed climate changes and past climate reconstructions (IPCC 2007, p. 761; Overland and Wang 2007a, pp. 1–7; Stroeve et al. 2007, pp. 1–5).

We also note the caveat, expressed by many climate modelers and summarized by DeWeaver (2007), that, even if global climate models perfectly represent all climate system physics and dynamics, inherent climate variability would still limit the ability to issue accurate forecasts (predictions) of climate change, particularly at regional and local geographical scales and longer time scales. A forecast is a more-precise prediction of what will happen and when, while a projection is less precise, especially in terms of the timing of events. For example, it is difficult to accurately forecast the exact year that seasonal sea ice will disappear, but it is possible to project that sea ice will disappear within a 10–20 year window, especially if that projection is based on an ensemble of modeling results (i.e., results from several models averaged together). It is simply not possible to engineer all uncertainty out of climate models, such that accurate forecasts are possible. Climate scientists expend considerable energy in trying to understand and interpret that uncertainty. The section in this rule entitled ''Uncertainty in Climate Models'' discusses uncertainty in climate models in greater depth than is presented here.

In summary, confidence in GCMs comes from their physical basis and their ability to represent observed climate and past climate changes. Models have proven to be extremely important tools for simulating and understanding climate and climate change, and we find that they provide credible quantitative estimates of future climate change, particularly at larger geographical scales.

Comment 26: Commenters provided a number of regional examples to contradict the major conclusions regarding climate change.

Our response: As noted in our response to Comment 25, GCMs are less accurate in projecting climate change over finer geographic scales, such as the variability noted for some regions in the Arctic, than they are for addressing global or continental-level climate change. Climate change projections for the Barents Sea are difficult, for example, because regional physics includes both local winds and local currents. Cyclic processes, such as the North Atlantic Oscillation (NAO), can also drive regional variability. We agree with one commenter that the NAO is particularly strong for Greenland (Chylek et al. 2006). However, the natural variability associated with this

phenomenon simply suggests that the future will also have large variability, but does not negate overall climate trends, because the basic physics of climate processes, including sea ice albedo feedback, are modeled in all major sectors of the Arctic Basin. The increased understanding of the basic physics related to climate processes and the inclusion of these parameters in current climate models, such as those used in the IPCC AR4, present a more complete, comprehensive, and accurate view of range-wide climate change than earlier models.

Comment 27: Other models should be used in the analysis of forecasted environmental and population changes including population viability assessment and precipitation models.

Our response: The Service has not relied upon the published results or use of a single climate model or single scenario in its analyses. Instead we have considered a variety of information derived from numerous climate model outputs. These include modeled changes in temperature, sea ice, snow cover, precipitation, freeze-up and breakup dates, and other environmental variables. The recent report of the IPCC AR4 provides a discussion of the climate models used, and why and how they resulted in improved analyses of climatic variable and future projections. Not only have the models themselves been improved, but many advances have been made in terms of how the model results were used. The AR4 utilized multiple results from single models (called multi-member ensembles) to, for example, test the sensitivity of response to initial conditions, as well as averaged results from multiple models (called multi-model ensembles). These two different types of ensembles allow more robust evaluation of the range of model results and more quantitative comparisons of model results against observed trends in a variety of parameters (e.g., sea ice extent, surface air temperature), and provide new information on simulated statistical variability. This final rule benefits from specific analyses of uncertainty associated with model prediction of Arctic sea ice decline (DeWeaver 2007; Overland and Wang 2007a, pp. 1–7), and identification of those models that best simulated observed changes in Arctic sea ice.

We also updated this final rule with information on recently completed population models (e.g., Hunter et al. 2007), habitat values and use models (Durner et al. 2007), and population projection models (Amstrup et al. 2007), which can be found in the ''Current Population Status and Trend'' section.

Comment 28: Future emission scenarios are unreliable or incomplete and use speculative carbon emission scenarios that inaccurately portray future levels.

Our response: Emissions scenarios used in climate modeling were developed by the IPCC and published in its Special Report on Emissions Scenarios in 2000. These emissions scenarios are representations of future levels of GHGs based on assumptions about plausible demographic, socioeconomic, and technological changes. The most recent, comprehensive climate projections in the IPCC AR4 used scenarios that represent a range of future emissions: low, medium, and high. The majority of models used a ''medium'' or ''middle-of-the-road'' scenario due to the limited computational resources for multi-model simulations using GCMs (IPCC 2007, p. 761). In addition, Zhang and Walsh (2006) use three emission scenarios representative of the suite of possibilities and DeWeaver (2007 p. 28), in subsequent analyses, used the A1B ''business as usual'' scenario as a representative of the medium-range forcing scenario, and other scenarios were not considered due to time constraints. Similarly, our final analysis considered a range of potential outcomes, based in part on the range of emission scenarios. For additional details see the previous section, ''Projected Changes in Arctic Sea Ice.''

We agree that emissions scenarios out to 2100 are less certain with regard to technology and economic growth than projections out to 2050. This is reflected in the larger confidence interval around the mean at 2100 than at 2050 in graphs of these emissions scenarios (see Figure SPM–5 in IPCC 2007). However, GHG loading in the atmosphere has considerable lags in its response, so that what has already been emitted and what can be extrapolated to be emitted in the next 15–20 years will have impacts out to 2050 and beyond (IPCC 2007, p. 749; J. Overland, NOAA, in litt. to the Service, 2007). This is reflected in the similarity of low, medium, and high SRES emissions scenarios out to about 2050 (see discussion of climate change under ''Factor A. Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range''). Thus, the uncertainty associated with emissions is lower for the foreseeable future timeframe (45 years) for the polar bear listing than longer timeframes.

Comment 29: Atmospheric CO_2 is an indicator of global warming and not a major contributor.

Our response: Carbon dioxide (CO_2) is one of four principal anthropogenically-generated GHGs, the others being nitrous oxide (N_2O), methane (CH_4), and halocarbons (IPCC 2007, p. 135). The IPCC AR4 considers CO_2 to be the most important anthropogenic GHG (IPCC 2007, p. 136). The GHGs affect climate by altering incoming solar radiation and out-going thermal radiation, and thus altering the energy balance of the Earth-atmosphere system. Since the start of the industrial era, the effect of increased GHG concentrations in the atmosphere has been widespread warming of the climate, with disproportionate warming in large areas of the Arctic (IPCC 2007, p. 37). A net result of this warming is a loss of sea ice, with notable reductions in Arctic sea ice.

Comment 30: Atmospheric CO_2 levels are not greater today than during pre-industrial time.

Our response: The best available scientific evidence unequivocally contradicts this comment. Atmospheric concentration of carbon dioxide (CO_2) has increased significantly during the post-industrial period based on information from polar ice core records dating back at least 650,000 years. The recent rate of change is also dramatic and unprecedented, with the increase documented in the last 20 years exceeding any increase documented over a thousand-year period in the historic record (IPCC AR4, p. 115). Specifically, the concentration of atmospheric CO_2 has increased from a pre-industrial value of about 280 ppm to 379 ppm in 2005, with an annual growth rate larger during the last 10 years than it has been since continuous direct atmospheric measurements began in 1960. These increases are largely due to global increases in GHG emissions and land use changes such as deforestation and burning (IPCC 2007, pp. 25–26).

Comment 31: Consider the impacts of black carbon (soot) due to increased shipping as a factor affecting the increase in the melting of the sea ice.

Our response: We recognize that there are large uncertainties about the contribution of soot to snow melt patterns. A general understanding is that soot (from black carbon aerosols) deposited on snow reduces the surface albedo with a resulting increase in snow melt process (IPCC 2007, p. 30). Estimates of the amount of effect from all sources of soot have wide variance, and the exact contribution from increased shipping cannot be determined at this time.

Comment 32: Climate models do not adequately address naturally occurring phenomena.

Our response: In IPCC AR4 simulations, models were run with natural and anthropogenic (i.e., GHG) forcing for the period of the observational record (i.e., the 20th century). Results from different models and different runs of the same model can be used to simulate the observed range of natural variability in the 20th century (such as warm in 1930s and cool in the 1960s). Only when GHG forcing is added to natural variability, however, do the models simulate the warming observed in the later portion of the 20th century (Wang et al. 2007). This is shown for the Arctic by Wang et al. (2007, pp. 1,093–1,107). This separation is shown graphically in Figure SPM–4 of the IPCC AR4 (shown below, reproduced from IPCC 2007 with permission); note the separation of the model results with and without greenhouse gases at the end of the 20th century for different regions. Thus comparison of forced CO_2 trends and natural variability were central to the IPCC AR4 analyses, and are discussed in this final rule.

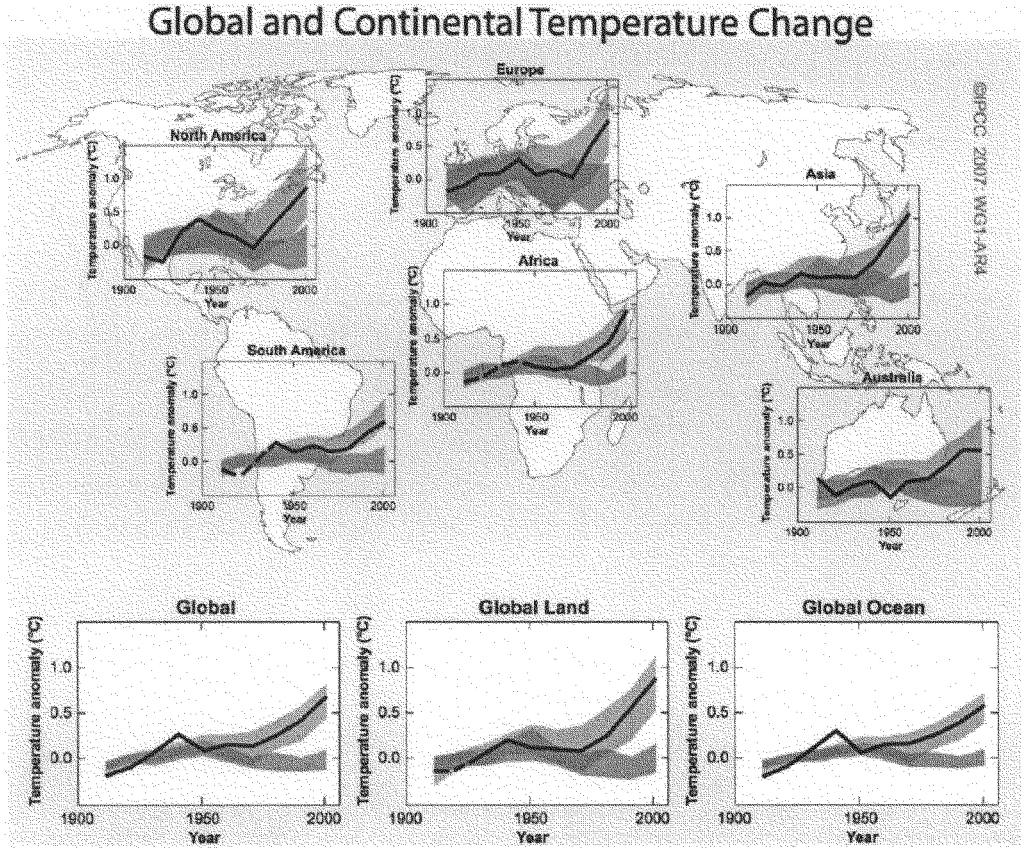


FIGURE SPM-4. Comparison of observed continental- and global-scale changes in surface temperature with results simulated by climate models using natural and anthropogenic forcings. Decadal averages of observations are shown for the period 1906–2005 (black line) plotted against the centre of the decade and relative to the corresponding average for 1901–1950. Lines are dashed where spatial coverage is less than 50%. Blue shaded bands show the 5–95% range for 19 simulations from 5 climate models using only the natural forcings due to solar activity and volcanoes. Red shaded bands show the 5–95% range for 58 simulations from 14 climate models using both natural and anthropogenic forcings. {FAQ 9.2. Figure 1}

Analyses of paleoclimate data increase confidence in the role of external influences on climate. The GCMs used to predict future climate provide insight into past climatic conditions of the Last Glacial Maximum and the mid-Holocene. While many aspects of these past climates are still uncertain, climate models reproduce key features by using boundary conditions and natural forcing factors for those periods. The IPCC AR4 concluded that a substantial fraction of the reconstructed Northern Hemisphere inter-decadal temperature variability of the seven centuries prior to 1950 is *very likely* attributable to natural external forcing, and it is *likely* that anthropogenic forcing contributed to the early 20th-century warming evident in these records (IPCC 2007).

Comment 33: Current climate patterns are part of the natural cycle and reflect natural variability.

Our response: Considered on a global scale, climate is subject to an inherent degree of natural variability. However, evidence of human influence on the recent evolution of climate has accumulated steadily during the past two decades. The IPCC AR4 has concluded that (1) most of the observed increase in globally-averaged temperatures since the mid-20th century is *very likely* due to the observed increase in anthropogenic GHG concentrations; and (2) it is *likely* there has been significant anthropogenic warming over the past 50 years averaged over each continent (except Antarctica) (IPCC 2007, p. 60).

Comment 34: There was a selective use of climate change information in the proposed rule, and the analysis ignored climate information about areas that are cooling.

Our response: We acknowledge that climate change and its effects on various physical processes (such as ice formation and advection, snowfall, precipitation) vary spatially and temporally, and that this has been considered in our analysis. While GCMs are more effective in characterizing climate change on larger scales, we have considered that the changes and effects are not uniform in their timing, location, or magnitude such as identified by Laidre et al. (2005) and Zhang and Walsh (2006). Indeed, the region southwest of Greenland does not show substantial warming by 2050 according to some climate projections. However, most polar bear habitat regions do show the substantial loss of sea ice by 2040–2050. While regional differences in climate change exist, this will not change the effect of climatic warming anticipated to occur within the foreseeable future within the range of polar bears. Updated information on regional climate variability has been added to the section ''Overview of Arctic Sea Ice Change.''

Comment 35: The world will be cooler by 2030 based on sunspot cycle phenomena, which is the most important determinant of global warming (e.g., Soon et al. 2005; Jiang et al. 2005).

Our response: The issue of solar influences, including sunspots, in climate change has been considered by many climate scientists, and there is considerable disagreement about any large magnitude of solar influences and their importance (Bertrand et al. 2002; IPCC 2007). The most current synthesis of the IPCC (AR4, p. 30) describes a well established, 11-year cycle with no significant long term trend based on new data obtained through significantly improved measurements over a 28-year period. Solar influence is considered in the IPCC models and is a small effect relative to volcanoes and CO_2 forcing in the later half of the 20th century. While more complex solar influences due to cosmic ray/ionosphere/cloud connections have been hypothesized, there is no clear demonstration of their having a large effect.

Comment 36: The IPCC report fails to give proper weight to the geological context and relationship to climate change.

Our response: Paleoclimatic events were analyzed in the IPCC AR4, which concluded that ''Confidence in the understanding of past climate change and changes in orbital forcing is strengthened by the improved ability of current models to simulate past climate conditions.'' Model results indicate that the Last Glacial Maximum (about 21,000 years ago) and the mid-Holocene (6,000 years ago) were different from the current climate not because of random variability, but because of altered seasonal and global forcing linked to known differences in the Earth's orbit. This additional information has been incorporated in this final rule.

Comment 37: Movement of sea ice from the Arctic depends on the Aleutian Low, Arctic Oscillation (AO), North Atlantic Oscillation (NAO), and Pacific Decadal Oscillation (PDO) rather than GHG emissions.

Our response: Sea ice is lost from the Arctic by a combination of dynamic and thermodynamic mechanisms. Not only is it lost by advection, but lost as a result of changes in surface air and water temperatures. Changes in surface air temperature are strongly influenced by warming linked to GHG emissions, while increases in water temperature are influenced by warming, the sea ice-albedo feedback mechanism, and the influx of warmer subpolar waters (largely in the North Atlantic) (Serreze et al. 2007). Recent studies (IPCC 2007, p. 355; Stroeve et al 2007; Overland and Wang 2007a, pp. 1–7) recognize considerable natural variability in the pattern of sea ice motion relative to the AO, NAO, and PDO, which will continue into the 21st century. However, the distribution of sea ice thickness is a factor in the amount of sea ice that is advected from the Arctic, and this distribution is significantly affected by surface air and water temperature.

Comment 38: Changes in the sea ice extent vary throughout the Arctic but overall extent has not changed in past 50 years.

Our response: All observational data collected since the 1950s points to a decline in both Arctic sea ice extent and area, as well as an increasing rate of decline over the past decade. While sea ice cover does have a component of natural variability, such variability does not account for the influence that increased air and water temperatures will have on sea ice in the future. The pattern of natural variability will continue, but will be in conjunction with the overall declining trend due to warming, and the combination could result in abrupt declines in sea ice cover faster than would be expected from GHG warming alone.

Comment 39: Evidence that does not support climate change was not included in the analyses.

Our response: We recognize that there are scientific differences of opinion on many aspects of climate change, including the role of natural variability in climate and also the uncertainties involved with both the observational record and climate change projections based on GCMs. We have reviewed a wide range of documents on climate change, including some that espouse the view that the Earth is experiencing natural cycles rather than directional climate change (e.g., Damon and Laut 2004; Foukal et al. 2006). We have consistently relied on synthesis documents (e.g., IPCC AR4; ACIA) that present the consensus view of a very large number of experts on climate change from around the world. We have found that these synthesis reports, as well as the scientific papers used in those reports or resulting from those reports, represent the best available scientific information we can use to inform our decision and have relied upon them and provided citation within our analysis.

Comment 40: Current conditions, based on past variation in Arctic sea ice and air temperatures, are by no means unprecedented and consequently the survival of polar bears and other marine mammals is not of concern.

Our response: We acknowledge that previous warming events (e.g., the Last Interglacial period (LIG), Holocene Thermal Maximum (HTM)) likely affected polar bears to some unknown degree. The fact that polar bears survived these events does not mean that they are not being affected by current sea ice and temperature changes. Indeed, the best available scientific information indicates that several populations are currently being negatively affected, and projections indicate that all populations will be negatively affected within the foreseeable future, such that the species will be in danger of extinction throughout all or a significant portion of its range within that timeframe. We have included additional information regarding previous warming events and an explanation of potential for polar bears to adapt in the section ''Effects of Sea Ice Habitat Changes on Polar Bear Prey.''

We agree that there is considerable natural variability and region-to-region differences in sea ice cover as documented by numerous journal articles and other references (Comiso 2001; Omstedt and Chen 2001; Jevrejeva 2001; Polyakov et al. 2003; Laidre and Heide-Jorgensen 2005). However, current conditions are unprecedented (IPCC 2007, p. 24). Climate scientists agree that atmospheric concentrations of

CO_2 and CH_4 far exceed the natural range over the last 650,000 years. The rate of growth in atmospheric concentration of GHGs is considered unprecedented (IPCC 2007, p. 24). The recent publication by Canadell et al. (2007) indicates that the growth rate of atmospheric CO_2 is increasing rapidly. An increasing CO_2 concentration is consistent with results of climate-carbon cycle models, but the magnitude of the observed atmospheric CO_2 concentration appears larger than that estimated by models. The authors suggest that these changes characterize a carbon cycle that is generating stronger-than-expected and sooner-than-expected climate forcing. What also is unprecedented is the potential for continued sea ice loss into the 21st century based on the physics of continued warming due to external forcing, and the accelerated impact of the ice albedo feedback as more open water areas open. Consideration of future loss of sea ice does not depend only on the sea ice observational record by itself. However, current sea ice loss, which now averages about 10 percent per decade over the last 25 years, plus the extreme loss of summer sea ice in 2007, is a warning sign that significant changes are underway, and data indicate that these extremes will continue into the foreseeable future.

Issue 6: Regulatory Mechanisms

Comment 41: Treaties, agreements, and regulatory mechanisms for population management of polar bears exist and are effective; thus there is no need to list the species under the Act.

Our response: The Service recognizes that existing polar bear management regulatory mechanisms currently in place have been effective tools in the conservation of the species; the ability of the species as a whole to increase in numbers from low populations, as discussed in our response to Comment 1, associated with over-hunting pressures of the mid 20th century attest to such effectiveness. As discussed under Factor D, there is a lack of regulatory mechanisms to address the loss of habitat due to reductions in sea ice. We acknowledge that progress is being made, and may continue to be made, to address climate change resulting from human activity; however, the current and expected impact to polar bear habitat indicates that in the foreseeable future, as defined in this rule, such efforts will not ameliorate loss of polar bear habitat or numbers of polar bears.

Comment 42: The Service did not consider existing local, State, National, and International efforts to address climate change (e.g., the Kyoto Protocol or United Nations Framework Convention on Climate Change) and is incorrect in concluding that there are no known regulatory mechanisms effectively addressing reductions in sea ice habitat. Furthermore, the Service failed to consider the probability of a global response to growing demands to deal with global climate change.

Our response: We have included discussion of domestic and international efforts to address climate change in the ''Inadequacy of Existing Regulatory Mechanisms'' (Factor D) section. While we note various efforts are ongoing, we conclude that such efforts have not yet proven to be effective at preventing loss of sea ice. The Service's ''Policy for Evaluation of Conservation Efforts When Making Listing Decisions'' (68 FR 15100) provides guidance for analyzing future conservation efforts and requires that the Service only rely on efforts that we have found will be both implemented and effective. While we note that efforts are being made to address climate change, we are unaware of any programs currently being shown to effectively reduce loss of polar bear ice habitat at a local, regional, or Arctic-wide scale.

Comment 43: The Service should evaluate the recent Supreme Court ruling that the U.S. Environmental Protection Agency (EPA) has the authority under the Clean Air Act to regulate GHGs.

Our response: The Service recognizes the leading role the EPA plays in implementing the Clean Air Act. However, specific considerations regarding the recent Supreme Court decision are beyond the scope of this decision.

Comment 44: The effort to list the polar bear is an inappropriate attempt to regulate GHG emissions. Any decision to limit GHG emissions should be debated in the open and not regulated through the ''back door'' by the Act.

Our response: The Service was petitioned to evaluate the status of polar bears under the Act. In doing so, we evaluated the best scientific and commercial information available on present and foreseeable future status of polar bears and their habitat as required by the Act. The role of the Service is to determine the appropriate biological status of the polar bear and that is the scope of this rule. Some commenters to the proposed rule suggested that the Service should require other agencies (e.g., the EPA) to regulate emissions from all sources, including automobiles and power plants. The science, law, and mission of the Service do not lead to such action. Climate change is a worldwide issue. A direct causal link between the effects of a specific action and ''take'' of a listed species is well beyond the current level of scientific understanding (see additional discussion of this topic under the ''Available Conservation Measures'' section).

Comment 45: Listing of the polar bear is more about the politics of global climate change than biology of polar bears.

Our response: The Service was petitioned to list polar bears under the Act and we evaluated the best available scientific and commercial information available on threats to polar bears and their habitat as required by the Act. The role of the Service is to determine the appropriate status of the polar bear under the Act, and that is the scope of this rule.

Issue 7: Listing Justification

Comment 46: Justification for listing is insufficient or limited to few populations, and thus range-wide listing is not warranted.

Our response: This document contains a detailed evaluation of the changing sea ice environment and research findings that describe the effect of environmental change on the declining physical condition of polar bears, corresponding declines in vital rates, and declines in population abundance. We acknowledge that the timing, rate and magnitude of impacts will not be the same for all polar bear populations. However, the best available scientific information indicates that several populations are currently being negatively affected, and projections indicate that all populations will be negatively affected within the foreseeable future, such that the species will be in danger of extinction throughout all or a significant portion of its range within that timeframe.

Since the proposed rule was published (72 FR 1064), the USGS completed additional analyses of population trajectories for the Southern Beaufort Sea population (Hunter et al. 2007), and updated population estimates for the Northern Beaufort Sea (Stirling et al. 2007) and Southern Hudson Bay (Obbard et al. 2007) populations (summarized in the ''Background'' section of this final rule). The USGS also has conducted additional modeling of habitat resource selection in a declining sea ice environment (Durner et al. 2007), and an evaluation of the levels of uncertainty or likelihood of outcomes for a variety of climate models (DeWeaver 2007). Information from these recent USGS analyses is included

and cited within this rule and balanced with other published information evaluating current and projected polar bear status. In addition, since the publication of the proposed rule (72 FR 1064), the IPCC AR4 and numerous other publications related to climate change and modeled climate projections have become available in published form and are now included and cited within this rule.

We considered whether listing particular Distinct Population Segments (DPSs) is warranted, but we could not identify any geographic areas or populations that would qualify as a DPS under our 1996 DPS Policy (61 FR 4722), because there are no population segments that satisfy the criteria of the DPS Policy.

Finally, we analyzed the status of polar bears in portions of its range to determine if differential threat levels in those areas warrant a determination that the species is endangered rather than threatened in those areas. The overall direction and magnitude of threats to polar bears lead us to conclude that the species is threatened throughout its range, and that there are no significant portions of the range where the polar bear would be considered currently in danger of extinction.

On the basis of all these analyses, we have concluded that the best available scientific information supports a determination that the species is threatened throughout all of its range.

Comment 47: Traditional ecological knowledge (TEK) does not support the conclusion that polar bear populations are declining and negatively impacted by climate change.

Our response: We acknowledge that TEK may provide a relevant source of information on the ecology of polar bears obtained through direct individual observations. We have expanded and incorporated additional discussion of TEK into our determination. Additionally, we have received and reviewed comments from individuals with TEK on both climate change and polar bears. While there may be disagreement among individuals on the impacts of climate change on polar bears, we believe there is general scientific consensus that sea ice environment is diminishing.

Comment 48: Cannibalism, starvation, and drowning are naturally occurring events and should not be inferred as reasons for listing.

Our response: We agree that cannibalism, starvation, and drowning occur in nature; however, we have not found that these are mortality factors that threaten the species throughout all or a significant portion of its range. Rather, we find that recent research findings have identified the unusual nature of some reported mortalities, and that these events serve as indicators of stressed populations. The occurrence and anecdotal observation of these events and potential relationship to sea ice changes is a current cause for concern. In the future, these events may take on greater significance, especially for populations that may be experiencing nutritional stress or related changes in their environment.

Comment 49: The Service did not adequately consider polar bear use of marginal ice zones in the listing proposal.

Our response: Due to the dynamic and cyclic nature of sea ice formation and retreat, marginal ice zones occur on an annual basis within the circumpolar area and indeed are important habitat for polar bears. The timing of occurrence, location, and persistence of these zones over time are important considerations because they serve as platforms for polar bears to access prey. Marginal ice zones that are associated with shallow and productive nearshore waters are of greatest importance, while marginal ice zones that occur over the deeper, less productive central Arctic basin are not believed to provide values equivalent to the areas nearshore. New information on polar bear habitat selection and use (Durner et al. 2007) is included in this rule's sections ''Polar Bear-Sea Ice Habitat Relationships'' and ''Effects of Sea Ice Habitat Change on Polar Bears.''

Comment 50: The effects of climate change on polar bears will vary among populations.

Our response: We recognize that the effects of climate change will vary among polar bear populations, and have discussed those differences in detail in this final rule. We have determined that several populations are currently being negatively affected, and projections indicate that all populations will be negatively affected within the foreseeable future. Preliminary modeling analyses of future scenarios using a new approach (the Bayesian Network Model) describe four ''ecoregions'' based on current and projected sea ice conditions (Amstrup et al. 2007); a discussion of these analyses is included in Factor A of the ''Summary of Factors Affecting the Species.'' Consistent with other projections, the preliminary model projects that southern populations with seasonal ice-free conditions and open Arctic Basin populations in areas of ''divergent'' sea ice will be affected earliest and to the greatest extent,while populations in the Canadian archipelago populations and populations in areas of ''convergent ''sea ice'' will be affected later and to a lesser extent. These model projections indicate that impacts will happen at different times and rates in different regions. On the basis of the best available scientific information derived from this preliminary model and other extensive background information, we conclude that the species is not currently in danger of extinction throughout all or a significant portion of its range, but is very likely to become so within the foreseeable future. We have not identified any areas or populations that would qualify as Distinct Population Segments under our 1996 DPS Policy, or any significant portions of the polar bear's range that would qualify for listing as endangered (see response to Comment 47).

Comment 51: The 19 populations the Service has identified cannot be thought of as discrete or stationary geographic units, and polar bears should be considered as one Arctic population.

Our response: We agree that the boundaries of the 19 populations are not static or stationary. Intensive scientific study of movement patterns and genetic analysis reinforces boundaries of some populations while confirming that overlap and mixing occur among others. Neither movement nor genetic information is intended to mean that the boundaries are absolute or stationary geographic units; instead, they most accurately represent discrete functional management units based on generalized patterns of use.

Comment 52: The Service should evaluate the status of the polar bear in significant portions of the range or distinct population segments, due to regional differences in climate parameters, and therefore the response of polar bears.

Our response: We analyzed the status of polar bears by population and region in the section ''Demographic Effects of Sea Ice Changes on Polar Bear'' and considered how threats may differ between areas. We recognize that the level, rate, and timing of threats will be uneven across the Arctic and, thus, that polar bear populations will be affected at different rates and magnitudes depending on where they occur. We find that, although habitat (i.e., sea ice) changes may occur at different rates, the direction of change is the same. Accepted climate models (IPCC AR4 2007; DeWeaver 2007), based on their ability to simulate present day ice patterns, all project a unidirectional loss of sea ice. Similarly, new analyses of polar bear habitat distribution in the polar basin projected over time (Durner et al. 2007) found that while the rate of

change in habitat varied between GCMs, all models projected habitat loss in the polar basin within the 45-year foreseeable future timeframe. Therefore, despite the regional variation in changes and response, we find that the primary threat (loss of habitat) is occurring and is projected to continue to occur throughout the Arctic. In addition, the USGS also examined how the effects of climate change will vary across time and space; their model projections also indicate that impacts will happen at different times and rates in different regions (Amstrup et al. 2007).

Recognizing the differences in the timing, rate, and magnitude of threats, we evaluated whether there were any specific areas or populations that may be disproportionately threatened such that they currently meet the definition of an endangered species versus a threatened species. We first considered whether listing one or more Distinct Population Segments (DPS) as endangered may be warranted. We then considered whether there are any significant portions of the polar bear's range (SPR) where listing the species as endangered may be warranted. In evaluating current status of all populations and projected sea ice changes and polar bear population projections, we were unable to identify any distinct population segments or significant portions of the range of the polar bear where the species is currently in danger of extinction. Rather, we have concluded that the polar bear is likely to become an endangered species throughout its range within the foreseeable future. Thus, we find that threatened status throughout the range is currently the most appropriate listing under the Act.

Comment 53: One commenter asserted that the best available scientific information indicates that polar bear populations in two ecoregions defined by Amstrup et al. (2007)—the Seasonal Ice ecoregion and the polar basin Divergent ecoregion—should be listed as endangered.

Our response: We separately evaluated whether polar bear populations in these two ecoregions qualify for a different status than polar bears in the remainder of the species' range. We determined that while these polar bears are likely to become in danger of extinction within the foreseeable future, they are not currently in danger of extinction. See our analysis in the section ''Distinct Population Segment (DPS) and Significant Portion of the Range (SPR) Evaluation.''

Comment 54: There is insufficient evidence to conclude that the polar bear will be threatened or extinct within three generations as no quantitative analysis or models of population numbers (or prey abundance) are offered.

Our response: New information on population status and trends for the Southern Beaufort Sea (Hunter et al. 2007; Regehr et al. 2007b) and updated population estimates for the Northern Beaufort Sea (Stirling et al. 2007) and Southern Hudson Bay (Obbard et al. 2007) populations is included in this rule along with range-wide population projections based on polar bear ecological relationship to sea ice and to changes in sea ice over time (Amstrup et al. 2007). These studies, plus the IPCC AR4, and additional analyses of climate change published within the last year, have added substantially to the final rule. Taken together, the new information builds on previous analyses to provide sufficient evidence to demonstrate that: (1) polar bears are sea ice-dependent species; (2) reductions in sea ice are occurring now and are very likely to continue to occur within the foreseeable future; (3) the linkage between reduced sea ice and population reductions has been established; (4) impacts on polar bear populations will vary in their timing and magnitude, but all populations will be affected within the foreseeable future; and (5) the rate and magnitude of the predicted changes in sea ice will make adaptation by polar bears unrealistic. On these bases, we have determined that the polar bear is not currently in danger of extinction throughout all or a significant portion of its range, but is likely to become so within the foreseeable future.

Comment 55: Perceptions differ as to whether polar bear populations will decline with loss of sea ice habitat.

Our response: Long-term data sets necessary to establish the linkage between population declines and climate change do not exist for all polar bear populations within the circumpolar Arctic. However, the best available scientific information indicates a link between polar bear vital rates or population declines and climate change. For two populations with extensive time series of data, Western Hudson Bay and Southern Beaufort Sea, either the population numbers or survival rates are declining and can be related to reductions in sea ice. In addition, scientific literature indicates that the Davis Strait, Baffin Bay, Foxe Basin, and the Eastern and Western Hudson Bay populations are expected to decline significantly in the foreseeable future based on reductions of sea ice projected in Holland et al. (2006, pp. 1–5). Additional population analyses (Regehr et al. 2007a, b; Hunter et al. 2007; Obbard et al. 2007) that further detail this relationship have been recently completed and are included in this final rule.

Comment 56: Factors supporting listing are cumulative and thus are unlikely to be quickly reversed. Polar bears are likely to become endangered within one to two decades.

Our response: We have concluded that habitat loss (Factor A) is the primary factor that threatens the polar bear throughout its range. We have also determined that there are no known regulatory mechanisms in place, and none that we are aware of that could be put in place, at the national or international level, that directly and effectively address the rangewide loss of sea ice habitat within the foreseeable future (Factor D). However, we have also concluded that other factors (e.g., overutilization) may interact with and exacerbate these primary threats (particularly habitat loss) within the 45-year foreseeable future.

Polar bear populations are being affected by habitat loss now, and will continue to be affected within the foreseeable future. We do not believe that the species is currently endangered, but we believe it is likely that the species will become endangered during the foreseeable future given current and projected trends; see detailed discussion under Factor A in the section ''Demographic Effects of Sea Ice Changes on Polar Bear''. We intend to continue to evaluate the status of polar bears and will review and amend the status determination if conditions warrant. Through 5-year reviews and international circumpolar monitoring, we will closely track the status of the polar bear over time.

Comment 57: Polar bears face unprecedented threats from climate change, environmental degradation, and hunting for subsistence and sport.

Our response: We agree in large part as noted in detail within this final rule, but clarify that hunting for subsistence or sport does not currently threaten the species in all or a significant portion of its range, and where we have concerns regarding the harvest we are hopeful that existing or newly established regulatory processes, e.g., the recently adopted Bilateral Agreement, will be adequate to ensure that harvest levels are sustainable and can be adjusted as our knowledge of population status changes over time. Please see the ''Summary of Factors Affecting the Polar Bear'' for additional discussion of these issues.

Issue 8: Listing Process

Comment 58: Listing the polar bear under the Act should be delayed until reassessment of the status of the species under Canada's Species at Risk Act (SARA) is completed.

Our response: When making listing decisions, section 4 of the Act establishes firm deadlines that must be followed, and does not allow for an extension unless there is substantial scientific disagreement regarding the sufficiency or accuracy of relevant data. Section 4(b) directs the Secretary to take into account any efforts being made by any State or foreign nation to protect the species under consideration; however, the Act does not allow the Secretary to defer a listing decision pending the outcome of any such efforts. The status of the polar bear under Canada's SARA is discussed under Factor D.

Comment 59: The Act was not designed to list species based on future status.

Our response: We agree. We have determined that the polar bear's current status is that it is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' This is the definition of a threatened species under the Act, and we are accordingly designating the species as threatened.

Comment 60: Use of the IUCN Red Listing criteria for a listing determination under the Act is questionable, and should not be used.

Our response: While we may consider the opinions and recommendations of other experts (e.g., IUCN), the determination as to whether a species meets the definition of threatened or endangered must be made by the Service, and must be based upon the criteria and standards in the Act. After reviewing the best available scientific and commercial information, we have determined that the polar bear is threatened throughout its range, based upon an assessment of threats according to section 4 of the Act. While some aspects of our determination may be in line with the IUCN Red List criteria (e.g., we used some Red List criteria for determination of generation time), we have not used the Red List criteria as a standard for our determination. Rather, in accordance with the Act, we conducted our own analyses and made our own determination based on the beast available information. Please see the ''Summary of Factors Affecting the Species'' section for in-depth discussion.

Comment 61: The peer review process is flawed due to biases of the individual peer reviewers.

Our response: We conducted our peer review in accordance with our policy published on July 1, 1994 (59 FR 34270), and based on our implementation of the OMB Final Information Quality Bulletin for Peer Review, dated December 16, 2004. Peer reviewers were chosen based upon their ability to provide independent review, their standing as experts in their respective disciplines as demonstrated through publication of articles in peer reviewed or referred journals, and their stature promoting an international cross-section of views. Please see ''Peer Review'' section above for additional discussion.

Peer review comments are available to the public and have been posted on the Service's web site at: *http://alaska.fws.gov/fisheries/mmm/polarbear/issues.htm.* In addition to peer review comments, the Service also provides an open public comment process to ensure in part that any potential issues of bias are specifically identified to allow for the issue to be evaluated for merit. In our analysis of peer review and public comments we find that peer review comments were objective, balanced and without bias.

Comment 62: Requests were received for additional public hearings and extension of the public comment period.

Our response: Procedures for public participation and review in regard to proposed rules are provided at section 4(b)(5) of the Act, 50 CFR 424, and the Administrative Procedure Act (5 U.S.C. 551 et seq.)(APA). We are obligated to hold at least one public hearing on a listing proposal, if requested to do so within 45 days after the publication of the proposal (16 U.S.C. 1533(b)(5)(E)). As described above, in response to requests from the public, we held three public hearings. We were not able to hold a public hearing that could be easily accessed by each and every requester, as we received comments from throughout the United States and many other countries. We accepted and considered oral comments given at the public hearings, and we incorporated those comments into the administrative record for this action. In making our decision on the proposed rule, we gave written comments the same weight as oral comments presented at hearings. Furthermore, our regulations require a 60-day comment period on proposed rules (50 CFR 424.16(c)(2)), but the initial public comment period on the proposed rule to list the polar bear was open from January 9 to April 9, 2007, encompassing approximately 90 days. The comment period was reopened for comments on new scientific information from September 20 through October 22, 2007, an extra 32 days. We believe the original 90-day comment period, three public hearings, and second public comment period provided ample opportunity for public comment, as intended under the Act, our regulations, and the APA.

Comment 63: The Service's conclusion that this regulatory action does not constitute a significant energy action and that preparation of a ''Statement of Energy Effects'' is not required is flawed.

Our response: In 1982, the Act was amended by the United States Congress to clarify that listing and delisting determinations are to be based on the best scientific and commercial data available (Pub. L. 97–304, 96 Stat. 1411) to clarify that the determination was intended to be a biological decision and made without reference to economic or other non-biological factors. The specific language from the accompanying House Report (No. 97–567) stated, ''The principal purpose of the amendments to Section 4 is to ensure that decisions pertaining to the listing and delisting of species are based solely upon biological criteria and to prevent non-biological considerations from affecting such decisions.'' Further as noted in another U.S. House of Representatives Report, economic considerations have no relevance to determinations regarding the status of the species and the economic analysis requirements of Executive Order 12291, and such statutes as the Regulatory Flexibility Act and Paperwork Reduction Act, will not apply to any phase of the listing process.'' (H.R. Rep. No 835, 97th Cong., Sess. 19 (1982)). On the basis of the amendments to the Act put forth by Congress in 1982 and Congressional intent as evidenced in the quotation above, we have determined that the provisions of Executive Order 13211 ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355), do not apply to listing and delisting determinations under section 4 of the Act because of their economic basis. Therefore, Executive Order 13211 does not apply to this determination to list the polar bear as threatened throughout its range.

Comment 64: There is insufficient information to proceed with a listing, and thus our proposal was arbitrary and capricious.

Our response: Under the APA, a court may set aside an agency rulemaking if found to be, among other things, ''arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law'' (5 U.S.C. 706(2)(A)). The Endangered Species Act

requires that listing decisions be based solely on the best scientific and commercial information available. We have used the best available scientific information throughout our analysis, and have taken a number of steps-as required by the Act and its implementing regulations, the APA, and our peer review policy—to ensure that our analysis of the available information was balanced and objective. The evaluation of information contained within the final rule and all other related documents (e.g., the Status Review (Schliebe et al. 2006a) is a result of multiple levels of review and validation of information. We sought peer review and public comment, and incorporated all additional information received through these processes, where applicable. These steps were transparent and made available to the public for inspection, review, and comment. We have determined that the best available scientific and commercial information is sufficient to find that the polar bear meets the definition of a threatened species under the Act.

Comment 65: The Service did not comply with the Information Quality Act and with the Service's Information Quality Guidelines.

Our response: The Information Quality Act requires Federal agencies to ensure the quality, objectivity, utility, and integrity of the information they disseminate. ''Utility'' refers to the usefulness of the information to its intended users, and ''integrity'' pertains to the protection of the information from unauthorized access or revision. According to OMB guidelines (67 FR 8452), technical information that has been subjected to formal, independent, external peer review, as is performed by scientific journals, is presumed to be of acceptable objectivity. Literature used in the proposed rule was considered the best available peer-reviewed literature at the time. In addition, our proposed rule was peer-reviewed by 14 experts in the field of polar bear biology and climatology. In instances where information used in the proposed rule has become outdated, this final rule has been revised to reflect the most current scientific information. Despite being peer-reviewed, most scientific information has some limitations and statements of absolute certainty are not possible. In this rule, and in accordance with our responsibilities under the Act, we sought to provide a balanced analysis by considering all available information relevant to the status of polar bears and potential impacts of climate change and by acknowledging and considering the limitations of the information that provided the basis for our analysis and decision-making (see ''Summary of Factors Affecting the Polar Bear'' and ''Issue 5: Climate Change'' for more information).

Comment 66: National Environmental Policy Act (NEPA) compliance is lacking, and an Environmental Impact Statement is needed as this is a significant Federal action.

Our response: The rule is exempt from NEPA procedures. In 1983, upon recommendation of the Council on Environmental Quality, the Service determined that NEPA documents are not required for regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244). A listing rule provides the appropriate and necessary prohibitions and authorizations for a species that has been determined to be threatened under section 4(a) of the Act. The opportunity for public comments-one of the goals of NEPA-is also already provided through section 4 rulemaking procedures. This determination was upheld in *Pacific Legal Foundation* v. *Andrus,* 657 F.2d 829 (6th Cir. 1981).

Comment 67: The Service should fulfill its requirement to have regular and meaningful consultation and collaboration with Alaska Native organizations in the development of this Federal action.

Our response: As detailed in the preamble to this section of the final rule, we actively engaged in government-to-government consultation with Alaska Native Tribes in accordance with E.O. 13175 and Secretarial Order 3225. Since 1997, the Service has worked closely with the Alaska Nanuuq Commission (Commission) on polar bear management and conservation for subsistence purposes. Not only was the Commission kept fully informed throughout the development of the proposed rule, but that organization was asked to serve as a peer reviewer of the Status Review (Schliebe et al. 2006a) and the proposed rule (72 FR 1064). Following publication of the proposed rule, the Service actively solicited comments from Alaska Natives living within the range of the polar bear. We received comments on the proposed rule from seven tribal associations. We held a public hearing in Barrow, Alaska, to enable Alaska Natives to provide oral comment. We invited the 15 villages in the Commission to participate in the hearing, and we offered the opportunity to provide oral comment via teleconference. Thus, we believe we have fulfilled our requirement to have regular and meaningful consultation and collaboration with Alaska Native organizations in the development of this final rule.

Comment 68: An Initial Regulatory Flexibility Analysis (IRFA) should be completed prior to the publication of a final rule.

Our response: Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), an IRFA is prepared in order to describe the effects of a rule on small entities (small businesses, small organizations, and small government jurisdictions). An IRFA is not prepared in a listing decision because we consider only the best available scientific information and do not consider economic impacts (please see response to Comment 70 for additional discussion).

Comment 69: Some commenters stated that the Service should designate critical habitat concurrent with this rulemaking; however, several other commenters disagreed.

Our response: Section 4(a)(3) of the Act requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is listed. Accordingly, we are not able to forego the process of designating critical habitat when doing so is prudent and critical habitat is determinable. Service regulations (50 CFR 424.12(a)) state that critical habitat is not determinable if information sufficient to perform required analyses of the impacts of designation is lacking or if the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat. Given the complexity and degree of uncertainty at this time as to which specific areas in Alaska might be essential to the conservation of the polar bear in the long-term under rapidly changing environmental conditions, we have determined that we will need additional time to conduct a thorough evaluation and peer review of a potential critical habitat designation. Thus, we are not publishing a proposed designation of critical habitat concurrently with this final listing rule, but we intend to publish a proposed designation in the very near future. Please see the ''Critical Habitat'' section below for further discussion.

Issue 9: Impacts of Listing

Comment 70: Several comments highlighted potential impacts of listing, such as economic consequences, additional regulatory burden, and conservation benefits. Other commenters noted that economic factors cannot be taken into consideration at this stage of the listing.

Our response: Under section 4(b)(1)(A) of the Act, we must base a listing decision solely on the best scientific and commercial data available. The legislative history of this provision clearly states the intent of Congress to ensure that listing decisions are ''* * * based solely on biological criteria and to prevent non-biological criteria from affecting such decisions * * *'' (see reponse to Comment PR8 for more details). Therefore, we did not consider the economic impacts of listing the polar bear. In our Notice of Interagency Cooperative Policy of Endangered Species Act Section 9 Prohibitions (59 FR 34272), we stated our policy to identify, to the extent known at the time a species is listed, specific activities that will not be considered likely to result in violation of section 9 of the Act. In accordance with that policy, we have published in this final rule a list of activities we believe will not result in violation of section 9 of the Act (see ''Available Conservation Measures'' section of this rule for further discussion). However, because the polar bear is listed as a threatened species and the provisions of section 4(d) of the Act authorize the Service to implement, by regulation, those measures included in section 9 of the Act that are deemed necessary and advisable to provide for the conservation of the species, please consult the special rule for the polar bear that is published in today's edition of the **Federal Register** for all of the prohibitions and exceptions that apply to this threatened species.

Comment 71: Several comments were received pertaining to the effectiveness of listing the polar bear under the Act, specifically whether listing would or would not contribute to the conservation of the species.

Our response: The potential efficacy of a listing action to conserve a species cannot be considered in making the listing decision. The Service must make its determination based on a consideration of the factors affecting the species, utilizing only the best scientific and commercial information available and is not able to consider other factors or impacts (see response to Comment 70 for additional discussion). Listing recognizes the status of the species and invokes the protection and considerations under the Act, including regulatory provisions, consideration of Federal activities that may affect the polar bear, potential critical habitat designation. The Service will also develop a recovery plan and a rangewide conservation strategy. Please see the responses to comments under ''Issue 10: Recovery'' as well as the ''Available Conservation Measures'' section of this rule for further discussion.

Comment 72: Listing under the Act may result in additional regulation of industry and development activities in the Arctic. A discussion of incidental take authorization should be included in the listing rule. Some comments reflected concern regarding the perceived economic implications of regulatory and administrative requirements stemming from listing.

Our response: Section 7(a)(2) of the Act, as amended, requires Federal agencies to consult with the Service to ensure that the actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of listed species. Informal consultation provides an opportunity for the action agency and the Service to explore ways to modify the action to reduce or avoid adverse effects to the listed species or designated critical habitat. In the event that adverse effects are unavoidable, formal consultation is required. Formal consultation is a process in which the Service determines if the action will result in incidental take of individuals, assesses the action's potential to jeopardize the continued existence of the species, and develops an incidental take statement. Formal consultation concludes when the Service issues a biological opinion, including any mandatory measures prescribed to reduce the amount or extent of incidental take of the action. In the case of marine mammals, the Service must also ensure compliance with regulations promulgated under section 101(a)(5) of the MMPA. Authorization of incidental take under the MMPA is discussed under Factor D. Actions that are already subject to section 7 consultation requirements in the Arctic, some of which may involve the polar bear, include, but are not limited to: Refuge operations and research permits; U.S. Army Corps of Engineers and Environmental Protection Agency permitting actions under the Clean Water Act and Clean Air Act; Bureau of Land Management land-use planning and management activities including onshore oil and gas leasing activities; Minerals Management Service administration of offshore oil and gas leasing activities; and Denali Commission funding of fueling and power generation projects.

Issue 10: Recovery

Comment 73: Several comments identified additional research needs related to polar bears, their prey, indigenous people, climate, and anthropogenic and cumulative effects on polar bears. Some specific recommendations include increased research and continued monitoring of polar bear populations and their prey, monitoring of polar bear harvest, and development of more comprehensive climate change models.

Our response: We agree that additional research would benefit the conservation of the polar bear. The Service will continue to work with the USGS, the State of Alaska, the IUCN/PBSG, independent scientists, indigenous people, and other interested parties to conduct research and monitoring on Alaska's shared polar bear populations. While the Service does not have appropriate resources or management responsibility for conducting climate research, we have and will continue to work with climatologists and experts from USGS, NASA, and NOAA to address polar bear-climate related issues. Furthermore, we will consider appropriate research and monitoring recommendations received from the public in the development of a rangewide conservation strategy.

Comment 74: Several commenters provided recommendations for recovery actions, to be considered both in addition to and in lieu of listing. Other commenters cited the need for immediate recovery planning and implementation upon completion of a final listing rule.

Our response: As discussed throughout this final rule, the Service has been working with Range countries on conservation actions for the polar bears for a number of years. Due to the significant threats to the polar bear's habitat, however, it is our determination that the polar bear meets the definition of a threatened species under the Act and requires listing. With completion of this final listing rule, the Service will continue and expand coordination with the Range countries regarding other appropriate international initiatives that would assist in the development of a rangewide conservation strategy. However, it must be recognized that the threats to the polar bear's habitat may only be addressed on a global level. Recovery planning under section 4(f) of the Act will be limited to areas under U.S. jurisdiction, since the preparation of a formal recovery plan would not promote the conservation of polar bears in foreign countries that are not subject to the implementation schedules and recovery goals established in such a plan. However, the Service will use its section 8 authorities to carry out conservation measures for polar bears in cooperation with foreign countries.

Summary of Factors Affecting the Polar Bear

Section 4 of the Act (16 U.S.C. 1533), and implementing regulations at 50 CFR part 424, set forth procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a) of the Act, we may list a species on the basis of any of five factors, as follows: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. In making this finding, the best scientific and commercial information available regarding the status and trends of the polar bear is considered in relation to the five factors provided in section 4(a)(1) of the Act.

In the context of the Act, the term ''endangered species'' means any species or subspecies or, for vertebrates, Distinct Population Segment (DPS), that is in danger of extinction throughout all or a significant portion of its range, and a ''threatened species'' is any species that is likely to become an endangered species within the foreseeable future. The Act does not define the term ''foreseeable future.'' For this final rule, we have identified 45 years as the foreseeable future for polar bears; our rationale for selecting this timeframe is presented in the following section.

Foreseeable Future

For this final rule, we have determined the ''foreseeable future'' in terms of the timeframe over which the best available scientific data allow us to reliably assess the effects of threats on the polar bear.

The principal threat to polar bears is the loss of their primary habitat-sea ice. The linkage between habitat loss and corresponding effects on polar bear populations was hypothesized in the past (Budyko 1966, p. 20; Lentfer 1972, p. 169; Tynan and DeMaster 1997, p. 315; Stirling and Derocher 1993, pp. 241–244; Derocher et al. 2004, p. 163), but is now becoming well established through long-term field studies that span multiple generations (Stirling et al. 1999, pp. 300–302; Stirling and Parkinson 2006, pp. 266–274; Regehr et al. 2006; Regehr et al. 2007a, 2007b; Rode et al. 2007, pp. 5–8; Hunter et al. 2007, pp. 8–14; Amstrup et al. 2007).

The timeframe over which the best available scientific data allows us to reliably assess the effect of threats on the species is the critical component for determining the foreseeable future. In the case of the polar bear, the key threat is loss of sea ice, the species' primary habitat. Sea ice is rapidly diminishing throughout the Arctic, and the best available evidence is that Arctic sea ice will continue to be affected by climate change. Recent comprehensive syntheses of climate change information (e.g., IPCC AR4) and additional modeling studies (e.g., Overland and Wang 2007a, pp. 1–7; Stroeve et al. 2007, pp. 1–5) show that, in general, the climate models that best simulate Arctic conditions all project significant losses of sea ice over the 21st century. A key issue in determining what timeframe to use for the foreseeable future has to do with the uncertainty associated with climate model projections at various points in the future. Virtually all of the climate model projections in the AR4 and other studies extend to the end of the 21st century, so we considered whether a longer timeframe for the foreseeable future was appropriate. The AR4 and other studies help clarify the scientific uncertainty associated with climate change projections, and allow us to make a more objective decision related to the timeframe over which we can reliably assess threats.

Available information indicates that climate change projections over the next 40–50 years are more reliable than projections over the next 80–90 years. This is illustrated in Figure 5 above. Examination of the trend lines for temperature using the three emissions scenarios, as shown in Figure 5, illustrates that temperature increases over the next 40–50 years are relatively insensitive to the SRES emissions scenario used to model the projected change (i.e., the lines in Figure 5 are very close to one another for the first 40–50 years). The ''limited sensitivity'' of the results is because the state-of-the-art climate models used in the AR4 have known physics connecting increases in GHGs to temperature increases through radiation processes (Overland and Wang 2007a, pp. 1–7, cited in J. Overland, NOAA, in litt. to the Service, 2007), and the GHG levels used in the SRES emissions scenarios follow similar trends until around 2040–2050. Because increases in GHGs have lag effects on climate and projections of GHG emissions can be extrapolated with greater confidence over the next few decades, model results projecting out for the next 40–50 years (near-term climate change estimates) have greater credibility than results projected much further into the future (long-term climate change) (J. Overland, NOAA, in litt. to the Service, 2007). Thus, the uncertainty associated with emissions is relatively smaller for the 45-year ''foreseeable future'' for the polar bear listing. After 2050, greater uncertainty associated with various climate mechanisms, including the carbon cycle, is reflected in the increasingly larger confidence intervals around temperature trend lines for each of the SRES emissions scenarios (see Figure 5). In addition, beyond 40–50 years, the trend lines diverge from one another due to differences among the SRES emissions scenarios. These SRES scenarios diverge because each makes different assumptions about the effects that population growth, potential technological improvements, societal and regulatory changes, and economic growth have on GHG emissions, and those differences are more pronounced after 2050. The divergence in the lines beyond 2050 is another source of uncertainty in that there is less confidence in what changes might take place to affect GHG emissions beyond 40–50 years from now.

The IPCC AR4 reaches a similar conclusion about the reliability of projection results over the short term (40–50 years) versus results over the long term (80–90 years) (IPCC 2007, p. 749) in discussing projected changes in surface air temperatures (SATs):

> ''There is close agreement of globally averaged SAT multi-model mean warming for the early 21st century for concentrations derived from the three non-mitigated IPCC Special Report on Emission Scenarios (SRES: B1, A1B and A2) scenarios (including only anthropogenic forcing) run by the AOGCMs * * * this warming rate is affected little by different scenario assumptions or different model sensitivities, and is consistent with that observed for the past few decades * * *. Possible future variations in natural forcings (e.g., a large volcanic eruption) could change those values somewhat, but about half of the early 21st-century warming is committed in the sense that it would occur even if atmospheric concentrations were held fixed at year 2000 values. By mid-century (2046–2065), the choice of scenario becomes more important for the magnitude of multi-model globally averaged SAT warming * * *. About a third of that warming is projected to be due to climate change that is already committed. By late century (2090–2099), differences between scenarios are large, and only about 20% of that warming arises from climate change that is already committed.''

On the basis of our analysis, reinforced by conclusions of the IPCC AR4, we have determined that climate changes projected within the next 40–50 years are more reliable than projections for the second half of the 21st century.

The 40–50 year timeframe for a reliable projection of threats to habitat corresponds closely to the timeframe of

three polar bear generations (45 years), as determined by the method described in the following paragraph. Long-term studies have demonstrated, and world experts (e.g., PBSG) are in agreement, that three generations is an appropriate timespan to use to reliably assess the status of the polar bear and the effects of threats on population-level parameters (e.g., body condition indices, vital rates, and population numbers). This is based on the life history of the polar bear, the large natural variability associated with polar bear population processes, and the capacity of the species for ecological and behavioral adaptation (Schliebe et al. 2006a, pp. 59–60). Although not relied on as the basis for determining ''foreseeable future'' in this rule, the correspondence of this timeframe with important biological considerations provides greater confidence for this listing determination.

Polar bears are long-lived mammals, and adults typically have high survival rates. Both sexes can live 20 to 25 years (Stirling and Derocher 2007), but few polar bears in the wild live to be older than 20 years (Stirling 1988, p. 139; Stirling 1990, p. 225). Due to extremely low reproductive rates, polar bears require a high survival rate to maintain population levels. Survival rates increase up to a certain age, with cubs-of-the-year having the lowest rates and prime age adults (between 5 and 20 years of age) having survival rates that can exceed 90 percent. Generation length is the average age of parents of the current cohort; generation length therefore reflects the turnover rate of breeding individuals in a population. We adapted the criteria of the IUCN Red List process (IUCN 2004) for determining polar bear generation time in both the proposed rule (72 FR 1064) and this final rule. A generation span, as defined by IUCN, is calculated as the age of sexual maturity (5 years for polar bears) plus 50 percent of the length of the lifetime reproductive period (20 years for polar bears). The IUCN Red List process also uses a three-generation timeframe ''to scale the decline threshold for the species'' life history'' (IUCN 2004), recognizing that a maximum time cap is needed for assessments based on projections into the future because ''the distant future cannot be predicted with enough certainty to justify its use'' in determining whether a species is threatened or endangered. Based on these criteria, the length of one generation for the polar bear is 15 years, and, thus, three generations are 45 years.

The appropriate timeframe for assessing the effects of threats on polar bear population status must be determined on the basis of an assessment of the reliability of available biological and threat information at each step. For polar bear, the reliability of biological information and, therefore, population status projections, increases if a multigenerational analysis is used. In general, the reliability of information and projections increases with time, until a point when reliability begins to decline again due to uncertainty in projecting threats and corresponding responses by polar bear populations (S. Schliebe, pers. comm., 2008). This decline in reliability depends on the level of uncertainty associated with projected threats and their relationship to the population dynamics of the species. With polar bears, we expect the reliability of population status projections to diminish around 4–5 generations. Thus, ±3 generations is the optimal timeframe to reliably assess the status of the polar bear response to population-level threats. This progression can be illustrated by results from studies of the Western Hudson Bay polar bear population.

In western Hudson Bay, break-up of the annual sea ice now occurs approximately 2.5 weeks earlier than it did 30 years ago (see discussion of ''Western Hudson Bay'' population under Factor A and Stirling and Parkinson 2006, p. 265). Stirling and colleagues measured mean estimated mass of lone adult female polar bears from 1980 through 2004, and determined that their average weight declined by about 65 kg (143 lbs) over that period. Stirling and Parkinson (2006, p. 266) project that cub production could cease in 20 to 30 years if climate trends continue as projected by the IPCC. The overall timeframe covered by this scenario is 45–55 years, which is within the ±3 generation timeframe. In addition, Regehr et al. (2007a, p. 2,673) analyzed population trend data for 1987 through 2004 and documented a long-term, gradual decline in population size that is anticipated to continue into the future. These two lines of evidence indicate that the species will likely be in danger of extinction within the next 45 years. Beyond that timeframe, the population trend and threats information are too uncertain to reliably project the status of the species.

In summary, we considered the timeframe over which the best available scientific data allow us to reliably assess the effect of threats on the polar bear, and determined that there is substantial scientific reliability associated with climate model projections of sea ice change over the next 40–50 years. Confidence limits are much closer (i.e., more certain) for projections of the next 40–50 years and all projections agree that sea ice will continue to decrease. In comparison, periods beyond 50 years exhibit wider confidence limits, although all trends continue to express warming and loss of sea ice (IPCC 2007, p. 749; Overland and Wang 2007a, pp. 1–7; Stroeve et al. 2007, pp. 1–5). This timespan compares well with the 3-generation (45-year) timeframe over which we can reliably evaluate the effects of environmental change on polar bear life history and population parameters. Therefore, we believe that a 45-year foreseeable future is a reasonable and objective timeframe for analysis of whether polar bears are likely to become endangered.

This 45-year timeframe for assessing the status of the species is consistent with the work of the PBSG in reassessing the status of polar bears globally in June 2005 (Aars et al. 2006, p. 31) for purposes of IUCN Red List classification. More than 40 technical experts were involved in the PBSG review (including polar bear experts from the range countries and other invited polar bear specialists), and these PBSG technical experts supported the definition of a polar bear generation as 15 years, and the application of three generations as the appropriate timeframe over which to evaluate polar bear population trends for the purposes of IUCN Red List categorization. Although the Red List process is not the same as our evaluation for listing a species under the Act, the basic rationale for determining generation length and timeframe for analysis of threats is similar in both. None of the experts raised an issue with the 45-year timeframe for analysis of population trends.

In addition, when seeking peer review of both the *Status Review* (Schliebe et al. 2006a) and the proposed rule to list the polar bear as threatened (72 FR 1064), we specifically asked peer reviewers to comment on the 45-year foreseeable future and the method we used to derive that timeframe. All reviewers that commented on this subject indicated that a 45-year timeframe for the foreseeable future was appropriate, with the exception of one reviewer who thought the foreseeable future should be 100 years. Thus, both the independent reviews by PBSG and the input from peer reviewers corroborate our final decision and our rationale for using 45 years as the foreseeable future for the polar bear.

Our evaluation of the five factors with respect to polar bear populations is presented below. We considered all relevant available scientific and commercial information under each of the listing factors in the context of the present-day distribution of the polar bear.

Factor A. Present or Threatened Destruction, Modification, or Curtailment of the Polar Bear's Habitat or Range

Introduction

As described in detail in the ''Species Biology'' section of this rule, polar bears are evolutionarily adapted to life on sea ice (Stirling 1988, p. 24; Amstrup 2003, p. 587). They need sea ice as a platform for hunting, for seasonal movements, for travel to terrestrial denning areas, for resting, and for mating (Stirling and Derocher 1993, p. 241). Moore and Huntington (in press) classify polar bears as an ''ice-obligate'' species because of their reliance on sea ice as a platform for resting, breeding, and hunting. Laidre et al. (in press) similarly describe the polar bear as a species that principally relies on annual sea ice over the continental shelf and areas toward the southern extent of the edge of sea ice for foraging. Some polar bears use terrestrial habitats seasonally (e.g., for denning or for resting during open water periods). Open water by itself is not considered to be a habitat type frequently used by polar bears, because life functions such as feeding, reproduction, or resting do not occur in open water. However, open water is a fundamental part of the marine system that supports seal species, the principal prey of polar bears, and seasonally refreezes to form the ice needed by the bears (see ''Open Water Habitat'' section for more information). In addition, the extent of open water is important because vast areas of open water may limit a bear's ability to access sea ice or land (see ''Open Water Swimming'' section for more detail). Snow cover, both on land and on sea ice, is an important component of polar bear habitat in that it provides insulation and cover for young polar bears and ringed seals in snow dens or lairs on sea ice (see ''Maternal Denning Habitat'' section for more detail).

Previous Warming Periods and Polar Bears

Genetic evidence indicates that polar bears diverged from grizzly bears between 200,000–400,000 years ago (Talbot and Shields 1996a, p. 490; Talbot and Shields 1996b, p. 574); however, polar bears do not appear in the fossil record until the Last Interglacial Period (LIG) (115,000–140,000 years ago) (Kurten 1964, p. 25; Ingolfsson and Wiig 2007). Depending on the exact timing of their divergence, polar bears may have experienced several periods of climatic warming, including a period 115,000–140,000 years ago, a period of warming 4,000–12,000 years ago (Holocene Thermal Maximum), and most recently during medieval times (800 to 1200 A.D.). During these periods there is evidence suggesting that regional air temperatures were higher than present day and that sea ice and glacial ice were significantly reduced (Circumpolar Arctic PaleoEnvironments (CAPE) 2006, p. 1394; Jansen et al. 2007, p. 435, 468). This section considers historical information available on polar bears and the environmental conditions during these warming periods.

During the LIG (115,000–140,000 years ago), some regions of the world including parts of the Arctic experienced warmer than present day temperatures as well as greatly reduced sea ice in some areas, including what is now coastal Alaska and Greenland (Jansen et al. 2007, p. 453). CAPE (2006, p.1393) concludes that all sectors of the Arctic were warmer than present during the LIG, but that the magnitude of warming was not uniform across all regions of the Arctic. Summer temperature anomalies at lower Northern Hemisphere latitudes below the Arctic were not as pronounced as those at higher latitudes but still are estimated to have ranged from 0–2 degrees C above present (CAPE 2006, p. 1394). Furthermore, according to the IPCC, while the average temperature when considered globally during the LIG was not notably higher than present day, the rate of warming averaged 10 times slower than the rate of warming during the 20th century (Jansen et al. 2007, p. 453). However, the rate at which change occurred may have been more rapid regionally, particularly in the Arctic (CAPE 2006, p. 1394). While the specific responses of polar bears to regional changes in climate during the LIG are not known, they may have survived regional warming events by altering their distribution and/or retracting their range. Similar range retraction is projected for polar bears in the 21st century (Durner et al. 2007). However, the slower rate of climate change and more regional scale of change during the LIG suggest that polar bears had more opportunity to adapt during this time in comparison to the current observed and projected relatively rapid, global climate change (Jansen et al. 2007, p. 776; Lemke et al. 2007, p. 351).

The HTM 4,000–12,000 years ago also appears to have affected climate Arctic-wide, though summer temperature anomalies were lower than those that occurred during the LIG (CAPE 2006, p. 1394). Kaufman et al. (2003, p. 545) report that mean surface temperatures during the HTM were 1.6 ± 0.8 degrees C (range: 0.5–3 degrees C) higher in terrestrial habitats and 3.8 ± 1.9 degrees C at marine sites than present-day temperatures at 120 sites throughout the western Arctic (Northeast Russia to Iceland, including all of North America). Furthermore, Birks and Amman (2000, pp. 1,392–1,393) provide evidence that change in some areas may have been rapid, including an increase of 0.2–0.3 degrees C per 25 years in Norway and Switzerland. However, the timing of warming across the Arctic was not uniform, with Alaska and northwest Canada experiencing peak warming 4,000 years prior to northeast Canada (Kaufman et al. 2004, p. 529). Thus while regional changes in temperature are believed to have occurred, the IPCC concluded that annual global mean temperatures were not warmer than present day any time during the Holocene (Jansen et al. 2007, p. 465). While polar bears did experience warmer temperatures in their range during this time, the regional nature of warming that occurred may have aided their survival through this period in certain areas. However, the degree to which polar bears may have been impacted either regionally or Arctic-wide is unknown.

The most recent period of warming occurred during the Medieval period (generally considered to be the period from 950 to 1300 AD). This episode again appears to have been regional rather than global (Broecker 2001, p. 1,497; Jansen et al. 2007, p. 469); additionally, temperatures during this period are estimated to be 0.1–0.2 degrees C below the 1961 to 1990 mean and significantly below the instrumental data after 1980 (Jansen et al. 2007, p. 469). Thus, temperatures and rate of change estimated for this time period do not appear comparable to present day conditions.

Unfortunately, the limited scientific evidence currently available to us for these time periods does limit our ability to assess how polar bears responded to previous warming events. For example, while genetic analyses can be useful for identifying significant reductions in population size throughout a species' history (Hedrick 1996, p. 897; Driscoll et al. 2002, p. 414), most genetic studies of polar bears have focused on analyzing

variation in micro-satellite DNA for the purposes of differentiating populations (i.e., identifying genetic structure; Paetkau et al. 1995, p. 347; Paetkau et al. 1999, p. 1,571; Cronin et al. 2006, p. 655). Additionally, genetic analyses for the purpose of identifying population bottlenecks require accurate quantification of mutation rates to determine how far back in time an event can be detected and a combination of mitochondrial and nuclear DNA analyses to eliminate potential alternative factors, other than a population bottleneck, that might result in or counteract low genetic variation (Driscoll et al. 2002, pp. 420–421; Hedrick 1996, p. 898; Nystrom et al. 2006, p. 84). The results of micro-satellite studies for polar bears have documented that within-population genetic variation is similar to black and grizzly bears (Amstrup 2003, p. 590), but that among populations, genetic structuring or diversity is low (Paetkau et al. 1995, p. 347; Cronin et al. 2006, pp. 658–659). The latter has been attributed with extensive population mixing associated with large home ranges and movement patterns, as well as the more recent divergence of polar bears in comparison to grizzly and black bears (Talbot and Shields 1996a, p. 490; Talbot and Shields 1996b, p. 574; Paetkau et al. 1999, p. 1,580). Inferring whether the degree of genetic variation from these studies is indicative of a population bottleneck, however, requires additional analyses that have yet to be conducted. Furthermore, the very limited fossil record of polar bears sheds little light on possible population-level responses of polar bears to previous warming events (Derocher et al. 2004, p. 163).

Thus, while polar bears as a species have survived at least one period of regional warming greater than present day, it is important to recognize that the degree that they were impacted is not known and there are differences between the circumstances surrounding historical periods of climate change and present day. First, the IPCC concludes that the current rate of global climate change is much more rapid and very unusual in the context of past changes (Jansen et al. 2007, p. 465). Although large variation in regional climate has been documented in the past 200,000 years, there is no evidence that mean global temperature increased at a faster rate than present warming (Jansen et al. 2007, p. 465), nor is there evidence that these changes occurred at the same time across regions. Furthermore, projected rates of future global change are much greater than rates of global temperature increase during the past 50 million years (Jansen et al. 2007, p. 465). Derocher et al. (2004, p. 163, 172) suggest that this rate of change will limit the ability of polar bears to respond and survive in large numbers. Secondly, polar bears today experience multiple stressors that were not present during historical warming periods. As explained further under Factors B, C, and E, polar bears today contend with harvest, contaminants, oil and gas development, and additional interactions with humans (Derocher et al. 2004, p. 172) that they did not experience in previous warming periods, whereas during the HTM, humans had just begun to colonize North America. Thus, both the cumulative effects of multiple stressors and the rapid rate of climate change today create a unique and unprecedented challenge for present-day polar bears in comparison to historical warming events.

Effects of Sea Ice Habitat Change on Polar Bears

Observed and predicted changes in sea ice cover, characteristics, and timing have profound effects on polar bears (Derocher and Stirling 1996, p. 1,250; Stirling et al. 1999, p. 294; Stirling and Parkinson 2006, p. 261; Regehr et al. 2007b, p. 18). As noted above, sea ice is a highly dynamic habitat with different types, forms, stages, and distributions that all operate as a complex matrix in determining biological productivity and use by marine organisms, including polar bears and their primary prey base, ice seal species. Polar bear use of sea ice is not uniform. Their preferred habitat is the annual ice located over the continental shelf and inter-island archipelagos that circle the Arctic basin. Ice seal species demonstrate a similar preference for these ice habitats.

In the Arctic, Hudson Bay, Canada has experienced some of the earliest ice changes due to its southerly location on a divide between a warming and a cooling region (Arctic Monitoring Assessment Program (AMAP) 2003, p. 22), making it an ideal area to study the impacts of climate change. In addition, Hudson Bay has the most extensive long-term data on the ecology of polar bears and is the location where the first evidence of major and ongoing impacts to polar bears from sea ice changes has been documented. Many researchers over the past 40 years have predicted an array of impacts to polar bears from climatic change that include adverse effects on denning, food chain disruption, and prey availability (Budyko 1966, p. 20; Lentfer 1972, p. 169; Tynan and DeMaster 1997, p. 315; Stirling and Derocher 1993, pp. 241–244). Stirling and Derocher (1993, p. 240) first noted changes, such as declining body condition, lowered reproductive rates, and reduced cub survival, in polar bears in western Hudson Bay; they attributed these changes to a changing ice environment. Subsequently, Stirling et al. (1999, p. 303) established a statistically significant link between climate change in western Hudson Bay, reduced ice presence, and observed declines in polar bear physical and reproductive parameters, including body condition (weight) and natality. More recently Stirling and Parkinson (2006, p. 266) established a statistically significant decline in weights of lone and suspected pregnant adult female polar bears in western Hudson Bay between 1988 and 2004. Reduced body weights of adult females during fall have been correlated with subsequent declines in cub survival (Atkinson and Ramsay 1995, p. 559; Derocher and Stirling 1996, p. 1,250; Derocher and Wiig 2002, p. 347).

Increased Polar Bear Movements

The best scientific data available suggest that polar bears are inefficient moving on land and expend approximately twice the average energy than other mammals when walking (Best 1982, p. 63; Hurst 1982, p. 273). However, further research is needed to better understand the energy dynamics of this highly mobile species. Studies have shown that, although sea ice circulation in the Arctic is clockwise, polar bears tend to walk against this movement to maintain a position near preferred habitat within large geographical home ranges (Mauritzen et al. 2003a, p. 111). Currently, ice thickness is diminishing (Rothrock et al. 2003, p. 3649; Yu et al. 2004) and movement of sea ice out of the polar region has occurred (Lindsay and Zhang 2005). As the climate warms, and less multi-year ice is present, we expect to see a decrease in the export of multi-year ice (e.g., Holland et al. 2006, pp. 1–5). Increased rate and extent of ice movements will, in turn, require additional efforts and energy expenditure by polar bears to maintain their position near preferred habitats (Derocher et al. 2004, p. 167). This may be an especially important consideration for females encumbered with small cubs. Ferguson et al. (2001, p. 51) found that polar bears inhabiting areas of highly dynamic ice had much larger activity areas and movement rates compared to those bears inhabiting more stable, persistent ice habitat.

Although polar bears are capable of living in areas of highly dynamic ice movement, they show inter-annual fidelity to the general location of preferred habitat (Mauritzen et al. 2003b, p. 122; Amstrup et al. 2000b, p. 963).

As sea ice becomes more fragmented, polar bears would likely use more energy to maintain contact with consolidated, higher concentration ice, because moving through highly fragmented sea ice is more energy-intensive than walking over consolidated sea ice (Derocher et al. 2004, p. 167). During summer periods, the remaining ice in much of the central polar basin is now positioned away from more productive continental shelf waters and occurs over much deeper, less productive waters, such as in the Beaufort and Chukchi Seas of Alaska. If the width of leads or extent of open water increases, the transit time for bears and the need to swim or to travel will increase (Derocher et al. 2004, p. 167). Derocher et al. (2004, p. 167) suggest that as habitat patch sizes decrease, available food resources are likely to decline, resulting in reduced residency time and increased movement rates. The consequences of increased energetic costs to polar bears from increased movements are likely to be reduced body weight and condition, and a corresponding reduction in survival and recruitment rates (Derocher et al. 2004, p. 167).

Additionally, as movement of sea ice increases and areas of unconsolidated ice also increase, some bears are likely to lose contact with the main body of ice and drift into unsuitable habitat from which it may be difficult to return (Derocher et al. 2004, p. 167). This has occurred historically in some areas such as Southwest Greenland as a result of the general drift pattern of sea ice in the area (Vibe 1967) and also occurs offshore of Newfoundland, Canada (Derocher et al. 2004, p. 167). Increased frequency of such events could negatively impact survival rates and contribute to population declines (Derocher et al. 2004, p. 167).

Polar Bear Seasonal Distribution Patterns Within Annual Activity Areas

Increasing temperatures and reductions in sea ice thickness and extent, coupled with seasonal retraction of sea ice poleward, will cause redistribution of polar bears seasonally into areas previously used either irregularly or infrequently. While polar bears have demonstrated a wide range of space-use patterns within and between populations, the continued retraction and fragmentation of sea ice habitats that is projected to occur will alter previous patterns of use seasonally and regionally. These changes have been documented at an early onset stage for a number of polar bear populations with the potential for large-scale shifts in distribution by the end of the 21st century (Durner et al. 2007, pp. 18–19).

This section provides examples of distribution changes and interrelated consequences. Recent studies indicate that polar bear movements and seasonal fidelity to certain habitat areas are changing and that these changes are strongly correlated to similar changes in sea ice and the ocean-ice system. Changes in movements and seasonal distributions can have effects on polar bear nutrition, body condition, and more significant longer term redistribution. Specifically, in western Hudson Bay, break-up of the annual sea ice now occurs approximately 2.5 weeks earlier than it did 30 years ago (Stirling et al. 1999, p. 299). The earlier spring break-up was highly correlated with dates that female polar bears came ashore (Stirling et al. 1999, p. 299). Declining reproductive rates, subadult survival, and body mass (weights) have occurred because of longer periods of fasting on land as a result of the progressively earlier break-up of the sea ice and the increase in spring temperatures (Stirling et al. 1999, p. 304; Derocher et al. 2004, p. 165).

Stirling et al. (1999, p. 304) cautioned that, although downward trends in the size of the Western Hudson Bay population had not been detected, if trends in life history parameters continued downward, ''they will eventually have a detrimental effect on the ability of the population to sustain itself.'' Subsequently, Parks et al. (2006, p. 1282) evaluated movement patterns of adult female polar bears satellite-collared from 1991 to 2004 with respect to their body condition. Reproductive status and variation in ice patterns were included in the analysis. Parks et al. (2006, p. 1281) found that movement patterns were not dependent on reproductive status of females but did change significantly with season. They found that annual distances moved had decreased in Hudson Bay since 1991. This suggested that declines in body condition were due to reduced prey consumption as opposed to increased energy output from movements (Parks et al. 2006, p. 281). More recently, Regehr et al. (2007a, p. 2,673) substantiated Stirling et al.'s (1999, p. 304) predictions, noting population declines in western Hudson Bay during analysis of data from an ongoing mark-recapture population study. Between 1987 and 2004, the number of polar bears in the Western Hudson Bay population declined from 1,194 to 935, a reduction of about 22 percent (Regehr et al. 2007a, p. 2,673). Progressive declines in the condition and survival of cubs, subadults, and bears 20 years of age and older appear to have been caused by progressively earlier sea ice break-up, and likely initiated the decline in population. Once the population began to decline, existing harvest rates contributed to the reduction in the size of the population (Regehr et al. 2007a, p. 2,680).

Since 2000, Schliebe et al. (2008) observed increased use of coastal areas by polar bears during the fall open-water period in the southern Beaufort Sea. High numbers of bears (a minimum of 120) were found to be using coastal areas during some years, where prior to the 1990s, according to native hunters, industrial workers, and researchers operating on the coast at this time of year, such observations of polar bears were rare. This study period (2000–2005) also included record minimal sea ice conditions for the month of September in 4 of the 6 survey years. Polar bear density along the mainland coast and on barrier islands during the fall open water period in the southern Beaufort Sea was related to distance from pack ice edge and the density of ringed seals over the continental shelf. The distance between pack ice edge and the mainland coast, as well as the length of time that these distances prevailed, was directly related to polar bear density onshore. As the sea ice retreated and the distance to the edge of the ice increased, the number of bears near shore increased. Conversely, as near-shore areas became frozen or sea ice advanced toward shore, the number of bears near shore decreased (Schliebe et al. 2008). The presence of subsistence-harvested bowhead whale carcasses and their relationship to polar bear distribution were also analyzed. These results suggest that, while seal densities near shore and availability of bowhead whale carcasses may play a role in polar bear distribution changes, that sea ice conditions (possibly similar to conditions observed in western Hudson Bay) are influencing the distribution of polar bears in the southern Beaufort Sea. They also suggest that increased polar bear use of coastal areas may continue if the summer retreat of the sea ice continues into the future as predicted (Serreze et al. 2000, p. 159; Serreze and Barry 2005).

Others have observed increased numbers of polar bears in novel habitats. During bowhead whale surveys conducted in the southern Beaufort Sea during September, Gleason et al. (2006)

observed a greater number of bears in open water and on land during surveys in 1997–2005, years when sea ice was often absent from their study area, compared to surveys conducted between 1979–1996, years when sea ice was a predominant habitat within their study area. Bears in open water likely did not select water as a choice habitat, but rather were swimming in an attempt to reach offshore pack ice or land. Their observation of a greater number of bears on land during the later period was concordant with the observations of Schliebe et al. (2008). Further, the findings of Gleason et al. (2006) coincide with the lack of pack ice (concentrations of greater than 50 percent) caused by a retraction of ice in the study area during the latter period (Stroeve et al. 2005, p. 2; Comiso 2003, p. 3,509; Comiso 2005, p. 52). The findings of Gleason et al. (2006) confirm an increasing use of coastal areas by polar bears in the southern Beaufort Sea in recent years and a decline in ice habitat near shore. The immediate causes for changes in polar bear distribution are thought to be (1) retraction of pack ice far to the north for greater periods of time in the fall and (2) later freeze-up of coastal waters.

Other polar bear populations exhibiting seasonal distribution changes with larger numbers of bears on shore have been reported. Stirling and Parkinson (2006, pp. 261–275) provide an analysis of pack ice and polar bear distribution changes for the Baffin Bay, Davis Strait, Foxe Basin, and Hudson Bay populations. They indicate that earlier sea ice break-up will likely result in longer periods of fasting for polar bears during the extended open-water season. This may explain why more polar bears have been observed near communities and hunting camps in recent years. Seasonal distribution changes of polar bears have been noted during a similar period of time for the northern coast of Chukotka (Kochnev 2006, p. 162) and on Wrangel Island, Russia (Kochnev 2006, p. 162; N. Ovsyanikov, Russian Federation Nature Reserves, pers. comm.). The relationship between the maximum number of polar bears, the number of dead walruses, and the distance to the ice edge from Wrangel Island was evaluated. The subsequent results revealed that the most significant correlation was between bear numbers and distance to the ice-edge (Kochnev 2006, p. 162), which again supports the observation that when sea ice retreats far off shore, the numbers of bears present or stranded on land appears to increase.

In Baffin Bay, traditional Inuit knowledge studies and anecdotal reports indicate that in many areas greater numbers of bears are being encountered on land during the summer and fall open-water seasons (Dowsley 2005, p. 2). Interviews with elders and senior hunters (Dowsley and Taylor 2005, p. 2) in three communities in Nunavut, Canada, revealed that most respondents (83 percent) believed that the population of polar bears had increased. The increase was attributed to more bears seen near communities, cabins, and camps; hunters also encountered bear sign (e.g., tracks, scat) in areas not previously used by bears. Some people interviewed noted that these observations could reflect a change in bear behavior rather than an increase in population. Many (62 percent) respondents believed that bears were less fearful of humans now than 15 years ago. Most (57 percent) respondents reported bears to be skinnier now, and five people in one community reported an increase in fighting among bears. Respondents also discussed climate change, and they indicated that there was more variability in the sea ice environment in recent years than in the past. Some respondents indicated a general trend for ice floe edge to be closer to the shore than in the past, the sea ice to be thinner, fewer icebergs to be present, and glaciers to be receding. Fewer grounded icebergs, from which shorefast ice forms and extends, were thought to be partially responsible for the shift of the ice edge nearer to shore. Respondents were uncertain if climate change was affecting polar bears or what form the effects may be taking (Dowsley 2005, p. 1). Also, results from an interview survey of 72 experienced polar bear hunters in Northwest Greenland in February 2006 indicate that during the last 10–20 years, polar bears have occurred closer to the coast. Several of those interviewed believed the change in distribution represented an increase in the population size (e.g., Kane Basin and Baffin Bay), although others suggested that it may be an effect of a decrease in the sea ice (Born et al., in prep).

Recently Vladilen Kavry, former Chair of the Union of Marine Mammal Hunters of Chukotka, Russia, Polar Bear Commission, conducted a series of traditional ecological knowledge interviews with indigenous Chukotka coastal residents regarding their impression of environmental changes based on their lifetime of observations (Russian Conservation News No. 41 Spring/Summer 2006). The interviewees included 17 men and women representing different age and ethnic groups (Chukchi, Siberian Yupik, and Russian) in Chukotka, Russia. Respondents noted that across the region there was a changing seasonal weather pattern with increased unpredictability and instability of weather. Respondents noted shorter winters, observing that the fall-winter transition was occurring later, and spring weather was arriving earlier. Many described these differences as resulting in a one-month-later change in the advent of fall and one-month-earlier advent of spring. One 71-year-old Chukchi hunter believed that winter was delayed two months and indicated that the winter frosts that had previously occurred in September were now taking place in November. He also noted that thunderstorms were more frequent. Another 64-year-old hunter noted uncharacteristic snow storms and blizzards as well as wintertime rains. He also noted that access to sea ice by hunters was now delayed from the normal access date of November to approximately one month later into December. This individual also noted that blizzards and weather patterns had changed and that snow is more abundant and wind patterns caused snow drifts to occur in locations not previously observed. With increased spring temperatures, lagoons and rivers are melting earlier. The sea ice extent has declined and the quality of ice changed. The timing of fall sea ice freezing is delayed two months into November. The absence of sea ice in the summer is thought to have caused walrus to use land haulouts for resting in greater frequency and numbers than in the past.

Stirling and Parkinson (2006, p. 263) evaluated sea ice conditions and distribution of polar bears in five populations in Canada: Western Hudson Bay, Eastern Hudson Bay, Baffin Bay, Foxe Basin, and Davis Strait. Their analysis of satellite imagery beginning in the 1970s indicates that the sea ice is breaking up at progressively earlier dates, so bears must fast for longer periods of time during the open-water season. Stirling and Parkinson (2006, pp. 271–272) point out that long-term data on population size and body condition of bears from the Western Hudson Bay population, and population and harvest data from the Baffin Bay population, indicate that these populations are declining or likely to be declining. The authors indicate that as bears in these populations become more nutritionally stressed, the numbers of animals will decline, and the declines will probably be significant. Based on the recent findings of Holland et al.

(2006, pp. 1–5) regarding sea ice changes, these events are predicted to occur within the foreseeable future as defined in this rule (Stirling, pers. comm. 2006).

Seasonal polar bear distribution changes noted above, the negative effect of reduced access to primary prey, and prolonged use of terrestrial habitat are a concern for polar bears. Although polar bears have been observed using terrestrial food items such as blueberries (*Vaccinium sp.*), snow geese (*Anser caerulescens*), and reindeer (*Rangifer tarandus*), these alternate foods are not believed to represent significant sources of energy (Ramsay and Hobson 1991, p. 600; Derocher et al. 2004, p. 169) because they do not provide the high fat, high caloric food source that seals do. Also, the potential inefficiency of polar bear locomotion on land noted above may explain why polar bears are not known to regularly hunt musk oxen (*Ovibos moschatus*) or snow geese, despite their occurrence as potential prey in many areas (Lunn and Stirling 1985, p. 2,295). The energy needed to catch such species would almost certainly exceed the amount of energy a kill would provide (Lunn and Stirling 1985, p. 2,295). Consequently, greater use of terrestrial habitats as a result of reduced presence of sea ice seasonally will not offset energy losses resulting from decreased seal consumption. Nutritional stress appears to be the only possible result.

Effects of Sea Ice Habitat Changes on Polar Bear Prey

Reduced Seal Productivity

Polar bear populations are known to fluctuate with prey abundance (Stirling and Lunn 1997, p. 177). Declines in ringed and bearded seal numbers and productivity have resulted in marked declines in polar bear populations (Stirling 1980, p. 309; Stirling and Øritsland 1995, p. 2,609; Stirling 2002, p. 68). Thus, changes in ringed seal productivity have the potential to affect polar bears directly as a result of reduced predation on seal pups and indirectly through reduced recruitment of this important prey species. Ringed seal productivity is dependent on the availability of secure habitat for birth lairs and rearing young and, as a result, is susceptible to changes in sea ice and snow dynamics. Ringed seal pups are the smallest of the seals and survive because they are born in snow lairs (subnivian dens) that afford protection from the elements and from predation (Hall 1866; Chapskii 1940; McLaren 1958; Smith and Stirling 1975, all cited in Kelly 2001, p. 47). Pups are born between mid-March and mid-April, nursed for about 6 weeks, and weaned prior to spring break-up in June (Smith 1980, p. 2,201; Stirling 2002, p. 67). During this time period, both ringed seal pups and adults are hunted by polar bears (Smith 1980, p. 2,201). Stirling and Lunn (1997, p. 177) found that ringed seal young-of-the-year represented the majority of the polar bear diet, although the availability of ringed seal pups from about mid-April to ice break up sometime in July (Stirling and Lunn 1997, p. 176) is also important to polar bears.

In many areas, ringed seals prefer to create birth lairs in areas of accumulated snow on stable, shore-fast ice over continental shelves along Arctic coasts, bays, and inter-island channels (Smith and Hammill 1981, p. 966). While some authors suggest that landfast ice is the preferred pupping habitat of ringed seals due to its stability throughout the pupping and nursing period (McLaren 1958, p. 26; Burns 1970, p. 445), others have documented ringed seal pupping on drifting pack ice both nearshore and offshore (Burns 1970; Smith 1987; Finley et al. 1983, p. 162; Wiig et al. 1999, p. 595; Lydersen et al. 2004). Either of these habitats can be affected by earlier warming and break-up in the spring, which shortens the length of time pups have to grow and mature (Kelly 2001, p. 48; Smith and Harwood 2001). Harwood et al. (2000, pp. 11–12) reported that an early spring break-up negatively impacted the growth, condition, and apparent survival of unweaned ringed seal pups. Early break-up was believed to have interrupted lactation in adult females, which in turn, negatively affected the condition and growth of pups. Earlier ice break-ups similar to those documented by Harwood et al. (2000, p. 11) and Ferguson et al. (2005, p. 131) are predicted to occur more frequently with warming temperatures, and result in a predicted decrease in productivity and abundance of ringed seals (Ferguson et al. 2005, p. 131; Kelly 2001). Additionally, high fidelity to birthing sites exhibited by ringed seals makes them more susceptible to localized impacts from birth lair snow degradation, harvest, or human activities (Kelly 2006, p. 15).

Unusually heavy ice has also been documented to result in markedly lower productivity of ringed seals and reduced polar bear productivity (Stirling 2002, p. 59). While reduced ice thickness associated with warming in some areas could be expected to improve seal productivity, the transitory and localized benefits of reduced ice thickness on ringed seals are expected to be outweighed by the negative effects of increased vulnerability of seal pups to predation and thermoregulatory costs (Derocher et al. 2004, p. 168). The number of studies that have documented negative effects associated with earlier warming and break-up and reduced snow cover (Hammill and Smith 1989, p. 131; Harwood et al. 2000, p. 11; Smith et al. 1991; Stirling and Smith 2004, p. 63; Ferguson et al. 2005, p. 131), in comparison to any apparent benefits of reduced ice thickness further support this conclusion.

Snow depth on the sea ice, in addition to the timing of ice break-up, appears to be important in affecting the survival of ringed seal pups. Ferguson et al. (2005, pp. 130–131) attributed decreased snow depth in April and May with low ringed seal recruitment in western Hudson Bay. Reduced snowfall results in less snow drift accumulation on the leeward side of pressure ridges; pups in lairs with thin snow roofs are more vulnerable to predation than pups in lairs with thick roofs (Hammill and Smith 1989, p.131; Ferguson et al. 2005, p. 131). Access to birth lairs for thermoregulation is also considered to be crucial to the survival of nursing pups when air temperatures fall below 0 degrees C (Stirling and Smith 2004, p. 65). Warming temperatures that melt snow-covered birth lairs can result in pups being exposed to ambient conditions and suffering from hypothermia (Stirling and Smith 2004, p. 63). Others have noted that when lack of snow cover has forced birthing to occur in the open, nearly 100 percent of pups died from predation (Kumlien 1879; Lydersen et al. 1987; Lydersen and Smith 1989, p. 489; Smith and Lydersen 1991; Smith et al. 1991, all cited in Kelly 2001, p. 49). More recently, Kelly et al. (2006, p. 11) found that ringed seal emergence from lairs was related to structural failure of the snow pack, and PM satellite measurements indicating liquid moisture in snow. These studies suggest that warmer temperatures have and will continue to have negative effects on ringed seal pup survival, particularly in areas such as western Hudson Bay (Ferguson et al. 2005, p. 121).

Similar to earlier spring break-up or reduced snow cover, increased rain-on-snow events during the late winter also negatively impact ringed seal recruitment by damaging or eliminating snow-covered pupping lairs, increasing exposure and the risk of hypothermia, and facilitating predation by polar bears and Arctic foxes (*Alopex lagopus*) (Stirling and Smith 2004, p. 65). Stirling and Smith (2004, p. 64) document the

collapse of snow roofs of ringed seal birth lairs associated with rain events near southeastern Baffin Island and the resultant exposure of adult seals and pups to hypothermia. Predation of pups by polar bears was observed, and the researchers suspect that most of the pups in these areas were eventually killed by polar bears (Stirling and Archibald 1977, p. 1,127), Arctic foxes (Smith 1976, p. 1,610) or possibly gulls (Lydersen and Smith 1989). Stirling and Smith (2004, p. 66) postulated that should early season rain become regular and widespread in the future, mortality of ringed seal pups will increase, especially in more southerly parts of their range. Any significant decline in ringed seal numbers, especially in the production of young, could negatively affect reproduction and survival of polar bears (Stirling and Smith 2004, p. 66).

Changes in snow and ice conditions can also have impacts on polar bear prey other than ringed seals (Born 2005a, p. 152). These species include harbor seals (*Phoca vitulina*), spotted seals (*Phoca largha*), and ribbon seals (*Phoca fasciata*), and in the north Atlantic, harp seals (*Phoca greenlandica*) and hooded seals (*Crystophora cristata*). The absence of ice in southerly pupping areas or the relocation of pupping areas for other ice-dependent seal species to more northerly areas has been demonstrated to negatively affect seal production. For example, repeated years of little or no ice in the Gulf of St. Lawrence resulted in almost zero production of harp seal pups, compared to hundreds of thousands in good ice years (ACIA 2005, p. 510). Marginal ice conditions and early ice break-up during harp seal whelping (pupping) are believed to have resulted in increased juvenile mortality from starvation and cold stress and an overall reduction in this age class (Johnston et al. 2005, pp. 215–216). Northerly shifts of whelping areas for hooded seals were reported to occur during periods of warmer climate and diminished ice (Burns 2002, p. 42). In recent years, the location of a hooded seal whelping patch near Jan Mayen, in East Greenland, changed position apparently in response to decreased sea ice in this area. This change in distribution has corresponded with a decrease in seal numbers (T. Haug, pers. comm. 2005). Laidre et al. (in press) concluded that harp and hooded seals will be susceptible to negative effects associated with reduced sea ice because they whelp in large numbers at high density with a high degree of fidelity to traditional and critical whelping locations. Because polar bears prey primarily on seal species whose reproductive success is closely linked to the availability of stable, spring ice, the productivity of these species, and, therefore, prey availability for polar bears, is expected to decline in response to continued declines in the extent and duration of sea ice.

Reduced Prey Availability

Current evidence suggests that prey availability to polar bears will be altered due to reduced prey abundance, changes in prey distribution, and changes in sea ice availability as a platform for hunting seals (Derocher et al. 2004, pp. 167–169). Young, immature bears may be particularly vulnerable to changes in prey availability. Polar bears feed preferentially on blubber, and adult bears often leave much of a kill behind (Stirling and McEwan 1975, p. 1,021). Younger bears, which are not as efficient at taking seals, are known to utilize these kills to supplement their diet (Derocher et al. 2004, p. 168). Younger bears may be disproportionately impacted if there are fewer kills or greater consumption of kills by adults, resulting in less prey to scavenge (Derocher et al. 2004, pp. 167–168). Altered prey distribution would also likely lead to increased competition for prey between dominant and subordinate bears, resulting in subordinate or subadult bears having reduced access to prey (Derocher et al. 2004, p. 167). Thus, a decrease in prey abundance and availability would likely result in a concomitant effect to polar bears.

Reduction in food resources available to seals, in addition to the previously discussed effects on reproduction, could affect seal abundance and availability as a prey resource to polar bears. Ringed seals are generalist feeders but depend on Arctic cod (*Boreogadus saida*) as a major component of their diet (Lowry et al. 1980, p. 2,254; Bradstreet and Cross 1982, p. 3; Welch et al. 1997, p. 1,106; Weslawski et al. 1994, p. 109). Klumov (1937) regarded Arctic cod as the 'biological pivot' for many northern marine vertebrates, and as an important intermediary link in the food chain. Arctic cod are strongly associated with sea ice throughout their range and use the underside of the ice to escape from predators (Bradstreet and Cross 1982, p. 39; Craig et al. 1982, p. 395; Sekerak 1982, p. 75). While interrelated changes in the Arctic food web and effects to upper level consumers are difficult to predict, a decrease in seasonal ice cover could negatively affect Arctic cod (Tynan and DeMaster 1997, p. 314; Gaston et al. 2003, p. 231). Though decreased ice could improve the ability of ringed seals to access and prey upon Arctic cod in open water, this change would come at increased costs for pups that are forced into the water at an earlier age and at risk of predation and thermal challenges (Smith and Harwood 2001). For example, studies have shown that even in the presence of abundant prey, growth and condition of ringed seals continued to be negatively affected by earlier ice break-up (Harwood et al. 2000, p. 422). Ice seals, including the ringed seal, are vulnerable to habitat loss from changes in the extent or concentration of Arctic ice because they depend on pack-ice habitat for pupping, foraging, molting, and resting (Tynan and DeMaster 1997, p. 312; Derocher et al. 2004, p. 168).

Sea ice is an essential platform that allows polar bears to access their prey. The importance of sea ice to polar bear foraging is supported by documented relationships between the duration and extent of sea ice and polar bear condition, reproduction, and survival that are apparent across decades, despite likely fluctuations in ringed seal abundance (Stirling et al. 1999, p. 294; Regehr et al. 2007a; p. 2,673; Regehr et al. 2007b, p. 18; Rode et al. 2007, p. 6–8). Ferguson et al. (2000b, p. 770) reported that higher seal density in Baffin Bay in comparison to the Arctic Archipelago did not correspond with a higher density of polar bears as a result of the more variable ice conditions that occur there. These results emphasize the dependence of polar bears on sea ice as a means of accessing prey. Not only does ice have to be present over areas of abundant prey, but the physical characteristics of sea ice appear to also be important. Stirling et al. (2008, in press) noted that unusually rough and rafted sea ice in the southeastern Beaufort Sea from about Atkinson Point to the Alaska border during the springs of 2004–2006 resulted in reduced hunting success of polar bears seeking seals despite extensive searching for prey. Thus, transitory or localized increases in prey abundance will have no benefit for polar bears if these changes are accompanied by a reduction in ice habitat or changes in physical characteristics of ice habitat that negate its value for hunting or accessing seals. Observations-to-date and projections of future ice conditions support the conclusion that accessibility of prey to polar bears is likely to decline.

Adaptation

Animals can adapt to changing environmental conditions principally through behavioral plasticity or as a result of natural selection. Behavioral

changes allow adaptation over shorter timeframes and can complement and be a precursor to the forces of natural selection that allow animals to evolve to better fit new or changed environmental patterns. Unlike behavioral plasticity, natural selection is a multi-generational response to changing conditions, and its speed is dependent upon the organism's degree of genetic variation and generation time and the rate of environmental change (Burger and Lynch 1995, p. 161). While some short-lived species have exhibited micro-evolutionary responses to climate change (e.g., red squirrels (Reale et al. 2003, p. 594)), the relatively long generation time (Amstrup 2003, pp. 599–600) and low genetic variation of polar bears (Amstrup 2003, p. 590) combined with the relatively rapid rate of predicted sea ice changes that are expected (Comiso 2006, p. 72; Serreze et al. 2007, p. 1,533–1,536; Stroeve et al. 2007, pp. 1–5; Hegerl et al. 2007, p. 716), suggest that adaptation through natural selection will be limited for polar bears (Stirling and Derocher 1990, p. 201). Furthermore, several recent reviews of species adaptation to changing climate suggest that rather than evolving, species appear to first alter their geographic distribution (Walther et al. 2002, p. 390; Parmesan 2006, p. 655). For example, evidence suggests that altered species distribution was the mechanism allowing many species to survive during the Pleistocene warming period (Parmesan 2006, p. 655). Because polar bears already occur in cold extreme climates, they are constrained from responding to climate change by significantly altering their distribution (Parmesan 2006, p. 653). Furthermore, a number of physiological and physical characteristics of polar bears constrain their ability to adapt behaviorally to rapid and extensive alteration of their sea-ice habitat.

Bears as a genus display a high degree of behavioral plasticity (Stirling and Derocher 1990, p. 189), opportunistic feeding strategies (Lunn and Stirling 1985, p. 2295; Schwartz et al. 2003, p. 568), and physiological mechanisms for energy conservation (Derocher et al. 1990, p. 196; McNab 2002, p. 385). However, polar bears evolved to be the largest of the bear species (Amstrup 2003, p. 588) by specializing on a calorically dense, carnivorous diet that differs from all other bear species. Their large size has the advantage of both increased fat storage capability (McNab 2002, p. 383) and reduced surface-area to volume ratios that minimize heat loss in the Arctic environment (McNab 2002, pp. 102–103). Because reproduction in polar bears and other bears is dependent upon achieving sufficient body mass (Atkinson and Ramsay 1995, p. 559; Derocher and Stirling 1996, p. 1,246; Derocher and Stirling 1998, p. 253), population density is directly linked to the availability of high-quality food and primary productivity (Hilderbrand et al. 1999, p. 135; Ferguson and McLoughlin 2000, p. 196). Thus, maintenance of a high caloric intake is facilitated by the high fat content of seals, which is required to maintain polar bears at the body size and in the numbers in which they exist today.

The most recent population estimates of ringed seals, the preferred prey of most polar bear populations, range to about 4 million or more, making them one of the most abundant seal species in the world (Kingsley 1990, p. 140). Rather than switching to alternative prey items when ringed seal populations decline as a result of environmental conditions, several studies demonstrated corresponding declines in polar bear abundance (Stirling and Øritsland 1995, p. 2,594; Stirling 2002, p. 68). For those polar bear populations that have been shown to utilize alternative prey species in response to changing availability, such shifts have been among other ice-dependent pinnipeds (Derocher et al. 2002, p. 448; Stirling 2002, p. 67; Iverson et al. 2006, pp. 110–112). For example, Stirling and Parkinson (2006, p. 270) and Iverson et al. (2006, p. 112) have shown that polar bears in the Davis Strait region have taken advantage of increases in availability of harp and hooded seals. See also the section ''Effects of Sea Ice Habitat Changes on Polar Bear Prey.'' However, harp and hooded seals have historically occurred in areas not frequented by polar bears, and are extremely vulnerable to polar bear predation and in Davis Strait survival of juveniles is believed to have declined in recent years due to significant and rapid reduction in sea ice in the spring (Stirling and Parkinson 2006, p. 270).

Changes in ringed seal distribution and abundance in response to changing ice conditions and the ability of polar bears to respond to those changes will likely be the most important factor determining effects on polar bear populations. Currently, access to ringed seals is seasonal for most polar bear populations, resulting in cycles of weight gain and weight loss. The most important foraging periods occur during the spring, early summer, and following the open-water period in the fall (Stirling et al. 1999, p. 303; Derocher et al. 2002, p. 449; Durner et al. 2004, pp. 18–19). Because observed and predicted changes in sea ice are most dramatic during the summer/fall period (Lemke et al. 2007, p. 351; Serreze et al. 2007, p. 1,533–1,536), this is the timeframe with the greatest potential for reduced access to ringed seals as prey. Most POLAR BEAR POPULATIONs forage minimally during the fall open-water period, but a reduction in sea ice can extend the time period in which bears have minimal or no access to prey (Stirling et al. 1999, p. 299). The effects of a lengthened ice-free season during this time period have been associated with declines in polar bear condition (Stirling et al. 1999, p. 304; Rode et al. 2007, p. 8), reproduction (Regehr et al. 2006; Rode et al. 2007, p. 8–9), survival (Regehr et al. 2007a, p. 2,677–2,678; Regehr et al 2007b, p. 13) and population size (Regehr et al. 2007a, p. 2,678–2,679;).

Marine mammal carcasses do not currently constitute a large portion of polar bear diets and are unlikely to contribute substantially to future diets of polar bears. Although marine mammal carcass availability occasionally is predictable where whales are harvested for subsistence by Native people (Miller et al. 2006, p. 1) or where walruses haul out on land and are killed in stampeding events (Kochnev 2006, p. 159), in most cases scavenging opportunities are unpredictable and not a substitute for normal foraging by polar bears. Even where their distribution is predictable, marine mammal carcasses are presently used by only a small proportion of most populations or contribute minimally to total diet (Bentzen 2006, p. 23; Iverson et al. 2006, p. 111), and do not appear to be a preferred substitute for the normal diet. For example, on the Alaskan Southern Beaufort Sea coast, from 2002–2004, on average less than 5 percent of the estimated population size of 1,500 polar bears visited subsistence-harvested whale carcasses (Miller et al. 2006, p. 9). A small fraction of collared pregnant adult females visited whale harvest sites (Fischbach et al. 2007, pp. 1,401–1,402). Quotas on subsistence whale harvest preclude the possibility that carcasses will be increasingly available in the future. Similarly, while walrus contributed up to 24 percent of diets of a few individual bears in Davis Strait, population wide, walruses composed a small fraction of the total diet (Iverson et al. 2006, p. 112). Less predictable sea-ice conditions could increase the frequency of future marine mammal strandings (Derocher et al. 2004, p. 89), and some polar bears may benefit from such increases in marine

mammal mortality. However, if stranding events become frequent, they are likely to result in declines of source populations. Thus, the likelihood of polar bears relying heavily on stranded or harvested marine mammals as a food source is low.

The potential for polar bears to substitute terrestrial food resources in place of their current diet of marine mammals is limited by the low quality and availability of foods in most northern terrestrial environments. Although smaller bears can maintain their body weight consuming diets consisting largely of berries and vegetation, low digestibility (Pritchard and Robbins 1990, p. 1,645), physical constraints on intake rate, and in the case of berries, low protein content, prevent larger bears from similarly subsisting on vegetative resources (Stirling and Derocher 1990, p. 191; Rode and Robbins 2000, p. 1,640; Rode et al. 2001, p. 70; Welch et al. 1997, p. 1,105). While some meat sources are available in terrestrial Arctic habitats, such as caribou, muskox, and Arctic char, the relative scarcity of these resources results in these areas supporting some of the smallest grizzly bears in the world at some of the lowest densities of any bear populations (Hilderbrand et al. 1999, p. 135; Miller et al. 1997, p. 37). Lunn and Stirling (1985, p. 2,295) suggest that predation on terrestrially-based prey by polar bears may be rare due to the high energetic cost of locomotion in polar bears in comparison to grizzly bears (Best 1982, p. 63). Energy expended to pursue terrestrial prey could exceed the amount of energy obtained. Furthermore, terrestrial meat resources are primarily composed of protein and carbohydrates that provide approximately half as many calories per gram as fats (Robbins 1993, p. 10). Because the wet weight of ringed seals is composed of up to 50 percent fat (Stirling 2002, p. 67), they provide a substantially higher caloric value in comparison to terrestrial foods. Physiological and environmental limitations, therefore, preclude the possibility that terrestrial food sources alone or as a large portion of the diet would be an equivalent substitute for the high fat diet supporting the population densities and body size of present-day polar bear populations.

An alternative to maintaining caloric intake would be for polar bears to adopt behavioral strategies that reduce energy expenditure and requirements. Across populations, polar bears do appear to alter home range size and daily travel distances in response to varying levels of prey density (Ferguson et al. 2001, p. 51). Additionally, polar bears exhibit a variety of patterns of fasting and feeding throughout their range, including 3-to 8-month-long fasts, denning by pregnant females, and moving between a fasting and a feeding metabolism based on continuously changing food availability throughout the year (Derocher et al. 1990, p. 202). These physiological and behavioral strategies have occurred in response to regional variation in environmental conditions but have limitations relative to their application across all regions and habitats. Both the long fasts that occur in Western Hudson Bay and denning of females throughout polar bear ranges are dependent on prey availability that allows sufficient accumulation of body fat to survive fasting periods (Derocher and Stirling 1995, p. 535). The 3-to 8-month-long periods of food deprivation exhibited by bears in the southern reaches of their range are supported by a rich marine environment that allows spring weight gains sufficient to sustain extended summer fasts. In the southern Beaufort Sea, for example, the heaviest polar bears were observed during autumn (Durner and Amstrup 1996, p. 483). In the Beaufort Sea and other regions of the polar basin, the probability that polar bears could survive extended summer fasting periods appears to be low. The documented reduction in polar bear condition in Western Hudson Bay associated with the recent lengthening of the ice-free season (Stirling et al. 1999, p. 294) suggests that even in the productive Hudson Bay environment there are limits to the ability of polar bears to fast.

Any period of fasting, whether while denning or resting onshore, would require an increase in food availability during alternative, non-fasting periods for fat accumulation. Adequate food may not be available to support sex and age classes other than pregnant females to adopt a strategy of denning over extended periods of time during food shortage. Furthermore, the ability to take advantage of seasonally fluctuating food availability and avoid extended torpor and associated physiological costs (Humphries et al. 2003, p. 165) has allowed polar bears to maximize access to food resources and is an important factor contributing to their large size.

The known current physiological and physical characteristics of polar bears suggest that behavioral adaptation will be sufficiently constrained to cause a pronounced reduction in polar bear distribution, and abundance, as a result of declining sea ice. The pace at which ice conditions are changing and the long generation time of polar bears precludes adaptation of new physiological mechanisms and physical characteristics through natural selection. Current evidence opposes the likelihood that extended periods of torpor, consumption of terrestrial foods, or capture of seals in open water will be sufficient mechanisms to counter the loss of ice as a platform for hunting seals. Polar bear survival and maintenance at sustainable population sizes depends on large and accessible seal populations and vast areas of ice from which to hunt.

Open Water Habitat

While sea ice is considered essential habitat for polar bear life functions because of the importance for feeding, reproduction, or resting, open water is not. Vast areas of open water can present a barrier or hazard under certain circumstances for polar bears to access sea ice or land. Diminished sea ice cover will increase the energetic cost to polar bears for travel, and will increase the risk of drowning that may occur during long distance swimming or swimming under unfavorable weather conditions. In addition, diminished sea ice cover may result in hypothermia for young cubs that are forced to swim for longer periods than at present. Under diminishing sea ice projections (IPCC 2001, p. 489; ACIA 2005, p. 192; Serreze 2006), ice-dependent seals, the principal prey of polar bears, will also be affected through distribution changes and reductions in productivity that will ultimately translate into reductions in seal population size.

Reduced Hunting Success

Polar bears are capable of swimming great distances, but exhibit a strong preference for sea ice (Mauritzen et al. 2003b, pp. 119–120). However, polar bears will also quickly abandon sea ice for land once the sea ice concentration drops below 50 percent. This is likely due to reduced hunting success in broken ice with significant open water (Derocher et al. 2004, p. 167; Stirling et al. 1999, pp. 302–303). Bears have only rarely been reported to capture ringed seals in open water (Furnell and Oolooyuk 1980, p. 88), therefore, hunting in ice-free water would not compensate for the corresponding loss of sea ice and the access sea ice affords polar bears to hunt ringed seals (Stirling and Derocher 1993, p. 241; Derocher et al. 2004, p. 167).

Reduction in sea ice and corresponding increase in open water would likely result in a net reduction in ringed and bearded seals, and Pacific walrus abundance (ACIA 2005, p. 510), as well as a reduction in ribbon and spotted seals (Born 2005a). While harp

and hooded seals may change their distribution and temporarily serve as alternative prey for polar bears, it appears that these species cannot successfully redistribute in a rapidly changing environment and reproduce and survive at former levels. Furthermore, a recent study suggests that these two species will be the most vulnerable to effects of changing ice conditions (Laidre et al. in press). Loss of southern pupping areas due to inadequate or highly variable ice conditions will, in the long run, also serve to reduce these species as a potential polar bear prey (Derocher et al. 2004, p. 168). That increased take of other species such as bearded seals, walrus, harbor seals, or harp and hooded seals, if they were available, would not likely compensate for reduced availability of ringed seals (Derocher et al. 2004, p. 168).

Open Water Swimming

Open water is considered to present a potential hazard to polar bears because it can result in long distances that must be crossed to access sea ice or land habitat. In September 2004, four polar bears drowned in open water while attempting to swim in an area between shore and distant ice (Monnett and Gleason 2006, p. 5). Seas during this period were rough, and extensive areas of open water persisted between pack ice and land. Because the survey area covered 11 percent of the study area, an extrapolation of the survey data to the entire study area suggests that a larger number of bears may have drowned during this event. Mortalities due to offshore swimming during years when sea ice formation nearshore is delayed (or mild) may also be an important and unaccounted source of natural mortality given energetic demands placed on individual bears engaged in long-distance swimming (Monnett and Gleason 2006, p. 6). This suggests that drowning related deaths of polar bears may increase in the future if the observed trend of recession of pack ice with longer open-water periods continues. However, this phenomenon may be shortlived if natural selection operates against the behavioral inclination to swim between ice and land and favors bears that remain on land or on ice.

Wave height (sea state) increases as a function of the amount of open water surface area. Thus ice reduction not only increases areas of open water across which polar bears must swim, but may have an influence on the size of wave action. Considered together, these may result in increases in bear mortality associated with swimming when there is little sea ice to buffer wave action (Monnett and Gleason 2006, p. 5). Evidence of such mortality was also reported east of Svalbard in 2006, where one exhausted and one apparently dead polar bear were stranded (J. Dowdeswell, Head of the Scott Polar Research Institute of England, pers. obs.).

Terrestrial Habitat

Although sea ice is the polar bear's principal habitat, terrestrial habitat serves a vital function seasonally for maternal denning. In addition, use of terrestrial habitat is seasonally important for resting and feeding in the absence of suitable sea ice. Due to retreating sea ice, polar bears may be forced to make increased use of land in future years. The following sections describe the effects or potential effects of climate change and other factors on polar bear use of terrestrial habitat. One section focuses on access to or changes in the quality of denning habitat, and one focuses on distribution changes and corresponding increases in polar bear-human interactions in coastal areas. Also discussed are the potential consequences of and potential concerns for development, primarily oil and gas exploration and production which occur in polar bear habitat (both marine and terrestrial).

Access to and Alteration of Denning Areas

Many female polar bears repeatedly return to specific denning areas on land (Harrington 1968, p. 11; Schweinsburg et al. 1984, p. 169; Garner et al. 1994, p. 401; Ramsay and Stirling 1990, p. 233; Amstrup and Gardner 1995, p. 8). For bears to access preferred denning areas, pack ice must drift close enough or must freeze sufficiently early in the fall to allow pregnant females to walk or swim to the area by late October or early November (Derocher et al. 2004, p. 166), although polar bears may den into early December (Amstrup 2003, p. 597). Stirling and Andriashek (1992, p. 364) found that the distribution of polar bear maternal dens on land was related to the proximity of persistent summer sea ice, or areas that develop sea ice early in the autumn.

Derocher et al. (2004, p. 166) predicted that under future climate change scenarios, pregnant female polar bears will likely be unable to reach many of the most important denning areas in the Svalbard Archipelago, Franz Josef Land, Novaya Zemlya, Wrangel Island, Hudson Bay, and the Arctic National Wildlife Refuge and north coast of the Beaufort Sea (see Figure 8). Under likely climate change scenarios, the distance between the edge of the pack ice and land will increase (ACIA 2005, pp. 456–459). As distance increases between the southern edge of the pack ice and coastal denning areas, it will become increasingly difficult for females to access preferred denning locations. In addition to suitable access and availability of den sites, body condition is an important prerequisite for cub survival, and recruitment into the population as pregnant bears with low lipid stores are less likely to leave the den with healthy young in the spring (Atkinson and Ramsay 1995, pp. 565–566). Messier et al. (1994) postulated that pregnant bears may reduce activity levels up to 2 months prior to denning to conserve energy.

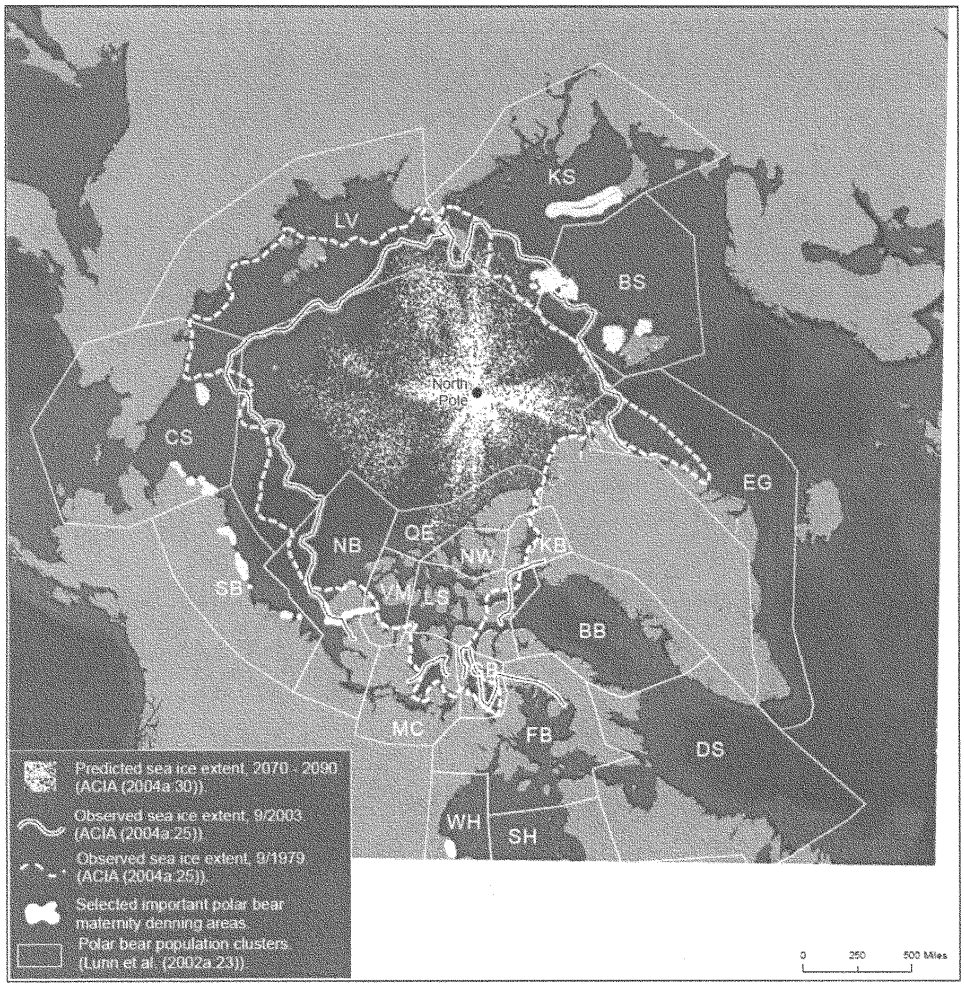


Figure 8. Circumpolar map of higher density polar bear terrestrial denning areas compared to past, present, and projected future extents of summer sea ice. Source: Adapted from Lunn et al. (2002a, p. 23) and ACIA (2005, pp. 25, 30).

Polar Bear Population Abbreviations. CS = Chukchi Sea; SB = Southern Beaufort Sea; NB = Northern Beaufort Sea; QE = Queen Elizabeth Islands; VM = Viscount Melville Sound; NW = Norwegian Bay; LS = Lancaster Sound; MC = M'Clintock Channel; GB = Gulf of Boothia; FB = Foxe Basin; WH = Western Hudson Bay; SH = Southern Hudson Bay; KB = Kane Basin; BB = Baffin Bay; DS = Davis Strait; EG = East Greenland; BS = Barents Sea; KS = Kara Sea; LV = Laptev Sea; Arctic Basin is the unlabelled area centered on the North Pole.

Bergen et al. (2007, p. 2) hypothesized that denning success is inversely related to the distance a pregnant polar bear must travel to reach denning habitat. These authors developed an approach using observed sea ice distributions (1979–2006) and GCM-derived sea ice projections (1975–2060) to estimate minimum distances that pregnant polar bears would have to travel between summer sea ice habitats and a terrestrial den location in northeast Alaska (Bergen et al. 2007, p. 2–3). In this pilot assessment, calculations were made with and without the constraint of least cost movement paths, which required bears to optimally follow high-quality sea ice habitats. Although variation was evident and considerable among the five GCMs analyzed, the smoothed multi-model average distances aligned well with those derived from the observational record. The authors found that between 1979 and 2006, the minimum distance polar bears traveled to denning habitats in northeast Alaska increased at an average linear rate of 6–8 km per year (3.7–5.0 mi per year), and almost doubled after 1992. They projected that travel would increase threefold by 2060 (Bergen et al. 2007, p. 2–3).

Based on projected retraction of sea ice in the future, Bergen et al. (2007, p. 2) states, ''thus, pregnant polar bears will likely incur greater energetic expense in reaching traditional denning regions if sea ice loss continues along the projected trajectory.'' Increased travel distances could negatively affect individual fitness, denning success, and ultimately populations of polar bears (Aars et al. 2006). While the Bergen et al. (2007, p. 2) study focused on polar bears using denning habitat in northern Alaska, other denning regions in the Arctic, particularly within the polar basin region, are much farther from

areas where summer ice is predicted to persist in the future. Polar bears returning to other denning locales, such as Wrangel Island or the Chukotka Peninsula, will likely have to travel greater distances than those reported here. Most high-density denning areas are located at more southerly latitudes (see Figure 8). For populations that den at high latitudes in the Canadian archipelago islands, access to, and availability of, suitable den sites may not currently be a problem. However, access to historically-used den sites in the future may become more problematic in the northern areas. The degree to which polar bears may use nontraditional denning habitats at higher latitudes in the future, through facultative adaptation, is largely unknown but is possible.

Climate change could also impact populations where females den in snow (Derocher et al. 2004). Insufficient snow would prevent den construction or result in use of poor sites where the roof could collapse (Derocher et al. 2004). Too much snow could necessitate the reconfiguration of the den by the female throughout the winter (Derocher et al. 2004). Changes in amount and timing of snowfall could also impact the thermal properties of the dens (Derocher et al. 2004). Since polar bear cubs are born helpless and need to nurse for three months before emerging from the den, major changes in the thermal properties of dens could negatively impact cub survival (Derocher et al. 2004). Finally, unusual rain events are projected to increase throughout the Arctic in winter (ACIA 2005), and increased rain in late winter and early spring could cause den collapse (Stirling and Smith 2004). Den collapse following a warming period was observed in the Beaufort Sea and resulted in the death of a mother and her two young cubs (Clarkson and Irish 1991). After March 1990 brought unseasonable rain south of Churchill, Manitoba, Canada, researchers observed large snow banks along creeks and rivers used for denning that had collapsed because of the weight of the wet snow, and noted that had there been maternity dens in this area the bears likely would have been crushed (Stirling and Derocher 1993).

Oil and Gas Exploration, Development, and Production

Each of the Parties to the 1973 Polar Bear Agreement (see International Agreements and Oversight section below) has developed detailed regulations pertaining to the extraction of oil and gas within their countries. The greatest level of oil and gas activity within polar bear habitat is currently occurring in the United States (Alaska). Exploration and production activities are also actively underway in Russia, Canada, Norway, and Denmark (Greenland). In the United States, all such leasing and production activities are evaluated as specified by the National Environmental Policy Act (42 U.S.C. 4321 et seq.) (NEPA), Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) (OCSLA), and numerous other statutes, that evaluate and guide exploration, development, and production in order to minimize possible environmental impacts. In Alaska, the majority of oil and gas development is on land; however, some offshore production sites have been developed, and others are planned.

Historically, oil and gas activities have resulted in little direct mortality to polar bears, and that mortality which has occurred has been associated with human-bear interactions as opposed to a spill event. However, oil and gas activities are increasing as development continues to expand throughout the U.S. Arctic and internationally, including in polar bear terrestrial and marine habitats. The greatest concern for future oil and gas development is the effect of an oil spill or discharges in the marine environment impacting polar bears or their habitat. Disturbance from activities associated with oil and gas activities can result in direct or indirect effects on polar bear use of habitat. Direct disturbances include displacement of bears or their primary prey (ringed and bearded seals) due to the movement of equipment, personnel, and ships through polar bear habitat. Female polar bears tend to select secluded areas for denning, presumably to minimize disturbance during the critical period of cub development. Direct disturbance may cause abandonment of established dens before their cubs are ready to leave. For example, expansion of the network of roads, pipelines, well pads, and infrastructure associated with oil and gas activities may force pregnant females into marginal denning locations (Lentfer and Hensel 1980, p. 106; Amstrup et al. 1986, p. 242). The potential effects of human activities are much greater in areas where there is a high concentration of dens such as Wrangel Island. Although bear behavior is highly variable among individuals and the sample size was small, Amstrup (1993, pp. 247–249) found that in some instances denning bears were fairly tolerant to some levels of activity. Increased shipping may increase the amount of open water, cause disturbance to polar bears and their prey, and increase the potential for additional oil spills (Granier et al. 2006 p. 4). Much of the North Slope of Alaska contains habitat suitable for polar bear denning (Durner et al. 2001, p. 119). Furthermore, in northern Alaska and Chukotka, Russia, polar bears appear to be using land areas with greater frequency during the season of minimum sea ice. Some of these areas coincide with areas that have traditionally been used for oil and gas production and exploration. These events increase the potential for interactions with humans (Durner et al. 2001, p. 115; National Research Council (NRC) 2003, p. 168); however, current regulations minimize these interactions by establishing buffer zones around active den sites.

The National Research Council (NRC 2003, p. 169) evaluated the cumulative effects of oil and gas development in Alaska and concluded the following related to polar bears and ringed seals:

- ''Industrial activity in the marine waters of the Beaufort Sea has been limited and sporadic and likely has not caused serious cumulative effects to ringed seals or polar bears.
- Careful mitigation can help to reduce the effects of oil and gas development and their accumulation, especially if there are no major oil spills. However, the effects of full-scale industrial development of waters off the North Slope would accumulate through the displacement of polar bears and ringed seals from their habitats, increased mortality, and decreased reproductive success.
- A major Beaufort Sea oil spill would have major effects on polar bears and ringed seals.
- Climatic warming at predicted rates in the Beaufort Sea region is likely to have serious consequences for ringed seals and polar bears, and those effects will accumulate with the effects of oil and gas activities in the region.
- Unless studies to address the potential accumulation of effects on North Slope polar bears or ringed seals are designed, funded, and conducted over long periods of time, it will be impossible to verify whether such effects occur, to measure them, or to explain their causes.''

Some alteration of polar bear habitat has occurred from oil and gas development, seismic exploration, or other activities in denning areas, and potential oil spills in the marine environment and expanded activities increase the potential for additional alteration. Any such impacts would be additive to other factors already or potentially affecting polar bears and their habitat. However, mitigative regulations that have been instituted,

and will be modified as necessary, have proven to be highly successful in providing for polar bear conservation in Alaska.

Oil and gas exploration, development, and production activities do not threaten the species throughout all or a significant portion of its range based on: (1) mitigation measures in place now and likely to be used in the future; (2) historical information on the level of oil and gas development activities occurring within polar bear habitat within the Arctic; (3) the lack of direct quantifiable impacts to polar bear habitat from these activities noted to date in Alaska; (4) the current availability of suitable alternative habitat; and (5) the limited and localized nature of the development activities, or possible events, such as oil spills.

Documented direct impacts on polar bears by the oil and gas industry during the past 30 years are minimal. Polar bears spend a limited amount of time on land, particularly in the southern Beaufort Sea, coming ashore to feed, den, or move to other areas. At times, fall storms deposit bears along the coastline where bears remain until the ice returns. For this reason, polar bears have mainly been encountered at or near most coastal and offshore production facilities, or along the roads and causeways that link these facilities to the mainland. During those periods, the likelihood of incidental interactions between polar bears and industry activities increases. As discussed under our Factor D analysis below, the MMPA has specific provisions for such incidental take, including specific findings that must be made by the Service and the provision of mitigation actions, which serve to minimize the likelihood of impacts upon polar bears. We have found that the polar bear interaction planning and training requirements set forth in the incidental take regulations and required through the letters of authorization (LOA) process, and the overall review of the regulations every one to five years has increased polar bear awareness and minimized these encounters in the United States. The LOA requirements have also increased our knowledge of polar bear activity in the developed areas.

Prior to issuance of regulations, lethal takes by industry were rare. Since 1968, there have been two documented cases of lethal take of polar bears associated with oil and gas activities. In both instances, the lethal take was reported to be in defense of human life. In the winter of 1968–1969, an industry employee shot and killed a polar bear (Brooks et al. 1971, p. 15). In 1990, a female polar bear was killed at a drill site on the west side of Camden Bay (USFWS internal correspondence, 1990). In contrast, 33 polar bears were killed in the Canadian Northwest Territories from 1976 to 1986 due to encounters with industry (Stenhouse et al. 1988, p. 276). Since the beginning of the incidental take program, which includes requirements for monitoring, project design, and hazing of bears presenting a safety problem, no polar bears have been killed due to encounters associated with the current industry activities on the North Slope of Alaska.

Observed Demographic Effects of Sea Ice Changes on Polar Bear

The potential demographic effects of sea ice changes on polar bear reproductive and survival rates (vital rates) and ultimately on population size are difficult to quantify due to the need for extensive time series of data. This is especially true for a long-lived and widely dispersed species like the polar bear. Recent research by Stirling et al. (2006), Regehr et al. (2007a, b), Hunter et al. (2007), and Rode et al. (2007), however, evaluates these important relationships and adds significantly to our understanding of how and to what extent environmental changes influence essential life history parameters. The key demographic factors for polar bears are physical condition, reproduction, and survival. Alteration of these characteristics has been associated with elevated risks of extinction for other species (McKinney 1997, p. 496; Beissinger 2000, p. 11,688; Owens and Bennett 2000, p. 12,145).

Physical condition of polar bears determines the welfare of individuals, and, ultimately, through their reproduction and survival, the welfare of populations (Stirling et al. 1999, p. 304; Regehr et al. 2007a, p. 13; Regehr et al 2007b, pp. 2,677–2,680; Hunter et al. 2007, pp. 8–13). In general, Derocher et al. (2004, p. 170) predict that declines in the physical condition will initially affect female reproductive rates and juvenile survival and then under more severe conditions adult female survival rates. Adult females represent the most important sex and age class within the population regarding population status (Taylor et al. 1987, p. 811).

Declines in fat reserves during critical times in the polar bear life cycle detrimentally affect populations through delay in the age of first reproduction, decrease in denning success, decline in litter sizes with more single cub litters and fewer cubs, and lower cub body weights and lower survival rates (Atkinson and Ramsay 1995, pp. 565–566; Derocher et al. 2004, p. 170). Derocher and Stirling (1998, pp. 255–256) demonstrated that body mass of adult females is correlated with cub mass at den emergence, with heavier females producing heavier cubs and lighter females producing lighter cubs. Heavier cubs have a higher rate of survival (Derocher and Stirling 1996, p. 1,249). A higher proportion of females in poor condition do not initiate denning or are likely to abandon their den and cub(s) mid-winter (Derocher et al. 2004, p. 170). Females with insufficient fat stores or in poor hunting condition in the early spring after den emergence could lead to increased cub mortality (Derocher et al. 2004, p. 170). In addition, sea ice conditions that include broken or more fragmented ice may require young cubs to enter water more frequently and for more prolonged periods of time, thus increasing mortality from hypothermia. Blix and Lenter (1979, p. 72) and Larsen (1985, p. 325) indicate that cubs are unable to survive immersion in icy water for more than approximately 10 minutes. This is due to cubs having little insulating fat, their fur losing its insulating ability when wet (though the fur of adults sheds water and recovers its insulating properties quickly), and the core body temperature dropping rapidly when they are immersed in icy water (Blix and Lentfer 1979, p. 72).

Reductions in sea ice, as discussed in previous sections, will alter ringed seal distribution, abundance, and availability for polar bears. Such reductions will, in turn, decrease polar bear body condition (Derocher et al. 2004, p. 165). Derocher et al. (2004, p. 165) projected that most females in the Western Hudson Bay population may be unable to reach the minimum 189 kg (417 lbs) body mass required to successfully reproduce by the year 2012. Stirling (Canadian Wildlife Service, pers comm. 2006) indicates, based on the decline in weights of lone and suspected pregnant females in the fall (Stirling and Parkinson 2006), that the 2012 date is likely premature. However, Stirling (Canadian Wildlife Service, pers comm. 2006) found that the trend of continuing weight loss by adult female polar bears in the fall is clear and continuing, and, therefore, Stirling believed that the production of cubs in these areas will probably be negligible within the next 15–25 years.

Furthermore, with the extent of sea ice projected to be substantially reduced in the future (e.g., Stroeve et al. 2007, pp. 1–5), opportunities for increased feeding to recover fat stores during the season of minimum ice may be limited

(Durner et al. 2007, p. 12). It should be noted that the models project decreased ice cover in all months in the Arctic, but that (as has been observed) the projected changes in the 21st century are largest in summer (Holland et al. 2006, pp. 1–5; Stroeve et al. 2007, pp. 1–5; Durner et al. 2007, p. 12; DeWeaver 2007, p. 2; IPCC 2007). Mortality of polar bears is thought to be the highest in winter when fat stores are low and energetic demands are greatest. Pregnant females are in dens during this period using fat reserves and not feeding. The availability and accessibility of seals to polar bears, which often hunt at the breathing holes, is likely to decrease with increasing amounts of open water or fragmented ice (Derocher et al. 2004, p. 167).

Demographic Effects on Polar Bear Populations with Long-term Data Sets

This section summarizes demographic effects on polar bear populations for which long-term data sets are available. These populations are: Western Hudson Bay, Southern Hudson Bay, Southern Beaufort Sea, Northern Beaufort Sea, and, to a lesser extent, Foxe Basin, Baffin Bay, Davis Strait, and Eastern Hudson Bay.

Western Hudson Bay

The Western Hudson Bay polar bear population occurs near the southern limit of the species' range and is relatively discrete from adjacent populations (Derocher and Stirling 1990, p. 1,390; Stirling et al. 2004, p. 16). In winter and spring, polar bears of the Western Hudson Bay population disperse over the ice-covered Bay to hunt seals (Iverson et al. 2006, p. 98). In summer and autumn, when Hudson Bay is ice-free, the population is confined to a restricted area of land on the western coast of the Bay. There, nonpregnant polar bears are cut off from their seal prey and must rely on fat reserves until freeze-up, a period of approximately 4 months. Pregnant bears going into dens may be food deprived for up to an additional 4 months (a total of 8 months).

In the past 50 years, spring air temperatures in western Hudson Bay have increased by 2–3 degrees C (Skinner et al. 1998; Gagnon and Gough 2005, p. 289). Consequently, the sea ice on the Bay now breaks up approximately 3 weeks earlier than it did 30 years ago (Stirling and Parkinson 2006, p. 265). This forces the Western Hudson Bay polar bears off the sea ice earlier, shortening the spring foraging period when seals are most available, and reducing the polar bears' ability to accumulate the fat reserves needed to survive while stranded onshore. Previous studies have shown a correlation between rising air temperatures, earlier sea ice break-up, and declining recruitment and body condition for polar bears in western Hudson Bay (Derocher and Stirling 1996, p. 1,250; Stirling et al. 1999, p. 294; Stirling and Parkinson 2006, p. 266). Based on GCM projections of continued warming and progressively earlier sea ice break-up (Zhang and Walsh 2006), Stirling and Parkinson (2006, p. 271–272) predicted that conditions will become increasingly difficult for the Western Hudson Bay population.

Regehr et al. (2007a, p. 2,673) used capture-recapture models to estimate population size and survival for polar bears captured from 1984 to 2004 along the western coast of Hudson Bay. During this period the Western Hudson Bay population experienced a statistically significant decline of 22 percent, from 1,194 bears in 1987 to 935 bears in 2004. Regehr et al. (2007a, p. 2,673) notes that while survival of adult female and male bears was stable, survival of juvenile, subadult, and senescent (nonreproductive) bears was negatively correlated with the spring sea ice break-up date—a date that occurred approximately 3 weeks earlier in 2004 than in 1984. Long-term observations suggest that the Western Hudson Bay population continues to exhibit a high degree of fidelity to the study area during the early part of the sea ice-free season (Stirling et al. 1977, p. 1,126; Stirling et al. 1999, p. 301; Taylor and Lee 1995, p. 147), which precludes permanent emigration as a cause for the population decline. The authors (Regehr et al. 2007a, p. 2,673) attribute the decline of the Western Hudson Bay population to increased natural mortality associated with earlier sea ice break-up, and the continued harvest of approximately 40 polar bears per year (Lunn et al. 2002, p. 104). No support for alternative explanations was found.

Southern Hudson Bay

Evidence of declining body condition for polar bears in the Western Hudson Bay population suggests that there should be evidence of parallel declines in adjacent polar bear populations experiencing similar environmental conditions. In an effort to evaluate an adjacent population, Obbard et al. (2006, p. 2) conducted an analysis of polar bear condition in the Southern Hudson Bay population by comparing body condition for two time periods, 1984–1986 and 2000–2005. The authors found that the average body condition for all age and reproductive classes combined was significantly poorer for Southern Hudson Bay bears captured from 2000–2005 than for bears captured from 1984–1986 (Obbard et al. 2006, p. 4). The results indicate a declining trend in condition for all age and reproductive classes of polar bears since the mid-1980s. The results further reveal that the decline has been greatest for pregnant females and subadult bears—trends that will likely have an impact on future reproductive output and subadult survival (Obbard et al. 2006, p. 1).

Obbard et al (2006, p. 4) evaluated inter-annual variability in body condition in relation to the timing of ice melt and to duration of ice cover in the previous winter and found no significant relationship despite strong evidence of a significant trend towards both later freeze-up and earlier break-up (Gough et al. 2004, p. 298; Gagnon and Gough 2005, p. 293). While southern Hudson Bay loses its sea ice cover later in the year than western Hudson Bay, the authors believe that other factors or combinations of factors (that likely also include later freeze-up and earlier break-up) are operating to affect body condition in southern Hudson Bay polar bears. These factors may include unusual spring rain events that occur during March or April when ringed seals are giving birth to pups in on-ice birthing lairs (Stirling and Smith 2004, pp. 60–63), depth of snow accumulation and roughness of the ice that vary over time and also affect polar bear hunting success (Stirling and Smith 2004, p. 60–62; Ferguson et al. 2005, p. 131), changes in the abundance and distribution of ringed seals, and reduced pregnancy rates and of reduced pup survival in ringed seals from western Hudson Bay during the 1990s (Ferguson et al. 2005, p. 132; Stirling 2005, p. 381).

A more recent status assessment using open population capture-recapture models was conducted to evaluate population trend in the Southern Hudson Bay population (Obbard et al. 2007, pp. 3–9). The authors found that the population and survival estimates for subadult female and male polar bears were not significantly different between 1984–1986 and 1999–2005 respectively. There was weak evidence of lower survival of cubs, yearlings, and senescent adults in the recent time period (Obbard et al. 2007, pp. 10–11). As previously reported, no association was apparent between survival and cub-of-the-year body condition, average body condition for the age class, or extent of ice cover. The authors indicate that lack of association could be real or attributable to various factors—the coarse scale of average body condition measure, or to limited sample size, or

limited years of intensive sampling (Obbard et al. 2007, pp. 11–12).

The decline in survival estimates, although not statistically significantly, combined with the evidence of significant declines in body condition for all age and sex classes, suggest that the Southern Hudson Bay population may be under increased stress at this time (Obbard et al. 2007, p. 14). The authors also indicated that if the trend in earlier ice break-up and later freeze-up continues in this area, it is likely that the population will exhibit changes similar to the Western Hudson Bay population even though no current significant relationships exist between extent of ice cover and the survival estimates and the average body condition for each age class (Obbard et al. 2007, p. 14).

Southern Beaufort Sea

The Southern Beaufort Sea population has also been subject to dramatic changes in the sea ice environment, beginning in the winter of 1989–1990 (Regehr et al. 2006, p. 2). These changes were linked initially through direct observation of distribution changes during the fall open-water period. With the exception of the Western Hudson Bay population, the Southern Beaufort Sea population has the most complete and extensive time series of life history data, dating back to the late 1960s. A 5-year coordinated capture-recapture study of this population to evaluate changes in the health and status of polar bears and life history parameters such as reproduction, survival, and abundance was completed in 2006. Results of this study indicate that the estimated population size has gone from 1,800 polar bears (Amstrup et al. 1986, p. 244; Amstrup 2000, p. 146) to 1,526 polar bears in 2006 (Regehr et al. 2006, p. 16). The precision of the earlier estimate (1,800 polar bears) was low, and consequently there is not a statistically significant difference between the two point estimates. Amstrup et al. (2001, p. 230) provided a population estimate of as many as 2,500 bears for this population in the late 1980s, but the statistical variance of this estimate could not be calculated and thus precludes the comparative value of the estimate.

Survival rates, weights, and skull sizes were compared for two periods of time, 1967–1989 and 1990–2006. In the later period, estimates of cub survival declined significantly, from 0.65 to 0.43 (Regehr et al. 2006, p. 11). Cub weights also decreased slightly. The authors believed that poor survival of new cubs may have been related to declining physical condition of females entering dens and consequently of cubs born during recent years, as reflected by smaller skull measurements. In addition, body weights for adult males decreased significantly, and skull measurements were reduced since 1990 (Regehr et al. 2006, p 1). Because male polar bears continue to grow into their teen years (Derocher et al. 2005, p. 898), if nutritional intake was similar since 1990, the size of males should have increased (Regehr et al. 2006, p. 18). The observed changes reflect a trend toward smaller size adult male bears. Although a number of the indices of population status were not independently significant, nearly all of the indices illustrated a declining trend. In the case of the Western Hudson Bay population, declines in cub survival and physical stature were recorded for a number of years (Stirling et al. 1999, p. 300; Derocher et al. 2004, p. 165) before a statistically significant decline in the population size was confirmed (Regehr et al. 2007, p. 2,673).

In further support of the interaction of environmental factors, nutritional stress, and their effect on polar bears, several unusual mortality events have been documented in the southern Beaufort Sea. During the winter and early spring of 2004, three observations of polar bear cannibalism were recorded (Amstrup et al. 2006b, p. 1). Similar observations had not been recorded in that region despite studies extending back for decades. In the fall of 2004, four polar bears were observed to have drowned while attempting to swim between shore and distant pack ice in the Beaufort Sea. Despite offshore surveys extending back to 1987, similar observations had not previously been recorded (Monnett and Gleason 2006, p. 3). In spring of 2006, three adult female polar bears and one yearling were found dead. Two of these females and the yearling had no fat stores and apparently starved to death, while the third adult female was too heavily scavenged to determine a cause of death. This mortality is suspicious because prime age females have had very high survival rates in the past (Amstrup and Durner 1995, p. 1,315). Similarly, the yearling that was found starved was the offspring of another radio-collared prime age female whose collar had failed prior to her yearling being found dead. Annual survival of yearlings, given survival of their mother, was previously estimated to be 0.86 (Amstrup and Durner 1995, p. 1,316). The probability, therefore, that this yearling died while its mother was still alive was only approximately 14 percent. Regehr et al. (2006, p. 27) indicate that these anecdotal observations, in combination with changes in survival of young and declines in size and weights reported above, suggest mechanisms by which a changing sea ice environment can affect polar bear demographics and population status.

The work by Regehr et al. (2006, pp. 1, 5) described above suggested that the physical stature (as measured by skull size and body weight data) of some sex and age classes of bears in the Southern Beaufort Sea population had changed between early and latter portions of this study, but trends in or causes of those changes were not investigated. Rode et al. (2007, pp. 1–28), using sea ice and polar bear capture data from 1982 to 2006, investigated whether these measurements changed over time or in relation to sea ice extent. Annual variation in sea ice habitat important to polar bear foraging was quantified as the percent of days between April to November when mean sea ice concentration over the continental shelf was greater than or equal to 50 percent. The 50 percent concentration threshold was used because bears make little use of areas where sea ice concentration is lower (Durner et al. 2004, p. 19). The April to November period was used because it is believed to be the primary foraging period for polar bears in the southern Beaufort Sea (Amstrup et al. 2000b, p. 963). The frequency of capture events for individual bears was evaluated to determine if this factor had an effect on bear size, mass, or condition. Rode et al. (2007, pp. 5–8) found that mass, length, skull size, and body condition indices (BCI) of growing males (aged 3–10), mass and skull size of cubs-of-the year, and the number of yearlings per female in the spring and fall were all positively and significantly related to the percent of days in which sea ice covered the continental shelf. Unlike Regehr et al. (2006, p. 1), Rode et al. (2007, p. 8) did not document a declining trend in skull size or body size of cubs-of-the-year when the date of capture was considered. Condition of adult males 11 years and older and of adult females did not decline. There was some evidence, based on capture dates, that females with cubs have been emerging from dens earlier in recent years. Thus, though cubs were smaller in recent years, they also were captured earlier in the year. Why females may be emerging from dens earlier than they used to is not certain and warrants additional research.

Skull sizes and/or lengths of adult and subadult males and females decreased over time during the study (Rode et al. 2007, p. 1). Adult body mass was not related to sea ice cover and did

not show a trend with time. The condition of adult females exhibited a positive trend over time, reflecting a decline in length without a parallel trend in mass. Though cub production increased over time, the number of cubs-of-the-year per female in the fall and yearlings per female in the spring declined (Rode et al. 2007, p. 1), corroborating the reduced cub survival, as noted previously by Regehr et al. (2006, p. 1). Males exhibited a stronger relationship with sea ice conditions and more pronounced declines over time than females. The mean body mass of males of ages 3–10 years (63 percent of all males captured over the age of 3) declined by 2.2 kg (4.9 lbs) per year, consistent with Regehr et al. (2006, p. 1), and was positively related to the percent of days with greater than or equal to 50 percent mean ice concentration over the continental shelf (Rode et al. 2007, p. 10). Because declines were not apparent in older, fully grown males, but were apparent in younger, fully grown males, the authors suggest that nutritional limitations may have occurred only in more recent years after the time when older males in the population were fully grown. Bears with prior capture history were either larger or similar in stature and mass to bears captured for the first time, indicating that research activities did not influence trends in the data.

The effect of sea ice conditions on the mass and size of subadult males suggests that, if sea ice conditions changed over time, this factor could be associated with the observed declines in these measures. While the sea ice metric used in Rode et al. (2007, p. 3) was meaningful to the foraging success of polar bears, recent habitat analyses have resulted in improvements in the understanding of preferred sea ice conditions of bears in the Southern Beaufort Sea population. Durner et al. (2007, pp. 6, 9) recently identified optimal polar bear habitat based on bathymetry (water depth), proximity to land, sea ice concentration, and distance to sea ice edges using resource selection functions. The sum of the monthly extent of this optimal habitat for each year within the range of the Southern Beaufort Sea population (Amstrup et al. 2004, p. 670) was strongly correlated with the Rode et al. (2007, p. 10) sea ice metric for the 1982–2006 period. This suggests that the Rode et al. (2007, p. 10) sea ice metric effectively quantified important habitat value. While the Rode et al. (2007, p. 10) sea ice metric did not exhibit a significantly negative trend over time, the optimal habitat available to bears in the southern Beaufort Sea as identified by Durner et al. (2007, pp. 5–6) did significantly decline between 1982 and 2006. This further supports the observation that the declining trend in bear size and condition over time were associated with a declining trend in availability of foraging habitat, particularly for subadult males whose mass and stature were related to sea ice conditions.

Rode et al. (2007, p. 12) concludes that the declines in mass and body condition index of subadult males, declines in growth of males and females, and declines in cub recruitment and survival suggest that polar bears of the Southern Beaufort Sea population have experienced a declining trend in nutritional status. The significant relationship between several of these measurements and sea ice cover over the continental shelf suggests that nutritional limitations may be associated with changing sea ice conditions.

Regehr et al. (2007b, p. 3) used multistate capture-recapture models that classified individual polar bears by sex, age, and reproductive category to evaluate the effects of declines in the extent and duration of sea ice on survival and breeding probabilities for polar bears in the Southern Beaufort Sea population. The study incorporated data collected from 2001–2006. Key elements of the models were the dependence of survival on the duration of the ice-free period over the continental shelf in the southern Beaufort Sea region, and variation in breeding probabilities over time. Other factors considered included harvest mortality, uneven capture probability, and temporary emigrations from the study area. Results of Regehr et al. (2007b, p. 1) reveal that in 2001 and 2002, the ice-free period was relatively short (mean 92 days) and survival of adult female polar bears was high (approximately 0.99). In 2004 and 2005, the ice-free period was long (mean 135 days) and survival of adult female polar bears was lower (approximately 0.77). Breeding and cub-of-the-year litter survival also declined from high rates in early years to lower rates in latter years of the study. The short duration of the study (5 years) introduced uncertainty associated with the logistic relationship between the sea ice covariate and survival. However, the most supported noncovariate models (i.e., that excluded ice as a covariate) also estimated declines in survival and breeding from 2001 to 2005 that were in close agreement to the declines estimated by the full model set.

Although the precision of vital rates estimated by Regehr et al. (2007b, pp. 17–18) was low, subsequent analyses (Hunter et al. 2007, p. 6) indicated that the declines in vital rates associated with longer ice-free periods have ramifications for the trend of the Southern Beaufort Sea population (i.e., result in a declining population trend). The Southern Beaufort Sea population occupies habitats similar to four other populations (Chukchi, Laptev, Kara, and Barents Seas) which represent over one-third of the world's polar bears. These areas have experienced sea ice declines in recent years that have been more severe than those experienced in the southern Beaufort Sea (Durner et al. 2007, pp. 32–33), and declining trends in status for these populations are projected to be similar to or greater than those projected for the Southern Beaufort Sea population (Amstrup et al. 2007, pp 7–8, 32).

Northern Beaufort Sea

The Northern Beaufort Sea population, unlike the Southern Beaufort Sea and Western Hudson Bay populations, is located in a region where sea ice converges on shorelines throughout most of the year. Stirling et al. (2007, pp. 1–6) used open population capture-recapture models of data collected from 1971–2006 to assess the relationship between polar bear survival and sex, age, time period, and a number of environmental covariates in order to assess population trends. Three covariates, two related to sea ice habitat and yearly seal productivity, were used to assess the recapture probability for estimates of long-term trends in the size of the Northern Beaufort Sea population (Stirling et al. 2007, pp. 4–8). Associations between survival estimates and the three covariates (sea ice habitat variables and seal abundance) were not, in general, supported by the data. Population estimates (model averaged) from 2004–2006 (980) were not significantly different from estimates for the periods of 1972–1975 (745) and 1985–1987 (867). The abundance during the three sampling periods, 1972–1975, 1985–1987, and 2004–2006 may be slightly low because (1) some bears residing in the extreme northern portions of the population may not have been equally available for capture and (2) the number of polar bears around Prince Patrick Island was not large relative to the rest of the population. Stirling et al. (2007, p. 10) concluded that currently the Northern Beaufort Sea population appears to be stable, probably because ice conditions remain suitable for feeding through much of the summer and fall in most years and harvest has not exceeded sustainable levels.

Other Populations

As noted earlier in the ''Distribution and Movement'' and the ''Polar Bear Seasonal Distribution Patterns Within Annual Activity Areas'' sections of this final rule, Stirling and Parkinson (2006, pp. 261–275) investigated ice break-up relative to distribution changes in five other polar bear populations in Canada: Foxe Basin, Baffin Bay, Davis Strait, Western Hudson Bay, and Eastern Hudson Bay. They found that sea-ice break-up in Foxe Basin has been occurring about 6 days earlier each decade; ice break-up in Baffin Bay has been occurring 6 to 7 days earlier per decade; and ice break-up in Western Hudson Bay has been occurring 7 to 8 days earlier per decade. Although long-term results from Davis Strait were not conclusive, particularly because the maximum percentage of ice cover in Davis Strait varies considerably more between years than in western Hudson Bay, Foxe Basin, or Baffin Bay, Stirling and Parkinson (2006, p. 269) did document a negative shortterm trend from 1991 to 2004 in Davis Strait. In eastern Hudson Bay, there was not a statistically significant trend toward earlier sea-ice break-up.

In four populations, Western Hudson Bay, Foxe Basin, Baffin Bay, and Davis Strait, residents of coastal settlements have reported seeing more polar bears and having more problem bear encounters during the open-water season, particularly in the fall. In those areas, the increased numbers of sightings, as well as an increase in the number of problem bears handled at Churchill, Manitoba, have been interpreted as indicative of an increase in population size. As discussed earlier, the declines in population size, condition, and survival of young bears in the Western Hudson Bay population as a consequence of earlier sea ice break-up brought about by climate warming have all been well documented (Stirling et al. 1999, p. 294; Gagnon and Gough 2005; Regehr et al. 2007a, p. 2,680). In Baffin Bay, the available data suggest that the population is being overharvested, so the reason for seeing more polar bears is unlikely to be an increase in population size. Ongoing research in Davis Strait (Peacock et al. 2007, pp. 6–7) indicates that this population may be larger than previously believed, which may at first seem inconsistent with the Stirling and Parkinson (2006, pp. 269–270) hypothesis of declining populations over time. This observation, however, is not equilavent to an indication of population growth. The quality of previous population estimates for this region, and the lack of complete coverage of sampling used to derive the previous estimates, preclude establishment of a trend in numbers. Although the timing and location of availability of sea ice in Davis Strait may have been declining (Amstrup et al. 2007, p. 25), changes in numbers and distribution of harp seals at this time may support large numbers of polar bears even if ringed seals are less available (Stirling and Parkinson 2006, p. 270; Iverson et al. 2006, p. 110). As stated previously, continuing loss of sea ice ultimately will have negative effects on this population and other populations in the Seasonal Ice ecoregion.

Polar Bear Populations without Long-term Data Sets

The remaining circumpolar polar bear populations either do not have data sets of sufficiently long time series or do not have data sets of comparable information that would allow the analysis of population trends or relationships to various environmental factors and other variables over time.

Projected Effects of Sea Ice Changes on Polar Bears

This section reviews a study by Durner et al. (2007) that evaluated polar bear habitat features and future habitat distribution and seasonal availability into the future. Studies by Amstrup et al. (2007) and Hunter et al. (2007) are also reviewed which included new analyses and approaches to examine trends and relationships for populations or groups of populations based on commonly understood relationships with habitat features and environmental conditions.

Habitat loss has been implicated as the greatest threat to the survival for most species (Wilcove et al. 1998, p. 614). Extinction theory suggests that the most vulnerable species are those that are specialized (Davis et al. 2004), long-lived with long generation times and low reproductive output (Bodmer et al. 1997), and carnivorous with large geographic extents and low population densities (Viranta 2003, p. 1,275). Because of their specialized habitats and life history constraints (Amstrup 2003, p. 605), polar bears have many qualities that make their populations susceptible to the potential negative impacts of sea ice loss resulting from climate change.

As discussed in detail in the ''Sea Ice Habitat'' section of this final rule, contemporary observations and state-of-the-art models point to a warming global climate, with some of the most accelerated changes in Arctic regions. In the past 30 years, average world surface temperatures have increased 0.2 degrees C per decade, but parts of the Arctic have experienced warming at a rate of 10 times the world average (Hansen et al. 2006). Since the late 1970s there have been major reductions in summer (multi-year) sea ice extent (Meier et al. 2007, pp. 428–434) (see detailed discussion in section entitled ''Summer Sea Ice''); decreases in ice age (Rigor and Wallace 2004; Belchansky et al. 2005) and thickness (Rothrock et al. 1999; Tucker et al. 2001) (see detailed discussion in section entitled ''Sea Ice Thickness''); and increases in length of the summer melt period (Belchansky et al. 2004; Stroeve et al. 2005) (see detailed discussion in section entitled ''Length of the Melt Period''). Recent observations further indicate that winter ice extent is declining (Comiso 2006) (see detailed discussion in section entitled ''Winter Sea Ice''). Empirical evidence therefore establishes that the environment on which polar bears depend for their survival has already changed substantially.

Without sea ice, polar bears lack the platform that allows them to access prey. Longer melt seasons and reduced summer ice extent will force polar bears into habitats where their hunting success will be compromised (Derocher et al. 2004, p. 167; Stirling and Parkinson 2006, pp. 271–272). Increases in the duration of the summer season, when polar bears are restricted to land or forced over relatively unproductive Arctic waters, may reduce individual survival and ultimately population size (Derocher et al. 2004, pp. 165–170). Ice seals typically occur in open-water during summer and therefore are inaccessible to polar bears during this time (Harwood and Stirling 1992, p. 897). Thus, increases in the length of the summer melt season have the potential to reduce annual availability of prey. In addition, unusual movements, such as long distance swims to reach pack ice or land, place polar bears at risk and may affect mortality (Monnett and Gleason 2006, pp. 4–6). Because of the importance of sea ice to polar bears, projecting patterns of ice habitat availability has direct implications on their future status. This section reports on recent studies that project the effects of sea ice change on polar bears.

Polar Bear Habitat

Durner et al. (2007, pp. 4–10) developed resource selection functions (RSFs) to identify ice habitat characteristics selected by polar bears and used these selection criteria as a basis for projecting the future availability of optimal polar bear habitat throughout the 21st century. Location

data from satellite-collared polar bears and environmental data (e.g., sea ice concentration, bathymetry, etc.) were used to develop RSFs (Manly et al. 2002), which are considered to be a quantitative measure of habitat selection by polar bears. Important habitat features identified in the RSF models were then used to determine the availability of optimal polar bear habitat in GCM projections of 21st century sea ice distribution. The following information has been excerpted or extracted from Durner et al. (2007).

Durner et al. (2007, p. 5) used the outputs from 10 GCMs from the IPCC 4AR report as inputs into RSFs models to forecast future distribution and quantities of preferred polar bear habitat. The 10 GCMs were selected based on their ability to accurately simulate actual ice extent derived from passive microwave satellite observations (as described in DeWeaver 2007). The area of the assessment was the pelagic ecoregion of the Arctic polar basin comprised of the Divergent and Convergent ecoregions described by Amstrup et al. (2007, pp. 5–7) as described previously in introductory materials contained in the ''Polar Bear Ecoregions'' section of this final rule. Predictions of the amount and rate of change in polar bear habitat varied among GCMs, but all predicted net losses in the polar basin during the 21st century. Projected losses in optimal habitat were greatest in the peripheral seas of the polar basin (Divergent ecoregion) and projected to be greatest in the Southern Beaufort, Chukchi, and Barents Seas. Observed losses of sea ice in the Southern Beaufort, Chukchi, and Barents Seas are occurring more rapidly than projected and suggest that trajectories may vary at regional scales. Losses were least in high-latitude regions where the RSF models predicted an initial increase in optimal habitat followed by a modest decline. Optimal habitat changes in the Queen Elizabeth and Arctic Basin units of the Canada-Greenland group (Convergent ecoregion) were projected to be negligible if not increasing. Very little optimal habitat was observed or predicted to occur in the deep water regions of the central Arctic basin.

Durner et al. (2007, p. 13) found that the largest seasonal reductions in habitat were predicted for spring and summer. Based on the multi-model mean of 10 GCMs, the average area of optimal polar bear habitat during summer in the polar basin declined from an observed 1.0 million sq km (0.39 million sq mi) in 1985–1995 (baseline) to a projected multi-model average of 0.58 million sq km (0.23 million sq mi) in 2045–2054 (42 percent decline), 0.36 million sq km (0.14 million sq mi) in 2070–2079 (64 percent decline), and 0.32 million sq km (0.12 million sq mi) in 2090–2099 (68 percent decline). After summer melt, most regions of the polar basin were projected to refreeze throughout the 21st century. Therefore, winter losses of polar bear habitat were more modest, from 1.7 million sq km (0.54 million sq mi) in 1985–1995 to 1.4 million sq km (0.55 million sq mi) in 2090–2099 (17 percent decline). Simulated and projected rates of habitat loss during the late 20th and early 21st centuries by many GCMs tend to be less than observed rates of loss during the past two decades; therefore, habitat losses based on GCM multi-model averages were considered to be conservative.

Large declines in optimal habitat are projected to occur in the Alaska-Eurasia region (Divergent ecoregion) where 60–80 percent of the polar bear's historical area of spring and summer habitat may disappear by the end of the century (Durner et al. 2007). The Canada-Greenland region (Convergent ecoregion) has historically contained less total optimal habitat area, since it is geographically smaller than the Alaska-Eurasia region. In the Queen Elizabeth region, while there is a similar seasonal pattern to the projected loss of optimal habitat, the magnitude of habitat loss was much less because of the predicted stability of ice in this region (Durner et al. 2007, p. 13). The projected rates of habitat loss over the 21st century were not constant over time (Durner et al. 2007). Rates of loss tended to be greatest during the second and third quarters of the century and then diminish during the last quarter.

Losses in optimal habitat between 1985–1995 and 1996–2006 established an observed trajectory of change that was consistent with the GCM projections; however, the observed rate of change (established over a 10-year period), when extrapolated over the first half of the 21st century, resulted in more habitat lost than that projected by the GCM ensemble average (i.e., faster than projected) (Durner et al. 2007, p. 13).

The recent findings regarding the record minimum summer sea ice conditions for 2007 reported by the NSIDC in Boulder, Colorado, were not considered in the analysis of sea ice conditions reported by Durner et al. (2007) because the full 2007 data were not yet available when the analyses in Durner et al. (2007) were conducted. In 2007, sea ice losses in the Canadian Archipelago and the polar basin Convergent ecoregions were the largest observed to date; these areas had previously been observed to be relatively stable (Durner et al. 2007).

Durner et al. (2007, pp. 18–19) indicated that less available habitat will likely result in reduced polar bear populations, although the precise relationship between habitat loss and population demographics remains unknown. Other authors (Stirling and Parkinson 2006, pp. 271–272; Regehr et al. 2007, pp. 14–18; Hunter et al. 2007, pp. 14–18; Rode et al. 2007, pp. 5–8; Amstrup et al. 2007, pp. 19–31) present detailed information regarding demographic effects of loss of sea ice habitat. Durner et al. (2007, pp. 19–20) does hypothesize that density effects may become more important as polar bears make long distance annual migrations from traditional winter areas to remnant high-latitude summer areas already occupied by polar bears. Further, Durner et al. (2007, p. 19) indicate that declines and large seasonal swings in habitat availability and distribution may impose greater impacts on pregnant females seeking denning habitat or leaving dens with cubs than on males and other age groups. Durner et al. (2007, p. 19) found that although most winter habitats would be replenished annually, long distance retreat of summer habitat may ultimately preclude bears from seasonally returning to their traditional winter ranges. Please also see the section in this final rule entitled ''Access to and Alteration of Denning Areas.''

Polar Bear Population Projections—Southern Beaufort Sea

Recent demographic analyses and modeling of the Southern Beaufort Sea population have provided insight about the current and future status of this population (Hunter et al. 2007; Regehr et al. 2007b). This population occupies habitats similar to four other populations in the Divergent ecoregion (Barents, Chukchi, Kara and Laptev Seas), which together represent over one-third of the current worldwide polar bear population. Because these other populations have experienced more severe sea ice changes than the southern Beaufort Sea, this assessment may understate the severity of the demographic impact that polar bear populations face in the Divergent ecoregion.

Hunter et al. (2007, pp. 2–6) conducted a demographic analysis of the Southern Beaufort Sea population using a life-cycle model parameterized with vital rates estimated from capture-recapture data collected between 2001 and 2006 (Regehr et al. 2007b, pp. 12–

14). Population growth rates and resultant population sizes were projected both deterministically (i.e., assuming that environmental conditions remained constant over time) and stochastically (i.e., allowing for environmental conditions to vary over time).

The deterministic model produced positive point estimates of population growth rate under the conditions in 2001–2003, ranging from 1.02 to 1.08 (i.e., 2 to 8 percent growth per year), and negative point estimates of population growth rate under the conditions in 2004–2005 when the region was ice-free for much longer, ranging from 0.77 to 0.90 (i.e., 23 to 10 percent decline per year) (Hunter et al. 2007, p. 8). The overall growth rate estimate for the study period was about 0.997, i.e., a 0.3 percent decline per year. Population growth rate was most affected by adult female survival, with secondary effects from reduced breeding probability (Hunter et al. 2007, p. 8). A main finding of this analysis was that when there are more than 125 ice-free days over the continental shelf of the broad southern Beaufort Sea region, population growth rate declines precipitously.

The stochastic model incorporated environmental variability by partitioning observed data into ''good'' years (2001–2003, short ice-free period) and ''bad'' years (2004–2005, long ice-free period), and evaluating the effect of the frequency of bad years on population growth rate (Hunter et al. 2007, p. 6). Stochastic projections were made in two ways: (1) Assuming a variable environment with the probability of bad years equal to what has been observed recently (1979–2006); and (2) assuming a variable environment described by projections of sea ice conditions in outputs of 10 selected general circulation models, as described by DeWeaver (2007). In the first analysis, Hunter et al. (2007, pp. 12–13) found that the stochastic growth rate declined with an increase in frequency of bad years, and that if the frequency of bad years exceeded 17 percent the result would be population decline. The observed frequency of bad years since 1979 indicated a decline of about 1 percent per year for the Southern Beaufort Sea population. The average frequency of bad ice years from 1979–2006 was approximately 21 percent and from 2001–2005 was approximately 40 percent. In the second analysis, using outputs from 10 GCMs to determine the frequency of bad years, Hunter et al. (2007, p. 13) estimated a 55 percent probability of decline to 1 percent of current population size in 45 years using the non-covariate model set, and a 40 percent probability of decline to 0.1 percent of current population size in 45 years, also using the non-covariate model set. Under sea ice conditions predicted by each of the 10 GCMs, the Southern Beaufort Sea population was projected to experience a significant decline within the next century. The demographic analyses of Hunter et al. (2007, pp. 3–9) incorporated uncertainty arising from demographic parameter estimation, the short time-series of capture-recapture data, the form of the population model, environmental variation, and climate projections. Support for the conclusions come from the agreement of results from different statistical model sets, deterministic and stochastic models, and models with and without climate forcing.

Polar Bear Population Projections—Range-wide

Amstrup et al. (2007, pp. 5–6) used two modeling approaches to estimate the future status of polar bears in the 4 ecoregions they delineated (see section entitled ''Polar Bear Ecoregions'' and Figure 2 above). First, they used a deterministic Carrying Capacity Model (CM) that applied current polar bear densities to future GCM sea ice projections to estimate potential future numbers of polar bears in each of the 4 ecoregions. The second approach, a Bayesian Network Model (BM), included the same annual measure of sea ice area as well as measures of the spatial and temporal availability of sea ice. In addition, the BM incorporated numerous other stressors that might affect polar bear populations that were not incorporated in the carrying capacity model. The CM ''provided estimates of the maximum potential sizes of polar bear populations based on climate modeling projections of the quantity of their habitat—but in the absence of effects of any additional stressors * * *'' while the BM ''provided estimates of how the presence of multiple stressors * * * may affect polar bears'' (Amstrup et al. 2007, p. 5).

For both modeling approaches, the 19 polar bear populations were grouped into 4 ecoregions, which are defined by the authors on the basis of observed temporal and spatial patterns of ice formation and ablation (melting or evaporation), observations of how polar bears respond to these patterns, and projected future sea ice patterns (see ''Current Population Status and Trends'' section). The four ecoregions are: (1) the Seasonal Ice ecoregion (which occurs mainly at the southern extreme of the polar bear range); (2) the Archipelago ecoregion of the central Canadian Arctic; (3) the polar basin Divergent ecoregion; and (4) the polar Basin Convergent ecoregion (see Figure 2 above). The ecoregions group polar bear populations that share similar environmental conditions and are, therefore, likely to respond in a similar fashion to projected future conditions.

Carrying Capacity Model (CM)

The deterministic Carrying Capacity Model (CM) developed by Amstrup et al. (2007) was used to estimate present-day polar bear density in each ecoregion based on estimates of the number of polar bears and amount of sea ice in each ecoregion. These density estimates were defined as ''carrying capacities'' and applied to projected future sea ice availability scenarios using the assumption that current ''carrying capacities'' will apply to available habitat in the future. This density and habitat index, therefore, allows a straightforward comparison between the numbers of bears that are present now and the number of bears which might be present in the future.

Amstrup et al. (2007, p. 8) defined total available sea ice habitat in the Divergent and Convergent ecoregions as the 12-month sum of sea ice cover (in km2) over the continental shelves of the 2 polar basin ecoregions; in the Archipelago and Seasonal Ice ecoregions, all sea ice-covered areas were considered shelf areas and defined as available habitat (Amstrup et al. 2007, p. 9). In the Divergent and Convergent ecoregions, available sea ice habitat was further defined as either optimal (according to the definition of Durner et al. 2007, p. 9) or nonoptimal; this further subdivision was not applied in the Archipelago and Seasonal Ice ecoregions, which used the one measure of total available sea ice habitat. Projections of future sea ice availability for each ecoregion were derived from 10 General Circulation Models (GCMs) selected by DeWeaver (2007, p. 21). Projections of polar bear status based on habitat availability were determined for each of the four ecoregions for 4 time periods: the present (year 0); 45 years from the present (the decade of 2045–2055); 75 years from the present (2070–2080); and 100 years (2090–2100) from the present. For added perspective, the authors also looked at 10 years in the past (1985–1995). Three sea ice habitat availability estimates were derived for each time period, based on the minimum, mean, and maximum sea ice projections from the 10-model GCM ensemble. Changes in habitat were defined in terms of direction (contracting, stable or expanding) and

magnitude (slow or none, moderate, or fast), while changes in carrying capacity were defined in terms of direction (decreasing, stable or increasing) and magnitude (low to none, moderate, or high) (Amstrup et al. 2007, pp. 10–12). ''Outcomes of habitat change and carrying capacity change were categorized into 4 composite summary categories to describe the status of polar bear populations: enhanced, maintained, decreased, or toward extirpation'' (Amstrup et al. 2007, p. 12).

The range of projected carrying capacities (numbers of bears potentially remaining assuming historic densities were maintained) varied by ecoregion and to whether maximum or minimum ice values were used. Table 1 below presents the range of projected change in carrying capacity of sea ice habitats for polar bears by ecoregion based on sea ice projections from GCMs. The range of percentages represents minimum and maximum projected changes in carrying capacity based on minimum and maximum projected changes in the total area of sea ice habitat at various times.

Table 1. Projected maximum and minimum percent changes in polar bear carrying capacity based on maximum and minimum projected changes in the total area of sea ice habitat at various times. Negative values indicate percent decrease in carrying capacity and positive values indicate percent increase in carrying capacity.

	Percent change in carrying capacity of sea ice habitats		
Ecoregion	Year 45	Year 75	Year 100
Seasonal Ice	-7 to -10	-21 to -32	-22 to -32
Archipelago	-3 to -14	-18 to -21	-21 to -24
Divergent Ice	-19 to -35	-29 to -43	-23 to -48
Convergent Ice	+4 to -24	-8 to -11	-3 to -25
Global	-10 to -22	-22 to -32	-20 to -37

All CM runs projected declines in polar bear carrying capacity in all four ecoregions (Amstrup et al. 2007, Figure 9). Some CM model runs project that polar bear carrying capacity will be trending ''toward extirpation'' (the term ''toward extirpation'' is defined as one of three combinations of habitat change and carrying capacity change (i.e., contracting moderate habitat change, decreasing fast carrying capacity change; contracting fast, decreasing moderate; contracting fast, decreasing high)) in some ecoregions at certain times, but that less severe carrying capacity changes will occur in other ecoregions (see Tables 2 and 6, and Figure 9 in Amstrup et al. 2007). Using the 4 composite summary categories of Amstrup et al. (2007, p. 12), the minimum sea ice extent model results project that a trend toward extirpation of polar bears will appear in the polar basin Divergent ecoregion by year 45 and in the Seasonal Ice ecoregion by year 75. Mean sea ice extent model results project that a trend toward extirpation of bears will appear in the polar basin Divergent ecoregion by year 75 and in the polar basin Convergent ecoregion by year 100. None of the model results project that a trend toward extirpation will appear in the Archipelago region by year 100. Likewise, none of the model results project that polar bear carrying capacity will increase or remain stable in any ecoregion beyond 45 years. Although the pattern of projected carrying capacity varied greatly among regions, the summary finding was for a range-wide decline in polar bear carrying capacity of between 10 and 22 percent by year 45 and between 22 and 32 percent by year 75 (Amstrup et al. 2007, p. 20). CM results provide a conservative view of the potential magnitude of change in bear carrying capacity over time and area, because these results are based solely on the area of sea ice present at a given point in time and do not consider the effects of other population stressors.

Bayesian Network Model (BM)

To address other variables in addition to sea ice habitat that may affect polar bears, Amstrup et al. (2007, pp. 5–6) developed a prototype Bayesian Network Model (BM). The BM incorporated empirical data and GCM projections of annual and seasonal sea ice availability, numerous other stressors, and expert judgment regarding known relationships between these stressors and polar bear demographics to obtain probabilistic estimates of future polar bear distributions and relative numbers. Anthropogenic stressors included human activities that could affect distribution or abundance of polar bears, such as hunting, oil and gas development, shipping, and direct bear-human interactions. Natural stressors included changes in the availability of primary and alternate prey and foraging areas, and occurrence of parasites, disease, and predation. Environmental factors included projected changes in total ice and optimal habitat, changes in the distance that ice retreats from traditional autumn or winter foraging areas, and changes in the number of months per year that ice is absent in the continental shelf regions. Habitat changes, natural and anthropogenic stressors, and environmental factors were evaluated for their potential effects on the density and distribution of polar bears and survival throughout their range. BM outcomes were defined according to their collective influence on polar bear

population distribution and relative numbers with respect to current conditions (e.g., larger than now, the same as now, smaller than now, rare, or extinct) (Amstrup et al. 2007).

As a caveat to their results, the authors note that, because a BM combines expert judgment and interpretation with quantitative and qualitative empirical information, inputs from multiple experts are usually incorporated into the structure and parameterization of a ''final'' BM. Because the BM in Amstrup et al. (2007) incorporates the input of a single polar bear expert, the model should be viewed as an ''alpha'' level prototype (Marcot et al. 2006, cited in Amstrup et al. 2007, p.27) that would benefit from additional development and refinement. Given this caveat, it is extremely important, while interpreting model outcomes, to focus on the general direction and magnitude of the probabilities of projected outcomes rather than the actual numerical probabilities associated with each outcome. For example, situations with high probability of a particular outcome (e.g., of extinction) or consistent directional effect across sea ice scenarios suggest a higher likelihood of that outcome as opposed to situations where the probability is evenly spread across outcomes or where there is large disagreement among different sea ice scenarios. These considerations were central to the authors' interpretation of BM results (Amstrup et al. 2007).

The overall outcomes from the BM indicate that in each of the four ecoregions polar bear populations in the future are very likely to be smaller and have a higher likelihood of experiencing multiple stressors in comparison to the past or present. In the future, multiple natural and anthropogenic stressors will likely become important, and negative effects on all polar bear populations will be apparent by year 45 with generally increased effects through year 100.

In the Seasonal Ice ecoregion the dominant outcome of the BM was ''extinct'' at all future time periods under all three GCM scenarios used in the analysis, with low probabilities associated with alternative outcomes, except for the minimum GCM scenario at year 45 (when the probability of alternative outcomes was around 44 percent). The small probabilities for outcomes other than extinct suggest a trend in this ecoregion toward probable extirpation by the mid-21st century. In the polar basin Divergent ecoregion, ''extinct'' was also the predominant outcome, with very low probabilities associated with alternative outcomes (i.e., less then 15 percent probability of not becoming extinct). The small probabilities for outcomes other than extinct also suggest a trend in this ecoregion toward probable extirpation by the mid-21st century. In the polar basin Convergent ecoregion, population persistence at ''smaller in numbers'' or ''rare'' was the predominant outcome at year 45, but the probability of extinction came to predominate (i.e., was greater than 60 percent) at year 75 and year 100. In the Archipelago ecoregion, a smaller population was the most probable outcome at year 45 under all GCM scenarios. By year 75, the most probable outcome for this ecoregion (as in the other ecoregions) across all GCM ice scenarios was population persistence, albeit in lower numbers. Even late in the century, however, the probability of a smaller than present population in the Archipelago Ecoregion was relatively high. Therefore, Amstrup et al. (2007) concluded that polar bears, in reduced numbers, could occur in the Archipelago Ecoregion through the end of the century. The authors note that the projected changes in sea ice conditions could result in loss of approximately two-thirds of the world's current polar bear population by the mid-21st century. They further note that, because the observed trajectory of Arctic sea ice decline appears to be underestimated by currently available models, these projections may be conservative.

As part of the BM, Amstrup et al. (2007, pp. 29–31) conducted a sensitivity analysis to determine the influence of model inputs and found that the overall projected population outcome was greatly influenced by changes in sea ice habitat. The Bayesian sensitivity analysis found that 91 percent of the variation in the overall predicted population outcome was determined by six variables. Four of these six were sea ice related, including patterns of seasonal and spatial distribution. The fifth variable among these top six was the ecoregion being considered. Outcomes varied for ecoregions as a result of differences in their sea ice characteristics. The sixth ranked variable, with regard to overall population outcome, was the level of intentional takes or harvest (overutilization). The stressors that related to bear-human interactions, parasites and disease and predation, and other natural or man-made factors provided a nominal influence of less than 9 percent contribution to the status outcome.

Amstrup et al. (2007, pp. 22–24) characterize the types and implications of uncertainty inherent to the carrying capacity and BM modeling in their report. Analyses in this report contain three main categories of uncertainty: (1) uncertainty in our understandings of the biological, ecological, and climatological systems; (2) uncertainty in the representation of those understandings in models and statistical descriptions; and (3) uncertainty in model predictions. In addition, Amstrup et al. (2007) discussed potential consequences of and efforts to evaluate and minimize uncertainty in the analyses. We reiterate the caveat that a BM combines expert judgment and interpretation with quantitative and qualitative empirical information, therefore necessitating inputs from multiple experts (if available) before it can be considered final. We note again that because the BM presented in Amstrup et al. (2007) incorporates the input of a single polar bear expert, it should be viewed as a first-generation prototype (Marcot et al. 2006, cited in Amstrup et al. 2007, p.27) that would benefit from additional development.

Because the BM includes numerous qualitative inputs (including expert assessment) and requires additional development (Amstrup et al. 2007, p. 27), we are more confident in the general direction and magnitude of the projected outcomes rather than the actual numerical probabilities associated with each outcome, and we are also more confident in outcomes within the 45-year foreseeable future than in outcomes over longer timeframes (e.g., year 75 and year 100 in Amstrup et al. (2007)). We conclude that the outcomes of the BM are consistent with ''the increasing volume of data confirming negative relationships between polar bear welfare and sea ice decline'' (Amstrup et al. 2007, p. 31), and parallel other assessments of both the demographic parameter changes as well as trends in various factors that threaten polar bears as described by Derocher et al. (2004), and in the proposed rule to list polar bears as a threatened species (72 FR 1064). However, because of the preliminary nature of the BM and levels of uncertainty associated with the initial Bayesian Modeling efforts, we do not find that the projected outcomes derived from the BM to be as reliable as the data derived from the ensemble of climate models used by the Service to gauge the loss of sea ice habitat over the next 45 years. Both the proposed rule and the status assessment (*Range Wide Status Review of the Polar Bear* (*Ursus maritimus*), Schliebe et al. 2006a), underwent extensive peer review by impartial experts within the disciplines of polar bear ecology, climatology, toxicology, seal ecology, and traditional ecological knowledge, and thereby

represent a consensus on the conclusions in these documents. The more recent projections from the BM exercise conducted by Amstrup et al. (2007) are consistent with conclusions reached in the earlier assessments that polar bear populations will continue to decline in the future.

Polar Bear Mortality

As changes in habitat become more severe and seasonal rates of change more rapid, catastrophic mortality events that have yet to be realized on a large scale are expected to occur. Observations of drownings and starved animals may be a prelude to such events. Populations experiencing compromised physical condition will be increasingly prone to sudden die-offs. While no information currently exists to evaluate such events, the possibility of other forms of unanticipated mortality are mentioned here because they have been observed in other species (e.g., canine distemper in Caspian seals (*Phoca caspica*) (Kuiken et al. 2006, p. 321) and phocine distemper virus in harbor seals (Heide-Jorgensen et al. 1992, cited in Goodman 1998).

Conclusion Regarding Current and Projected Demographic Effects of Habitat Changes on Polar Bears

Polar bears have evolved in a sea ice environment that serves as an essential platform from which they meet life functions. Polar bears currently are exposed to a rapidly changing sea ice platform, and in many regions of the Arctic already are being affected by these changes. Sea ice changes are projected to continue and positive feedbacks are expected to amplify changes in the arctic which will hasten sea ice retreat. These factors will likely negatively impact polar bears by increasing energetic demands of seeking prey. Remaining members of many populations will be redistributed, at least seasonally, into terrestrial or offshore habitats with marginal values for feeding, and increasing levels of negative bear-human interactions. Increasing nutritional stress will coincide with exposure to numerous other potential stressors. Polar bears in some regions already are demonstrating reduced physical condition, reduced reproductive success, and increased mortality. As changes in habitat become more severe and seasonal rates of change more rapid, catastrophic mortality events that have yet to be realized on a large scale are expected to occur. Observations of drownings and starved animals may be a prelude to such events. These changes will in time occur throughout the world-wide range of polar bears. Ultimately, these inter-related factors will result in range-wide population declines. Populations in different ecoregions will experience different rates of change and timing of impacts. Within the foreseeable future, however, all ecoregions will be affected.

Conclusion for Factor A

Rationale

Polar bears evolved over thousands of years to life in a sea ice environment. They depend on the sea ice-dominated ecosystem to support essential life functions. Sea ice provides a platform for hunting and feeding, for seeking mates and breeding, for movement to terrestrial maternity denning areas and occasionally for maternity denning, for resting, and for long-distance movements. The sea ice ecosystem supports ringed seals, primary prey for polar bears, and other marine mammals that are also part of their prey base.

Sea ice is rapidly diminishing throughout the Arctic. Patterns of increased temperatures, earlier onset of and longer melting periods, later onset of freeze-up, increased rain-on-snow events, and potential reductions in snowfall are occurring. In addition, positive feedback systems (i.e., the sea-ice albedo feedback mechanism) and naturally occurring events, such as warm water intrusion into the Arctic and changing atmospheric wind patterns, can operate to amplify the effects of these phenomena. As a result, there is fragmentation of sea ice, a dramatic increase in the extent of open water areas seasonally, reduction in the extent and area of sea ice in all seasons, retraction of sea ice away from productive continental shelf areas throughout the polar basin, reduction of the amount of heavier and more stable multi-year ice, and declining thickness and quality of shore-fast ice. Such events are interrelated and combine to decrease the extent and quality of sea ice as polar bear habitat during all seasons and particularly during the spring-summer period. Arctic sea ice will continue to be affected by climate change. Due to the long persistence time of certain GHGs in the atmosphere, the current and projected patterns of GHG emissions over the next few decades, and interactions among climate processes, climate changes for the next 40–50 years are already largely set (IPCC 2007, p. 749; J. Overland, NOAA, in litt. to the Service, 2007). Climate change effects on sea ice and polar bears will continue through this timeframe and very likely further into the future.

Changes in sea ice negatively impact polar bears by increasing the energetic demands of movement in seeking prey, causing seasonal redistribution of substantial portions of populations into marginal ice or terrestrial habitats with limited values for feeding, and increasing the susceptibility of bears to other stressors, some of which follow. As the sea ice edge retracts to deeper, less productive polar basin waters, polar bears will face increased competition for limited food resources, increased open water swimming with increased risk of drowning, increasing interaction with humans with negative consequences, and declining numbers that may be unable to sustain ongoing harvests.

Changes in sea ice will reduce productivity of most ice seal species, result in changes in composition of seal species indigenous to some areas, and eventually result in a decrease in seal abundance. These changes will decrease availability or timing of availability of seals as food for polar bears. Ringed seals will likely remain distributed in shallower, more productive southerly areas that are losing their seasonal sea ice and becoming characterized by vast expanses of open water in the spring-summer-fall period. As a result, the seals will remain unavailable as prey to polar bears during critical times of the year. These factors will, in turn, result in a steady decline in the physical condition of polar bears, which has proven to lead to population-level demographic declines in reproduction and survival.

The ultimate net effect of these inter-related factors will be that polar bear populations will decline or continue to decline. Not all populations will be affected evenly in the level, rate, and timing of effects, but we have determined that, within the foreseeable future, all polar bear populations will be negatively affected. This determination is broadly supported by results of the USGS studies, and within the professional community, including a majority of polar bear experts who peer reviewed the proposed rule. The PBSG evaluated potential impacts to the polar bear, and determined that the observed and projected changes in sea ice habitat would negatively affect the species (Aars et al. 2006, p. 47). The IUCN, based on the PBSG assessment, reclassified polar bears as ''vulnerable.'' Similarly, their justification for the classification was the projected change in sea ice, effect of climate change on polar bear condition, and corresponding effect on reproduction and survival, which have been associated with a steady and persistent decline in abundance.

A series of analyses of the best available scientific information on the

ecology and demography of polar bears were recently undertaken by the USGS at the request of the Secretary of the Interior. These include additional analyses of some specific populations (Southern Beaufort Sea, Northern Beaufort Sea, Southern Husdon Bay), analysis of optimal polar bear habitat and projections of optimal habitat through the 21st century, projections of the status of populations into the future, and information from a pilot study regarding the increase in travel distance for pregnant females to reach denning areas on the North Slope of Alaska with insights to potential consequences. Results of the analyses are detailed within this final rule. This significant effort enhanced and reaffirmed our understanding of the interrelationships of ecological factors and the future status of polar bear populations.

The USGS report by Amstrup et al. (2007) synthesized historical and recent scientific information and conducted two modeling exercises to provide a range-wide assessment of the current and projected future status of polar bears occupying four ecoregions. In this effort, using two approaches and validation processes, the authors described four ''ecoregions'' based on current and projected sea ice conditions and developed a suite of population projections by ecoregion. This assessment helps inform us on the future fate of polar bear populations subject to a rapidly changing sea ice environment. In summary, polar bear populations within all ecoregions were not uniformly impacted, but all populations within ecoregions declined, with the severity of declines depending on the sea ice projections (minimal, mean, maximum), season of the year, and area. Amstrup et al. (2007, p. 36) forecasts the extirpation of populations in the Seasonal Ice, and polar basin Divergent ecoregions by the mid-21st century. Because the BM presented in the report be viewed as a first-generation prototype (Marcot et al. 2006, cited in Amstrup et al. 2007, p.27) that would benefit from additional development, and because the BM includes numerous qualitative inputs (including expert assessment), we are more confident in the general direction and magnitude of the projected outcomes rather than the actual numerical probabilities associated with each outcome, and we are also more confident in outcomes within the 45-year foreseeable future.

In the southerly populations (Seasonal Ice ecoregion) of Western Hudson Bay, Southern Hudson Bay, Foxe Basin, Davis Strait, and Baffin Bay, polar bears already experience stress from seasonal fasting due to early sea ice retreat, and have or will be affected earliest (Stirling and Parkinson 2006, p. 272; Obbard et al. 2006, pp. 6–7; Obbard et al. 2007, p. 14). Populations in the Divergent ecoregion, including the Chukchi Sea, Barents Sea, Southern Beaufort Sea, Kara Sea, and Laptev Sea will, or are currently, experiencing initial effects of changes in sea ice (Rode et al. 2007, p. 12; Regehr et al. 2007b, pp. 18–19; Hunter et al. 2007, p. 19; Amstrup et al. 2007, p. 36). These populations are vulnerable to large-scale dramatic seasonal fluctuations in ice movements, decreased abundance and access to prey, and increased energetic costs of hunting. Polar bear populations inhabiting the central island archipelago of Canada (Archipelago ecoregion) will also be affected but to lesser degrees and later in time. These more northerly populations (Norwegian Bay, Lancaster Sound, M'Clintock Channel, Viscount Melville Sound, Kane Basin, and the Gulf of Boothia) are expected to be affected last due to the buffering effects of the island archipelago complex, which lessens effects of oceanic currents and seasonal retractions of ice and retains a higher proportion of heavy, more stable, multi-year sea ice. A caution in this evaluation is that historical record minimum summer ice conditions in September 2007 resulted in vast ice-free areas that encroached into the area of permanent polar sea ice in the central Arctic Basin, and the Northwest Passage was open for the first time in recorded history. The record low sea ice conditions of 2007 are an extension of an accelerating trend of minimum sea ice conditions and further support the concern that current sea ice models may be conservative and underestimate the rate and level of change expected in the future.

Although climate change may improve conditions for polar bears in some high latitude areas where harsh conditions currently prevail, these improvements will only be transitory. Continued warming will lead to reduced numbers and reduced distribution of polar bears range-wide (Regehr et al. 2007b, p. 18; Derocher et al. 2004, p. 19; Hunter et al. 2007, p. 14; Amstrup et al. 2007, p. 36). Projected declines in the sea ice for most parts of the Arctic are long-term, severe, and occurring at a pace that is unprecedented (Comiso 2003; ACIA 2004; Holland et al. 2006, pp. 1–5); therefore, the most northerly polar bear populations will experience declines in demographic parameters similar to those observed in the Western Hudson Bay population, along with changes in distribution and other currently unknown ecological responses (Derocher et al. 2004, p. 171; Aars et al. 2006, p. 47). Ultimately, all polar bear populations will be affected within the foreseeable future, and the species will likely become in danger of extinction throughout all of its range.

It is possible, even with the total loss of summer sea ice, that a small number of polar bears could survive, provided there is adequate seasonal ice cover to serve as a platform for hunting opportunities, and that sea ice is present for a period of time adequate for replenishment of body fat stores and condition. However, this possibility is difficult to evaluate. As a species, polar bears have survived at least two warming periods, the Last Interglacial (140,000—115,000 years Before Present (BP)), and the Holocene Thermal maximum (ca 12,000—4,000 BP) (Dansgaard et al. 1993, p. 218; Dahl-Jensen et al. 1998, p. 268). Greenland ice cores revealed that the climate was much more variable in the past, and some of the historical shifts between the warm and cold periods were rapid, suggesting that the recent relative climate stability seen during the Holocene may be an exception (Dansgaard et al. 1993, p. 218). While the precise impacts of these warming periods on polar bears and the Arctic sea ice habitat are unknown, the ability of polar bears to adapt to alternative food sources seems extremely limited given the caloric requirements of adult polar bears and the documented effects of nutritional stress on reproductive success.

In addition to the effects of climate change on sea ice, we have also evaluated changes to habitat in the Arctic as a result of increased pressure from human activities. Increased human activities include a larger footprint from the number of people resident to the area, increased levels of oil and gas exploration and development and expanding areas of interest, and potential increases in shipping. Cumulatively, these activities may result in alteration of polar bear habitat. Any potential impact from these activities would be additive to other factors already or potentially affecting polar bears and their habitat. We acknowledge that the sum total of documented direct impacts from these activities in the past have been minimal. We also acknowledge, as discussed further under the Factor D analysis in this final rule, that national and local concerns for these activities has resulted in the development and implementation of multi-layered regulatory programs to monitor and eliminate or minimize potential effects. Regarding potential

shipping activities within the Arctic, increased future monitoring is necessary to enhance the understanding of potential effects from this activity.

Determination for Factor A

We have evaluated the best available scientific and commercial information on polar bear habitat and the current and projected effects of various factors (including climate change) on the quantity and distribution of polar bear habitat, and have determined that the polar bear is threatened throughout its entire range by ongoing and projected changes in sea ice habitat (i.e., the species is likely to become endangered throughout all of its range within the foreseeable future due to habitat loss).

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Use of polar bears for commercial, recreational, scientific, and educational purposes is generally low, with the exception of harvest. Use for nonlethal scientific purposes is highly regulated and does not pose a threat to populations. Similarly, the regulated, low-level use for educational purposes through placement of cubs or orphaned animals into zoos or public display facilities or through public viewing is not a threat to populations. Sport harvest of polar bears in Canada is discussed in the harvest section below. For purposes of population assessment, no distinction is made between harvest uses for sport or subsistence. Take associated with defense of life, scientific research, illegal take, and other forms of take are generally included in harvest management statistics, so this section also addresses all forms of take, including bear-human interactions.

Overview of Harvest

Polar bears historically have been, and continue to be, an important renewable resource for coastal communities throughout the Arctic (Lentfer 1976, p. 209; Amstrup and DeMaster 1988, p. 41; Servheen et al. 1999, p. 257, Table 14.1; Schliebe et al. 2006a, p. 72). Polar bears and polar bear hunting remain an important part of indigenous peoples' culture, and polar bear hunting is a source of pride, prestige, and accomplishment. Polar bears provide a source of meat and raw materials for handicrafts, including functional clothing such as mittens, boots (mukluks), parka ruffs, and pants (Nageak et al. 1991, p. 6).

Prior to the 1950s, most hunting was by indigenous people for subsistence purposes. Increased sport hunting in the 1950s and 1960s resulted in population declines (Prestrud and Stirling 1994, p. 113). International concern about the status of polar bears resulted in biologists from the five polar bear range nations forming the Polar Bear Specialist Group (PBSG) within the IUCN SSC (Servheen et al. 1999, p. 262). The PBSG was largely responsible for the development and ratification of the 1973 International Agreement on the Conservation of Polar Bears (1973 Polar Bear Agreement) (Prestrud and Stirling 1994, p. 114) (see detailed discussion under Factor D, ''Inadequacy of Existing Regulatory Mechanisms'' below). The 1973 Polar Bear Agreement and the actions of the member nations are credited with the recovery of polar bears following the previous period of overexploitation.

Harvest Management by Nation

Canada

Canada manages or shares management responsibility for 13 of the world's 19 polar bear populations (Kane Basin, Baffin Bay, Davis Strait, Foxe Basin, Western Hudson Bay, Southern Hudson Bay, Gulf of Boothia, Lancaster Sound, Norwegian Bay, M'Clintock Channel, Viscount Melville Sound, Northern Beaufort Sea, and Southern Beaufort Sea). Wildlife management is a shared responsibility of the Provincial and Territorial governments. The Federal government (Canadian Wildlife Service) has an ongoing research program and is involved in management of wildlife populations shared with other jurisdictions, especially ones with other nations (e.g., where a polar bear stock ranges across an international boundary). To facilitate and coordinate management of polar bears, Canada has formed the Federal Provincial Technical Committee for Polar Bear Research and Management (PBTC) and the Federal Provincial Administrative Committee for Polar Bear Research and Management (PBAC). These committees include Provincial, Territorial, and Federal representatives who meet annually to review research and management activities.

Polar bears are harvested in Canada by native residents and by sport hunters employing native guides. All human-caused mortality (i.e., hunting, defense of life, and incidental kills) is included in a total allowable harvest. Inuit people from communities in Nunavut, Northwest Territories (NWT), Manitoba, Labrador, Newfoundland, and Quebec conduct hunting. In Ontario, the Cree and the Inuit can harvest polar bears. In Nunavut and NWT, each community obtains an annual harvest quota that is based on the best available scientific information and monitored through distribution of harvest tags to local hunter groups, who work with scientists to set quotas. Native hunters may use their harvest tags to guide sport hunts. The majority of sport hunters in Canada are U.S. citizens. In 1994 the MMPA was amended to allow these hunters to import their trophies into the United States if the bears had been taken in a legal manner from sustainably managed populations.

The Canadian system places tight controls on the size and design of harvest limits and harvest reporting. Quotas are reduced in response to population declines (Aars et al. 2006, p. 11). In 2004, existing polar bear harvest practices caused concern when Nunavut identified quota increases for 8 populations, 5 of which are shared with other jurisdictions (Lunn et al. 2005, p. 3). Quota increases were largely based on indigenous knowledge (the Nunavut equivalent of traditional ecological knowledge) and the perception that some populations were increasing from historic levels. Nunavut did not coordinate these changes with adjacent jurisdictions that share management responsibility. This action resulted in an increase in the quota of allowable harvest from 398 bears in 2003–2004 to 507 bears in 2004–2005 (Lunn et al. 2005, p. 14, Table 6). Discussions between jurisdictions, designed to finalize cooperative agreements regarding the shared quotas, continue.

Greenland

The management of polar bear harvest in Greenland is through a system introduced in 1993 that allows only full-time hunters living a subsistence lifestyle to hunt polar bears. Licenses are issued annually for a small fee contingent upon reporting harvest during the prior 12 months. Until 2006, no quotas were in place, but harvest statistics were collected through Piniarneq, a local reporting program (Born and Sonne 2005, p. 137). In January 2006, a new harvest monitoring and quota system was implemented (Lønstrup 2005, p. 133). Annual quotas are determined in consideration of international agreements, biological advice, user knowledge, and consultation with the Hunting Council. However, for the Baffin Bay and Kane Basin populations, which are shared with Canada, evaluation of quota levels, harvest levels for shared populations occurring in other jurisdictions, and best available estimates of population numbers indicate that the quotas and combined jurisdictions harvest levels are not sustainable and the enforcement of harvest quotas may not be effective

(Aars et al. 2006). These populations are thought to be reduced and the trend is thought to be declining. Greenland is considering the allocation of part of the quota for sport hunting (Lønstrup 2005, p. 133).

Norway

Norway and Russia share jurisdiction over the Barents Sea population of polar bears. Management in Norway is the responsibility of the Ministry of the Environment (Wiig et al. 1995, p. 110). The commercial, subsistence, or sport hunting of polar bears in Norway is prohibited (Wiig et al. 1995, p. 110). Bears may only be killed in self-defense or protection of property, and all kills, including ''mercy'' kills, must be reported and recorded (Gjertz and Scheie 1998, p. 337).

Russia

The commercial, subsistence, or sport hunting of polar bears in Russia is prohibited. Some bears are killed in defense of life, and a small number of cubs (1 or 2 per year) have been taken in the past for zoos. Despite the 1956 ban on hunting polar bears, illegal harvest is occurring in the Chukchi Sea region and elsewhere where there is limited monitoring or enforcement (Aars et al. 2007, p. 9; Belikov et al. 2005, p. 153). The level of illegal harvest in Russian populations is unknown. There is a significant interest in reopening subsistence hunting by indigenous people. The combined ongoing illegal hunting in Russia and legal subsistence harvest in Alaska is a concern for the Chukchi Sea population, which may be in decline (USFWS 2003, p. 1). This mutual concern resulted in the United States and Russia signing the ''Agreement between the United States of America and the Russian Federation on the Conservation and Management of the Alaska-Chukotka Polar Bear Population'' (Bilateral Agreement) on October 16, 2000. On January 12, 2007, the President of the United States signed into law the ''Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006.'' This Act added Title V to the MMPA, which implements the Bilateral Agreement. On September 22, 2007, the governments of the United States and Russian Federation exchanged instruments of ratification. Full implementation of the Bilateral Agreement is intended to address overharvest, but implementation has not yet occurred (Schliebe et al. 2005, p. 75). In the United States, Presidential appointment of Commissioners necessary to implement the Bilateral Agreement is pending. Accordingly, we have not relied on implementation of the Bilateral Agreement in our assessment of the threat of overutilization of polar bears (see ''International Agreements and Oversight'' section under Factor D below).

United States

Polar bear subsistence hunting by coastal Alaska Natives has occurred for centuries (Lentfer 1976, p. 209). Polar bear hunting and the commercial sale of skins took on increasing economic importance to Alaskan Natives when whaling began in the 1850s, and a market for pelts emerged (Lentfer 1976, p. 209). Trophy hunting using aircraft began in the late 1940s. In the 1960s, State of Alaska hunting regulations became more restrictive, and in 1972 aircraft-assisted hunting was stopped altogether (Lentfer 1976, p. 209). Between 1954 and 1972, an average of 222 polar bears was harvested annually, resulting in a population decline (Amstrup et al. 1986, p. 246).

Passage of the MMPA in 1972 established a moratorium on the sport or commercial hunting of polar bears in Alaska. However, the MMPA exempts harvest, conducted in a nonwasteful manner, of polar bears by coastal dwelling Alaska Natives for subsistence and handicraft purposes. The MMPA and its implementing regulations also prohibit the commercial sale of any marine mammal parts or products except those that qualify as authentic articles of handicrafts or clothing created by Alaska Natives. The Service cooperates with the Alaska Nanuuq Commission, an Alaska Native organization that represents Native villages in North and Northwest Alaska on matters concerning the conservation and sustainable subsistence use of the polar bear, to address polar bear subsistence harvest issues. In addition, for the Southern Beaufort Sea population, hunting is regulated voluntarily and effectively through an agreement between the Inuvialuit of Canada and the Inupiat of Alaska (Brower et al. 2002, p. 371) (see ''International Agreements and Oversight'' section under Factor D below). The harvest is monitored by the Service's marking and tagging program. Illegal take or trade is monitored by the Service's law enforcement program.

The MMPA was amended in 1994 to allow for the import into the United States of sport-hunted polar bear trophies legally taken by the importer in Canada. Prior to issuing a permit for import of such trophies, the Service must have found that Canada has a monitored and enforced sport-hunting program consistent with the purposes of the 1973 Polar Bear Agreement, and that the program is based on scientifically sound quotas ensuring the maintenance of the population at a sustainable level. Six populations were approved for import of polar bear trophies (62 FR 7302, 64 FR 1529, 66 FR 50843) under regulations implementing section 104(c)(5) of the MMPA (50 CFR 18.30). However, as of the effective date of the threatened listing, authorization for the import of sport hunted polar bear trophies is no longer available under section 104(c)(5) of the MMPA.

Harvest Summary

A thorough review and evaluation of past and current harvest, including other forms of removal, for all populations has been described in the *Polar Bear Status Review* (Schliebe *et al.* 2006a, pp. 108–127). The Status Review is available on our Marine Mammal website (*http://alaska.fws.gov/fisheries/mmm/polarbear/issues.htm*). Table 2 of the Status Review provides a summary of harvest statistics from the populations and is included herein as a reference. The total harvest and other forms of removal were considered in the summary analysis.

Five populations (including four that are hunted) have no estimate of potential risk from overharvest, since adequate demographic information necessary to conduct a population viability analysis and risk assessment are not available (see Table 1 below). For one of the populations, Chukchi Sea, severe overharvest is suspected to have occurred during the past 10–15 years, and anecdotal information suggests the population is in decline (Aars et al. 2006, pp. 34–35). The Chukchi Sea, Baffin Bay, Kane Basin, and Western Hudson Bay populations may be overharvested (Aars et al. 2006, pp. 40, 44–46). In other populations, including East Greenland and Davis Strait, substantial harvest occurs annually in the absence of scientifically derived population estimates (Aars et al. 2006, pp. 39, 46). Considerable debate has occurred regarding the recent changes in population estimates based on indigenous or local knowledge (Aars et al. 2006, p. 57) and subsequent quota increases for some populations in Nunavut (Lunn et al. 2005, p. 20). The PBSG (Aars et al. 2006, p. 57), by resolution, recommended that ''polar bear harvest can be increased on the basis of local and traditional knowledge only if supported by scientifically collected information.'' Increased polar bear observations along the coast may be attributed to changes in bear distribution due to lack of suitable ice habitat rather than to increased

population size (Stirling and Parkinson 2006, p. 266). Additional data are needed to reconcile these differing interpretations.

As discussed in Factor A, Amstrup et al. (2007, p.30) used a first-generation BM model to forecast the range-wide status of polar bears during the 21st century, factoring in a number of stressors, including intentional take or harvest. The authors conducted a sensitivity analysis to determine the importance and influence of the stressors on the population forecast. Their analysis indicated that intentional take was the 4th ranked .potential stressor, and could exacerbate the effects of habitat loss in the future. Because of the preliminary nature of the BM results, we are more confident in the general direction and magnitude of the projected outcomes rather than the actual numerical probabilities associated with each outcome. Nonetheless, the relatively high ranking for this stressor indicates that effective management of hunting and evaluation of sustainable harvest levels will continue to be important to minimize effects for populations experiencing increased stress.

Table 2. Polar Bear Harvest Statistics, adapted from the PBTC status table

	Aerial Survey/M-R Analysis		5 yr mean kill		3 yr mean kill		1 yr mean kill					
Population	Number (year of estimate)	±2 SE	Actual removals	Likelihood of decline (next 10 years)[a]	Actual removals	Likelihood of decline (next 10 years)[a]	Actual removals	Likelihood of decline (next 10 years)[a]	Identified Permitted Harvest[b]	Estimated Maximum Sustainable Yield[c]	Observed or Predicted Trend[d]	Status[e]
Southern Beaufort Sea	1500 (2006)	1000 - 2000	57 8	No Estimate	59 3	No Estimate	44	No Estimate	81	84	Decline	Reduced
Northern Beaufort Sea	980 (2007)	825-1135	36 2	No Estimate	38	No Estimate	36	No Estimate	65	56	Stable	Not reduced
Viscount Melville	161 (1992)	121 - 201	4 4	5 6%	4 7	6 5%	5	6 8%	7	10	Increase	Severely reduced
Norwegian Bay	190 (1998)	102 - 278	2 6	70 5%	2 7	73 1%	4	84 4%	4	9	Decline	Not reduced
Lancaster Sound	2541 (1998)	1759 - 3323	74	67 0%	79	74 0%	87	80 6%	85	119	Stable	Not reduced
M'Clintock Channel	284 (2000)	166 - 402	3	2 5%	1	1 0%	2	1 8%	3	13	Increase	Severely reduced
Gulf of Boothia	1528 (2000)	953 - 2093	45 8	3 3%	48 3	4 3%	66	12 9%	74	72	Increase	Not reduced
Foxe Basin	2197 (1994)	1677 - 2717	97 2	14 0%	96	12 1%	97	13 1%	106 + Quebec	108	Stable	Not reduced
Western Hudson Bay	935 (2004)	791 - 1079	44 8	99 9%	46 3	99 9%	43	99.9%	62	44	Decline	Reduced
Southern Hudson Bay	681 (2007)	784 - 1216	36 6	0 1%	36.7	0 1%	27	0 1%	25 + Ontario, Quebec	47	Stable	Not reduced
Kane Basin	164 (1998)	94 -234	10 8	99 9%	10 3	99 9%	11	99 9%	5 + Greenland	8	Decline	Reduced
Baffin Bay	2074 (1988)	1544 - 2604	216 8	99 9%	251 7	99 9%	252	99 9%	105 + Greenland	72	Decline	Reduced
Davis Strait			64 8	12 9%	67.3	17 1%	70	18 9%	46 + Greenland, Quebec,	77	Stable	Not reduced
East Greenland	Unknown		70	No Estimate					50	No Estimate	Data Deficient	Data Deficient
Barents Sea	3000 (2004)										Data Deficient	Data Deficient
Kara Sea											Data Deficient	Data Deficient
Laptev Sea	800-1200 (1993)										Data Deficient	Data Deficient
Chukchi Sea	2000 (1993)		43- AK Unk # in Chukotka	No Estimate	Unknown	No Estimate	43++	No Estimate	Unknown	Unknown	Data Deficient	Data Deficient

[a] Presented is the proportion of simulation runs using the RISKMAN model and vital rates presented in natural survival and recruitment tables resulting in any decline after 10 years of simulation, assuming minimum 2M 1F in the harvest. One-minus this value represents the proportion of simulations resulting in population increase after 10 years

[b] The identified permitted harvest includes the maximum harvest that is presently allowed by jurisdictions with an identified quota.

[c] The estimated maximum sustainable yield (MSY) is based on a meta-analysis of the 1990s that assumed mean reproduction and survival for polar bears across their range in Canada (given information available at the time) MSY = N * 0 0156/Pr[F], where N = total population number, 0 0156 is a constant derived from a meta-analysis to estimate survival and recruitment rates for Canadian polar bears,

[d] Observed or predicted status as suggested by PVA results and, where vital rates are not sufficient for analysis, anectodatal information

[e] Current status relative to probable historic numbers

Bear-Human Interactions

Polar bears come into conflict with humans when they scavenge for food at sites of human habitation, and also because they occasionally prey or attempt to prey upon humans (Stirling 1988, p. 182). ''Problem bears,'' the bears most associated with human conflicts, are most often subadult bears that are inexperienced hunters and, therefore, that scavenge more frequently than adult bears (Stirling 1988, p. 182). Following subadults, females with cubs are most likely to interact with humans, because females with cubs are likely to be thinner and hungrier than single adult bears, and starving bears are more likely to interact with humans in their pursuit of food (Stirling 1988, p. 182). For example, in Churchill, Manitoba, Canada, an area of high polar bear use, the occurrence of females with cubs feeding at the town's garbage dump in

the fall increased during years when bears came ashore in poorer condition (Stirling 1988, p. 182). Other factors that may influence bear-human encounters include increased land use activities, increased human populations in areas of high polar bear activity, increased polar bear concentrations on land, and earlier polar bear departure from ice habitat to terrestrial habitats.

Increased bear-human interactions and defense-of-life kills may occur under predicted climate change scenarios where more bears are on land and in contact with human settlements (Derocher et al. 2004, p. 169). Direct interactions between people and bears in Alaska have increased markedly in recent years, and this trend is expected to continue (Amstrup 2000, p. 153). Since the late 1990s, the timing of complete ice formation in the fall has occurred later in November or early December than it formerly did (September and October), resulting in an increased amount of time polar bears spend on land. This consequently increases the probability of bear-human interactions occurring in coastal villages. Adaptive management programs that focus on the development of community or ecotourism based polar bear-human interaction plans (that include polar bear patrols, deterrent and hazing programs, efforts to manage and minimize sources of attraction, and education about polar bear behavior and ecology) are ongoing in a number of Alaska North Slope communities and should be expanded or further developed for other communities in the future. In four Canadian populations-Western Hudson Bay, Foxe Basin, Baffin Bay, and Davis Strait-Inuit hunters reported seeing more bears in recent years around settlements, hunting camps, and sometimes locations where they had not (or only rarely) been seen before, resulting in an increase in threats to human life and damage to property (Stirling and Parkinson 2006, p. 262).

As discussed in Factor A, Amstrup et al. (2007, p.30) used a first-generation BM model to forecast the range-wide status of polar bears during the 21st century, factoring in a number of stressors, including bear-human interactions. The authors conducted a sensitivity analysis to determine the importance and influence of the stressors on the population forecast. Their analysis indicated that bear-human interactions ranked 7th of potential stressors. Because of the preliminary nature of the BM results, we are more confident in the general direction and magnitude of the projected outcomes rather than the actual numerical probabilities associated with each outcome. Although this factor's singular contribution to a declining population trend was relatively small, it could operate with other mortality factors (such as harvest) in the future to exacerbate the effects of habitat loss. Thus, bear-human interactions should be monitored, and may require additional management actions in the future.

Conclusion for Factor B

Rationale

Polar bears are harvested in Canada, Alaska, Greenland, and Russia. Active harvest management or reporting programs are in place for populations in Canada, Greenland, and Alaska. Principles of sustainable yield are instituted through harvest quotas or guidelines for a number of Canadian populations. Other forms of removal, such as defense-of-life take are considered through management actions by the responsible jurisdictions. Hunting or killing polar bears is illegal in Russia, although an unknown level of harvest occurs, and harvest impacts on Russian populations are generally unknown. While overharvest is occurring for some populations, laws and regulations for most management programs have been instituted and are flexible enough to allow adjustments in order to ensure that harvests are sustainable. These actions are largely viewed as having succeeded in reversing widespread overharvests by many jurisdictions that resulted in population depletion during the period prior to signing of the multilateral 1973 Polar Bear Agreement (Prestrud and Stirling 1994) see additional discussion under Factor D below). For the internationally-shared populations in the Chukchi Sea, Baffin Bay, Kane Basin, and Davis Strait, conservation agreements have been developed (United States-Russia) or are in development (Canada-Greenland), but in making our finding we have not relied on agreements that have not been implemented.

We realize that management agencies will be challenged in the future with managing populations that are declining and under stress from loss of sea ice. We also note that the sensitivity anlaysis conducted by Amstrup et al. (2007, pp. 35, 58) suggests that, for some populations, the effects of habitat and environmental changes will far outweigh the effects of harvest, and consequently, that harvest regulation may have little effect on the ultimate population outcome. For other populations affected to a lesser degree by environmental changes and habitat impacts, effective implementation of existing regulatory mechanisms is necessary to address issues related to overutilization.

Determination for Factor B

We have evaluated the best available scientific and commercial information on the utilization of polar bears for commercial, recreational, scientific, or educational purposes. Harvest, increased bear-human interaction levels, defense-of-life take, illegal take, and take associated with scientific research live-capture programs are occurring for several populations. We have determined that harvest is likely exacerbating the effects of habitat loss in several populations. In addition, polar bear mortality from harvest and negative bear-human interactions may in the future approach unsustainable levels for several populations, especially those experiencing nutritional stress or declining population numbers as a consequence of habitat change. The PBSG (Aars et al. 2006, p. 57), through resolution, urged that a precautionary approach be instituted when setting harvest limits in a warming Arctic environment. Continued efforts are necessary to ensure that harvest or other forms of removal do not exceed sustainable levels. We find, however, that overutilization does not currently threaten the polar bear throughout all or a significant portion of its range.

Factor C. Disease and Predation

Disease

The occurrence of diseases and parasites in polar bears is rare compared to other bears, with the exception of the presence of *Trichinella* larvae, *Trichinella* has been documented in polar bears throughout their range, and, although infestations can be quite high, they are normally not fatal (Rausch 1970, p. 360; Dick and Belosevic 1978, p. 1,143; Larsen and Kjos-Hanssen 1983, p. 95; Taylor et al. 1985, p. 303; Forbes 2000, p. 321). Although rabies is commonly found in Arctic foxes, there has been only one documented case in polar bears (Taylor et al. 1991, p. 337). Morbillivirus has been documented in polar bears from Alaska and Russia (Garner et al. 2000, p. 477; C. Kirk, University of Alaska, Fairbanks, pers. comm. 2006). Antibodies to the protozoan parasite, *Toxoplasma gondii,* were found in Alaskan polar bears; whether this is a health concern for polar bears is unknown (C. Kirk, University of Alaska, Fairbanks, pers. comm. 2006).

Whether polar bears are more susceptible to new pathogens due to their lack of previous exposure to diseases and parasites is also unknown. Many different pathogens and viruses have been found in seal species that are polar bear prey (Duignan et al. 1997, p. 7; Measures and Olson 1999, p. 779; Dubey et al. 2003, p. 278; Hughes-Hanks et al. 2005, p. 1,226), so the potential exists for transmission of these diseases to polar bears. . As polar bears become more nutritionally stressed, they may eat more of the intestines and internal organs of their prey than they presently do, thus increasing potential exposure to parasites and viruses (Derocher et al. 2004, p. 170; Amstrup et al. 2006b, p. 3). In addition, new pathogens may expand their range northward from more southerly areas under projected climate change scenarios (Harvell et al. 2002, p. 60). A warming climate has been associated with increases in pathogens in other marine organisms (Kuiken et al. 2006, p. 322).

Amstrup et al. (2007, p. 87) considered a host of potential stressors, including diseases and parasites, in their status evaluation of polar bears. The influence of parasites and disease agents evaluated in the sensitivity analysis ranked 8th, and made very minor contributions to the projected population status. The authors note, however, that the potential effect of disease and parasites on polar bears would likely increase if the climate continues to warm (Amstrup et al. 2007, p. 21). Parasitic agents that have developmental stages outside the bodies of warm-blooded hosts (e.g., nematodes) will likely benefit from the warmer and wetter weather projected for the Arctic (Macdonald et al. 2005). Significant impacts from such parasites on some Arctic ungulates have been noted. Improved conditions for such parasites already have had significant impacts on some terrestrial mammals (Kutz et al. 2001, p. 771; Kutz et al. 2004). Bacterial parasites also are likely to benefit from a warmer and wetter Arctic. Although increases in disease and parasite agents have not yet been reported in polar bears, they are anticipated, if temperatures continue to warm as projected. Amstrup et al. (2007, p. 31) also indicated that diseases and parasites could operate to exacerbate the effects of habitat loss. Continued monitoring of pathogens and parasites in polar bears is appropriate.

Intraspecific Predation

Intraspecific killing has been reported among all North American bear species (Derocher and Wiig 1999, p. 307; Amstrup et al. 2006b, p. 1). Reasons for intraspecific predation in bear species are poorly understood but thought to include nutrition, and enhanced breeding opportunities in the case of predation on cubs. Although occurrences of infanticide by male polar bears have been well documented (Hansson and Thomassen 1983, p. 248; Larsen 1985, p. 325; Taylor et al. 1985, p. 304; Derocher and Wiig 1999, p. 307), this activity accounts for a small percentage of the cub mortality.

Cannibalism has also been documented in polar bears (Derocher and Wiig 1999, p. 307; Amstrup et al. 2006b, p. 1). Amstrup et al. (2006b, p. 1) observed three instances of cannibalism in the southern Beaufort Sea during the spring of 2004; two involved adult females (one an unusual mortality of a female in a den) and third involved a yearling. This is notable because, throughout a combined 58 years of research, there are no similar observations recorded. Active stalking or hunting preceded the attacks, and all three of the killed bears were wholly or partly consumed. Adult males were believed to be the predator in both attacks. Amstrup et al. (2006b, p. 43) indicated that in general a greater proportion of polar bears in the area where the predation events occurred were in poorer physical condition compared to bears captured in other areas. The authors hypothesized that large adult males may be the first to show effects of nutritional stress which is expected to occur first in more southerly areas, due to significant ice retreat (Skinner et al. 1988, p. 3; Comiso and Parkinson 2004, p. 43; Stroeve et al. 2005, p. 1) . Adult males may be the first to show the effects of nutritional stress because they feed little during the spring mating season and enter the summer in poorer condition than other sex/age classes. Derocher and Wiig (1999, p. 308) documented a similar intraspecific killing and consumption of another polar bear in Svalbard, Norway, which was attributed to relatively high population densities and food shortages. Taylor et al. (1985, p. 304) documented that a malnourished female killed and consumed her own cubs, and Lunn and Stenhouse (1985, p. 1,516) found an emaciated male consuming an adult female polar bear. The potential importance of cannibalism and infanticide for polar bear population regulation is unknown. However, given our current knowledge of disease and predation, we do not believe that these factors are currently having population-level effects.

Another form of intraspecific stress is cross-breeding, or hybridization. The first documented instance of cross-breeding in the wild was reported in the spring of 2006. Rhymer and Simberloff (1996, pp. 83–84) express concerns for cross-breeding in the wild, noting that habitat modification contributing to cross breeding may cause the break-down of reproductive isolation between native species, leading to mixing of gene pools and potential loss of genotypically distinct populations. The authors generally viewed hybridization through introgression (defined as gene flow between populations through hybridization when hybrids cross back to one of the parental populations) as a threat to plant and animal taxa, particularly for morphologically well-defined and evolutionarily isolated taxa. Cross-breeding in the wild is thought to be extremely rare, but cross-breeding may pose additional concerns for population and species viability in the future should the rate of occurrence increase.

Conclusion for Factor C

Rationale

Disease pathogen titers are present in polar bears; however, no epizootic outbreaks have been detected. In addition, forms of intraspecific stress and cannibalism are known to be present with bear species and within polar bears. For polar bears, there is no indication that these stressors have operated to influence population levels in the past. Cannibalism is an indication of intraspecific stress, however we do not believe it has resulted in population level effects.

Determination for Factor C

We have evaluated the best available scientific information on disease and predation, and have determined that disease and predation (including intraspecific predation) do not threaten the species throughout all or any significant portion of its range. Potential for disease outbreaks, an increased possibility of pathogen exposure from changed diet or the occurrence of new pathogens that have moved northward with a warming environment, and increased mortality from cannibalism all warrant continued monitoring and may become more significant threat factors in the future for polar bear populations experiencing nutritional stress or declining population numbers.

Factor D. Inadequacy of Existing Regulatory Mechanisms

Regulatory mechanisms directed specifically at managing many of the threats to polar bears, such as overharvest or disturbance, exist in all of the countries states where the species

occurs, as well as between (bilateral and multilateral) range countries.

IUCN/SSC Polar Bear Specialist Group

The Polar Bear Specialist Group (PBSG) is not a regulatory authority nor do they provide any regulatory mechanisms. However, the PBSG contributed significantly to the negotiation and development of the International Agreement on the Conservation of Polar Bears (1973 Polar Bear Agreement), and has been instrumental in monitoring the worldwide status of polar bear populations. Therefore, we believe a discussion of the PBSG is relevant to a current understanding of the status of polar bears worldwide. We did not rely on the PBSG or any actions of the PBSG for determining the status of the polar bear under the Act.

The PBSG operates under the IUCN Species Survival Commission (SSC), and was formed in 1968. The PBSG meets periodically at 3-to 5-year intervals in compliance with Article VII of the 1973 Polar Bear Agreement; said article instructs member parties to conduct national research programs on polar bears, particularly research relating to the conservation and management of the species and, as appropriate, coordinate such research with the research carried out by other parties, consult with other parties on management of migrating polar bear populations, and exchange information on research and management programs, research results, and data on bears taken. The PBSG first evaluated the status of all polar bear populations in 1980. In 1993, 1997, and 2001, the PBSG conducted circumpolar status assessments of polar bear populations, and the results of those assessments were published as part of the proceedings of the relevant PBSG meeting. The PBSG conducted its fifth polar bear status assessment in June 2005.

The PBSG also evaluates the status of polar bears under the IUCN Red List criteria. Previously, polar bears were classified under the IUCN Red List program as: ''Less rare but believed to be threatened/requires watching'' (1965); ''Vulnerable'' (1982, 1986, 1988, 1990, 1994); and ''Lower Risk/Conservation Dependent'' (1996). During the 2005 PBSG working group meeting, the PBSG re-evaluated the status of polar bears and unanimously agreed that a status designation of ''Vulnerable'' was warranted.

International Agreements and Oversight

International Agreement on the Conservation of Polar Bears

Canada, Denmark (on behalf of Greenland), Norway, the Russian Federation, and the United States are parties to the Agreement on the Conservation of Polar Bears (1973 Polar Bear Agreement) signed in 1973; by 1976, the Agreement was ratified by all parties. The 1973 Polar Bear Agreement requires the parties to take appropriate action to protect the ecosystem of which polar bears are a part, with special attention to habitat components such as denning and feeding sites and migration patterns, and to manage polar bear populations in accordance with sound conservation practices based on the best available scientific data. The 1973 Polar Bear Agreement relies on the efforts of each party to implement conservation programs and does not preclude a party from establishing additional controls (Lentfer 1974, p. 1).

The 1973 Polar Bear Agreement is viewed as a success in that polar bear populations recovered from excessive harvests and severe population reductions in many areas (Prestrud and Stirling 1994). At the same time, implementation of the terms of the 1973 Polar Bear Agreement varies across the member parties. Efforts are needed to improve current harvest management practices, such as restricting harvest of females and cubs, establishing sustainable harvest limits, and controlling illegal harvests (Derocher et al. 1998, pp. 47–48). In addition, a lack of protection of key habitats by member parties, with few notable exceptions for some denning areas, is a weakness (Prestrud and Stirling 1994, p. 118).

Inupiat-Inuvialuit Agreement for the Management of Polar Bears of the Southern Beaufort Sea

In January 1988, the Inuvialuit of Canada and the Inupiat of Alaska, groups that both harvest polar bears for cultural and subsistence purposes, signed a management agreement for polar bears of the southern Beaufort Sea. This agreement, based on the understanding that the two groups harvested animals from a single population shared across the international boundary, provides a joint responsibility for conservation and harvest practices (Treseder and Carpenter 1989, p. 4; Nageak et al. 1991, p. 341). Provisions of the agreement include: annual quotas (which may include problem kills); hunting seasons; protection of bears in dens or while constructing dens, and protection of females accompanied by cubs and yearlings; collection of specimens from killed bears to facilitate monitoring of the sex and age composition of the harvest; agreement to meet annually to exchange information on research and management and to set priorities; agreement on quotas for the coming year; and prohibition of hunting with aircraft or large motorized vessels and of trade in products taken in violation of the agreement. In Canada, recommendations and decisions from the Commissioners are then implemented through Community Polar Bear Management Agreements, Inuvialuit Settlement Region Community Bylaws, and NWT Big Game Regulations. In the United States, this agreement is implemented at the local level. Adherence to the agreement's terms in Alaska is voluntary, and levels of compliance may vary. There are no Federal, State, or local regulations that limit the number or type (male, female, cub) of polar bear that may be taken. Brower et al. (2002) analyzed the effectiveness of the Inupiat-Inuvialuit Agreement, and found that it had been successful in maintaining the total harvest and the proportion of females in the harvest within sustainable levels. The authors noted the need to improve harvest monitoring in Alaska and increase awareness of the need to prevent overharvest of females for both countries.

Agreement between the United States of America and the Russian Federation on the Conservation and Management of the Alaska-Chukotka Polar Bear Population

On October 16, 2000, the United States and the Russian Federation signed a bilateral agreement for the conservation and management of polar bear populations shared between the two countries. The Agreement between the United States of America and the Russian Federation on the Conservation and Management of the Alaska-Chukotka Polar Bear Population (Bilateral Agreement) expands upon the progress made through the multilateral 1973 Polar Bear Agreement by implementing a unified conservation program for this shared population. The Bilateral Agreement reiterates requirements of the 1973 Polar Bear Agreement and includes restrictions on harvesting denning bears, females with cubs or cubs less than 1 year old, and prohibitions on the use of aircraft, large motorized vessels, and snares or poison for hunting polar bears. The Bilateral Agreement does not allow hunting for commercial purposes or commercial

uses of polar bears or their parts. It also commits the parties to the conservation of ecosystems and important habitats, with a focus on conserving polar bear habitats such as feeding, congregating, and denning areas. The Russian government indicates that it is prepared to implement the Bilateral Agreement. On December 9, 2006, the Congress of the United States passed the ''United States—Russia Polar Bear Conservation and Management Act of 2006.'' This Act provides the necessary authority to regulate and manage the harvest of polar bears from the Chukchi Sea population, an essential conservation measure. Ratification documents have been exchanged between the countries, but the United States has yet to designate representatives to the Commission, and we did not rely on this treaty in our assessment as it is not formally implemented. Implementation of the Act will provide numerous conservation benefits for this population, however it does not provide authority or mechanisms to address ongoing loss of sea ice.

Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is a treaty aimed at protecting species at risk from international trade. The CITES regulates international trade in animals and plants by listing species in one of its three appendices. The level of monitoring and regulation to which an animal or plant species is subject depends on the appendix in which the species is listed. Appendix I includes species threatened with extinction that are or may be affected by trade; trade of Appendix I species is only allowed in exceptional circumstances. Appendix II includes species not necessarily now threatened with extinction, but for which trade must be regulated in order to avoid utilization incompatible with their survival. Appendix III includes species that are subject to regulation in at least one country, and for which that country has asked other CITES Party countries for assistance in controlling and monitoring international trade in that species.

Polar bears were listed in Appendix II of CITES on July 7, 1975. As such, CITES parties must determine, among other things, that any polar bear, polar bear part, or product made from polar bear was legally obtained and that the export will not be detrimental to the survival of the species, prior to issuing a permit authorizing the export of the animal, part, or product. The CITES does not itself regulate take or domestic trade of polar bears; however, through its process of monitoring trade in wildlife species and requisite findings prior to allowing international movement of listed species and monitoring programs, the CITES is effective in ensuring that the international movement of listed species does not contribute to the detriment of wildlife populations. All polar bear range states are members to the CITES and have in place the CITES-required Scientific and Management Authorities. The Service therefore has determined that the CITES is effective in regulating the international trade in polar bear, or polar bear parts or products, and provides conservation measures to minimize those potential threats to the species.

Domestic Regulatory Mechanisms

United States

Marine Mammal Protection Act of 1972, as amended

The Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 et seq.) (MMPA) was enacted to protect and conserve marine mammals so that they continue to be significant functioning elements of the ecosystem of which they are a part. The MMPA set forth a national policy to prevent marine mammal species or population stocks from diminishing to the point where they are no longer a significant functioning element of the ecosystems.

The MMPA places an emphasis on habitat and ecosystem protection. The habitat and ecosystem goals set forth in the MMPA include: (1) Management of marine mammals (including of polar bears) to ensure they do not cease to be a significant element of the ecosystem to which they are a part; (2) protection of essential habitats, including rookeries, mating grounds, and areas of similar significance ''from the adverse effects of man's action''; (3) recognition that marine mammals ''affect the balance of marine ecosystems in a manner that is important to other animals and animal products,'' and that marine mammals and their habitats should therefore be protected and conserved; and (4) direction that the primary objective of marine mammal management is to maintain ''the health and stability of the marine ecosystem.'' Congressional intent to protect marine mammal habitat is also reflected in the definitions section of the MMPA. The terms ''conservation'' and ''management'' of marine mammals are specifically defined to include habitat acquisition and improvement.

The MMPA established a general moratorium on the taking and importing of marine mammals and a number of prohibitions, which are subject to a number of exceptions. Some of these exceptions include take for scientific purposes, for purposes of public display, for subsistence use by Alaska Natives, and unintentional incidental take coincident with conducting otherwise lawful activities. The Service, prior to issuing a permit authorizing the taking or importing of a polar bear, or a polar bear part or product, for scientific or public display purposes submits each request to a rigorous review, including an opportunity for public comment and consultation with the U.S. Marine Mammal Commision (MMC), as described at 50 CFR 18.31. In addition, in 1994, Congress amended the MMPA to allow for the import of polar bear trophies taken in Canada for personal use providing certain requirements are met. Import permits may only be issued to hunters that are citizens of the United States for trophies they have legally taken from those Canadian polar bear populations the Service has approved as meeting the MMPA requirements, as described at 50 CFR 18.30. The Service has determined that there is sufficient rigor under the regulations at 50 CFR 18.30 and 18.31 to ensure that any activities so authorized are consistent with the conservation of this species and are not a threat to the species.

Take is defined in the MMPA to include the ''harassment'' of marine mammals. ''Harassment'' includes any act of pursuit, torment, or annoyance that ''has the potential to injure a marine mammal or marine mammal stock in the wild'' (Level A harassment), or ''has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering'' (Level B harassment).

The Secretaries of Commerce and of the Interior have primary responsibility for implementing the MMPA. The Department of Commerce, through the National Oceanic and Atmospheric Administration (NOAA), has authority with respect to whales, porpoises, seals, and sea lions. The remaining marine mammals, including polar bears, walruses, sea otters, dugongs, and manatees are managed by the Department of the Interior through the U.S. Fish and Wildlife Service. Both agencies are ''* * * responsible for the promulgation of regulations, the issuance of permits, the conduct of scientific research, and enforcement as

necessary to carry out the purposes of [the MMPA].''

Citizens of the United States who engage in a specified activity other than commercial fishing (which is specifically and separately addressed under the MMPA) within a specified geographical region may petition the Secretary of the Interior to authorize the incidental, but not intentional, taking of small numbers of marine mammals within that region for a period of not more than five consecutive years (16 U.S.C. 1371(a)(5)(A)). The Secretary ''shall allow'' the incidental taking if the Secretary finds that ''the total of such taking during each five-year (or less) period concerned will have no more than a negligible impact on such species or stock and will not have an unmitigable adverse impact on the availability of such species or stock for taking for subsistence uses.'' If the Secretary makes the required findings, the Secretary also prescribes regulations that specify (1) permissible methods of taking, (2) means of affecting the least practicable adverse impact on the species, their habitat, and their availability for subsistence uses, and (3) requirements for monitoring and reporting. The regulatory process does not authorize the activities themselves, but authorizes the incidental take of the marine mammals in conjunction with otherwise legal activities.

Similar to promulgation of incidental take regulations, the MMPA also established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals where the take will be limited to harassment (16 U.S.C. 1371(a)(5)(D)). These authorizations are limited to one year and as with incidental take regulations, the Secretary must find that the total of such taking during the period will have no more than a negligible impact on such species or stock and will not have an unmitigable adverse impact on the availability of such species or stock for taking for subsistence uses. The Service refers to these authorizations as Incidental Harassment Authorizations.

Examples and descriptions of how the Service has analyzed the effects of oil and gas activities and applied the general provisions of the MMPA described above to polar bear conservation programs in the Beaufort and Chukchi Seas are decribed in the *Range Wide Status Review of the Polar Bear* (*Ursus maritimus*) (Schliebe et al. 2006a). These regulations include an evaluation of the cumulative effects of oil and gas industry activities on polar bears from noise, physical obstructions, human encounters, and oil spills. The likelihood of an oil spill occurring and the risk to polar bears is modeled quantitatively and factored into the evaluation. The results of previous industry monitoring programs, and the effectiveness of past detection and deterrent programs that have a beneficial record of protecting polar bears, as well as providing for the safety of oil field workers, are also considered. Based on the low likelihood of an oil spill occurring and the effectiveness of industry mitigation measures within the Beaufort Sea region, the Service has found that oil and gas industry activities have not affected the rates of recruitment or survival for the polar bear populations over the period of the regulations.

General operating conditions in specific authorizations include the following: (1) Protection of pregnant polar bears during denning activities (den selection, birthing, and maturation of cubs) in known and confirmed denning areas; (2) restrictions on industrial activities, areas, time of year; and (3) development of a site-specific plan of operation and a site-specific polar bear interaction plan. Additional requirements may include: pre-activity surveys (e.g., aerial surveys, infra-red thermal aerial surveys, or polar bear scent-trained dogs) to determine the presence or absence of dens or denning activity and, in known denning areas, enhanced monitoring or flight restrictions, such as minimum flight elevations. These and other safeguards and coordination with industry have served to minimize industry effects on polar bears.

Outer Continental Shelf Lands Act

The Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) (OCSLA) established Federal jurisdiction over submerged lands on the Outer Continental Shelf (OCS) seaward of the State boundaries (3-mile limit) in order to expedite exploration and development of oil/gas resources on the OCS in a manner that minimizes impact to the living natural resources within the OCS. Implementation of OCSLA is delegated to the Minerals Management Service (MMS) of the Department of the Interior. The OCS projects that could adversely impact the Coastal Zone are subject to Federal consistency requirements under terms of the Coastal Zone Management Act, as noted below. The OCSLA also mandates that orderly development of OCS energy resources be balanced with protection of human, marine, and coastal environments. The OCSLA does not itself regulate the take of polar bears, although through consistency determinations it helps to ensure that OCS projects do not adversely impact polar bears or their habitats.

Oil Pollution Act of 1990

The Oil Pollution Act of 1990 (33 U.S.C. 2701) established new requirements and extensively amended the Federal Water Pollution Control Act (33 U.S.C. 1301 et. seq.) to provide enhanced capabilities for oil spill response and natural resource damage assessment by the Service. It requires us to consult on developing a fish and wildlife response plan for the National Contingency Plan, input to Area Contingency Plans, review of Facility and Tank Vessel Contingency Plans, and to conduct damage assessments associated with oil spills.

Coastal Zone Management Act

The Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.) (CZMA) was enacted to ''preserve, protect, develop, and where possible, to restore or enhance the resources of the Nation's coastal zone.'' The CZMA provides for the submission of a State program subject to Federal approval. The CZMA requires that Federal actions be conducted in a manner consistent with the State's CZM plan to the maximum extent practicable. Federal agencies planning or authorizing an activity that affects any land or water use or natural resource of the coastal zone must provide a consistency determination to the appropriate State agency. The CZMA applies to polar bear habitats of northern and western Alaska. The North Slope Borough and Alaska Coastal Management Programs assist in protection of polar bear habitat through the project review process. The CZMA does not itself regulate the take of polar bears, and, overall, is not determined to be effective at this time in addressing the threats identified in the five factor analysis.

Alaska National Interest Lands Conservation Act

The Alaska National Interest Lands Conservation Act of 1980 (16 U.S.C. 3101 et seq.) (ANILCA) created or expanded National Parks and National Wildlife Refuges in Alaska, including the expansion of the Arctic National Wildlife Refuge (NWR). One of the establishing purposes of the Arctic NWR is to conserve polar bears. Section 1003 of ANILCA prohibits production of oil and gas in the Arctic NWR, and no leasing or other development leading to production of oil and gas may take place unless authorized by an Act of Congress. Most of the Arctic NWR is a federally

designated Wilderness, but the coastal plain of Arctic NWR, which provides important polar bear denning habitat, does not have Wilderness status. The ANILCA does not itself regulate the take of polar bears, although through its designations it has provided recognition of, and various levels of protection for, polar bear habitat. In the case of polar bear habitat, the Bureau of Land Management (BLM) is responsible for vast land areas on the North Slope, including the National Petroleum Reserve, Alaska (NPRA). Habitat suitable for polar bear denning and den sites have been identified within NPRA. The BLM considers fish and wildlife values under its multiple use mission in evaluating land use authorizations and prospective oil and gas leasing actions. Provisions of the MMPA regarding the incidental take of polar bears on land areas and waters within the jurisdiction of the United States continue to apply to activities conducted by the oil and gas industry on BLM lands.

Marine Protection, Research and Sanctuaries Act

The Marine Protection, Research and Sanctuaries Act (33 U.S.C. 1401 et seq.) (MPRSA) was enacted in part to ''prevent or strictly limit the dumping into ocean waters of any material that would adversely affect human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities.'' The MPRSA does not itself regulate the take of polar bears. There are no designated marine sanctuaries within the range of the polar bear.

Canada

Canada's constitutional arrangement specifies that the Provinces and Territories have the authority to manage terrestrial wildlife, including the polar bear, which is not defined as a marine mammal in Canada. The Canadian Federal Government is responsible for CITES-related programs and provides both technical (long-term demographic, ecosystem, and inventory research) and administrative (Federal-Provincial Polar Bear Technical Committee (PBTC), Federal-Provincial Polar Bear Administrative Committee (PBAC), and the National Database) support to the Provinces and Territories. The Provinces and Territories have the ultimate authority for management, although in several areas, the decision-making process is shared with aboriginal groups as part of the settlement of land claims. Regulated hunting by aboriginal people is permissible under Provincial and Territorial statutes (Derocher et al. 1998, p. 32) as described in Factor B.

In Manitoba, most denning areas have been protected by inclusion within the boundaries of Wapusk National Park. In Ontario, some denning habitat and coastal summer sanctuary habitat are included in Polar Bear Provincial Park. Some polar bear habitat is included in the National Parks and National Park Reserves and territorial parks in the Northwest Territories, Nunavut, and Yukon Territory (e.g., Herschel Island). While these parks and preserves provide some protection for terrestrial habitat, subsistence hunting activities are allowed in these areas. Additional habitat protection measures in Manitoba include restrictions on harassment and approaching dens and denning bears, and a land use permit review that considers potential impacts of land use activities on wildlife (Derocher et al. 1998, p. 35). The measures adopted by the Government of Manitoba have been effective on a site-specific basis. In addition, the Government of Manitoba has recently listed the polar bear as a threatened species in that province; however, we have no information on whether this designation provides any additional regulatory protection for the species.

Species at Risk Act

Canada's Species at Risk Act (SARA) became law on December 12, 2002, and went into effect on June 1, 2004 (Walton 2004, p. M1–17). Prior to SARA, Canada's oversight of species at risk was conducted through the Committee on the Status of Endangered Wildlife in Canada (COSEWIC) which continues to function under SARA and through the Ministry of Environment. COSEWIC evaluates species status and provides recommendations to the Minister of the Environment, who makes final listing decisions and identifies species-specific management actions. The SARA provides a number of protections for wildlife species placed on the List of Wildlife Species at Risk, or ''Schedule 1'' (SARA Registry 2005). The listing criteria used by COSEWIC are based on the 2001 IUCN Red List assessment criteria (Appendix 3). Currently, under SARA the polar bear is designated as a Schedule 3 species, ''Species of Special Concern,'' awaiting re-assessment and public consultation for possible up-listing to Schedule 1 (Environment Canada 2005). A Schedule 3 listing under SARA does not include protection measures, whereas a Schedule 1 listing under SARA may include protection measures. We did not rely on this potential in our analysis as the action has not yet occurred.

Intra-jurisdiction Polar Bear Agreements Within Canada

Polar bears occur in the Northwest Territories (NWT), Nunavut, Yukon Territory, and in the Provinces of Manitoba, Ontario, Quebec, Newfoundland, and Labrador (see Figure 1 above). All 13 Canadian polar bear populations lie within or are shared with the NWT or Nunavut. The NWT and Nunavut geographical boundaries include all Canadian lands and marine environment north of the 60th parallel (except the Yukon Territory), and all islands and waters in Hudson Bay and Hudson Strait up to the low water mark of Manitoba, Ontario, and Quebec. The offshore marine areas along the coast of Newfoundland and Labrador are under Federal jurisdiction. Although Canada manages each of the 13 populations of polar bear as separate units, there is a complex sharing of responsibilities. While wildlife management has been delegated to the Provincial and Territorial Governments, the Federal Government (Environment Canada's Canadian Wildlife Service) has an active research program and is involved in management of wildlife populations shared with other jurisdictions, especially ones with other nations. In the NWT, Native Land Claims resulted in Co-management Boards for most of Canada's polar bear populations. Canada formed the PBTC and PBAC to ensure a coordinated management process consistent with internal and international management structures and the International Agreement. The committees meet annually to review research and management of polar bears in Canada and have representation from all Provincial and Territorial jurisdictions with polar bear populations and the Federal Government. Beginning in 1984, the Service and biologists from Norway and Denmark have, with varying degrees of frequency, participated in annual PBTC meetings. The annual meetings of the PBTC provide for continuing cooperation between jurisdictions and for recommending management actions to the PBAC (Calvert et al. 1995, p. 61).

The NWT Polar Bear Management Program (GNWT) manages polar bears in the Northwest Territories. A 1960 ''Order-in-Council'' granted authority to the Commissioner in Council (NWT) to pass ordinances to protect polar bears, including the establishment of a quota system. The Wildlife Act, 1988, and Big Game Hunting Regulations provide supporting legislation which addresses each polar bear population. The Inuvialuit and Nunavut Land Claim

Agreements supersede the Northwest Territories Act (Canada) and the Wildlife Act. The Government of Nunavut passed a new Wildlife Act in 2004 and has management and enforcement authority for polar bears in their jurisdiction. Under the umbrella of this authority, polar bears are now co-managed through wildlife management boards made up of Land Claim Beneficiaries and Territorial and Federal representatives. The Boards may develop Local Management Agreements (LMAs) between the communities that share a population of polar bears. Management agreements are in place for all Nunavut populations. The LMAs are signed between the communities, regional wildlife organizations, and the Government of Nunavut (Department of Environment) but can be over-ruled by the Nunavut Wildlife Management Board (NWMB).

In the case of populations that Nunavut shares with Quebec and Ontario, the management agreement is not binding upon residents of communities outside of Nunavut jurisdiction. Similarly, in the case of populations that Nunavut shares with Manitoba, or Newfoundland and Labrador, the management agreement is not binding upon residents of communities outside of Nunavut jurisdiction. Regulations implementing the LMAs specify who can hunt, season timing and length, age and sex classes that can be hunted, and the total allowable harvest for a given population. The Department of Environment in Nunavut and the Department of Environment and Natural Resources in the NWT have officers to enforce the regulations in most communities of the NWT. The officers investigate and prosecute incidents of violation of regulations, kills in defense of life, or exceeding a quota (USFWS 1997). Canada's inter-jurisdictional requirements for consultation and development of LMAs and oversight through the PBTC and PBAC have resulted in conservation benefits for polar bear populations. Although there are some localized instances where changes in management agreements may be necessary, these arrangements and provisions have operated to minimize the threats of overharvest to the species.

The Service analyzed the overall efficacy of Canada's management of polar bears in 1997 (62 FR 7302) and 1999 (64 FR 1529) and determined, at those times, that the species was managed by Canada using sound scientific principles and in such a manner that existing populations would be sustained. We continue to believe that, in general, Canada manages polar bears in an effective and sustainable manner. However, as discussed above (see ''Harvest Management by Nation''), the Territory of Nunavut has recently adopted changes to polar bear management, including some increased harvest quotas, that may place a greater significance on indigenous knowledge than on scientific data and analysis. Management improvements may be desirable for some Canadian populations. The Service will continue to monitor polar bear management in Canada and actions taken by the Nunavut Government. This is particularly important for populations that are currently in decline or may decline in the near future.

Russian Federation

Polar bears are listed in the second issue of the Red Data Book of the Russian Federation (2001). The Red Data Book establishes official policy for protection and restoration of rare and endangered species in Russia. Polar bear populations inhabiting the Barents Sea and part of the Kara Sea (Barents-Kara population) are designated as Category IV (uncertain status); polar bears in the eastern Kara Sea, Laptev Sea, and the western Eastern Siberian Sea (Laptev population) are listed as Category III (rare); and polar bears inhabiting the eastern part of the Eastern Siberian Sea, Chukchi Sea, and the northern portion of the Bering Sea (Chukchi population) are listed as Category V (restoring). The main government body responsible for management of species listed in the Red Data Book is the Ministry of Natural Resources of the Russian Federation. Russia Regional Committees of Natural Resources are responsible for managing polar bear populations consistent with Federal legislation (Belikov et al. 2002, p. 86).

Polar bear hunting has been totally prohibited in the Russian Arctic since 1956 (Belikov et al. 2002, p. 86). The only permitted take of polar bears is catching cubs for public zoos and circuses. There are no data on illegal trade of polar bears, and parts and products derived from them, although considerable concern persists for unquantified levels of illegal harvest that is occurring (Belikov et al. 2002, p. 87).

In the Russian Arctic, Natural Protected Areas (NPAs) have been established that protect marine and associated terrestrial ecosystems, including polar bear habitats. Wrangel and Herald Islands have high concentrations of maternity dens and polar bears, and were included in the Wrangel Island State Nature Reserve (zapovednik) in 1976. A 1997 decree by the Russian Federation Government established a 12-nautical mile (nm) (22.2 km) marine zone to the Wrangel Island State Nature Reserve; the marine zone was extended an additional 24-nm (44.4-km) to a total of 36-nm (66.7-km) by a decree from the Governor of Chukotsk Autonomous Okruga (Belikov et al. 2002, p. 87). The Franz Josef Land State Nature Refuge was established in 1994. In 1996, a federal nature reserve (zakaznik) was established on Severnaya Zemlya archipelago. In Chukotka, efforts are underway to establish new protected areas where polar bears aggregate seasonally; other special protected areas are proposed for the Russian High Arctic including the Novosibirsk Islands, Severnaya Zemlya, and Novaya Zemlya. However, because they have not yet been designated, protections that may be afforded the polar bear under these designations have not been considered in our evaluation of the adequacy of existing regulatory mechanisms. Within these protected areas, conservation and restoration of terrestrial and marine ecosystems, and plant and animal species (including the polar bear), are the main goals. In 2001, the Nenetskiy State Reserve, which covers 313,400 ha (774,428 ac), and includes the mouth of the Pechora River and adjacent waters of the Barents Sea, was established.

In May 2001, the Federal law ''Concerning territories of traditional use of nature by small indigenous peoples of North, Siberia, and Far East of the Russian Federation'' was passed. This law established areas for traditional use of nature (TTUN) within NPAs of Federal, regional, and local levels to support traditional life styles and traditional subsistence use of nature resources for indigenous peoples. This law and the law ''Concerning natural protected territories'' (1995) regulate protection of plants and animals on the TTUNs. The latter also regulates organization, protection and use of other types of NPAs: State Nature Reserves (including Biosphere Reserves), National Parks, Natural Parks, and State Nature Refuges. Special measures on protection of polar bears or other resources may be governed by specific regulations of certain NPAs.

Outside NPAs, protection and use of marine renewable natural resources are regulated by Federal legislation; Acts of the President of the Russian Federation; regulations of State Duma, Government, and Federal Senate of the Russian Federation; and regulations issued by appropriate governmental departments. The most important Federal laws for nature protection are: ''About environment protection'' (2002), ''About

animal world'' (1995), ''About continental shelf of the Russian Federation'' (1995), ''About exclusive economical zone of the Russian Federation'' (1998), and ''About internal sea waters, territorial sea, and adjacent zone of the Russian Federation'' (1998) (Belikov et al. 2002, p. 87). The effectiveness of laws protecting marine and nearshore environments is unknown.

Norway

According to the Svalbard Treaty of February 9, 1920, Norway exercises full and unlimited sovereignty over the Svalbard Archipelago. Polar bears have complete protection from harvest under the Svalbard Treaty (Derocher et al. 2002b, p. 75), which is effectively implemented. The Svalbard Treaty applies to all the islands situated between 10 degree and 35 degrees East longitude and between 74 degrees and 81 degrees North latitude, and includes the waters up to 4 nm offshore. Beyond this zone, Norway claims an economic zone to the continental shelf areas to which Norwegian law applies. Under Norwegian Game Law, all game, including polar bears, are protected unless otherwise stated (Derocher et al. 2002b, p. 75). The main responsibility for the administration of Svalbard lies with the Norwegian Ministry of Justice. Norwegian civil and penal laws and various other regulations are applicable to Svalbard. The Ministry of Environment deals with matters concerning the environment and nature conservation. The Governor of Svalbard (Sysselmannen), who has management responsibilities for freshwater fish and wildlife, pollution and oil spill protection, and environmental monitoring, is the cultural and environmental protection authority in Svalbard (Derocher et al. 2002b, p. 75).

Approximately 65 percent of the land area of Svalbard is totally protected, including all major regions of denning by female bears; however, protection of habitat is only on land and to 4 nm offshore. Marine protection was increased in 2004, when the territorial border of the existing protected areas was increased to 12 nm (Aars et al. 2006, p. 145). Norway claims control of waters out to 200 nm and regards polar bears as protected within this area.

In 2001, the Norwegian Parliament passed a new Environmental Act for Svalbard which went into effect in July 2002. This Act was designed to ensure that wildlife, including polar bears, is protected, although hunting of some other species is allowed. The only permitted take of polar bears is for defense of life. The regulations included specific provisions on harvesting, motorized traffic, remote camps and camping, mandatory leashing of dogs, environmental pollutants, and environmental impact assessments in connection with planning development or activities in or near settlements. Some of these regulations were specific to the protection of polar bears, e.g., through enforcement of temporal and spatial restrictions on motorized traffic and through provisions on how and where to camp to ensure adequate bear security (Aars et al. 2006, p. 145).

In 2003, Svalbard designated six new protected areas, two nature reserves, three national parks and one ''biotope protection area.'' The new protected areas are mostly located around Isfjord, the most populated fjord on the west side of the archipelago. Another protected area, Hopen, is an important denning area (Aars et al. 2006, p. 145). Kong Karls Land is the main denning area and has the highest level of protection under the Norwegian land management system. These new protected areas cover 4,449 sq km (1,719 sq mi) which is 8 percent of the Archipelago's total area (*http://www.norway.org/News/archive/2003/200304svalbard.htm*), and increase the total area under protection to 65 percent of the total land area.

Denmark/Greenland

Under terms of the Greenland Home Rule (1979), the government of Greenland is responsible for management of all renewable resources, including polar bears. Greenland is also responsible for providing scientific data for sound management of polar bear populations and for compliance with terms of the 1973 Polar Bear Agreement. Regulations for the management and protection of polar bears in Greenland that were introduced in 1994 have been amended several times (Jensen 2002, p. 65). Hunting and reporting regulations include who can hunt polar bears (residents who live off the land), protection of family groups with cubs of the year, prohibition of trophy hunting, mandatory reporting requirements, and regulations on permissible firearms and means of transportation (Jensen 2002, p. 65). In addition, there are specific regulations that apply to traditional take within the National Park of North and East Greenland and the Melville Bay Nature Reserve. A large amount of polar bear habitat occurs within the National Park of North and East Greenland. One preliminary meeting between Greenland Home Rule Government and Canada (with the participation of the government of Nunavut) has occurred to discuss management of shared populations. Greenland introduced a quota system that took effect on January 1, 2006 (L°nstrup 2005, p. 133), although no scientifically supportable quotas have yet been developed. Some reconsideration to allow a limited sport hunt is under discussion within the Greenland governmental organizations. We have no information upon which to base a finding that Greenland is managing polar bear hunting activities in a manner that provides for sustainable populations.

Regulatory Mechanisms to Limit Sea Ice Loss

Although there are regulatory mechanisms for managing many of the threats to polar bears in all countries where the species occurs, as well as among range countries through bilateral and multilateral agreements, there are no known regulatory mechanisms that are directly and effectively addressing reductions in sea ice habitat at this time.

National and international regulatory mechanisms to comprehensively address the causes of climate change are continuing to be developed. International efforts to address climate change globally began with the United Nations Framework Convention on Climate Change (UNFCCC), adopted in May 1992. The stated objective of the UNFCCC is the stabilization of GHG concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. The Kyoto Protocol, negotiated in 1997, became the first additional agreement added to the UNFCCC to set GHG emissions targets. The Kyoto Protocol entered into force in February 2005 for signatory countries.

Domestic U.S. efforts relative to climate change focus on implementation of the Clean Air Act, and continued studies programs, support for developing new technologies and use of incentives for supporting reductions in emissions.

The recent publication by Canadell et al. (2007) underscores the current deficiencies of regulatory mechanisms in addressing root causes of climate change. This paper, in the *Proceedings of the National Academy of Sciences,* indicates that the growth rate of atmospheric carbon dioxide (CO_2), the largest anthropogenic source of GHGs, is increasing rapidly. Increasing atmospheric CO_2 concentration is consistent with the results of climate-carbon cycle models, but the magnitude of the observed CO_2 concentration is larger than that estimated by models. The authors suggest that these changes ''characterize a carbon cycle that is generating stronger-than-expected and

sooner-than-expected climate forcing'' (Canadell et al. 2007).

Conclusion for Factor D

Rationale

Our review of existing regulatory mechanisms at the national and international level has led us to determine that potential threats to polar bears from direct take, disturbance by humans, and incidental or harassment take are, for the most part, adequately addressed through international agreements, national, State, Provincial or Territorial legislation, and other regulatory mechanisms.

As described under Factor A, the primary threat to the survival of the polar bear is loss of sea ice habitat and its consequences to polar bear populations. Our review of existing regulatory mechanisms has led us to determine that, although there are some existing regulatory mechanisms to address anthropogenic causes of climate change, there are no known regulatory mechanisms in place at the national or international level that directly and effectively address the primary threat to polar bears-the rangewide loss of sea ice habitat.

Determination for Factor D

After evaluating the best available scientific information, we have determined that existing regulatory mechanisms at the national and international level are adequate to address actual and potential threats to polar bears from direct take, disturbance by humans, and incidental or harassment take.

We note that GHG loading in the atmosphere can have a considerable lag effect on climate, so that what has already been emitted will have impacts out to 2050 and beyond (IPCC 2007, p. 749; J. Overland, NOAA, in litt. to the Service, 2007)). This is reflected in the similarity of low, medium, and high SRES emissions scenarios out to about 2050 (see Figure 5). As noted above, the publication of Canadell et al. (2007) underscores the current deficiencies of regulatory mechanisms in addressing root causes of climate change. This paper indicates that the growth rate of atmospheric carbon dioxide (CO_2), the largest anthropogenic source of GHGs, is increasing rapidly. Increasing atmospheric CO_2 concentration is consistent with the results of climate-carbon cycle models, but the magnitude of the observed CO_2 concentration is larger than that estimated by models (Canadell et al. 2007). We have determined that there are no known regulatory mechanisms in place at the national or international level that directly and effectively address the primary threat to polar bears-the rangewide loss of sea ice habitat within the foreseeable future. We also acknowledge that there are some existing regulatory mechanisms to address anthropogenic causes of climate change, and these mechanisms are not expected to be effective in counteracting the worldwide growth of GHG emissions within the foreseeable future.

Factor E. Other Natural or Manmade Factors Affecting the Polar Bear's Continued Existence

Contaminants

Understanding the potential effects of contaminants on polar bears in the Arctic is confounded by the wide range of contaminants present, each with different chemical properties and biological effects, and the differing geographic, temporal, and ecological exposure regimes impacting each of the 19 polar bear populations. Further, contaminant concentrations in polar bear tissues differ with polar bears' age, sex, reproductive status, and other factors. Contaminant sources and transport; geographical, temporal patterns and trends; and biological effects are detailed in several recent Arctic Monitoring and Assessment Program (AMAP) publications (AMAP 1998; AMAP 2004a; AMAP 2004b; AMAP 2005). Three main groups of contaminants in the Arctic are thought to present the greatest potential threat to polar bears and other marine mammals: petroleum hydrocarbons, persistent organic pollutants (POPS), and heavy metals.

Petroleum Hydrocarbons

The principal petroleum hydrocarbons in the Arctic include crude oil, refined oil products, polynuclear aromatic hydrocarbons, and natural gas and condensates (AMAP 1998, p. 661). Petroleum hydrocarbons come from both natural and anthropogenic sources. The primary natural source is oil seeps. AMAP (2007, p. 18) notes that ''natural seeps are the major source of petroleum hydrocarbon contamination in the Arctic environment.'' Anthropogenic sources include activities associated with exploration, development, and production of oil (well blowouts, operational discharges), ship- and land-based transportation of oil (oil spills from pipelines, accidents, leaks, and ballast washings), discharges from refineries and municipal waste water, and combustion of wood and fossil fuels. In addition to direct contamination, petroleum hydrocarbons are transported from more southerly areas to the Arctic via long range atmospheric and oceanic transport, as well as by north-flowing rivers (AMAP 1998, p. 671).

Polar bears are particularly vulnerable to oil spills due to their inability to effectively thermoregulate when their fur is oiled, and to poisoning that may occur from ingestion of oil while from grooming or eating contaminated prey (St. Aubin 1990, p. 237). In addition, polar bears are curious and are likely to investigate oil spills and oil-contaminated wildlife. Under some circumstances polar bears are attracted to offshore drilling platforms (Stirling 1988, p. 6; Stirling 1990, p. 230). Whether healthy polar bears in their natural environment would avoid oil spills and contaminated seals is unknown; hungry polar bears are likely to scavenge contaminated seals, as they have shown no aversion to eating and ingesting oil (St. Aubin 1990, p. 237; Derocher and Stirling 1991, p. 56). Polar bears are generally known to be attracted to various refined hydrocarbon products such as anti-freeze, hydraulic fluids, etc., and may consume them, which in some instances has resulted in death (Amstrup et al. 1989).

The most direct exposure of polar bears to petroleum hydrocarbons would come from direct contact with and ingestion of oil from acute and chronic oil spills. Polar bears' range overlaps with many active and planned oil and gas operations within 40 km (25 mi) of the coast or offshore. In the past, no large volume major oil spills of more than 3,000 barrels have occurred in the marine environment within the range of polar bears. Oil spills associated with terrestrial pipelines have occurred in the vicinity of polar bear habitat, including denning areas (e.g., Russian Federation, Komi Republic, 1994 oil spill, *http://www.american.edu/ted/KOMI.HTM*). Despite numerous safeguards to prevent spills, smaller spills do occur. An average of 70 oil and 234 waste product spills per year occurred between 1977 and 1999 in the North Slope oil fields (71 FR 14456). Many spills are small (less than 50 barrels) by oil and gas industry standards, but larger spills (greater than or equal to 500 barrels) account for much of the annual volume. The largest oil spill to date on the North Slope oil fields in Alaska (estimated volume of approximately 4,786 barrels) occurred on land in March 2006, and resulted from an undetected leak in a corroded pipeline (see State of Alaska Prevention and Emergency Response web site (*http://www.dec.state.ak.us/spar/perp/*

response/sum_fy06/060302301/060302301_index.htm).

The MMS (2004, pp. 10, 127) estimated an 11 percent chance of a marine spill greater than 1,000 barrels in the Beaufort Sea from the Beaufort Sea Multiple Lease Sale in Alaska. The Minerals Management Service (MMS) prepared an EIS on the *Chukchi Sea Planning Area; Oil and Gas Lease Sale 193 and Seismic Surveying Activities in the Chukchi Sea;* they determined that polar bears could be affected by both routine activities and a large oil spill (MMS 2007, pp. ES 1–10). Regarding routine activities, the EIS determined that small numbers of polar bears could be affected by ''noise and other disturbance caused by exploration, development, and production activities'' (MMS 2007, p. ES–4). In addition, the EIS evaluated events that would be possible over the life of the hypothetical development and production that could follow the lease sale, and estimated that ''the chance of a large spill greater than or equal to 1,000 barrels occurring and entering offshore waters is within a range of 33 to 51 percent.'' If a large spill were to occur, the analysis conducted as part of the EIS process identified potentially significant impacts to polar bears occurring in the area affected by the spill; the evaluation was done without regard to the effect of mitigating measures (MMS 2007, p. ES–4).

Oil spills in the fall or spring during the formation or break-up of sea ice present a greater risk because of difficulties associated with clean up during these periods, and the presence of bears in the prime feeding areas over the continental shelf. Amstrup et al. (2000a, p. 5) concluded that the release of oil trapped under the ice from an underwater spill during the winter could be catastrophic during spring break-up if bears were present. During the autumn freeze-up and spring break-up periods, any oil spilled in the marine environment would likely concentrate and accumulate in open leads and polynyas, areas of high activity for both polar bears and seals (Neff 1990, p. 23). This would result in an oiling of both polar bears and seals (Neff 1990, pp. 23–24; Amstrup et al. 2000a, p. 3; Amstrup et al. 2006a, p. 9).

The MMS operating regulations require that Outer Continental Shelf (OCS) activities are carried out in a safe and environmentally sound manner to prevent harm, damage or waste of, any natural resources any life (including marine mammals such as the polar bear), property, or the marine, coastal, or human environment. Regulations for exploration, development, and production operations on the OCS are specified in 30 CFR part 250. These regulations provide measures for pollution prevention and control, including drilling procedures specific to individual wells, redundant safety and pollution prevention equipment, blowout preventers and subsurface safety valves, training of the drilling crews, and structural and safety system review of production facilities. Regulations related to oil-spill prevention and response are specified in 30 CFR part 254.

As previously discussed in the ''Oil and Gas Exploration, Development, and Production'' section, the actual history of oil and gas activities in the Beaufort and Chukchi Seas demonstrate that operations have been done safely and with a negligible effect on wildlife and the environment. On the Beaufort and Chukchi OCS, 35 exploratory wells have been drilled. During this drilling period, approximately 26.7 barrels of petroleum product have been spilled, and, of those 26.7 barrels, approximately 24 barrels were recovered or cleaned up. MMS and industry standards require strict protection measures during production of energy resources. For example, although it is located in State of Alaska waters, the shared State/Federal Northstar production facility used a specially-fabricated pipe that was buried 7–11 ft below the sea floor to prevent damage from ice keels, is pigged (the practice of using pipeline inspection gauges or 'pigs' to perform various operations on a pipeline without stopping the flow of the product in the pipeline), and has several different monitoring systems to detect spills.

In addition, NOAA and the Service require monitoring and avoidance measures for marine mammals during critical times during exploration and production. The Marine Mammal Observers (MMO) are required by NOAA and the Service to be on deck watching for animals. Depending on the activity and the particular circumstances, operations may be temporarily halted or modified. In some circumstances, hazing may be used to keep the polar bears away from operations. There are specific guidelines the MMO follow for observing and hazing. Hazing is only used to protect the safety of humans or the marine mammal.

Prior to any exploration, development, or production activities, companies must submit an Exploration Plan or a Development/Production Plan to MMS for review and approval. In Alaska, MMS provides a copy of all such plans to the Service for review. Prior to conducting drilling operations, the operator must also obtain approval for an Application for Permit to Drill (APD). The APD requires detailed information on the seafloor and shallow seafloor conditions for the drill site from shallow geophysical and, if necessary, archaeological and biological surveys. The APD requires detailed information about the drilling program to allow evaluation of operational safety and pollution-prevention measures. The lessee must use the best available and safest technology to minimize the potential for uncontrolled well flow, through the use of blowout preventers. For example, the operator also must identify procedures to curtail operations during critical ice or weather conditions.

In addition, the MMS identifies additional protection measures for the polar bear through the use of Information to Lessees (ITL). Lessees are advised that incidental take of marine mammals is prohibited unless authorization is received under the MMPA. For example, for Sale 193 in the Chukchi Sea, potential lessees were advised to obtain MMPA authorizations from FWS and to consult with the Service, local Native communities and the Alaska Nanuuq Commission during exploration, production and spill response planning, to assure adequate protection for the polar bear. Lessees are specifically advised to conduct their activities in a way that will limit potential encounters and interaction between lease operations and polar bears.

For production, the lessee must design, fabricate, install, use, inspect, and maintain all platforms and structures on the OCS to ensure their structural integrity for the safe conduct of operations at specific locations. All tubing installations open to hydrocarbon-bearing zones below the surface must be equipped with safety devices that will shut off the flow from the well in the event of an emergency, unless the well is incapable of flowing. All surface production facilities must be designed, installed, and maintained in a manner that provides for efficiency, safety of operations, and protection of the environment, including marine mammals.

Pipeline-permit applications to MMS include the pipeline location drawing, profile drawing, safety schematic drawing, pipe-design data to scale, a shallow-hazard-survey report, and an archaeological report. The MMS evaluates the design and fabrication of the pipeline. No pipeline route will be approved by MMS if any bottom-disturbing activities (from the pipeline

itself or from the anchors of lay barges and support vessels) encroach on any biologically sensitive areas. The operators are required to monitor and inspect pipelines by methods prescribed by MMS for any indication of pipeline leakage.

MMS conducts onsite inspections to ensure compliance with plans and with the MMS pollution prevention regulations. It has been practice in Alaska to have an MMS inspector onboard drilling vessels during key drilling procedures.

In compliance with 30 CFR part 254, all owners and operators of oil-handling, oil-storage, or oil-transportation facilities located seaward of the coastline must submit an Oil Spill Response Plan to MMS for approval. Owners or operators of offshore pipelines are required to submit a plan for any pipeline that carries oil, condensate that has been injected into the pipeline, or gas and naturally occurring condensate.

Increases in circumpolar Arctic oil and gas development, coupled with increases in shipping and/or development of offshore and land-based pipelines, increase the potential for an oil spill to negatively affect polar bears and/or their habitat. Future declines in the Arctic sea ice may result in increased tanker traffic in high bear use areas (Frantzen and Bambulyak 2003, p. 4), which would increase the chances of an oil spill from a tanker accident, ballast discharge, or discharges during the loading and unloading of oil at the ports. Amstrup et al. (2007, p. 31) assumed that human activities related to oil and gas exploration and development are likely to increase with disappearance of sea ice from many northern areas. At the same time, less sea ice will facilitate an increase in offshore developments. More offshore development will increase the probability of hydrocarbon discharges into polar bear habitat (Stirling 1990, p. 228). The record of over 30 years of predominantly terrestrial oil and gas development in Alaska suggests that with proper management, potential negative effects of these activities on polar bears can be minimized (Amstrup 1993, p. 250; Amstrup 2000, pp. 150–154; Amstrup 2003, pp. 597, 604; Amstrup et al. 2004, p. 23) (for details see the ''Oil and Gas Exploration, Development, and Production'' section of this final rule). Increased industrial activities in the marine environment will require additional monitoring.

Amstrup et al. (2006) evaluated the potential effects of a hypothetical 5,912-barrel oil spill (the largest spill thought possible from a pipeline spill) on polar bears from the Northstar offshore oil production facility in the southern Beaufort Sea, and found that there is a low probability that a large number of bears (e.g., 25–60) might be affected by such a spill. For the purposes of this scenario, it was assumed that a polar bear would die if it came in contact with the oil. Amstrup et al. (2006a, p.21) found that 0–27 bears could potentially be oiled during the open water conditions in September, and from 0–74 bears in mixed ice conditions during October. If such a spill occurred, particularly during the broken ice period, the impact of the spill could be significant to the Southern Beaufort Sea polar bear population (Amstrup et al. 2006a, pp. 7, 22; 65 FR 16833). The sustainable harvest yield per year for the Southern Beaufort Sea population, based on a stable population size of 1,800 bears, was estimated to be 81.1 bears (1999–2000 to 2003–2004) (Lunn et al. 2005, p. 107). For the same time period, the average harvest was 58.2 bears, leaving an additional buffer of 23 bears that could have been removed from the population. Therefore, an oil spill that resulted in the death of greater than 23 bears, which was possible based on the range of oil spill-related mortalities from the previous analysis, could have had population level effects for polar bears in the southern Beaufort Sea. However, the harvest figure of 81 bears may no longer be sustainable for the Southern Beaufort Sea population, so, given the average harvest rate cited above, fewer than 23 oil spill-related mortalities could result in population-level effects.

The number of polar bears affected by an oil spill could be substantially higher if the spill spread to areas of seasonal polar bear concentrations, such as the area near Kaktovik, Alaska, in the fall, and could have a significant impact to the Southern Beaufort Sea polar bear population. It seems likely that an oil spill would affect ringed seals the same way the Exxon Valdez oil spill affected harbor seals (Frost et al. 1994a, pp. 108–110; Frost et al. 1994b, pp. 333–334, 343–344, 346–347; Lowry et al. 1994, pp. 221–222; Spraker et al. 1994, pp. 300–305). As with polar bears, the number of animals killed would vary depending upon the season and spill size (NRC 2003, pp. 168–169). Oil spills remain a concern for polar bears throughout their range. Increased industrial activities in the marine environment will require additional monitoring. Oil and gas exploration, development, and production effects on polar bears and their habitat are discussed under Factor A.

Persistent Organic Pollutants (POPs)

Contamination of the Arctic and sub-Arctic regions through long-range transport of persistent organic pollutants has been recognized for over 30 years (Bowes and Jonkel 1975, p. 2,111; de March et al. 1998, p. 184; Proshutinsky and Johnson 2001, p. 68; MacDonald et al. 2003, p. 38). These compounds are transported via large rivers, air, and ocean currents from the major industrial and agricultural centers located at more southerly latitudes (Barrie et al. 1992; Li et al. 1998, pp. 39–40; Proshutinsky and Johnson 2001, p. 68; Lie et al. 2003, p. 160). The presence and persistence of these contaminants within the Arctic is dependent on many factors, including transport routes, distance from source, and the quantity and chemical composition of the releases. Climate change may increase long-range marine and atmospheric transport of contaminants (Macdonald et al. 2003, p. 5; Macdonald et al 2005, p.15). For example, increased rainfall in northern regions has increased river discharges into the Arctic marine environment. Many north-flowing rivers originate in heavily industrialized regions and carry heavy contaminant burdens (Macdonald et al. 2005, p. 31).

The Arctic ecosystem is particularly sensitive to environmental contamination due to the slower rate of breakdown of persistent organic pollutants, including organochlorine (OC) compounds, the relatively simple food chains, and the presence of long-lived organisms with low rates of reproduction and high lipid levels. The persistence and tendency of OCs to reside and concentrate in fat tissues of organisms increases the potential for bioaccumulation and biomagnification at higher trophic levels (Fisk et al. 2001, pp. 225–226). Polar bears, because of their position at the top of the Arctic marine food chain, have some of the highest concentrations of OCs of any Arctic mammals (Braune et al. 2005, p. 23). Considering the potential for increases in both local and long-range transport of contaminants to the Arctic, with warmer climate and less sea ice, the influence these activities have on polar bears is likely to increase.

The most studied POPs in polar bears include polychlorinated biphenyls (PCBs), chlordanes (CHL), DDT and its metabolites, toxaphene, dieldrin, hexachloroabenzene (HCB), hexachlorocyclohexanes (HCHs), and chlorobenzenes (ClBz). Overall, the relative proportion of the more recalcitrant compounds, such as PCB 153 and β-HCH, appears to be increasing in polar bears (Braune et al. 2005, p. 50).

Although temporal trend information is lacking, newer compounds, such as polybrominated diphenyl ethers (PBDEs), polychlorinated naphthalenes (PCNs), perflouro-octane sulfonate (PFOsS), perfluoroalkyl acids (PFAs), and perflourocarboxylic acids (PFCAs), have been recently found in polar bears (Braune et al. 2005, p. 5). Of this relatively new suite of compounds, there is concern that both PFOsS, which are increasing rapidly, and PBDEs are a potential risk to polar bears (Ikonomou et al. 2002, p. 1,886; deWit 2002, p. 583; Martin et al. 2004, p. 373; Braune et al. 2005, p. 25; Smithwick et al. 2006, p. 1,139).

Currently, polychlorinated dibenzo-p-dioxins (PCDDs), dibenzofurans (PCDFs) and dioxin-like PCBs are at relatively low concentrations in polar bears (Norstrom et al. 1990, p. 14). The highest PCB concentrations have been found in polar bears from the Russian Arctic (Franz Joseph Land and the Kara Sea), with decreasing concentrations to the east and west (Andersen et al. 2001, p. 231). Overall, there is evidence of declines in PCBs for most polar bear populations. The pattern of distribution for most other chlorinated hydrocarbons and metabolites generally follows that of PCBs, with the highest concentrations of DDT-related compounds and CHLs in Franz Joseph Land and the Kara Sea, followed by East Greenland, Svalbard, the eastern Canadian Arctic populations, the western Canadian populations, the Siberian Sea, and finally the lowest concentrations in Alaska populations (Bernhoft et al. 1997; Norstrom et al. 1998, p. 361; Andersen et al. 2001, p. 231; Kucklick et al. 2002, p. 9; Lie et al. 2003, p. 159; Verreault et al. 2005, pp. 369–370; Braune et al. 2005, p. 23).

The polybrominated diphenyl ethers (PBDEs) share similar physical and chemical properties with PCBs (Wania and Dugani 2003, p. 1,252; Muir et al. 2006, p. 449), and are thought to be transported to the Arctic by similar pathways. Muir et al. (2006, p. 450) analyzed archived samples from Dietz et al. (2004) and Verreault et al. (2005) for PBDE concentrations, finding the highest mean PBDE concentrations in female polar bear adipose tissue from East Greenland and Svalbard. Lower concentrations of PBDEs were found in adipose tissue from the Canadian and Alaskan populations (Muir et al. 2006, p. 449). Differences between the PBDE concentrations and composition in liver tissue between the Southern Beaufort Sea and the Chukchi Seas populations in Alaska suggest differences in the sources of PBDEs exposure (Kannan et al. 2005, p. 9057). Overall, the sum of the PBDE concentrations are much lower and less of a concern compared to PCBs, oxychlordane, and some of the more recently discovered perflouorinated compounds. PBDEs are metabolized to a high degree in polar bears and thus do not bioaccumulate as much as PCBs (Wolkers et al. 2004, p. 1,674).

Although baseline information on contaminant concentrations is available, determining the biological effects of these contaminants in polar bears is difficult. Field observations of reproductive impairment in females and males, lower survival of cubs, and increased mortality of females in Svalbard, Norway, however, suggest that high concentrations of PCBs may have contributed to population level effects in the past (Wiig 1998, p. 28; Wiig et al. 1998, p. 795; Skaare et al. 2000, p. 107; Haave et al. 2003, pp. 431, 435; Oskam et al. 2003, p. 2134; Derocher et al. 2003, p. 163). At present, however, PCB concentrations are not thought to be resulting population level effects on polar bears. Organochlorines may adversely affect the endocrine system as metabolites of these compounds are toxic and some have demonstrated endocrine disrupting activity (Letcher et al. 2000; Braune et al. 2005, p. 23). High concentrations of organochlorines may also affect the immune system, resulting in a decreased ability to produce antibodies (Lie et al. 2004, pp. 555–556).

Despite the regulatory steps taken to decrease the production or emissions of toxic chemicals, increases in some relatively new compounds are cause for concern. Some of these compounds have increased in the last decade (Ikonomou et al. 2002, p. 1,886; Muir et al. 2006, p. 453).

Metals

Numerous essential and non-essential elements have been reported on for polar bears and the most toxic or abundant elements in marine mammals are mercury, cadmium, selenium, and lead. Of these, mercury is of greatest concern because of its potential toxicity at relatively low concentrations, and its ability to biomagnify and bioaccumulate in the food web. Polar bears from the western Canadian Arctic and southwest Melville Island, Canada (Braune et al. 1991, p. 263; Norstrom et al. 1986, p. 195; AMAP 2005, pp. 42, 62, 134), and ringed seals from the western Canadian Arctic (Wagemann et al. 1996, p. 41; Deitz et al. 1998, p. 433; Dehn et al. 2005, p. 731; Riget et al. 2005, p. 312), have some of the highest known mercury concentrations. Wagemann et al. (1996, pp. 51, 60) observed an increase in mercury from eastern to western Canadian ringed seal populations and attributed this pattern to a geologic gradient in natural mercury deposits.

Although the contaminant concentrations of mercury found in marine mammals often exceed those found to cause effects in terrestrial mammals (Fisk et al. 2003, p. 107), most marine mammals appear to have evolved effective biochemical mechanisms to tolerate high concentrations of mercury (AMAP 2005, p.123). Polar bears are able to break down methylmercury and accumulate higher levels than their terrestrial counterparts without detrimental effects (AMAP 2005, p. 123). Evidence of mercury poisoning is rare in marine mammals, but Dietz et al. (1990, p. 49) noted that sick marine mammals often have higher concentrations of methylmercury, suggesting that these animals may no longer be able to detoxify methylmercury. Hepatic mercury concentrations are well below those expected to cause biological effects in most polar bear populations (AMAP 2005, p. 118). Only two polar bear populations have concentrations of mercury close to the biological threshold levels of 60 micrograms wet weight reported for marine mammals (AMAP 2005, p. 121): the Viscount Melville population (southwest Melville Sound), Canada, and the Southern Beaufort Sea population (eastern Beaufort Sea) (Dietz et al. 1998, p. 435, Figure 7–52).

Shipping and Transportation

Observations over the past 50 years show a decline in Arctic sea ice extent in all seasons, with the most prominent retreat in the summer. Climate models project an acceleration of this trend with periods of extensive melting in spring and autumn, thus opening new shipping routes and extending the period that shipping is practical (ACIA 2005, p. 1,002). Notably, the navigation season for the Northern Sea Route (across northern Eurasia) is projected to increase from 20–30 days per year to 90–100 days per year. Russian scientists cite increasing use of a Northern Sea Route for transit and regional development as a major source of disturbance to polar bears in the Russian Arctic (Wiig et al. 1996, pp. 23–24; Belikov and Boltunov 1998, p. 113; Ovsyanikov 2005, p. 171). Commercial navigation on the Northern Sea Route could disturb polar bear feeding and other behaviors, and would increase the risk of oil spills (Belikov et al. 2002, p. 87).

Increased shipping activity may disturb polar bears in the marine

environment, adding additional energetic stresses. If ice-breaking activities occur, they may alter habitats used by polar bears, possibly creating ephemeral lead systems and concentrating ringed seals within the refreezing leads. This, in turn, may allow for easier access to ringed seals and may have some beneficial values. Conversely, this may cause polar bears to use areas that may have a higher likelihood of human encounters as well as increased likelihood of exposure to oil, waste products, or food wastes that are intentionally or accidentally released into the marine environment. If shipping involved the tanker transport of crude oil or oil products, there would be some increased likelihood of small to large volume spills and corresponding oiling of polar bears, as well as potential effects on seal prey species (AMAP 2005, pp. 91, 127).

The PBSG (Aars et al. 2006, pp. 22, 58, 171) recognized the potential for increased shipping and marine transportation in the Arctic with declining seasonal sea ice conditions. The PBSG recommended that the parties to the 1973 Polar Bear Agreement take appropriate measures to monitor, regulate, and mitigate ship traffic impacts on polar bear populations and habitats (Aars et al. 2006, p. 58).

Ecotourism

Properly regulated ecotourism will likely not have a negative effect on polar bear populations, although increasing levels of ecotourism and photography in polar bear viewing areas and natural habitats may lead to increased polar bear-human conflicts. Ecotourists and photographers may inadvertently displace bears from preferred habitats or alter natural behaviors (Lentfer 1990, p.19; Dyck and Baydack 2004, p. 344). Polar bears are inquisitive animals and often investigate novel odors or sights. This trait can lead to polar bears being killed at cabins and remote stations where they investigate food smells (Herrero and Herrero 1997, p. 11). Conversely, ecotourism has the effect of increasing the worldwide constituency of people with an interest in polar bears and their conservation.

Conclusion for Factor E

Rationale

Contaminant concentrations are not presently thought to have population level effects on most polar bear populations. However, increased exposure to contaminants has the potential to operate in concert with other factors, such nutritional stress from loss or degradation of the sea ice habitat or decreased prey availability and accessibility, to lower recruitment and survival rates that ultimately would have negative population level effects. Despite the regulatory steps taken to decrease the production or emissions of toxic chemicals, use of some relatively new compounds has increased recently in the last decade (Ikonomou et al. 2002, p. 1,886; Muir et al. 2006, p. 453). Several populations, such as the Svalbard, East Greenland, and Kara Sea populations, that currently have some of the highest contaminant concentrations may be affected, but we do not believe these effects will be significant within the foreseeable future. Increasing levels of ecotourism and shipping may lead to greater impacts on polar bears. The potential extent of impact is related to changing sea ice conditions and resulting changes to polar bear distribution.

Determination for Factor E

We have evaluated the best available scientific information on other natural or manmade factors that are affecting polar bears, and have determined that contaminants, ecotourism, and shipping do not threaten the polar bear throughout all or any significant portion of its range. Some of these, particularly contaminants and shipping, may become more significant threats in the future for polar bear populations experiencing declines related to nutritional stress brought on by sea ice and environmental changes.

Finding

We have carefully considered all available scientific and commercial information past, present, and future threats faced by the polar bear. We reviewed the petition, information available in our files, scientific journals and reports, and other published and unpublished information submitted to us during the public comment periods following our February 9, 2006 (71 FR 6745) 90-day petition finding, the January 9, 2007 (72 FR 1064), 12-month Finding and proposed rule, and during public hearings held in Washington, DC and Alaska. In addition, at the request of the Secretary of the Interior, the USGS analyzed and integrated a series of studies on polar bear population dynamics, range-wide habitat use and changing sea ice conditions in the Arctic, and provided the Service with nine scientific reports on the results of their studies. We carefully evaluated these new reports and other published and unpublished information submitted to us following the public comment period on these reports, initially opened for 15 days (September 20, 2007; 72 FR 53749), but then extended until October 22, 2007 (72 FR 56979).

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited and received expert opinions on both the *Range Wide Status Review of the Polar Bear* (*Ursus maritimus*) (Schliebe et al. 2006a), and subsequently on the 12-month finding and proposed rule (72 FR 1064). We received reviews of the draft Status Review from 10 independent experts and on the proposed rule from 14 independent experts in the fields of polar bear ecology, contaminants and physiology, climatic science and physics, Arctic ecology, pinniped (seal) ecology, and traditional ecological knowledge (TEK). We also consulted with recognized polar bear experts and other Federal, State, and range country resource agencies.

In making this finding, we recognize that polar bears evolved in the ice-covered waters of the circumpolar Arctic, and are reliant on sea ice as a platform to hunt and feed on ice-seals, to seek mates and breed, to move to feeding sites and terrestrial maternity denning areas, and for long-distance movements. The rapid retreat of sea ice in the summer and overall diminishing sea ice throughout the year in the Arctic is unequivocal and extensively documented in scientific literature. Further extensive recession of sea ice is projected by the majority of state-of-the-art climate models, with a seasonally ice-free Arctic projected by the middle of the 21st century by many of those models. Sea ice habitat will be subjected to increased temperatures, earlier melt periods, increased rain-on-snow events, and shifts in atmospheric and marine circulation patterns.

Under Factor A (''Present or Threatened Destruction, Modification, or Curtailment of its habitat or range''), we have determined that ongoing and projected loss of the polar bear's crucial sea ice habitat threatens the species throughout all of its range. Productivity, abundance, and availability of ice seals, the polar bear's primary prey base, would be diminished by the projected loss of sea ice, and energetic requirements of polar bears for movement and obtaining food would increase. Access to traditional denning areas would be affected. In turn, these factors would cause declines in the condition of polar bears from nutritional stress and reduced productivity. As already evidenced in the Western Hudson Bay and Southern Beaufort Sea populations, polar bears would experience reductions in survival and recruitment rates. The eventual effect is that polar bear populations would

decline. The rate and magnitude of decline would vary among populations, based on differences in the rate, timing, and magnitude of impacts. However, within the foreseeable future, all populations would be affected, and the species is likely to become in danger of extinction throughout all of its range due to declining sea ice habitat.

Under Factor B (''Overutilization for Commercial, Recreational, Scientific, or Educational Purposes'') we note that polar bears are harvested in Canada, Alaska, Greenland, and Russia, and we acknowledge that harvest is the consumptive use of greatest importance and potential effect to polar bear. Further we acknowledge that forms of removal other than harvest (such as defense-of-life take) have been considered in this analysis. While overharvest occurs for some populations, laws and regulations for most management programs have been instituted to provide sustainable harvests over the long term. As the status of populations declines, it may be necessary for management entitites to implement harvest reductions in order to limit the potential effect of harvest. This capability has a proven track record in Canada, and is adaptive to future needs. Further, bilateral agreements or conservation agreements have been developed to address issues of overharvest. Conservation benefits from agreements that are in development or have not yet been implemented are not considered in our evaluation. We also acknowledge that increased levels of bear-human encounters are expected in the future and that encounters may result in increased mortality to bears at some unknown level. Adaptive management programs, such as implementing polar bear patrols, hazing programs, and efforts to minimize attraction of bears to communities, to address future bear-human interaction issues, including on-the-land ecotourism activities, are anticipated.

Harvest is likely exacerbating the effects of habitat loss in several populations. In addition, continued harvest and increased mortality from bear-human encounters or other forms of mortality may become a more significant threat factor in the future, particularly for populations experiencing nutritional stress or declining population numbers as a consequence of habitat change. Although harvest, increased bear-human interaction levels, defense-of-life take, illegal take, and take associated with scientific research live-capture programs are occurring for several populations, we have determined that overutilization does not currently threaten the species throughout all or a significant portion of its range.

Under Factor C (''Disease and Predation'') we acknowledge that disease pathogens are present in polar bears; no epizootic outbreaks have been detected; and intra-specific stress through cannibalism may be increasing; however, population level effects have not been documented. Potential for disease outbreaks, an increased possibility of pathogen exposure from changed diet or the occurrence of new pathogens that have moved northward with a warming environment, and increased mortality from intraspecific predation (cannibalism) may become more significant threat factors in the future for polar bear populations experiencing nutritional stress or declining population numbers. We have determined that disease and predation (including intraspecific predation) do not threaten the species throughout all or a significant portion of its range.

Under Factor D (''Inadequacy of Existing Regulatory Mechanisms''), we have determined that existing regulatory mechanisms at the national and international level are generally adequate to address actual and potential threats to polar bears from direct take, disturbance by humans, and incidental or harassment take. We have determined that there are no known regulatory mechanisms in place at the national or international level that directly and effectively address the primary threat to polar bears—the rangewide loss of sea ice habitat within the foreseeable future.

We acknowledge that there are some existing regulatory mechanisms to address anthropogenic causes of climate change, and these mechanisms are not expected to be effective in counteracting the worldwide growth of GHG emissions in the foreseeable future.

Under Factor E (''Other Natural or Manmade Factors Affecting the Polar Bear's Continued Existence'') we reviewed contaminant concentrations and find that, in most populations, contaminants have not been found to have population level effects. We further evaluated increasing levels of ecotourism and shipping that may lead to greater impacts on polar bears. The extent of potential impact is related to changing ice conditions, polar bear distribution changes, and relative risk for a higher interaction between polar bears and ecotourism or shipping. Certain factors, particularly contaminants and shipping, may become more significant threats in the future for polar bear populations experiencing declines related to nutritional stress brought on by sea ice and environmental changes. We have determined, however, that contaminants, ecotourism, and shipping do not threaten the polar bear throughout all or a significant portion of its range.

On the basis of our thorough evaluation of the best available scientific and commercial information regarding present and future threats to the polar bear posed by the five listing factors under the Act, we have determined that the polar bear is threatened throughout its range by habitat loss (i.e., sea ice recession). We have determined that there are no known regulatory mechanisms in place at the national or international level that directly and effectively address the primary threat to polar bears—the rangewide loss of sea ice habitat. We have determined that overutilization does not currently threaten the species throughout all or a significant portion of its range, but is exacerbating the effects of habitat loss for several populations and may become a more significant threat factor within the foreseeable future. We have determined that disease and predation, in particular intraspecific predation, and contaminants do not currently threaten the species throughout all or a significant portion of its range, but may become more significant threat factors for polar bear populations, especially those experiencing nutritional stress or declining population levels, within the foreseeable future.

Distinct Population Segment (DPS) and Significant Portion of the Range (SPR) Evaluation

The Act defines an endangered species as a species in danger of extinction throughout all or a significant portion of its range, and a threatened species as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

In our analysis for this final rule we initially evaluated the status of and threats to the species throughout its entire range. The polar bear is broadly distributed throughout the circumpolar Arctic, occurring in five countries and numbering from 20,000–25,000 in total population. The species has been delineated into 19 populations for management purposes by the PBSG (Aars et al. 2006, p. 33), and these populations have been aggregated into four ecoregions for population and habitat modeling exercises by Amstrup et al. (2007). In our evaluation of threats to the polar bear, we determined that populations are being affected, and will continue being affected, at different

times, rates, and magnitudes depending on where they occur. Some of these differential effects can be distinguished at the ecoregional level, as demonstrated by Amstrup et al. (2007). On the basis of this evaluation, we determined that the entire species meets the definition of threatened under the Act due to the loss of sea ice habitat. The basis of this determination is captured within the analysis of each of the five listing factors, and the ''Finding'' immediately preceding this section.

Recognizing the differences in the timing, rate, and magnitude of threats, we evaluated whether there were any specific areas or populations that may be disproportionately threatened such that they currently meet the definition of an endangered species versus a threatened species. We first considered whether listing one or more Distinct Population Segments (DPS) as endangered may be warranted. We then considered whether there are any significant portions of the polar bear's range (SPR) where listing the species as endangered may be warranted. Our DPS and SPR analyses follow.

Our ''Policy Regarding the Recognition of Distinct Vertebrate Population Segments under the Act'' (61 FR 4725; February 7, 1996) outlines three elements that must be considered with regard to the potential recognition of a DPS as endangered or threatened: (1) Discreteness of the population segment in relation to the remainder of the species to which it belongs; (2) significance of the population segment in relation to the remainder of the taxon; and (3) conservation status of the population segment in relation to the Act's standards for listing (i.e., when treated as if it were a species, is the population segment endangered or threatened?).

Under our DPS Policy, a population segment of a vertebrate species may be considered discrete if it satisfies either one of the following conditions: (1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors (quantitative measures of genetic or morphological discontinuity may provide evidence of this separation); or (2) it is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act.

Genetic studies of polar bears have documented that within-population genetic variation is similar to black and grizzly bears (Amstrup 2003, p. 590), but that among populations, genetic structuring or diversity is low (Paetkau et al. 1995, p. 347; Cronin et al. 2006, pp. 658–659). The latter has been attributed to extensive population mixing associated with large home ranges and movement patterns, as well as the more recent divergence of polar bears in comparison to grizzly and black bears (Talbot and Shields 1996a, p. 490; Talbot and Shields 1996b, p. 574; Paetkau et al. 1999, p. 1580). Genetic analyses support delineated boundaries between some populations (Paetkau et al. 1999, p. 1,571; Amstrup 2003, p. 590), while confirming the existence of overlap and mixing among others (Paetkau et al. 1999, p. 1,571; Cronin et al. 2006, p. 655). We have concluded that these small genetic differences are not sufficient to distinguish population segments under the DPS Policy. Moreover, there are no morphological or physiological differences across the range of the species that may indicate adaptations to environmental variations. Although polar bears within different populations or ecoregions (as defined by Amstrup et al. 2007) may have minor differences in demographic parameters, behavior, or life history strategies, in general polar bears have a similar dependence upon sea ice habitats, rely upon similar prey, and exhibit similar life history characteristics throughout their range.

Consideration might be given to utilizing international boundaries to satisfy the discreteness portion of the DPS Policy. However, each range country shares populations with other range countries, and many of the shared populations are also co-managed. Given that the threats to the polar bear's sea ice habitat is global in scale and not limited to the confines of a single country, and that populations are being managed collectively by the range countries (through bi-lateral and multi-lateral agreements), we do not find that differences in conservation status or management for polar bears across the range countries is sufficient to justify the use of international boundaries to satisfy the discreteness criterion of the DPS Policy. Therefore, we conclude that there are no population segments that satisfy the discreteness criterion of the DPS Policy. As a consequence, we could not identify any geographic areas or populations that would qualify as a DPS under our 1996 DPS Policy (61 FR 4722).

Having determined that the polar bear meets the definition of a threatened species rangewide and that there are no populations that meet the discreteness criteria under our DPS policy (and, therefore, that there are no Distinct Population Segments for the polar bear), we then considered whether there are any significant portions of its range where the species is in danger of extinction.

On March 16, 2007, a formal opinion was issued by the Solicitor of the Department of the Interior, ''The Meaning of 'In Danger of Extinction Throughout All or a Significant Portion of Its Range''' (USDI 2007c). We have summarized our interpretation of that opinion and the underlying statutory language below. A portion of a species' range is significant if it is part of the current range of the species and it contributes substantially to the representation, resiliency, or redundancy of the species. The contribution must be at a level such that its loss would result in a decrease in the ability to conserve the species.

Some may argue that lost historical range should be considered by the Service when evaluating effects posed to a significant portion of the species' range. While we disagree with this argument, we note that the polar bear currently occupies its entire historical range.

In determining whether a species is threatened or endangered in a significant portion of its range, we first identify any portions of the range of the species that warrant further consideration. The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose to analyzing portions of the range that are not reasonably likely to be significant and threatened or endangered. To identify those portions that warrant further consideration, we determine whether there is substantial information indicating that (i) the portions may be significant and (ii) the species may be in danger of extinction there or likely to become so within the foreseeable future. In practice, a key part of this analysis is whether the threats are geographically concentrated in some way. If the threats to the species are essentially uniform throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats applies only to portions of the range that are unimportant to the conservation of the species, such portions will not warrant further consideration.

If we identify any portions that warrant further consideration, we then determine whether in fact the species is threatened or endangered in any significant portion of its range. Depending on the biology of the species, its range, and the threats it faces, it may be more efficient for the Service to

address the significance question first, or the status question first. Thus, if the Service determines that a portion of the range is not significant, the Service need not determine whether the species is threatened or endangered there. If the Service determines that the species is not threatened or endangered in a portion of its range, the Service need not determine if that portion is significant. If the Service determines that both a portion of the range of a species is significant and the species is threatened or endangered there, the Service will specify that portion of the range as threatened or endangered pursuant to section 4(c)(1) of the Act.

The terms ''resiliency,'' ''redundancy,'' and ''representation'' are intended to be indicators of the conservation value of portions of the range. Resiliency of a species allows the species to recover from periodic disturbance. A species will likely be more resilient if large populations exist in high-quality habitat that is distributed throughout the range of the species in such a way as to capture the environmental variability found within the range of the species. In addition, the portion may contribute to resiliency for other reasons—for instance, it may contain an important concentration of certain types of habitat that are necessary for the species to carry out its life-history functions, such as breeding, feeding, migration, dispersal, or wintering. Redundancy of populations may be needed to provide a margin of safety for the species to withstand catastrophic events. This does not mean that any portion that provides redundancy is a significant portion of the range of a species. The idea is to conserve enough areas of the range such that random perturbations in the system act on only a few populations. Therefore, each area must be examined based on whether that area provides an increment of redundancy that is important to the conservation of the species. Adequate representation ensures that the species' adaptive capabilities are conserved. Specifically, the portion should be evaluated to see how it contributes to the genetic diversity of the species. The loss of genetically based diversity may substantially reduce the ability of the species to respond and adapt to future environmental changes. A peripheral population may contribute meaningfully to representation if there is evidence that it provides genetic diversity due to its location on the margin of the species' habitat requirements.

To determine whether any portions of the range of the polar bear warrant further consideration as possible endangered significant portions of the range, we reviewed the entire supporting record for this final listing determination with respect to the geographic concentration of threats and the significance of portions of the range to the conservation of the species. As previously mentioned, we evaluated whether substantial information indicated that (i) the portions may be significant and (ii) the species in that portion may currently be in danger of extinction. We recognize that the level, rate, and timing of threats are uneven across the Arctic and, thus, that polar bear populations will be affected at different rates and magnitudes depending on where they occur and the resiliency of each specific population. On this basis, we determined that some portions of the polar bear's range might warrant further consideration as possible endangered significant portions of the range.

To determine which areas may warrant further consideration, we initially evaluated the four ecoregions defined by Amstrup et al. (2007), each of which consists of a subset of the 19 IUCN-defined management populations, plus a new population—the Queen Elizabeth Islands—created by the authors. The four ecoregions are: (1) the Seasonal Ice ecoregion; (2) the Archipelago ecoregion of the central Canadian Arctic; (3) the polar basin Divergent ecoregion; and (4) the polar basin Convergent ecoregion. On the basis of observational results from long-term studies of polar bear populations and sea ice conditions, plus projections from GCM climate simulations and the results of preliminary Carrying Capacity and Bayesian Network modeling exercises by Amstrup et al. (2007), we have determined that there is substantial information that polar bear populations in the Seasonal Ice and polar basin Divergent ecoregions may face a greater level of threat than populations in the Archipelago and polar basin Convergent ecoregions (see detailed discussion under Factor A). The large geographic area included in each of these ecoregions, plus the substantial proportion of the total polar bear population inhabiting those ecoregions, also indicate that they may be significant portions of the range. Having met these two initial tests, a further evaluation was deemed necessary to determine if these two portions of the range are both significant and endangered (that analysis follows below). We determined that the Archipelago and polar Convergent ecoregions do not satisfy the two initial tests, because there is not substantial information to suggest that the species in those portions may currently be in danger of extinction.

After reviewing the four ecoregions, we proceeded to an evaluation of the 19 populations delineated for management purposes by the IUCN PBSG (Aars et al. 2006, p. 33) plus the Queen Elizabeth Island population created by Amstrup et al. (2007). For fourteen of the PBSG-defined populations, population status is considered stable, increasing, or data deficient, and there is not substantial information indicating that they may currently be in danger of extinction. We eliminated these populations from further consideration. We also eliminated the Queen Elizabeth Island population because there is no current evidence of decline in the population, and because it occurs in the polar basin Convergent ecoregion where sea ice is projected to persist longest into the future (along with the Archipelago ecoregion). Thus, there is not substantial information indicating that this population may currently be in danger of extinction. For the remaining five populations, there is some information indicating actual or projected population declines according to the most recent subpopulation viability analysis conducted by the PBSG (i.e., Southern Beaufort Sea, Norwegian Bay, Western Hudson Bay, Kane Basin, Baffin Bay) (Aars et al. 2006, pp. 34–35). Two of these populations—Norwegian Bay and Kane Basin—occur within the Archipelago ecoregion, and are small both in terms of geographic area included within their boundaries and number of polar bears in the population. Even if these two populations are considered together, the overall geographic area they occupy and overall population size are still small. On this basis we determined that these two populations do not satisfy one portion of the initial test, because there is not substantial information to suggest that these areas are significant portions of the range. In addition, the two populations occur in the Archipelago ecoregion, where sea ice is projected to persist the longest into the future. In addition, available population estimates for these two populations are less reliable because they are older (circa 1998) and are based on limited years and incomplete coverage of sampling. Because of the projected persistence of sea ice in this area throughout the foreseeable future, and the lack of reliable information on population trends, we have determined that there is not substantial information to indicate that these populations are currently in danger of extinction. Having not

satisfied either of the two initial tests, we have determined that these two populations do not warrant any further consideration in this analysis.

The relatively larger area and population size of each of the three remaining populations—Southern Beaufort Sea, Western Hudson Bay, Baffin Bay—indicate that they may be significant portions of the range. For these three populations there is information indicating actual or potential population declines according to the most recent subpopulation viability analysis conducted by the PBSG (Baffin Bay) and other recent studies (Regehr et al. 2007a for Western Hudson Bay; Regehr et al. 2007b for Southern Beaufort Sea), as well as projected population declines based on recent modeling exercises (Hunter et al. 2007; Amstrup et al. 2007). Having met these two initial tests, a further evaluation was deemed necessary to determine if these three populations are both significant and endangered (that analysis follows below). Based on our review of the record, we did not find substantial information indicating that any other portions of the polar bear's range might be considered significant and qualify as endangered.

Having identified the five portions of the range that warrant further consideration (two ecoregions and three populations), we then proceeded to determine whether any of those portions are both significant and endangered. We initially discuss our evaluation of the two ecoregions identified above, and then proceed to discuss our evaluation of the three populations identified above.

On an ecoregional level, the most significant results suggesting that the two ecoregions may be endangered comes from the results of Bayesian network modeling (BM) exercises by Amstrup et al. (2007). In particular, the BM exercise results suggest that polar bear populations in the Seasonal Ice and polar basin Divergent ecoregions may be lost by the mid-21st century given rates of sea ice recession projected in the 10-GCM ensemble used by the authors. As previously discussed above under the heading ''Bayesian Network Model'' within Factor A, we believe that this initial effort has several limitations that reduce our confidence in the actual numerical probabilities associated with each outcome of the BM, as opposed to the general direction and magnitude of the projected outcomes. The BM analysis is a preliminary effort that requires additional development (Amstrup et al. 2007, p. 27). The current prototype is based on qualitative input from a single expert, and input from additional polar bear experts is needed to advance the model beyond the alpha prototype stage. There are also uncertainties associated with statistical estimation of various parameters such as the extent of sea ice or size of polar bear populations (Amstrup et al. 2007, p. 23). In addition, the BM needs further refinement to develop variance estimates to go with its outcomes. Because of these uncertainties associated with the complex BM, it is more appropriate to focus on the general direction and magnitude of the projected outcomes rather than the actual numerical probabilities associated with each outcome. Because of these limitations, we have determined that the BM model outcomes are not a sufficient basis, in light of the other available scientific information, to find that threats to polar bears currently warrant a determination of endangered status for the two ecoregions. However, despite these limitations, we also recognize that the BM results are a useful contribution to the overall weight of evidence and likelihood regarding changing sea ice, population stressors, and effects. We believe that the results are consistent with other available scientific information, including results of the CM (see discussion under ''Carrying Capacity Model'' under Factor A), and quantitative evidence of the gradual rate of population decline in three populations within the ecoregions. We further note that, although these Seasonal Ice and polar basin Divergent ecoregions face differential threats, both ecoregions currently are estimated to have large numbers of polar bears, and there is no evidence of any population currently undergoing a precipitous decline. Therefore, we find that the polar bear is not currently in danger of extinction in either the Seasonal Ice ecoregion or the polar basin Divergent ecoregion.

The three populations identified above as actually or potentially declining are the Western Hudson Bay, Southern Beaufort Sea, and Baffin Bay populations. Over an 18-year period, Regehr et al. (2007, p. 2,673) documented a statistically significant decline in the Western Hudson Bay polar bear population of 22 percent. For this period, the mean annual growth rate was 0.986 (with a 95 percent confidence interval of 0.978–0.995), indicative of a gradual population decline. The decline has been attributed primarily to the effects of climate change (earlier break-up of sea ice in the spring), with harvest also playing a role (see discussion of ''Western Hudson Bay'' under Factor A). A reduction in harvest quota in this population (from 54 to 38) for the 2007–2008 harvest season might begin to reduce the effect of harvest; however, we expect continued population declines from earlier and earlier break-up of sea ice and corresponding longer fasting periods of bears on land (Stirling and Parkinson 2006). Nonetheless, we note that the Western Hudson Bay population remains greater than 900 bears, and that reproduction and recruitment are still occurring in the population (Regehr et al. 2006). Because the current rate of decline for the Western Hudson Bay population is gradual rather than precipitous, reproduction and recruitment are still occurring, and the current size of the population remains reasonably large, we have determined that the population is not currently in danger of extinction, but is likely to become so within the foreseeable future.

The apparent decline in the Southern Beaufort Sea population, documented over a 20-year period, has not been demonstrated to be statistically significant. However, available information indicates that there will be a statistically-significant population decline in the coming decades. Hunter et al. (2007) conducted a sophisticated demographic analysis of the Southern Beaufort Sea population using both deterministic and stochastic demographic models, and parameters estimated from capture-recapture data collected between 2001 and 2006. The authors focused on measures of long-term population growth rate and on projections of population size over the next 100 years. Taking the average observed frequency of bad sea ice years (0.21), they predicted a gradual population decline of about one percent per year (similar to the rate of decline observed in Western Hudson Bay), and an extinction probability of around 35–40 percent at year 45 (see Figure 14 of Hunter et al. 2007). However, the precision of vital rates used in the analysis (estimated by Regehr et al. (2007b, pp. 17–18)) was subject to large degrees of sampling and model selection uncertainty (Hunter et al. 2007, p. 6), the length of the study period (5 years) was short, and the spatial resolution of the GCMs at the scale of the southern Beaufort Sea is less reliable than at the scale of the entire range of the polar bear. These sources of uncertainty lead us to have greater confidence in the general direction and magnitude of the trend of the model outcomes in Hunter et al. (2007) than in the specific percentages associated with each

outcome. In addition, we note that the Southern Beaufort Sea population remains fairly large, that reproduction and recruitment is still occurring in the population, and that changes in the sea ice have not yet been associated with changes in the size of the population (Regehr et al. 2007, p. 2). These results all indicate that this population is not currently in danger of extinction but is likely to become so in the foreseeable future.

As regards Baffin Bay, the recent population estimates of 2,074 bears in 1998 and 1,546 bears in 2004 have limited reliability because of the population survey methods used. There is clear evidence that the population has been overharvested (Aars et al. 2006). Although the PBSG subpopulation viability analysis projects a declining trend, most likely as a result of overharverst, there is no reliable estimate of population trend based on valid population survey results. In recent years, some efforts have been made to reduce harvest of the Baffin Bay population. Greenland put a quota system in place for Baffin Bay in 2006; its current quota is 75 bears. Stirling and Parkinson (2006, p. 268) have documented earlier spring sea ice break-up dates in Baffin Bay since 1978 (i.e., ice breakup has been occurring 6 to 7 days earlier per decade since late 1978). Earlier breakup is likely to lead to longer periods of fasting onshore, with concomitant effects on bear body condition as documented in other populations. However, there are no data on body condition of polar bears or the survival of cubs or subadults from Baffin Bay (Stirling and Parkinson 2006, p. 269) that would allow an analysis of the relationship between changes in body condition and changes in sea ice habitat. In terms of projecting sea ice trends in Baffin Bay in the foreseeable future, Overland and Wang (2007) evaluated a suite of the 12 most applicable GCMs, and found that, ''according to these models, Baffin Bay does not show significant ice loss by 2050.'' These results are at apparent odds with observed sea ice trends, which further complicates projecting future effects of sea ice loss on polar bears. Without statistically reliable indices of declines in survival, body condition indices, or population size, and with evidence of earlier spring breakup dates but equivocal information on future sea ice conditions, we cannot conclude that the species is currently in danger of extinction in Baffin Bay, but can conclude it is likely to become so in the foreseeable future.

Therefore, on the basis of the discussion presented in the previous three paragraphs, we find that the polar bear populations of Western Hudson Bay, Southern Beaufort Sea, and Baffin Bay are not currently in danger of extinction, but are likely to become so in the foreseeable future.

As a result, while the best scientific data available allows us to make a determination as to the rangewide status of the polar bear, we have determined that when analyzed on a population or even an ecoregion level, the available data show that there are no significant portions of the range in which the species is currently in danger of extinction. Because we find that the polar bear is not endangered in the five portions of the range that we previously determined to warrant further consideration (two ecoregions and three populations), we need not address the question of significance for those five portions.

Critical Habitat

Critical habitat is defined in section 3(5) of the Act as: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' is defined in section 3(3) of the Act as meaning the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary. The primary regulatory effect of critical habitat is the requirement, under section 7(a)(2) of the Act, that Federal agencies shall ensure that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of designated critical habitat.

Section 4(a)(3) of the Act and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time a species is determined to be endangered or threatened. Critical habitat may only be designated within the jurisdiction of the United States, and may not be designated for jurisdictions outside of the United States (50 CFR 424(h)). Our regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) the species is threatened by taking or other activity and the identification of critical habitat can be expected to increase the degree of threat to the species; or (2) such designation of critical habitat would not be beneficial to the species. Our regulations (50 CFR 424.12(a)(2)) further state that critical habitat is not determinable when one or both of the following situations exist: (1) Information sufficient to perform required analysis of the impacts of the designation is lacking; or (2) the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat.

Delineation of critical habitat requires, within the geographical area occupied by the polar bear, identification of the physical and biological features essential to the conservation of the species. In general terms, physical and biological features essential to the conservation of the polar bear may include (1) annual and perennial marine sea ice habitats that serve as a platform for hunting, feeding, traveling, resting, and to a limited extent, for denning, and (2) terrestrial habitats used by polar bears for denning and reproduction for the recruitment of new animals into the population, as well as for seasonal use in traveling or resting. The most important polar bear life functions that occur in these habitats are feeding (obtaining adequate nutrition) and reproduction. These habitats may be influenced by several factors and the interaction among these factors, including: (1) water depth; (2) atmospheric and oceanic currents or events; (3) climatologic phenomena such as temperature, winds, precipitation and snowfall; (4) proximity to the continental shelf; (5) topographic relief (which influences accumulation of snow for denning); (6) presence of undisturbed habitats; and (7) secure resting areas that provide refuge from extreme weather or other bears or humans. Unlike some other marine mammal species, polar bears generally do not occur at high-density focal areas such as rookeries and haulout sites. However, certain terrestrial areas have a history of higher use, such as core denning areas, or are experiencing an increasing tendancy of use for resting, such as coastal areas during the fall open water phase for which polar bear use has been increasing in duration for additional and expanded areas. During the winter period, when energetic demands are the greatest, nearshore lead systems (linear openings or cracks in the sea ice) and emphemeral or recurrent polynyas (areas of open sea surrounded by sea ice) are areas of importance for seals

and, correspondingly for polar bears that hunt seals for nutrition. During the spring period, nearshore lead systems continue to be important habitat for bears for hunting seals and feeding. Also the shorefast ice zone where ringed seals construct subnivean birth lairs for pupping is an important feeding habitat during this season. In northern Alaska, while denning habitat is more diffuse than in other areas where core, high-density denning has been identified, certain areas such as barrier islands, river bank drainages, much of the North Slope coastal plain (including the Arctic NWR), and coastal bluffs that occur at the interface of mainland and marine habitat receive proportionally greater use for denning than other areas. Habitat suitable for the accumulation of snow and use for denning has been delineated on the North Slope.

While information regarding important polar bear life functions and habitats associated with these functions has expanded greatly in Alaska during the past 20 years, the identification of specific physical and biological features and specific geographic areas for consideration as critical habitat is complicated, and the future values of these habitats may change in a rapidly changing environment. Arctic sea ice provides a platform for critical life-history functions, including hunting, feeding, travel, and nuturing cubs. That habitat is projected to be significantly reduced within the next 45 years, and some models project complete absence of sea ice during summer months in shorter timeframes.

A careful assessment of the designation of marine areas as critical habitat will require additional time to fully evaluate physical and biological features essential to the conservation of the polar bear and how those features are likely to change over the foreseeable future. In addition, near-shore and terrestrial habitats that may qualify for designation as critical habitat will require a similar thorough assessment and evaluation in light of projected climate change and other threats. Additionally, we have not gathered sufficient economic and other data on the impacts of a critical habitat designation. These factors must be considered as part of the designation procedure. Thus, we find that critical habitat is not determinable at this time.

Available Conservation Measures

The Service will continue to work with other countries that have jurisdiction in the Arctic, the IUCN/SSC Polar Bear Specialist Group, U.S. government agencies (e.g., NASA, NOAA), species experts, Native organizations, and other parties as appropriate to consider new information as it becomes available to track the status of polar bear populations over time, to develop a circumpolar monitoring program for the species, and to develop management actions to conserve the polar bear. Using current ongoing and future monitoring programs for the 19 IUCN-designated populations we will continue to evaluate the status of the species in relation to its listing under the Act. In addition, status of domestic populations will continue to be evaluated as required under the MMPA.

Conservation measures provided to species listed as endangered or threatened under the Act include recognition of the status, increased priority for research and conservation funding, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States, and for conservation actions to be carried out for listed species.

The listing of the polar bear will lead to the development of a recovery plan for this species in Alaska. The recovery plan will bring together international, Federal, State, and local agencies, and private efforts, for the conservation of this species. A recovery plan for Alaska will establish a framework for interested parties to coordinate activities and to cooperate with each other in conservation efforts. The plan will set recovery priorities, identify responsibilities, and estimate the costs of the tasks necessary to accomplish the priorities. Under section 6 of the Act, we would be able to grant funds to the State of Alaska for management actions promoting the conservation of the polar bear.

Additionally, the Service will pursue conservation strategies among all countries that share management of polar bears. The existing multilateral agreement provides an international framework to pursue such strategies, and the outcome of the June 2007 meeting of polar bear range countries (held at the National Conservation Training Center in West Virginia) clearly documents the shared interest by all to pursue such an effort. Range-wide strategies will be particularly important as the sea ice habitat likely to persist the longest is not in U.S. jurisdiction and collaborative efforts to support ongoing research and management actions for purposes of restoring or supplementing the most dramatically affected population will be important. The PBSG is recognized as the technical advisor for the 1973 Agreement for the Conservation of Polar Bears and provides recommendations to each of the range states on conservation and management; recommendations from this group will be sought throughout the entire process.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is listed as endangered or threatened and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. For threatened species such as the polar bear, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species. If a Federal action may affect a polar bear, the responsible Federal agency must consult with us under the provisions of section 7(a)(2) of the Act.

Several Federal agencies are expected to have involvement under section 7 of the Act regarding the polar bear. The National Marine Fisheries Service may become involved, such as if a joint rulemaking for the incidental take of marine mammals is undertaken. The EPA may become involved through its permitting authority under the Clean Water Act and Clean Air Act for activities conducted in Alaska. The U.S Army Corps of Engineers may become involved through its responsibilities and permitting authority under section 404 of the Clean Water Act and through future development of harbor projects. The MMS may become involved through administering their programs directed toward offshore oil and gas development, and the BLM for onshore activities in NPRA. The Denali Commission may be involved through its potential funding of fuel and power generation projects. The U.S. Coast Guard may become involved through their deployment of icebreakers in the Arctic Ocean.

Much of Alaska oil and gas development occurs within the range of polar bears, and the Service has worked effectively with the industry for a number of years to minimize impacts to polar bears through implementation of the incidental take program authorized under the MMPA. Under the MMPA, incidental take cannot be authorized unless the Service finds that any take that is reasonably likely to occur will have no more than a negligible impact on the species. Incidental take

authorization has been in place for the Beaufort Sea region since 1993 and for the Chukchi Sea in 2006 and 2007. New MMPA incidental take authorization covering oil and gas exploration activities in the Chukchi Sea was proposed in June 2007. Mitigation measures required under these authorizations minimize potential impacts to polar bears and ensure that any take remains at the negligible level; these measures are implemented on a case-by-case basis through Letters of Authorization (LOAs) under the MMPA. Because the MMPA negligible impact standard is a tighter management standard than ensuring that an activity is not likely to jeopardize the continued existence of the species under section 7 of the Act, we do not anticipate that any entity holding incidental take authorization for polar bears under the MMPA and in compliance with all mitigation measures under that authorization will be required to implement further measures under the section 7 consultation process.

Regulatory Implications for Consultations under Section 7 of the Act

When a species is listed as threatened under the Act, section 7(a)(2) provides that Federal agencies must insure that any actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of designated critical habitat. Furthermore, under the authority of section 4(d), the Secretary shall establish regulatory provisions on the take of threatened species that are ''necessary and advisable to provide for the conservation of the species'' (16 U.S.C. 1533(d)).

The coverage of the section 9 taking prohibition is much broader than a simple prohibition against killing an individual of the species. Section 3(19) of the Act defines the term ''take'' as ''* * * harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct.'' Federal regulations promulgated by the Service (50 CFR 17.3) define the terms ''harm'' and ''harass'' as:

Harass in the definition of ''take'' in the Act means an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering. This definition, when applied to captive wildlife does not include generally accepted: (1) animal husbandry practices that meet or exceed the minimum standards for facilities and care under the Animal Welfare Act, (2) breeding procedures, or (3) provisions of veterinary care for confining, tranquilizing, or anesthetizing, when such practices, procedures, or provisions are not likely to result in injury to the wildlife.

Harm in the definition of ''take'' in the Act means an act that actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behaviorial patterns, including breeding, feeding, or sheltering.

Certain levels of incidental take may be authorized through provisions under section 7(b)(4) and (o)(2) (incidental take statements for Federal agency actions) and section 10(a)(1)(B) (incidental take permits).

In making a determination to authorize incidental take under section 7 or section 10, the Service must assess the effects of the proposed action to evaluate the potential negative and positive impacts that are expected to occur as a result of the action. Under Section 7, this would be done through a consultation between the Service and the Federal agency on a specific proposed agency action. Section 7 consultation regulations generally limit the Service's review of the effects of the proposed action to the direct and indirect effects of the action and any activities that are interrelated or interdependent with the proposed action. ''Indirect'' effects are caused by the proposed action, later in time, and are ''reasonably certain to occur.'' Essentially, the Service evaluates those effects that would not occur ''but for'' the action under consultation and that are also reasonably certain to occur. Cumulative effects, which are the effects of future non-Federal actions that are also reasonably certain to occur within the action area of the proposed action, must also be taken into consideration. The direct, indirect, and cumulative effects are then analyzed along with the status of the species and the environmental baseline to determine whether the action under consultation is likely to reduce appreciably both the survival and recovery of the listed species or result in the destruction or adverse modification of critical habitat. If the Service determines that the action is not likely to jeopardize the continued existence of a listed species, a ''no jeopardy'' opinion will be issued, along with an incidental take statement. The purpose of the incidental take statement is to identify the amount or extent of take that is reasonably likely to result from the proposed action and to minimize the impact of any take through reasonable and prudent measures (RPMs). The regulations require, however, that any RPM's be only a ''minor change'' to the proposed action. If the Federal agency and any applicant comply with the terms and conditions of the incidental take statement, then section 7(o)(2) of the Act provides an exception to the take prohibition.

The 9th Circuit Court of Appeals has determined that the Service cannot use the consultation process or the issuance of an Incidental Take Statement as a form of regulation limiting what are otherwise legal activities by action agencies, if no incidental take is reasonably likely to occur as a result of the Federal action (*Arizona Cattle Growers' Association* v. *U.S. Fish and Wildlife Service,* 273 F.3d 1229 (9th Cir. 2001)). In that case, the court reviewed several biological opinions that were the result of consultations on numerous grazing permits. The 9th Circuit analyzed the Service's discussion of effects and the incidental take statements for several specific grazing allotments. The court found that the Service, in some allotments, assumed there would be ''take'' without explaining how the agency action (in this case, cattle grazing) would cause the take of specific individuals of the listed species. Further, for other permits the court did not see evidence or argument to demonstrate how cattle grazing in one part of the permit area would take listed species in another part of that permit area. The court concluded that the Service must ''connect the dots'' between its evaluation of effects of the action and its assessment of take. That is, the Service cannot simply speculate that take may occur. The Service must first articulate the causal connection between the effects of the action under consultation and the anticipated take. It must then demonstrate that the take is reasonably likely to occur.

The significant cause of the decline of the polar bear, and thus the basis for this action to list it as a threatened species, is the loss of arctic sea ice that is expected to continue to occur over the next 45 years. The best scientific information available to us today, however, has not established a causal connection between specific sources and locations of emissions to specific impacts posed to polar bears or their habitat.

Some commenters to the proposed rule suggested that the Service should require other agencies (e.g., the Environmental Protection Agency) to

regulate emissions from all sources, including automobile and power plants. The best scientific information available today would neither allow nor require the Service to take such action.

First, the primary substantive mandate of section 7(a)(2)—the duty to avoid likely jeopardy to an endangered or threatened species—rests with the Federal action agency and not with the Service. The Service consults with the Federal action agency on proposed Federal actions that may affect an endangered or threatened species, but its consultative role under section 7 does not allow for encroachment on the Federal action agency's jurisdiction or policy-making role under the statutes it administers.

Second, the Federal action agency decides when to initiate formal consultation on a particular proposed action, and it provides the project description to the Service. The Service may request the Federal action agency to initiate formal consultation for a particular proposed action, but it cannot compel the agency to consult, regardless of the type of action or the magnitude of its projected effects.

Recognizing the primacy of the Federal action agency's role in determining how to conform its proposed actions to the requirements of section 7, and taking into account the requirement to examine the ''effects of the action'' through the formal consultation process, the Service does not anticipate that the listing of the polar bear as a threatened species will result in the initiation of new section 7 consultations on proposed permits or licenses for facilities that would emit GHGs in the conterminous 48 States. Formal consultation is required for proposed Federal actions that ''may affect'' a listed species, which requires an examination of whether the direct and indirect effects of a particular action meet this regulatory threshold. GHGs that are projected to be emitted from a facility would not, in and of themselves, trigger formal section 7 consultation for a particular licensure action unless it is established that such emissions constitute an ''indirect effect'' of the proposed action. To constitute an ''indirect effect,'' the impact to the species must be later in time, must be caused by the proposed action, and must be ''reasonably certain to occur'' (50 CFR 402.02 (definition of ''effects of the action'')). As stated above, the best scientific data available today are not sufficient to draw a causal connection between GHG emissions from a facility in the conterminous 48 States to effects posed to polar bears or their habitat in the Arctic, nor are there sufficient data to establish that such impacts are ''reasonably certain to occur'' to polar bears. Without sufficient data to establish the required causal connection—to the level of ''reasonable certainty''—between a new facility's GHG emissions and impacts to polar bears, section 7 consultation would not be required to address impacts to polar bears.

A question has also been raised regarding the possible application of section 7 to effects posed to polar bears that may arise from oil and gas development activities conducted on Alaska's North Slope or in the Chukchi Sea. It is clear that any direct effects from oil and gas development operations, such as drilling activities, vehicular traffic to and from drill sites, and other on-site operational support activities, that pose adverse effects to polar bears would need to be evaluated through the section 7 consultation process. It is also clear that any ''indirect effects'' from oil and gas development activities, such as impacts from the spread of contaminants (accidental oil spills, or the unintentional release of other contaminants) that result from the oil and gas development activities and that are ''reasonably certain to occur,'' that flow from the ''footprint'' of the action and spread into habitat areas used by polar bears would also need to be evaluated through the section 7 consultation process.

However, the future effects of any emissions that may result from the consumption of petroleum products refined from crude oil pumped from a particular North Slope drilling site would not constitute ''indirect effects'' and, therefore, would not be considered during the section 7 consultation process. The best scientific data available to the Service today does not provide the degree of precision needed to draw a causal connection between the oil produced at a particular drilling site, the GHG emissions that may eventually result from the consumption of the refined petroleum product, and a particular impact to a polar bear or its habitat. At present there is a lack of scientific or technical knowledge to determine a relationship between an oil and gas leasing, development, or production activity and the effects of the ultimate consumption of petroleum products (GHG emissions). There are discernible limits to the establishment of a causal connection, such as uncertainties regarding the productive yield from an oil and gas field; whether any or all of such production will be refined for plastics or other products that will not be burned; what mix of vehicles or factories might use the product; and what mitigation measures would offset consumption. Furthermore, there is no traceable nexus between the ultimate consumption of the petroleum product and any particular effect to a polar bear or its habitat. In short, the emissions effects resulting from the consumption of petroleum derived from North Slope or Chukchi Sea oil fields would not constitute an ''indirect effect'' of any federal agency action to approve the development of that field.

Other Provisions of the Act

Section 9 of the Act, except as provided in sections 6(g)(2) and 10 of the Act, prohibits take (within the United States and on the high seas) and import into or export out of the United States of endangered species. The Act defines take to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. However, the Act also provides for the authorization of take and exceptions to the take prohibitions. Take of endangered wildlife species by non-Federal property owners can be permitted through the process set forth in section 10 of the Act. The Service has issued regulations (50 CFR 17.31) that generally afford to fish and wildlife species listed as threatened the prohibitions that section 9 of the Act establishes with respect to species listed as endangered.

The Service may also develop a special rule specifically tailored to the conservation needs of a threatened species instead of applying the general threatened species regulations. In today's **Federal Register** we have published a special rule for the polar bear that generally adopts existing conservation regulatory requirements under the MMPA and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) as the appropriate regulatory provisions for this threatened species.

Section 10(e) of the Act provides an exemption for any Indian, Aleut, or Eskimo who is an Alaskan Native and who resides in Alaska to take a threatened or endangered species if such taking is primarily for subsistence purposes and the taking is not accomplished in a wasteful manner. Non-native permanent residents of an Alaska native village are also covered by this exemption, but since such persons are not covered by the similar exemption under the MMPA, take of polar bears for subsistence purposes by non-native permanent residents of an Alaskan native village would not be lawful. While the collaborative co-

management mechanisms to institute sustainable harvest levels are in place, the challenges of managing harvest for declining populations are new and will require extensive dialogue with the Alaska Native hunting community and their leadership organizations. Development of risk assessment models that describe the probability and effect of a range of harvest levels interrelated to demographic population life tables are needed. Any future consideration of harvest regulation will be done with the full involvement of the subsistence community through the Alaska Nanuuq Commission and North Slope Borough and should build upon the co-management approach to harvest management that we have developed through the Inupiat-Inuvialuit Agreement and which we will work to expand through the United States-Russia Bilateral Agreement. The Inupiat-Inuvialuit Agreement is a voluntary harvest agreement between the native peoples of Alaska and Canada who share access to the Southern Beaufort Sea polar bear population. The agreement includes harvest restrictions, including a quota. A 10-year review of the agreement published in 2002 revealed high compliance rates and support for the agreement. The United States-Russia Bilateral Agreement calls for the active involvement of the United States, Russian Federation, and native people of both countries in managing subsistence harvest. The Service is currently developing recommendations for the Bilateral Commission that will direct research and establish sustainable and enforceable harvest limits needed to address current potential population declines due to overharvest of the stock. Development of population estimates and harvest monitoring protocols must be developed in a cooperative bilateral manner. The Alaska Nanuuq Commission, the North Slope Borough, USGS, and the Alaska Department of Fish and Game (ADF&G) have indicated support for these future efforts and wish to be a part of implementation of this agreement.

Under the section 10(e) exemption, nonedible byproducts of species taken pursuant to this section may be sold in interstate commerce when made into authentic native articles of handicrafts and clothing. It is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Further, it is illegal for any person to commit, to solicit another person to commit, or cause to be committed, any of these acts. Certain exceptions to the prohibitions apply to our agents and State conservation agencies. See our special rule published in today's edition of the **Federal Register** that would align allowable activities with authentic native articles of handicrafts and clothing made from polar bear parts with existing provisions under the MMPA.

Under the general threatened species regulations at 50 CFR 17.32, permits to carry out otherwise prohibited activities may be issued for particular purposes, including scientific purposes, enhancement of the propagation or survival of the species, zoological exhibitions, educational purposes, incidental take in the course of otherwise lawful activities, or special purposes consistent with the purposes of the Act. However, see today's **Federal Register** for our rule that presents provisions specifically tailored to the conservation needs of the polar bear that generally adopts provisions of the MMPA and CITES. Requests for copies of the regulations that apply to the polar bear and inquiries about prohibitions and permits may be addressed to the Endangered Species Coordinator, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503.

It is our policy, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify, to the maximum extent practicable at the time a species is listed, those activities that would or would not likely constitute a violation of regulations at 50 CFR 17.31. The intent of this policy is to increase public awareness of the effects of the listing on proposed and ongoing activities within a species' range.

For the polar bear we have not yet determined which, if any, provisions under section 9 would apply, provided these activities are carried out in accordance with existing regulations and permit requirements. Some permissible uses or actions have been identified below. Note that the special rule for polar bears (see the special rule published in today's **Federal Register**) affects certain activities otherwise regulated under the Act.

(1) Possession and noncommercial interstate transport of authentic native articles of handicrafts and clothing made from polar bears taken for subsistence purposes in a nonwasteful manner by Alaska Natives;

(2) Any action authorized, funded, or carried out by a Federal agency that may affect the polar bear, when the action is conducted in accordance with the terms and conditions of authorizations under section 101(a)(5) of the MMPA and the terms and conditions of an incidental take statement issued by us under section 7 of the Act;

(3) Any action carried out for scientific purposes, to enhance the propagation or survival of polar bears, for zoological exhibitions, for educational purposes, or for special purposes consistent with the purposes of the Act that is conducted in accordance with the conditions of a permit issued by us under 50 CFR 17.32; and

(4) Any incidental take of polar bears resulting from an otherwise lawful activity conducted in accordance with the conditions of an incidental take permit issued under 50 CFR 17.32. Non-Federal applicants may design a habitat conservation plan (HCP) for the species and apply for an incidental take permit. HCPs may be developed for listed species and are designed to minimize and mitigate impacts to the species to the greatest extent practicable. See also requirements for incidental take of a polar bear under (3) above.

We believe the following activities could potentially result in a violation of the special rule for polar bears; however, possible violations are not limited to these actions alone:

(1) Unauthorized killing, collecting, handling, or harassing of individual polar bears;

(2) Possessing, selling, transporting, or shipping illegally taken polar bears or their parts;

(3) Unauthorized destruction or alteration of denning, feeding, or resting habitats, or of habitats used for travel, that actually kills or injures individual polar bears by significantly impairing their essential behavioral patterns, including breeding, feeding, or sheltering; and

(4) Discharge or dumping of toxic chemicals, silt, or other pollutants (i.e., sewage, oil, pesticides, and gasoline) into the marine environment that actually kills or injures individual polar bears by significantly impairing their essential behavioral patterns, including breeding, feeding, or sheltering.

We will review other activities not identified above on a case-by-case basis to determine whether they may be likely to result in a violation of 50 CFR 17.31. We do not consider these lists to be exhaustive and provide them as information to the public. You may direct questions regarding whether specific activities may constitute a violation of the Act to the Field Supervisor, U.S. Fish and Wildlife Service, Fairbanks Fish and Wildlife Field Office, 101 12th Avenue, Box 110, Fairbanks, Alaska 99701.

Regarding ongoing importation of sport-hunted polar bear trophies from Canada, under sections 101(a)(3)(B) and 102(b) of the MMPA, it is unlawful to

import into the United States any marine mammal that has been designated as a depleted species or stock unless the importation is for the purpose of scientific research or enhancement of the survival or recovery of the species. Under the MMPA, the polar bear will be a depleted species as of the effective date of the rule. Under sections 102(b) and 101(a)(3)(B) of the MMPA therefore, as a depleted species, polar bears and their parts cannot be imported into the United States except for scientific research or enhancement. Therefore, sport-hunted polar bear trophies from Canada cannot be imported after the effective date of this listing rule. Nothing in the special rule for polar bears published in today's **Federal Register** affects these provisions under the MMPA.

Future Opportunities

Earlier in the preamble to this final rule, we determined that polar bear habitat—principally sea ice—is declining throughout the species' range, that this decline is expected to continue for the foreseeable future, and that this loss threatens the species throughout all of its range. We also determined that there are no known regulatory mechanisms in place, and none that we are aware of that could be put in place, at the national or international level, that directly and effectively address the rangewide loss of sea ice habitat within the foreseeable future. We also acknowledged that existing regulatory mechanisms to address anthropogenic causes of climate change are not expected to be effective in counteracting the worldwide growth of GHG emissions within the foreseeable future, as defined in this rule.

Fully aware of the current situation and projected trends within the foreseeable future, and recognizing the great challenges ahead of us, we remain optimistic that the future can be a bright one for the polar bear. The root causes and consequences of the loss of Arctic sea ice extend well beyond the five countries that border the Arctic and comprise the range of the polar bear, and will extend beyond the foreseeable future as determined in this rule. This is a global issue and will be resolved as the global community comes together and acts in concert to achieve that resolution. Polar bear range countries are working, individually and cooperatively, to conserve polar bears and alleviate stressors on polar bear populations that may exacerbate the threats posed by sea ice loss. The global community is also beginning to act more cohesively, by developing national and international regulatory mechanisms and implementing measures to mitigate the anthropogenic causes of climate change.

In December 2007, the United States joined other Nations at the United Nations (UN) Climate Change Conference in Bali to launch a comprehensive ''roadmap'' for global climate negotiations. The Bali Action Plan is a critical step in moving the UN negotiation process forward toward a comprehensive and effective post-2012 arrangement by 2009. (Please note that measures in the Bali Action Plan, in and of themselves, were not considered as offsetting or otherwise dimishing the risk of sea ice loss in our determination of the appropriate listing classification for the polar bear.) In December 2007, President Bush signed the Energy Independence and Security Act of 2007, which responded to his ''Twenty in Ten'' challenge in his 2006 State of the Union Address to improve vehicle fuel economy and increase alternative fuels. This bill will help improve energy efficiency and cut GHG emissions.

With the world community acting in concert, we are confident the future of the polar bear can be secured.

National Environmental Policy Act

We have determined that we do not need to prepare an environmental assessment or an environmental impact statement as defined under the authority of the National Environmental Policy Act of 1969, in connection with regulations adopted under section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship with Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, Secretarial Order 3225, and the Department of Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. Since 1997, we have signed cooperative agreements annually with The Alaska Nanuuq Commission (Commission) to fund their activities. The Commission was established in 1994 to represent the interests of subsistence users and Alaska Native polar bear hunters when working with the Federal government on the conservation of polar bears in Alaska. We attended Commission board meetings during the preparation of the proposed rule and subsequent public comment period, regularly briefing the board of commissioners and staff on relevant issues. We also requested the Commission to act as a peer reviewer of the *Polar Bear Status Review* (Schliebe et al. 2006a) and the proposed rule to list the species throughout its range (72 FR 1064). In addition to working closely with the Commission, we sent copies of the proposed rule (72 FR 1064) to, or contacted directly, 46 Alaska Native Tribal Councils and specifically requested their comments on the proposed listing action. As such, we believe that we have and will continue to coordinate with affected Tribal entities in compliance with the applicable Executive and Secretarial Orders.

References Cited

A complete list of all references cited in this rule is available upon request. You may request a list of all references cited in this document from the Supervisor, Marine Mammals Management Office (see **ADDRESSES** section).

Authors

The primary authors of this rule are Scott Schliebe, Marine Mammals Management Office (see **ADDRESSES** section), and Kurt Johnson, PhD, Branch of Listing, Endangered Species Program, Arlington, VA.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Final Regulation Promulgation

■ Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.11(h) by adding an entry for ''Bear, polar'' in alphabetical order under MAMMALS, to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic Range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*	*	
Bear, polar	*Ursus maritimus*	U.S.A. (AK), Canada, Russia, Denmark (Greenland), Norway.	Entire	T	.....	NA	NA
*	*	*	*	*	*	*	

Dated: May 14, 2008.

Dirk Kempthorne,

Secretary of the Interior.

[FR Doc. E8–11105 Filed 5–14–08; 3:15 pm]

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Federal Register

Thursday,
May 15, 2008

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Special Rule for the Polar Bear; Interim Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS-R7-ES-2008-0027; 1111 FY07 MO—B2]

RIN 1018-AV79

Endangered and Threatened Wildlife and Plants; Special Rule for the Polar Bear

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Interim final rule.

SUMMARY: We, the Fish and Wildlife Service (Service), amend the regulations at 50 CFR part 17, which implement the Endangered Species Act, as amended (ESA), to create a special rule under authority of section 4(d) of the ESA that provides measures that are necessary and advisable for the conservation of the polar bear (*Ursus maritimus*). Elsewhere in today's **Federal Register**, we have published a final rule listing the polar bear as a threatened species under the ESA. The special rule would adopt existing conservation regulatory requirements under the Marine Mammal Protection Act of 1972, as amended (MMPA), and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) as the appropriate regulatory provisions for this threatened species. If an activity is not authorized or exempted under the MMPA or CITES and would result in an act that would be otherwise prohibited under the general prohibitions for threatened species (50 CFR 17.31), then the § 17.31 prohibitions apply and we would require authorization under 50 CFR 17.32 of our regulations.

DATES: This rule becomes effective on May 15, 2008. We will accept comments from all interested parties until July 14, 2008. The reasons for this accelerated implementation and for making this rule effective less than 30 days after publication in the **Federal Register** are described below in the section titled ''Need for Interim Final Rule.''

ADDRESSES: You may submit comments by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- U.S. mail or hand-delivery: Public Comments Processing, Attn: 1018-AV79; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments Solicited section below for more information).

FOR FURTHER INFORMATION CONTACT: Kurt Johnson, Division of Conservation and Classification, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 420, Arlington, VA 22203, telephone 703–358–2171. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

Background

In the Rules and Regulations section of today's **Federal Register**, we published a final rule to list the polar bear as a threatened species throughout its range under the Endangered Species Act, as amended (ESA) (16 U.S.C. 1531 et seq.). Section 4(d) of the ESA specifies that for threatened species, the Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation of the species. Under this authority, the Service has promulgated certain regulations in Title 50 of the Code of Federal Regulations (CFR). Specifically, 50 CFR 17.31 provides that the prohibitions for endangered wildlife under 50 CFR 17.21, with the exception of 17.21(c)(5), also apply to threatened wildlife unless a special rule has been developed under section 4(d) of the ESA. The prohibitions of 50 CFR 17.31 include, among others, take, import, export, and shipment in interstate or foreign commerce in the course of a commercial activity of a threatened species. The general provisions for issuing a permit for any activity otherwise prohibited with regard to threatened species are found at 50 CFR 17.32. The Service may, however, also develop a special rule under section 4(d) of the ESA for a threatened species that specifies prohibitions and authorizations that are tailored to the specific conservation needs of the species, and are deemed necessary and advisable to provide for the conservation of the species. In such cases, some of the prohibitions and authorizations under 50 CFR 17.31 and 17.32 may be appropriate for the species and incorporated into the special rule under section 4(d) of the ESA, but the special rule will also include provisions tailored to the specific conservation needs of the listed species.

With this rule, the Service has found that a special rule under section 4(d) of the ESA that is tailored to the conservation needs of the polar bear is necessary and advisable. The polar bear is a marine mammal and therefore is protected under the Marine Mammal Protection Act of 1972, as amended (MMPA) (16 U.S.C. 1361 et seq.). In addition, the polar bear is protected under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (March 3, 1973; 27 U.S.T. 1087) as an Appendix-II species. We assessed the conservation needs of the species in light of the extensive protections already provided to the polar bear under the MMPA and CITES.

Under this rule, if an activity is authorized or exempted under the MMPA or CITES, we would not require any additional authorization under our regulations to conduct the activity. However, if the activity is not authorized or exempted under the MMPA or CITES and the activity would result in an act that would be otherwise prohibited under 50 CFR 17.31, the prohibitions of section 17.31 apply and we would require authorization under 50 CFR 17.32 of our regulations. In addition, otherwise lawful activities within the United States (except for Alaska) that cause incidental take of polar bears are exempt from the provisions of section 17.31.

Subsistence Handicraft Trade and Cultural Exchanges

Section 10(e) of the ESA provides an exemption for Alaska Natives for the taking and importation of listed species if such taking is primarily for subsistence purposes. Nonedible by-products of species taken in accordance with the exemption, when made into authentic native articles of handicraft and clothing, may be transported, exchanged, or sold in interstate commerce. The ESA defines authentic native articles of handicraft and clothing as items composed wholly or in some significant respect of natural materials, and which are produced, decorated or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or other mass copying devices (16 U.S.C. 1539(e)(3)(ii)). That definition also provides that traditional native handicrafts include, but are not limited to, weaving, carving, stitching, sewing, lacing, beading, drawing, and painting. Authentic native articles of handicrafts and clothing are further defined at 50 CFR 17.3. This exemption is similar to one in section 101(b) of the MMPA, which provides an exemption from the moratorium on take for subsistence harvest and the creation and sale of authentic native articles of handicrafts

or clothing by Alaska Natives. The definition of authentic native articles of handicrafts and clothing in the MMPA is identical to the ESA definition, and our MMPA definition in our regulations at 50 CFR 18.3 is identical to the ESA definition at 50 CFR 17.3. Both statutes require that the taking may not be accomplished in a wasteful manner.

Under this special rule under section 4(d) of the ESA, any exempt activities under the MMPA associated with handicrafts or clothing or cultural exchange using subsistence-taken polar bears will not require additional authorization under the ESA. The limited, noncommercial import and export of authentic native articles of handicrafts and clothing that are created from polar bears taken by Alaska Natives will also continue. Under this rule, all such imports and exports involving polar bears will need to conform to what is currently allowed under the MMPA, comply with our import and export regulations found at 50 CFR part 14, and be noncommercial in nature. Service regulations at 50 CFR 14.4 define commercial as related to the offering for sale or resale, purchase, trade, barter, or the actual or intended transfer in the pursuit of gain or profit, of any item of wildlife and includes the use of any wildlife article as an exhibit for the purpose of soliciting sales, without regard to the quantity or weight. There is a presumption that eight or more similar unused items are for commercial use. The Service or the importer, exporter, or owner may rebut this presumption based upon the particular facts and circumstances of each case (see 50 CFR 14.4). Another activity covered by the special rule is cultural exchange between Alaska Natives and Native inhabitants of Russia, Canada, and Greenland with whom Alaska Natives share a common heritage. The MMPA allows the import and export of marine mammal parts and products that are components of a cultural exchange, which is defined under the MMPA as the sharing or exchange of ideas, information, gifts, clothing, or handicrafts. Cultural exchange has been an important exemption for Alaska Natives under the MMPA, and this special rule ensures that such exchanges will not be interrupted.

This rule also adopts the registered agent and tannery process from the current MMPA regulations. In order to assist Alaska Natives in the creation of authentic native articles of handicrafts and clothing, the Service's MMPA implementing regulations at 50 CFR 18.23(b) and (d) allow persons who are not Alaska Natives to register as an agent or tannery. Once registered, agents are authorized to receive or acquire marine mammal parts or products from Alaskan Natives or other registered agents. They are also authorized to transfer (not sell) hides to registered tanners for further processing. A registered tannery may receive untanned hides from Alaska Natives or registered agents for tanning and return. The tanned skins may then be made into authentic articles of clothing or handicrafts. Registered agents and tanneries must maintain strict inventory control and accounting methods for any marine mammal part, including skins; they provide accountings of such activities and inventories to the Service. These restrictions and requirements for agents and tanners allow the Service to monitor the processing of such items while ensuring that Alaska Natives can exercise their rights under the exemption. Adopting the registered agent and tannery process aligns ESA provisions relating to the creation of handicrafts and clothing by Alaska Natives with the current process under the MMPA.

The provisions in this special rule under section 4(d) of the ESA regarding creation, shipment, and sale of authentic native articles of handicrafts and clothing apply only to items to which the subsistence harvest exemption applies under the MMPA. The exemption for Alaska Natives in section 10(e)(1) of the ESA applies to ''any Indian, Aleut, or Eskimo who is an Alaskan Native who resides in Alaska'' and also applies to ''any non-native permanent resident of an Alaskan native village.'' However, the Alaska Native exemption under section 101 of the MMPA is limited to only an ''Indian, Aleut, or Eskimo who resides in Alaska and who dwells on the coast of the North Pacific Ocean or the Arctic Ocean.'' Because the MMPA is more restrictive, only a person who qualifies under the MMPA Alaska Native exemption may legally take polar bears for subsistence purposes, as a take by non-native permanent residents of Alaska native villages under the broader ESA exemption is not allowed under the MMPA. Therefore, all persons, including those who qualify under the Alaska Native exemption of the ESA, should consult the MMPA and our regulations at 50 CFR part 18 before engaging in any activity that may result in a prohibited act to ensure that their activities will be consistent with both laws.

Import, Export, Take, Transport, Purchase, and Sale or Offer for Sale or Purchase

The Service has generally adopted restrictions for threatened species on their import; export; take within the United States, the territorial seas of the United States, or upon the high seas; transport in interstate or foreign commerce in the course of a commercial activity; sale or offer for sale in interstate or foreign commerce; and possession, sale, delivery, carrying, transportation, or shipping of unlawfully taken species, either through a special rule or through the provisions of 50 CFR 17.31. For the polar bear, these same activities are already strictly regulated under the MMPA. Section 101 of the MMPA provides a moratorium on the taking and importation of marine mammals and their products. Section 102 of the MMPA further prohibits activities unless exempted or authorized under subsequent sections. Prohibitions in section 102(a) include take of any marine mammal on the high seas; take of any marine mammal in waters or on lands under the jurisdiction of the United States; use of any port, harbor, or other place under the jurisdiction of the United States to take or import a marine mammal; possession of any marine mammal or product taken in violation of the MMPA; and transport, purchase, sale, export, or offer to purchase, sell, or export any marine mammal or product taken in violation of the MMPA or for any purpose other than public display, scientific research, or enhancing the survival of the species or stock. Under sections 102(b) and (c) of the MMPA, it is unlawful to import a pregnant or nursing marine mammal; an individual taken from a species or population stock designated as depleted under the MMPA; an individual taken in a manner deemed inhumane; any marine mammal taken in violation of the MMPA or in violation of the law of another country; or any marine mammal product if it was made from any marine mammal taken in violation of the MMPA or in violation of the law of another country, or if it was illegal to sell in the country of origin. The MMPA then provides specific exceptions to these prohibitions under which certain acts are allowed only if all statutory requirements are met.

Section 104 of the MMPA provides for authorization of activities for public display (section 104(c)(2)), scientific research (section 104(c)(3)), enhancing the survival or recovery of a species (section 104(c)(4)), and photography (where there is level B harassment only; section 104(c)(6)). In addition, section

104(c)(8) specifically addresses the possession, sale, purchase, transport, export, or offer for sale of the progeny of any marine mammal taken or imported under section 104, and section 104(c)(9) sets strict standards for the export of any marine mammal from the United States. In all of these sections of the MMPA, strict criteria have been established to ensure that the impact of an authorized activity, if a permit were to be issued, would successfully meet Congress's finding in the MMPA that species ''should not be permitted to diminish beyond the point at which they cease to be a significant functioning element in the ecosystem of which they are a part.'' The statutory provisions of the MMPA allow fewer types of activities than does the ESA for threatened species, and the MMPA's standards are generally stricter for those activities than standards for comparable activities under the ESA. Because for polar bears, an applicant must obtain authorization under the MMPA to engage in an act that would otherwise be prohibited, and because both the types of activities and standards for those activities are generally stricter than the general standards under 50 CFR 17.32, this rule adopts the MMPA provisions as appropriate conservation protections under the ESA. All authorizations issued under section 104 of the MMPA will still be required to undergo consultation under section 7 of the ESA.

Convention on International Trade in Endangered Species of Wild Fauna and Flora (Convention or CITES)

Polar bears are also listed under Appendix II of CITES. CITES regulates the import and export of listed specimens, which include live and dead animals and plants, as well as parts and items made from the species. CITES and U.S. regulations that implement CITES at 50 CFR part 23 require the United States to regulate and monitor the trade in legally possessed CITES specimens over an international border. Thus, for example, CITES would apply to tourists driving from Alaska through Canada with polar bear handicrafts to a destination elsewhere in the United States. Appendix-II specimens may not be exported from a member country without the prior issuance of an export permit that requires findings that the export is not detrimental to the survival of the species and that the specimen was legally acquired. Some limited exceptions to this permit requirement exist. For example, member countries may exempt personal and household effects made of dead specimens from the permitting requirements. Personal and household effects must be personally owned for noncommercial purposes, and the quantity must be necessary or appropriate for the nature of the trip or stay or for household use. Persons who may cross an international border with a polar bear specimen should check with the Service and the country of transit or destination in advance as to applicable requirements. Because for polar bears, any person importing or exporting any live or dead animal, part, or product into or from the United States must comply with the strict provisions of CITES as well as the strict import and export provisions under the MMPA, this special rule adopts these requirements under CITES as appropriate conservation protections under the ESA.

Import of Sport-Hunted Trophies and Other Specimens that are Non-Commercial

The MMPA was amended in 1994 to allow for the import into the United States of certain sport-hunted polar bear trophies legally taken by the importer in Canada. Prior to issuing a permit for import of such trophies, the Service must find that Canada has a monitored and enforced sport-hunting program consistent with the purposes of the five-nation 1973 Agreement on the Conservation of Polar Bears, and that the program is based on scientifically sound quotas ensuring the maintenance of the population at a sustainable level. Currently, six populations are approved for import of polar bear trophies (see 62 FR 7302, 64 FR 1529, 66 FR 50843, and 50 CFR 18.30(i)).

Section 9(c)(2) of the ESA sets out an exemption to the general import prohibition for threatened, Appendix-II wildlife, both live and dead, when: (1) the taking and export meet all provisions of CITES; (2) all other import and reporting requirements under section 9 of the ESA are met; and (3) the import is not made in the course of a commercial activity. Since the polar bear is currently listed in Appendix II of CITES, this ESA exemption is generally applicable.

Because a sport-hunted trophy is not a specimen obtained or imported in the course of a commercial activity, the section 9(c)(2) ESA exemption would typically apply to the import of sport-hunted trophies, provided that all other requirements of section 9(c)(2) of the ESA are met. However, certain importers-persons importing sport-hunted trophy polar bears that were taken in Canada-will not be able to use this exemption. Under the MMPA, marine mammals such as the polar bear are ''depleted'' species as of the effective date of their listing as threatened or endangered species under the ESA (see section 3(1)(C) of the MMPA). As explained below under ''Need for Interim Final Rule,'' the Court has ordered the Service to make the polar bear listing effective upon publication. Therefore, as of today's publication of the final rule listing the polar bear as a threatened species, the polar bear is also a depleted species under the MMPA. Sections 101(a)(3)(B) and 102(b) of the MMPA limit the activities that may be authorized for depleted species. For a depleted species, imports can be authorized under the MMPA only if the import qualifies as enhancement of the survival or recovery of the species or scientific research. Section 101(a)(3)(B) in particular makes clear that the importation of a specimen from a depleted species is prohibited unless it qualifies as one of the excepted activities: scientific research, photography for educational purposes, or enhancing the survival or recovery of the species. Importation of polar bear parts taken in sport hunts in Canada is not one of the exceptions to the restrictions on depleted species. Therefore, as of today's listing of the polar bear as a threatened species under the ESA, which appears elsewhere in today's **Federal Register**, importation of a sport-hunted polar bear trophy from Canada is prohibited even if previously authorized and authorization for the import of sport-hunted polar bear trophies from Canada is no longer available under section 104(c)(5) of the MMPA. Further, the import of sport hunted polar bear trophies from other countries has never been authorized under the MMPA. Section 17 of the ESA states that, unless expressly provided for, no provision in the ESA takes precedence over any more restrictive conflicting provision in the MMPA. Therefore, the ESA exemption under section 9(c)(2) is not available for the import of sport-hunted polar bears from Canada, and nothing in a special rule under section 4(d) of the ESA can override the more restrictive provisions of the MMPA.

Public Display

With the ESA listing and the concurrent designation of polar bears as a depleted species under the MMPA, the take and import of polar bears for public display are also affected. Section 104(c)(2) of the MMPA allows permits to be issued for the take and import of marine mammals for the purpose of public display provided facilities meet specific requirements. Before the listing under the ESA, a polar bear (or its progeny) that was permitted for the

purpose of public display could be transferred, transported, exported, or re-imported without additional MMPA authorization, provided the receiving institution meets the specific housing and display criteria or comparable standards (if an export was involved). However, once a species is designated as depleted, take and import of a marine mammal can no longer be authorized for the purpose of public display. As explained above, under sections 101(a)(3)(B) and 102(b) of the MMPA, take and imports can only be authorized for depleted species if the take or import meets the requirements of enhancement of the survival or recovery of the species or for scientific research. Polar bears or their progeny that qualify as public display animals prior to the ESA listing can continue to be displayed and transferred within the United States consistent with the MMPA requirements for notification outlined in section 104(c)(2)(E). Further, such animals, or their progeny, can be exported provided they meet the requirements for comparable standards under section 104(c)(9) of the MMPA and all requirements under CITES. However, any animals that have been exported cannot be re-imported for the purpose of public display, and no permit may be issued for the taking or importation of a polar bear for purposes of public display as of today's listing of the polar bear as a threatened species under the ESA, which appears elsewhere in today's **Federal Register**. As explained in the discussion on importation of sport-hunted trophies from Canada, nothing in a special rule under section 4(d) of the ESA can override these more restrictive provisions of the MMPA.

Take for Self-Defense or Welfare of the Animal

Both the MMPA and the ESA provide restrictions on the intentional take of protected species. However, both statutes provide exceptions when the take is either exempted or can be authorized for self-defense, the welfare of the animal, or removal or deterrence of a marine mammal from fishing gear. Many of these exemptions are provided by statute, and do not require authorization from the Service. Because the MMPA provides the appropriate management measures for a species such as the polar bear, this rule adopts those measures as appropriate management measures under the ESA.

Take in Defense of Life or Property

In the interest of public safety, both the MMPA and the ESA include provisions to allow for take, including lethal take, when this take is necessary for self-defense or to protect another person. Section 101(c) of the MMPA states that it shall not be a violation to take a marine mammal if such taking is necessary for self-defense or to save the life of another person who is in immediate danger. Any such incident must be reported to the Service within 48 hours of occurrence. Section 11(a)(3) of the ESA similarly provides that no civil penalty shall be imposed if it can be shown by a preponderance of the evidence that the defendant committed an act based on a good faith belief that he or she was protecting himself or herself, a member of his or her family, or any other individual from bodily harm. Section 11(b)(3) of the ESA provides that it shall be a defense to prosecution if the defendant committed an offense based on a good faith belief that he or she was protecting himself or herself, a member of his or her family, or any other individual from bodily harm. The ESA regulations in 50 CFR 17.21(c)(2), which reiterate that any person may take listed wildlife in defense of life, clarify this exemption. Reporting of the incident is required under 50 CFR 17.21(c)(4).

Section 101(a)(4)(A) of the MMPA provides that a marine mammal may be deterred from damaging fishing gear or catch (by the owner or an agent or employee of the owner of that gear or catch), other private property (by the owner or an agent or employee of the owner of that property), and, if done by a government employee, public property so long as the deterrence measures do not result in death or serious injury of the marine mammal. This section also allows for any person to deter a marine mammal from endangering personal safety. Section 101(a)(4)(D) clarifies that this authority to deter marine mammals applies to stocks designated as depleted, which would include the polar bear. The non-lethal deterrence of a polar bear from fishing gear or other property, or for the purpose of personal safety, would not result in injury to the bear or removal of the bear from the population and could, instead, prevent serious injury or death to the bear by preventing escalation of an incident to the point where the bear is killed in self-defense.

Take for the Welfare of the Animal

The MMPA contains a number of provisions that allow taking of a marine mammal when that taking is for the health or welfare of the animal. Section 101(d) of the MMPA provides that it is not a violation of the MMPA for any person to take a marine mammal if the taking is necessary to avoid serious injury, additional injury, or death to a marine mammal entangled in fishing gear or debris, and care is taken to prevent further injury and ensure safe release. The incident must be reported to the Service within 48 hours of occurrence. In addition, if entangled, the safe release of a marine mammal from fishing gear or other debris could prevent further injury or death of the animal. Therefore, by adopting this provision of the MMPA, this special rule provides for the conservation of polar bears in the event of entanglement with fishing gear and could prevent further injury or death of the bear.

Section 109(h) of the MMPA authorizes the humane taking of a marine mammal by specific categories of people (i.e., Federal, State, or local government officials or employees or a person designated under section 112(c) of the MMPA) in the course of their official duties provided that one of three criteria is met-the taking is for: (1) the protection or welfare of the mammal; (2) the protection of the public health and welfare; or (3) the non-lethal removal of nuisance animals. The MMPA regulations at 50 CFR 18.22 provide the specific requirements of the exception. The ESA regulations at 50 CFR 17.21(c)(3) are similar in that they authorize any employee or agent of the Service, any other Federal land management agency, the National Marine Fisheries Service, or a State conservation agency, who is designated by the agency for such purposes, to take listed wildlife when acting in the course of official duties if the action is necessary to: (i) aid a sick, injured, or orphaned specimen; (ii) dispose of a dead specimen; (iii) salvage a dead specimen for scientific study; or (iv) remove a specimen that may constitute a threat to human safety, provided that the taking is humane or, if lethal take or injury is necessary, that there is no other reasonable possibility to eliminate the threat. Further, 50 CFR 17.31(b) allows any employee or agent of the Service, of the National Marine Fisheries Service (NMFS), or of a State conservation agency which is operating a conservation program under the terms of a Cooperative Agreement with the Service in accord with section 6 of the ESA, when acting in the course of official duty, to take those species of threatened wildlife which are covered by an approved cooperative agreement to carry out conservation programs. These authorizations under the ESA are comparable to those under the MMPA. Therefore, if authorization for take is provided under section 109(h) of the MMPA, we will not require any further authorization under the ESA.

Pre-Act Specimens

The ESA, MMPA, and CITES all have provisions for the regulation of specimens, both live and dead, that were acquired or removed from the wild prior to application of the law or the listing of the species, but the laws treat these specimens somewhat differently. ESA section 9(b)(1) provides a broad exemption for threatened species held in a controlled environment as of the date of publication of the listing provided that the holding and any subsequent holding or use is not in the course of a commercial activity. Additionally, section 10(h) of the ESA provides an exemption for certain antique articles. All live polar bears held in captivity prior to today's rule listing the polar bear as a threatened species under the ESA, which appears elsewhere in today's **Federal Register**, and not used or subsequently held or used in the course of a commercial activity, and all items containing polar bear parts that qualify as antiques under the ESA, would qualify for this exemption.

Section 102(e) of the MMPA contains a pre-MMPA exemption that provides that the MMPA shall not apply to any marine mammal or marine mammal product taken prior to December 21, 1972. In addition, Article VII(2) of CITES provides a pre-Convention exception that exempts a pre-Convention specimen from standard permitting requirements in Articles III, IV, and V of the Convention when the exporting or re-exporting country is satisfied that the specimen was acquired before the provisions of CITES applied to it and issues a CITES document to that effect (see 50 CFR 23.45). Under the CITES pre-Convention exception, these specimens still require documentation for any international movement that verifies that the specimen was acquired before CITES applied to the species, which for the polar bear was July 1, 1975. Pre-Convention certificates required by CITES and pre-MMPA affidavits and supporting documentation required under the Service's regulations at 50 CFR 18.14 ensure that trade in pre-MMPA and pre-Convention specimens meet the requirements of the exemptions.

The MMPA has been in force since 1972 and CITES since mid-1975. In that time, there has never been a conservation problem identified related to pre-Act polar bear specimens. Thus, CITES and the MMPA provide appropriate protections for the polar bear in this regard, and additional restrictions under the ESA are not necessary.

Incidental Take of Polar Bears During the Course of Authorized Specific Activities (other than Commercial Fishing)

The take restrictions under the MMPA and those typically provided for threatened species under 50 CFR 17.31 or a special rule under section 4(d) of the ESA also apply to incidental take. This special rule under section 4(d) of the ESA aligns ESA incidental take provisions for polar bears with incidental take provisions of the MMPA and its implementing regulations.

Section 7(a)(2) of the ESA requires Federal agencies to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of designated critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with the Service.

Further, regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). These requirements under the ESA remain unchanged, and this special rule does not negate the need for a Federal action agency to consult with the Service to ensure that any action being authorized, funded, or carried out is not likely to jeopardize the continued existence of any endangered or threatened species, including the polar bear.

As a result of consultation, we document compliance with the requirements of section 7(a)(2) of the ESA through our issuance of a concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat, or issuance of a biological opinion for Federal actions that may affect listed species or critical habitat. In those cases where the Service determines an action that is likely to adversely affect will not result in jeopardy or adverse modification of critical habitat but may result in incidental take, the biological opinion will provide: a statement that specifies the amount or extent of such take; any reasonable and prudent measures considered appropriate to minimize such effects; terms and conditions to implement the measures necessary to minimize effects; and procedures for handling actual incidental take. Under section 7(b)(4) of the ESA, an incidental take statement for a marine mammal such as the polar bear cannot be issued until the applicant has received incidental take authorization under the MMPA.

50 CFR 17.32(b) provides a mechanism for non-Federal parties to obtain authorization for the incidental take of threatened wildlife. This process requires that an applicant specify effects to the species and steps to minimize and mitigate such effects. If the Service determines that the mitigation measures will minimize effects of any potential incidental take and that take will not appreciably reduce the likelihood of survival and recovery of the species, we may grant incidental take authorization. This authorization would include terms and conditions deemed necessary or appropriate to insure minimization of take, as well as monitoring and reporting requirements.

Under this special rule, if incidental take has been authorized under section 101(a)(5) of the MMPA, either by the issuance of an Incidental Harassment Authorization (IHA) or through incidental take regulations, we will not require an incidental take permit issued in accordance with 50 CFR 17.32(b).

Section 101(a)(5) of the MMPA gives the Service the authority to allow the incidental, but not intentional, taking of small numbers of marine mammals, in response to requests by U.S. citizens (as defined in 50 CFR 18.27(c)) engaged in a specified activity (other than commercial fishing) in a specified geographic region. Incidental take cannot be authorized unless the Service finds that the total of such taking will have no more than a negligible impact on the species and, for Alaska species, will not have an unmitigable adverse impact on the availability of the species for taking for subsistence use by Alaska Natives.

If any take that is likely to occur will be limited to non-lethal harassment of the species, the Service may issue an Incidental Harassment Authorization (IHA) under section 101(a)(5)(D) of the MMPA. IHAs cannot be issued for a period longer than one year. If the taking may result in more than harassment, regulations under section 101(a)(5)(A) of the MMPA must be issued, which may be in place for no longer than 5 years. Once regulations making the required findings are in place, we issue Letters of Authorization (LOAs) that authorize the incidental take consistent with the provisions in the regulations. In either case, the IHA or the regulations must set forth: (1)

permissible methods of taking; (2) means of effecting the least practicable adverse impact on the species and their habitat and on the availability of the species for subsistence uses; and (3) requirements for monitoring and reporting.

These incidental take standards under the MMPA currently provide a greater level of protection for the polar bear than adoption of the standards under 50 CFR 17.32. Negligible impact, as defined at 50 CFR 18.27(c), is an impact that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species through effects on annual rates of recruitment or survival. This is a more protective standard than 50 CFR 17.32's requirement to minimize and mitigate, to the maximum extent practicable, the impact of any takings. In addition, the authorizations under the MMPA are limited to one year for IHAs and 5 years for regulations, thus ensuring that activities that are likely to cause incidental take are periodically reviewed and mitigation measures that ensure that take remains at the negligible level can be updated. Therefore, this special rule adopts the MMPA standards for authorizing non-Federal incidental take. As noted earlier, requirements to authorize incidental take associated with a Federal action are set under section 7 of the ESA and would not be affected by this special rule.

In the consideration of IHAs or the development of incidental take regulations, the Service will conduct an intra-Service consultation under section 7(a)(2) of the ESA to ensure that providing an MMPA incidental take authorization is not likely to jeopardize the continued existence of the polar bear. Since the standard for approval of an IHA or the development of incidental take regulations under the MMPA is no more than ''negligible impact'' to the affected marine mammal species, we believe that any MMPA-compliant authorization or regulation would meet the ESA section 7(a)(2) standards of avoiding jeopardy to the species and destruction or adverse modification of critical habitat (if any were to be designated for the polar bear).

Further, to the extent that any Federal actions comport with the standards for MMPA incidental take authorization, we would fully anticipate any such section 7 consultation under the ESA would result in a finding that the proposed action is not likely to jeopardize the continued existence of the polar bear. In addition, we anticipate that any such proposed action(s) would augment protection and enhance agency management of the polar bear through the application of site-specific mitigation measures contained in authorization issued under the MMPA. Therefore, we do not anticipate that any entity holding incidental take authorization under the MMPA and in compliance with all mitigation measures under that authorization would be required to implement further measures under the ESA section 7 process.

An example of application of the MMPA incidental take standards to the polar bear is associated with onshore and offshore oil and gas exploration, development, and production activities in Alaska. Since 1991, affiliates of the oil and gas industry have requested, and we have issued regulations for, incidental take authorization for activities in areas of polar bear habitat. This includes regulations issued for incidental take in the Chukchi Sea for the period 1991–1996, and regulations issued for incidental take in the Beaufort Sea from 1993 to the present. A detailed history of our past regulations for the Beaufort Sea region can be found in our final regulation published on November 28, 2003 (68 FR 66744) and August 2, 2006 (71 FR 43926). On June 1, 2007, the Service published a proposed rule and request for comments on regulations for similar activities and potential incidental take in the Chukchi Sea (72 FR 30670).

The mitigation measures that we have required for all oil and gas projects include a site-specific plan of operation and a site-specific polar bear interaction plan. Site-specific plans outline the steps the applicant will take to minimize effects on polar bears, such as garbage disposal and snow management procedures to reduce the attraction of polar bears, an outlined chain-of-command for responding to any polar bear sighting, and polar bear awareness training for employees. The training program is designed to educate field personnel about the dangers of bear encounters and to implement safety procedures in the event of a bear sighting. Most often, the appropriate response involves merely monitoring the animal's activities until they move out of the area. However, personnel may be instructed to leave an area where bears are seen. If it is not possible to leave, the bears can be displaced by using forms of deterrents, such as vehicles, vehicle horn, vehicle siren, vehicle lights, spot lights, or, if necessary, pyrotechnics (e.g., cracker shells). The intent of the interaction plan and training activities is to allow for the early detection and appropriate response to polar bears that may be encountered during operations, which eliminates the potential for injury or lethal take of bears in defense of human life. By requiring such steps be taken, we ensure any impacts to polar bears will be minimized and will remain negligible.

Additional mitigation measures are also required on a case-by-case basis depending on the location, timing, and specific activity. For example, we may require trained marine mammal observers for offshore activities; pre-activity surveys (e.g., aerial surveys, infra-red thermal aerial surveys, or polar bear scent-trained dogs) to determine the presence or absence of dens or denning activity; measures to protect pregnant polar bears during denning activities (den selection, birthing, and maturation of cubs), including incorporation of a 1-mile (1.6-kilometer) buffer surrounding known dens; and enhanced monitoring or flight restrictions. These mitigation measures are implemented to limit human-bear interactions and disturbances to bears and have ensured that industry effects on polar bears have remained at the negligible level.

Data provided by monitoring and reporting programs in the Beaufort Sea and in the Chukchi Sea, as required under the incidental take authorizations for oil and gas activities, have shown that the mitigation measures have successfully minimized effects on polar bears. For example, since 1991, when the incidental take regulations became effective in the Chukchi and Beaufort Seas, there has been no known instance of a polar bear being killed or of personnel being injured by a bear as a result of oil and gas industry activities. The mitigation measures associated with the Beaufort Sea incidental take regulations, which, based on the monitoring and reporting data, have proven to minimize human-bear interactions, will be part of the Chukchi Sea incidental take regulations currently under review.

Polar Bears Taken Incidentally in the Course of Commercial Fishing Operations

Incidental take of marine mammals as a result of commercial fishery operations is regulated separately under the MMPA under section 118, which is under the authority of the Secretary of Commerce. The regulations that outline the requirements for commercial fisheries that may incidentally take marine mammals can be found at 50 CFR part 229. These regulations outline the process and requirements for placing all commercial fisheries in one of three categories, which are based on the relative frequency of incidental

serious injuries and mortalities of marine mammals in each fishery. Category I designates fisheries with frequent serious injuries and mortalities incidental to commercial fishing; Category II designates fisheries with occasional serious injuries and mortalities; and Category III designates fisheries with a remote likelihood or no known serious injuries or mortalities. If a marine mammal is listed as endangered or threatened, section 118 of the MMPA further specifies that the Secretary of Commerce shall develop and implement a take reduction plan to assist in the restoration or to prevent the depletion of a strategic marine mammal stock that interacts with a commercial fishery that has a high level of mortality and serious injury.

In addition, for depleted species such as the polar bear, section 101(a)(5)(E) of the MMPA provides that the Secretary may allow incidental take caused by commercial fishing, only if the finding has been made that any incidental mortality and serious injury will have no more than a negligible impact on the species; a recovery plan has been developed or is being developed under the ESA; and where required under section 118 of the MMPA, a monitoring program is established, vessels engaged in such fisheries are registered, and a take reduction plan has been developed or is being developed for the species. Upon making a determination that these requirements have been met, the National Marine Fisheries Service (NMFS) issues the appropriate permits for registered vessels. If during the course of the commercial fishing season, it is determined that the level of incidental mortality or serious injury has or is likely to result in more than negligible impact, the permit may be modified as necessary.

With this special rule, if incidental take of polar bears by commercial fisheries is authorized under sections 118 and 101(a)(5)(E) of the MMPA, we will not require any additional authorizations. At present, polar bear stocks in Alaska have no direct interaction with commercial fisheries activities, and we know of no instances where a take is likely to occur. We also anticipate, therefore, that a consultation on commercial fishery activities in Alaska would result in a ''no effect'' determination under section 7 of the ESA. As stated above, this rule does not negate the need for ESA consultation with the Service if these actions may affect a listed species, including the polar bear.

Military Activities

The take restrictions under the MMPA and the ESA apply to military activities that may affect marine mammals. However, the National Defense Authorization Act (NDAA) of 2004 provided an exemption under the MMPA and a limitation under the ESA to be invoked in certain situations.

Section 318 of the NDAA established a limitation on the designation of critical habitat under section 4(a)(3) of the ESA. Section 318 states that ''[T]he Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.'' However, section 318 of the NDAA further states that this limitation does not affect the requirement for the Department of Defense (DOD) to consult under section 7(a)(2) of the ESA nor the obligation of the DOD to comply with section 9 of the ESA. This limitation will apply to any designation of critical habitat for the polar bear as long as an integrated natural resources management plan (INRMP) is in place as described. However, as clarified in section 318 of the NDAA, the DOD will be required to consult with the Service under section 7(a)(2) of the ESA if any proposed action may affect the polar bear. This special rule does not change that requirement.

Section 319 of the NDAA revised the definition of harassment under section 3(18) of the MMPA as it applies to military readiness or scientific research conducted by or on behalf of the Federal government. Section 319 defined harassment for these purposes as ''(i) any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild; 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.'' Section 319 further amended section 101 of the MMPA to provide a mechanism for the DOD to exempt any actions or a category of actions necessary for national defense from requirements of the MMPA provided that DOD has conferred with the Secretaries of Commerce and the Interior. Such an exemption may be issued for no more than 2 years. A similar exemption is not provided for the DOD under the ESA.

Consultation under Section 7 of the ESA

For species listed as threatened or for designated critical habitat, section 7(a)(2) of the ESA requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. In addition, as a Federal agency, the Service must conduct an intra-Service consultation for any action it authorizes, funds, or carries out. This requirement does not change with the adoption of this special rule.

Nonetheless, the determination of whether consultation is triggered is narrow; that is, the focus of the effects analysis is on the discrete effect of the proposed agency action. This is not to say that other factors affecting listed species are ignored. To the contrary, once in consultation, the status of the species, the baseline analysis and cumulative effects analysis all consider factors other than just the effects of the proposed action.

But in the simplest terms, a Federal agency evaluates whether consultation is necessary by analyzing what will happen to listed species or critical habitat ''with and without'' the proposed action. Typically, this analysis will review direct effects, indirect effects, and the effects that are caused by interrelated and interdependent activities to determine if the proposed action ''may affect'' listed species or critical habitat. For those effects beyond the footprint of the action, our regulations at 50 CFR 402.02 require that they both be ''caused by the action under consultation'' and ''reasonably certain to occur.'' That is, effects are only appropriately considered in a section 7 analysis if there is a causal connection between the proposed action and a discernible effect to the species or critical habitat that is reasonably certain to occur. One must be able to ''connect the dots'' between the proposed action, an effect, and an impact to the species and there must be a reasonable certainty that the effect will occur.

While there is no case law directly on point, the 9th Circuit has ruled that in section 7 consultations the Services must demonstrate the connection between the action under consultation and the actual resulting take of the

listed species, which is one form of effect. *Arizona Cattlegrowers' Association* v. *U.S. Fish and Wildlife Service,* 273 F.3d 1229 (9th cir. 2001). In that case, the court reviewed grazing allotments and found several incidental take statements to be arbitrary and capricious because the Service did not connect the action under consultation (grazing) with an effect on (take of) specific individuals of the listed species. The court held that the Service had to demonstrate a causal link between the action under consultation (issuance of grazing permits with cattle actually grazing in certain areas) and the effect (take of listed fish in streams), which had to be reasonable certainty to occur. The court noted that ''speculation'' with regard to take ''is not a sufficient rational connection to survive judicial review.'' *Arizona Cattlegrowers',* 273 F.3d at 1247.

We have specifically considered whether a Federal action that produces GHG emissions is a ''may affect'' action that requires section 7 consultation with regard to any and all species or critical habitat that may be impacted by climate change. As described above, the regulatory analysis of effects outside the footprint of the proposed action requires the determination of whether a causal linkage exists between the proposed action, the effect in question (climate change), and listed species or critical habitat. There must be a traceable connection from one to the next and the effect must be ''sonably certain to occur.'' This causation linkage narrows section 7 consultation requirements to listed species and critical habitat in the ''action area'' rather than to all listed species or all designated critical habitats. Without the requirement of a causal connection between the action under consultation and effects to species, literally every agency action that contributes greenhouse gases to the atmosphere would arguably result in consultation with respect to every listed species or critical habitat that may be affected by climate change.

There is currently no way to determine how the emissions from a specific project under consultation both influence climate change and then subsequently affect specific listed species or critical habitat, including polar bears. As we now understand them, the best scientific data currently available does not draw a causal connection between GHG emissions resulting from a specific Federal action and effects on listed species or critical habitat by climate change, nor are there sufficient data to establish the required causal connection to the level of reasonable certainty between an action's resulting emissions and effect on species or critical habitat.

Necessary and Advisable Finding

This rulemaking revises our regulations at 50 CFR part 17 to include a special rule that, in most instances, would adopt the strict conservation provisions of the MMPA and CITES as the appropriate regulatory provisions for this threatened species. These provisions regulate subsistence handicraft trade and cultural exchanges; import, export, intentional take, transport, purchase, and sale or offer for sale or purchase; take for self-defense or welfare of the animal; pre-Act specimens; incidental take during the course of specific activities; and incidental take in the course of commercial fishing operations. In addition, we have also clarified operation of the ESA section 7 consultation process.

For the most part, the MMPA and its implementing regulations already provide more protective measures than would be provided for the polar bear under the general ESA regulations at 50 CFR sections 17.31 and 17.32. As discussed earlier, authorizations can only be issued for public display, scientific research, limited photography, and enhancement of the survival or recovery of the species, whereas under the general threatened species regulations, authorizations are available for a wider range of activities, including permits for any special purpose consistent with the ESA. In addition, for those activities that are available under both the MMPA and the general threatened species regulations, the MMPA issuance criteria are often more strict. For example, in order to obtain an enhancement permit under the MMPA, the Service must find that any taking or importation is likely to contribute significantly to maintaining distribution or numbers necessary to ensure the survival or recovery of the species or stock and is consistent with any conservation plan or ESA recovery plan for the species or stock or, if no conservation or ESA recovery plan is in place, with the Service's evaluation of actions required to enhance the survival or recovery of the species or stock in light of factors that would be addressed in a conservation plan or ESA recovery plan. Also as explained earlier, with the designation of the polar bear as a depleted species under the MMPA, no permit may be issued for the taking or importation for the purpose of public display whereas section 17.32 would allow issuance of a permit for zoological exhibition or educational purposes.

In addition to the restrictions on import and export discussed above under the MMPA, CITES provisions that apply to the polar bear also ensure that import into or export from the United States is carefully regulated. As an Appendix-II species, the export of any polar bear, either live or dead, and any polar bear parts or products would require an export document where it has been determined that the specimen was legally acquired under international and domestic laws. Prior to export, the exporting country must also find that export will not be detrimental to the survival of the species. A valid export document issued by the exporting country must be presented to the officials of the importing country before the polar bear specimen will be cleared for importation.

As discussed earlier, incidental take authorizations under existing provisions of the MMPA are also stricter than similar provisions would be under the general ESA regulations at 50 CFR 17.32. The general ESA regulations require that an applicant will, to the maximum extent practicable, minimize and mitigate the impacts of the takings; the applicant will ensure adequate funding for the conservation plan and procedures to deal with unforeseen circumstances will be provided; and the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild. In comparison, for any incidental take of a depleted species such as the polar bear (whether caused by commercial fishing or any other specified activity), the MMPA sets the stricter standard that authorization cannot be issued unless the Service finds that the taking will have no more than a negligible impact on the species. This strict standard, and the mitigation measures that have been imposed to ensure that any incidental take remains at the negligible level, have contributed to the Service's finding in the final listing rule that activities for which incidental take of polar bears has been authorized to date are not a threat to the species throughout all or a significant portion of its range.

In addition, a few provisions between the MMPA and the general threatened species regulations at 50 CFR 17.31 and 17.32 are essentially comparable. Both provisions provide an exemption for intentional take when the take is necessary for self-defense or to save the life of another person. Both laws also contain provisions that allow intentional take when that taking is for the protection or welfare of the animal or removal of an animal is necessary for the public health or welfare. As discussed earlier, the MMPA also

contains provisions that allow for the non-lethal deterrence of an animal to prevent damage of personal or private property.

In many ways, adoption of the existing provisions in the MMPA would not result in significant differences from provisions that would apply under section 11 of the ESA and 50 CFR sections 17.31 and 17.32. Also, the MMPA exceptions are available only in limited circumstances and some require authorization by the Service, in which case the agency includes terms and conditions that provide for the protection of the animal. None of the activities to which these exceptions would apply were identified in the final ESA listing rule as threatening the polar bear throughout all or a significant portion of its range.

In fact, these provisions under the MMPA have often proven to be beneficial to the conservation of marine mammals such as the polar bear. Section 112(c) of the MMPA allows the Service to enter into cooperative agreements with other Federal or State agencies and public or private institutions or other persons to carry out the purposes of section 109(h) of the MMPA. The ability to designate non-Federal, non-State ''cooperators'' under section 112(c) of the MMPA has allowed the Service to work with private groups to retrieve carcasses, respond to injured animals, and provide care and maintenance for stranded or orphaned animals. This has provided benefits by drawing on the expertise and allowing the use of facilities of non-Federal and non-State scientists, aquaria, veterinarians, and other private entities.

In the interest of public safety and to protect polar bears, the Service also provides authorization for specified individuals to deter polar bears on an as-needed basis under the authorities of the MMPA. The purpose of the authorization is to allow intentional take of polar bears by harassment to haze animals for the protection of both human life and polar bears. These measures have proven to be successful in preventing injury and death to both people and polar bears. Only individuals who are trained and qualified in proper techniques for hazing polar bears may receive such an authorization. All polar bear hazing events must be reported to the Service within 24 hours of the event and all encounters must be documented. These reports have substantiated the benefits of hazing in these situations and shown that this practice does not pose a threat to the polar bear.

The non-lethal deterrence of a marine mammal from fishing gear or other property or for the purpose of personal safety is also limited to actions that will not result in death or serious injury of the animal and may in fact prevent serious injury or death of the animal from an escalating situation. In addition, the entanglement provisions allow for the safe release of a marine mammal from fishing gear or other debris and are designed to prevent further injury or death of the animal.

A few provisions of the MMPA or CITES are less strict than the ESA regulations that are generally applied to threatened species under 50 CFR 17.31 and 17.32, but, for the reasons explained below, these provisions are still the appropriate regulatory mechanisms to apply to the polar bear. Both the ESA and the MMPA recognize the intrinsic role that marine mammals have played and continue to play in the subsistence, cultural, and economic lives of Alaska Natives. The Service, in turn, recognizes the important role that Alaska Natives play in the conservation of marine mammals. Amendments to the MMPA in 1994 acknowledged this role by authorizing the Service to enter into cooperative agreements with Alaska Natives for the conservation and co-management of subsistence use of marine mammals (section 119 of the MMPA). Through these cooperative agreements, the Service has worked with Alaska native organizations to better understand the status and trends of polar bear throughout Alaska. For example, Alaska Natives collect and contribute biological specimens from subsistence-harvested animals for biological analysis. Analysis of these samples allows us to monitor the health and status of polar bear stocks.

Further, as discussed in our proposed and final rules to list the polar bear as a threatened species (72 FR 1064; January 9, 2007 and today's **Federal Register**), the Service cooperates with the Alaska Nanuuq Commission, an Alaska Native organization that represents interests of Alaska Native villages whose members engage in the subsistence hunting of polar bears, to address polar bear subsistence harvest issues. In addition, for the Southern Beaufort Sea population, hunting is regulated voluntarily and effectively through an agreement between the Inuvialuit of Canada and the Inupiat of Alaska (implemented by the North Slope Borough) as well as being monitored by the Service's marking, tagging, and reporting program. In addition, in the Chukchi Sea, the Service will be working with Alaska Natives through the recently-concluded Agreement between the United States of America and the Russian Federation on the Conservation and Management of the Alaska-Chukotka Polar Bear Population (Bilateral Agreement), under which one of two commissioners representing the United States will represent the Native people of Alaska and, in particular, the Native people for whom polar bears are an integral part of their culture. Thus, we recognize the unique contributions Alaska Natives are able to provide to the Service's understanding of polar bears, and their interest in ensuring that polar bear stocks are conserved and managed to achieve and maintain healthy populations.

We are also mindful of the unique exemptions from the prohibitions against take, import, and interstate sale of authentic native handicrafts and clothing provided to Alaska Natives under the ESA. These exemptions are similar to the exemptions provided Alaska Natives under the MMPA. The Service recognizes the significant conservation benefits that Alaska Natives have already made to polar bears through the measures that they have voluntarily taken to self-regulate harvest that is otherwise exempt under the MMPA and the ESA and through their support of measures for regulation of harvest. This contribution has provided significant benefit to polar bears throughout Alaska, and will continue by maintaining and encouraging the involvement of the Alaska Native community in the conservation of the species. This special rule under section 4(d) of the ESA provides for the conservation of polar bears, while at the same time accommodating Alaska Natives' subsistence, cultural, and economic interests which are interests recognized by both the ESA and MMPA. Therefore, the Service finds that aligning provisions under the ESA relating to the creation, shipment, and sale of authentic native handicrafts and clothing by Alaska Natives with what is already allowed under the MMPA contributes to a regulation that is necessary and advisable to provide for the conservation of polar bears.

This aspect of the special rule is limited to activities that are not already exempted under the ESA. The ESA itself provides a statutory exemption to Alaska Natives for the harvesting of polar bears from the wild as long as the taking is for primarily subsistence purposes. The ESA then specifies that polar bears taken under this provision can be used to create handicrafts and clothing and that these items can be sold in interstate commerce. Thus, this rule does not regulate the taking or importation of polar bears or the sale in

interstate commerce of authentic native articles of handicrafts and clothing by qualifying Alaska Natives; these have already been exempted by statute. The rule addresses only activities relating to cultural exchange and limited types of travel, and to the creation and shipment of authentic native handicrafts and clothing that are currently allowed under section 101 of the MMPA that are not already clearly exempted under the ESA.

In addition, in our final rule to list the polar bear as threatened, while we found that polar bear mortality from harvest and negative bear-human interactions may be approaching unsustainable levels for some populations, especially those experiencing nutritional stress or declining population numbers as a consequence of habitat change, subsistence take by Alaska Natives does not currently threaten the polar bear throughout all or any significant portion of its range. Range-wide, continued harvest and increased mortality from bear-human encounters or other reasons are likely to become more significant threats in the future, particularly for declining or nutritionally-stressed populations. The Polar Bear Specialist Group (PBSG) (Aars et al. 2006, p. 57), through resolution, urged that a precautionary approach be instituted when setting harvest limits in a warming Arctic environment, and continued efforts are necessary to ensure that harvest or other forms of removal do not exceed sustainable levels. However, the Service has found that standards for subsistence harvest in the United States under the MMPA and the voluntary measures taken by Alaska Natives to manage subsistence harvest in the United States have been effective, and that, range-wide, the lawful subsistence harvest of polar bears and the associated creation, sale, and shipment of authentic handicrafts and clothing currently do not threaten the polar bear throughout all or a significant portion of its range.

This rule also adopts the pre-Act provisions of the MMPA. While under this special rule, polar bear specimens that were obtained prior to the date that the MMPA went into effect (December 21, 1972) are not subject to the same restrictions as other threatened species under the general regulations at sections 17.31 and 17.32, the number of specimens and the nature of the activities to which these restrictions would apply is limited. There are very few live polar bears, either in a controlled environment within the United States or elsewhere, that would be considered ''pre-Act'' under the MMPA. Therefore, all of the MMPA prohibitions would probably apply to all live polar bears. Of the dead specimens that would be considered ''pre-Act'' under the MMPA, very few of these specimens would likely be subject to commercial activities due to the age and probable poor physical quality of these specimens. Furthermore, under CITES these specimens would still require documentation for any international movement, which would verify that the specimen was acquired before CITES went into affect in 1976. While the general threatened species regulations would provide some additional restrictions if a commercial transaction were to take place, such transactions have not been identified as a threat in any way to the polar bear. The adoption of this special rule would thus provide appropriate protections for the species while eliminating unnecessary permitting burdens on the public.

Finally the military exemption under the MMPA, while not available under the general ESA regulations of 50 CFR 17.31 and 17.32, is limited to narrow circumstances; can only be invoked after the Secretary of Defense, after conferring with the Secretary of the Interior, has found that the action is necessary for national defense; and cannot remain in place for longer than two years. No actions by the U.S. Department of Defense were identified as a threat to the polar bear throughout all or a significant portion of its range in the final ESA listing rule.

We have determined that requiring additional authorization to carry out activities that are already strictly regulated under the MMPA and CITES would not increase protection for polar bears but would merely create an additional, unnecessary administrative burden on the public. Our 36-year history of implementation of the MMPA, 33-year history of implementation of CITES, and our analysis in the ESA listing rule, which shows that none of the activities currently regulated under these U.S. laws are factors that threaten the polar bear throughout all or a significant portion of its range, demonstrate that the MMPA and CITES provide appropriate regulatory protection to polar bears for activities that are regulated under these laws. In addition, the threat that has been identified in today's final rule that lists the polar bear as a threatened species—loss of habitat and related effects—would not be alleviated by the additional overlay of provisions in the general threatened species regulations at 50 CFR 17.31 and 17.32.

Therefore, this special rule under section 4(d) of the ESA adopts existing conservation regulatory requirements under the MMPA and CITES as the appropriate regulatory provisions for this threatened species. Under this rule, if an activity is authorized or exempted under the MMPA or CITES, no additional authorization will be required. But if an activity is not authorized or exempted under the MMPA or CITES and the activity would result in an act that would be otherwise prohibited under 50 CFR 17.31, the protections provided by the general threatened species regulations will apply. In such circumstances, the prohibitions of 50 CFR 17.31 would be in effect, and authorization under 50 CFR 17.32 would be required. In addition, any action authorized, funded, or carried out by the Service that may affect polar bears, including the Service's issuance of any permit or authorization described above, will require consultation under section 7 of the ESA to ensure that the action will not jeopardize the continued existence of the species. This provision provides an additional overlay of protection for the species. Further, ESA civil and criminal penalties will apply, including where a person has obtained authorization or qualifies for an exemption under the MMPA or CITES but has failed to comply with all terms and conditions of the authorization or exemption.

For the reasons discussed above, we find that this special rule under section 4(d) of the ESA is necessary and advisable to provide for the conservation of the polar bear.

Need for Interim Final Rule

Under section 553(b) of the Administrative Procedure Act (APA), we have good cause to find that the delay associated with public comment on a proposed rule would be detrimental to the conservation of the polar bear and therefore is contrary to the public interest. If the Secretary went through the standard rule-making process (using the full public-notice-and-comment process prior to putting a final rule in place), it would result in the default provisions at 50 CFR 17.31 and 17.32 controlling polar bear management in the interim. That outcome would be contrary to the public interest in this case because immediate implementation of the interim special rule has the advantage of providing a conservation benefit to polar bears that is unavailable under the general threatened species provisions in sections 17.31 and 17.32. Under the interim special rule, the Service can

continue to authorize nonlethal measures to deter polar bears under appropriate situations and therefore avoid interactions with people. In the past these steps have proven successful in preventing injury and death to both people and polar bears. The general threatened species provisions in sections 17.31 and 17.32 would not allow such protection for either people or bears. In addition, as discussed in detail in the preamble, applying the default provisions under sections 17.31 and 17.32, unmodified by a special 4(d) rule, during the interim period would not provide any significant conservation benefit to the species.

In addition, we have good cause to waive the standard 30-day effective date for this special rule consistent with section 553(d)(3) of the APA. On April 28, 2008, the United States District Court for the Northern District of California ordered us to publish the final determination on whether the polar bear should be listed as an endangered or threatened species by May 15, 2008. As part of its order, the Court ordered us to waive the standard 30-day effective date for the final determination. That determination, that the polar bear qualifies as a threatened species under the ESA, is published in today's **Federal Register** and, consistent with the Court's order, is effective immediately. It would be extremely confusing to the public if the listing decision were immediately effective but the special rule that applies to the polar bear became effective 30 days later. In such a case, the provisions in sections 17.31 and 17.32 would apply for 30 days until the regulatory measures under this rule took effect. The public would have to adapt their activities to the requirements of sections 17.31 and 17.32, and then in 30 days would have to understand that new provisions now apply. To avoid confusion arising from varying effective dates, we are therefore waiving the effective date for this interim special rule so it is consistent with the Court's order on the listing determination.

Public Comments Solicited

We solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this special rule under section 4(d) of the ESA for the polar bear.

You may submit your comments and materials concerning this rule by one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section. Your comment must include your first and last name, city, State, country, and postal (zip) code.

We will post your entire comment-including your personal identifying information-on *http://www.regulations.gov*. If you provide personal identifying information in addition to the required items specified in the previous paragraph, such as your street address, phone number, or e-mail address, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the Marine Mammals Management Office, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503 (telephone 907–786–3800).

Clarity of the Rule

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

(a) Be logically organized;

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

(c) Use clear language rather than jargon;

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

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. Your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Required Determinations

Regulatory Planning and Review

This document is not a significant rule, and the Office of Management and Budget has not reviewed this rule under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This rule does not raise novel legal or policy issues.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended RFA to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

Based on the information that is available to us at this time, we are certifying that this special rule will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

According to the Small Business Administration (SBA), small entities include small organizations, including any independent nonprofit organization that is not dominant in its field, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses. The SBA defines small businesses categorically and has provided standards for determining what constitutes a small business at 13 CFR 121.201 (also found at *http://www.sba.gov/size/*), which the RFA requires all federal agencies to follow. To determine if potential economic impacts to these small entities would be significant, we considered the types of activities that might trigger regulatory impacts. However, this special rule for the polar bear designated as threatened under the ESA will, with limited exceptions, allow for maintenance of the status quo regarding activities that had previously been authorized or exempted under the MMPA. Therefore, we

anticipate no significant economic impact on a substantial number of small entities from this rule. Therefore, a Regulatory Flexibility Analysis is not required.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.), we make the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)-(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or [T]ribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and [T]ribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or Tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

(b) Because this special rule for the polar bear designated as threatened under the ESA allows, with limited exceptions, for the maintenance of the status quo regarding activities that had previously been authorized or exempted under the MMPA, we do not believe that this rule will significantly or uniquely affect small governments. Therefore, a Small Government Agency Plan is not required.

Takings

In accordance with Executive Order 12630, this rule does not have significant takings implications. We have determined that the rule has no potential takings of private property implications as defined by this Executive Order because this special rule will, with limited exceptions, maintain the status quo regarding activities currently allowed under the MMPA. A takings implication assessment is not required.

Federalism

In accordance with Executive Order 13132, this rule does not have significant Federalism effects. A Federalism assessment is not required. This rule will not have substantial direct effects on the State, in the relationship between the Federal Government and the State, or on the distribution of power and responsibilities among the various levels of government.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This special rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 et seq. The rule does not impose new record keeping or reporting requirements on State or local governments, individuals, and businesses, or organizations. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA)

This rule is exempt from NEPA procedures. In 1983, upon recommendation of the Council on Environmental Quality, the Service determined that NEPA documents need not be prepared in connection with regulations adopted pursuant to section 4(a) of the ESA. The Service subsequently expanded this determination to section 4(d) rules. A section 4(d) rule provides the appropriate and necessary prohibitions and authorizations for a species that has been determined to be threatened under section 4(a) of the ESA. NEPA procedures would confuse matters by overlaying its own matrix upon the section 4 decision-making process. The opportunity for public comment-one of the goals of NEPA-is also already provided through section 4 rulemaking procedures. This determination was upheld in *Center for Biological Diversity* v. *U.S. Fish and Wildlife Service,* No. 04–04324 (N.D. Cal. 2005).

Government-to-Government Relationship With Tribes

The Service, in accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175 and the Department of the Interior's manual at 512 DM 2, and Secretarial Order 3225, acknowledges our responsibility to communicate meaningfully with federally recognized Tribes on a government-to-government basis. During the public comment period following our proposal to list the polar bear as threatened (72 FR 1064), Alaska Native tribes and tribally-authorized organizations were among those that provided comments on the listing action. In addition, public hearings were held at Anchorage (March 1, 2007) and Barrow (March 7, 2007), Alaska. For the Barrow public hearing, we established teleconferencing capabilities to provide an opportunity to receive testimony from outlying communities. The communities of Kaktovik, Gambell, Kotzebue, Shishmaref, and Point Lay, Alaska, participated in this public hearing via teleconference.

Energy Supply, Distribution or Use (Executive Order 13211)

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is a not significant regulatory action under Executive Order 12866. For reasons discussed within this rule, we believe that the rule does not have any effect on energy supplies, distribution, and use. Therefore, this action is a not a significant energy action, and no Statement of Energy Effects is required.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the

Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.11(h) by revising the entry for ''Bear, polar'' under MAMMALS in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*		*
Bear, polar	Ursus maritimus	U.S.A. (AK), Canada, Russia, Denmark (Greenland), Norway.	Entire	T		NA	17.40(q)
*	*	*	*	*	*		*

■ 3. Amend § 17.40 by adding a new paragraph (q) to read as follows:

§ 17.40 Special rules—mammals.

* * * * *

(q) Polar bear (*Ursus maritimus*).

(1) Except as noted in paragraphs *(2) and (4) of subsection* (q) of this section, all prohibitions and provisions of §§ 17.31 and 17.32 of this part apply to the polar bear.

(2) None of the prohibitions in § 17.31 of this part apply to any activity conducted in a manner that is consistent with the requirements of the Marine Mammal Protection Act (MMPA), 16 U.S.C. 1361 *et seq.*, and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), provided that the person carrying out the activity has complied with all terms and conditions that apply to that activity under the provisions of the MMPA and CITES and their implementing regulations.

(3) All applicable provisions of 50 CFR parts 14, 18, and 23 must be met.

(4) None of the prohibitions in § 17.31 of this part apply to any taking of polar bears that is incidental to, but not the purpose of, carrying out an otherwise lawful activity within any area subject to the jurisdiction of the United States except Alaska.

Dated: May 14, 2008.

Dirk Kempthorne,

Secretary of the Interior.

[FR Doc. E8–11144 Filed 5–14–08; 3:15 pm]

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Vol. 73, No. 95

Thursday, May 15, 2008

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23939–24138 1
24139–24496 2
24497–24850 5
24851–25502 6
25503–25960 7
25961–26312 8
26313–26940 9
26941–27458 12
27459–27712 13
27713–28024 14
28025–28318 15

CFR PARTS AFFECTED DURING MAY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

2 CFR

1200 24139

3 CFR

Proclamations:
8247 24133
8248 24135
8249 24137
8250 25501
8251 25503
8252 26311
8253 27457
8254 27713
8255 27715

Executive Orders:
13338 (See Notice of May 7, 2008) 26939
13399 (See Notice of May 7, 2008) 26939
13460 (See Notice of May 7, 2008) 26939

Administrative Orders:
Memorandums:
Memorandum of May 6, 2008 27717
Notices:
Notice of May 7, 2008 26939
13464 24491
Presidential Determinations:
No. 2008-19 of May 5, 2008 27719

5 CFR

250 24851
733 28025
2429 27459

6 CFR

Proposed Rules:
5 .....28060, 28062, 28066

7 CFR

56 28026
70 28026
305 24851
318 24851
319 25505
915 26941
932 26313
944 26941
1005 26315
1007 26315
1221 25398
2902 .....27928, 27958, 27978

Proposed Rules:
319 24886

8 CFR

103 28026
299 28026

Proposed Rules:
214 26340
248 26340

9 CFR

Proposed Rules:
2 26344

10 CFR

Proposed Rules:
34 27771
35 27773
50 26349

12 CFR

201 25505

Proposed Rules:
261a 25594
712 23982
741 23982

14 CFR

21 24497
39 .....23939, 23942, 24141, 24143, 24145, 24147, 24149, 24151, 24153, 24155, 24157, 24160, 24162, 24164, 24168, 24856, 24858, 24864, 25961, 25962, 25967, 25970, 25974, 25977, 25984, 25986, 25990, 25997, 26316, 26318, 26475
60 26478
71 .....25506, 25999, 27721, 28032
95 23944
97 .....24171, 27721, 27725
121 25506
382 27614
1210 28033

Proposed Rules:
39 .....23988, 23990, 23993, 23995, 24887, 25597, 25599, 25601, 25606, 25609, 25612, 26043, 26045, 26351, 27475, 27477, 27479
71 .....26047, 26048, 27481
91 26049
125 26049
135 26049

15 CFR

774 26000

16 CFR

Proposed Rules:
317 25614

17 CFR

Proposed Rules:
230 26876
232 26876
239 26876

240 26876
249 26876

18 CFR

35 25832
381 23946

20 CFR

401 25507
402 25507
403 26001
416 28033

21 CFR

101 23947
111 27727
522 28036
529 25507

24 CFR

Proposed Rules
3500 26953

26 CFR

1 ....26321, 26322, 27728, 27729
301 ....27728, 27729
Proposed Rules:
1 24186
301 27775

27 CFR

Proposed Rules:
19 26200

29 CFR

4022 28037
4044 28037
Proposed Rules:
403 27346

30 CFR

75 27729
926 27730
Proposed Rules:
732 24120
785 24120
870 24120
872 24120

32 CFR

204 23953
706 24173
Proposed Rules:
199 24509

33 CFR

100 ....25508, 26002, 26005, 26007, 27460, 28038
101 25562
102 25562
104 25562
105 25562
106 25562
117 ....24866, 27744
155 24497
156 24497
165 ....26017, 26019, 27460, 27745, 28039
Proposed Rules:
110 ....26054, 27775
117 ....24510, 28069
160 27778
165 ....24513, 24889, 24899, 24901, 24904, 25624

34 CFR

8 27747
Proposed Rules:
5b 26056
300 27690

37 CFR

Proposed Rules:
201 25627

38 CFR

3 24868
17 26945
38 27462

39 CFR

111 ....25508, 25509, 28041
Proposed Rules:
111 26353

40 CFR

9 25098
51 24174
52 ....23957, 23959, 24174, 24175, 24500, 24868, 25516, 26019
60 24870
61 24870
62 24870
63 24870
70 24174
71 24174
80 26325
85 25098
86 25098
89 25098
92 25098
94 25098
180 ....25518, 25524, 25528, 25533, 27748, 27756
268 27761
300 26025
1033 25098
1039 25098
1042 25098
1065 25098
1068 25098
Proposed Rules:
52 ....23998, 24187, 24515, 26059, 26355, 27783, 27786, 27788, 27791, 28071
704 24187
720 24187
721 24187
723 24187

41 CFR

51-3 28043
51-4 28043
302-17 25539

42 CFR

412 ....24871, 26788
Proposed Rules:
413 25918
418 24000

44 CFR

64 24178
65 ....26026, 28044, 28046
67 ....25542, 25560, 26030
Proposed Rules:
67 ....24036, 25633, 26060, 28073

45 CFR

Proposed Rules:
1606 27483
1623 27483

46 CFR

10 25562
12 25562
15 25562

47 CFR

0 25566
1 25420
2 25420
20 25566
24 24180
25 ....25420, 25591
27 ....24180, 26032
64 ....28049, 28057
68 25566
73 25420
74 25420
76 24502
90 25420
97 25420
Proposed Rules:
27 26067
76 24515

48 CFR

204 27464
215 27464
231 27464
252 27464
3002 25592
3036 24881
6101 26947
6102 26947
6103 26947
6104 26947
6105 26947
9904 23961

49 CFR

29 24139
1572 25562
Proposed Rules:
18 24188
19 24188
107 24519
192 26953
512 26071
523 24352
531 ....24190, 24352
533 ....24190, 24352
534 24352
536 24352
537 24352
544 24906

50 CFR

17 ....23966, 28212, 28306
660 25592
229 23970
622 ....24883, 24884
648 24885
660 ....23971, 26325
679 ....24184, 23339, 27473, 27768
Proposed Rules:
17 ....24910, 24911, 24915, 25354, 27483, 27900, 28080, 28084, 28094
80 24523
600 24922
635 24922
648 24936
700 27998

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT MAY 15, 2008

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Increase in Fees and Charges for Egg, Poultry, and Rabbit Grading; Correction; published 5-15-08

BLIND OR SEVERELY DISABLED, COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE

Committee for Purchase From People Who Are Blind or Severely Disabled

Change in Investigatory Procedures; published 5-15-08

ENVIRONMENTAL PROTECTION AGENCY

Approval and Promulgation of Air Quality Implementation Plans:

Virginia; published 4-15-08

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Implantation or Injectable Dosage Form New Animal Drugs; Flunixin; published 5-15-08

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants:

Determination of Threatened Status for the Polar Bear (Ursus maritimus) Throughout Its Range; published 5-15-08

Endangered and Threatened Wildlife and Plants; Special Rule for the Polar Bear; published 5-15-08

INTERIOR DEPARTMENT

Minerals Management Service

Incorporate American Petroleum Institute Hurricane Bulletins; published 4-15-08

POSTAL SERVICE

Repositionable Notes Transitioned from an Experimental Test to a Permanent Classification; published 5-15-08

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Changes in Handling Requirements for Fresh Nectarines and Peaches Grown in California; comments due by 5-19-08; published 3-18-08 [FR E8-05357]

Pears Grown in Oregon and Washington; Tomatoes Grown in Florida; and Walnuts Grown in California; comments due by 5-19-08; published 3-18-08 [FR E8-05360]

Raisins Produced From Grapes Grown in California:

Revisions to Requirements Regarding Off-Grade Raisins; comments due by 5-22-08; published 4-22-08 [FR E8-08639]

AGRICULTURE DEPARTMENT

Grain Inspection, Packers and Stockyards Administration

Weighing, Feed, and Swine Contractors; comments due by 5-21-08; published 4-21-08 [FR E8-08554]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fisheries of the Exclusive Economic Zone Off Alaska:

Allocating Bering Sea and Aleutian Islands King and Tanner Crab Fishery Resources; comments due by 5-20-08; published 3-21-08 [FR E8-05789]

Bering Sea and Aleutian Islands King and Tanner Crabs; comments due by 5-19-08; published 3-19-08 [FR E8-05562]

Fisheries of the Northeastern United States:

Atlantic Mackerel, Squid, and Butterfish Fisheries; comments due by 5-19-08; published 4-4-08 [FR E8-07025]

Fisheries Off West Coast States; Inseason Adjustments; comments due by 5-19-08; published 4-18-08 [FR E8-08405]

General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits; comments due by 5-23-08; published 5-8-08 [FR E8-10176]

Magnuson-Stevens Fishery Conservation and Management Act Provisions: Fisheries of the Northeastern United States; Northeast Multispecies Fishery, etc.; comments due by 5-21-08; published 5-6-08 [FR E8-09970]

Pacific Whiting Fishery Vessel License Limitation Program; Pacific Coast Groundfish Fishery Management Plan Amendment; comments due by 5-19-08; published 3-19-08 [FR E8-05561]

CONSUMER PRODUCT SAFETY COMMISSION

Standard for the Flammability of Residential Upholstered Furniture; comments due by 5-19-08; published 3-4-08 [FR 08-00768]

DEFENSE DEPARTMENT

Engineers Corps

United States Navy Restricted Area, Menominee River, Marinette Marine Corp. Shipyard, Marinette, WI; comments due by 5-21-08; published 4-21-08 [FR E8-08525]

ENVIRONMENTAL PROTECTION AGENCY

Approval and Promulgation of Air Quality Implementation Plans:

Virginia; Incorporation of On-board Diagnostic Testing and Other Amendments to the Motor Vehicle, etc.; comments due by 5-22-08; published 4-22-08 [FR E8-08394]

Certain New Chemicals; Receipt and Status Information; comments due by 5-23-08; published 4-23-08 [FR E8-08794]

Environmental Statements; Notice of Intent:

Coastal Nonpoint Pollution Control Programs; States and Territories—

Florida and South Carolina; Open for comments until further notice; published 2-11-08 [FR 08-00596]

Pesticide Tolerance:

Prothioconazole; comments due by 5-19-08; published 3-19-08 [FR E8-05290]

FEDERAL COMMUNICATIONS COMMISSION

Radio Broadcasting Services; Basin, WY; comments due by 5-19-08; published 4-14-08 [FR E8-07883]

FEDERAL DEPOSIT INSURANCE CORPORATION

Assessment Dividends; comments due by 5-23-08; published 3-24-08 [FR E8-05670]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Agency Information Collection Activities; Proposals, Submissions, and Approvals; comments due by 5-19-08; published 4-18-08 [FR E8-08459]

HEALTH AND HUMAN SERVICES DEPARTMENT

Regulation on the Organizational Integrity of Entities Implementing Leadership Act Programs and Activities; comments due by 5-19-08; published 4-17-08 [FR 08-01147]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Safety Zone:

Ocean City Air Show, Atlantic Ocean, Ocean City, MD; comments due by 5-21-08; published 4-21-08 [FR E8-08469]

Red Bull Air Race, Detroit River, Detroit, MI; comments due by 5-22-08; published 5-7-08 [FR E8-10238]

Safety Zone; Festival of Sail 2008 Ship's Parade:

San Diego Harbor, San Diego, California; comments due by 5-23-08; published 4-23-08 [FR E8-08732]

Safety Zone; Thunder on Niagara, Niagara River, North Tonawanda, NY; comments due by 5-21-08; published 5-6-08 [FR E8-10005]

Security Zone; Patapsco River, Middle Branch, Baltimore, MD; comments due by 5-23-08; published 4-23-08 [FR E8-08728]

HOMELAND SECURITY DEPARTMENT

Federal Emergency Management Agency

Proposed Flood Elevation Determinations; comments due by 5-22-08; published 2-22-08 [FR E8-03362]

HOMELAND SECURITY DEPARTMENT

U.S. Citizenship and Immigration Services

Petitions Filed on Behalf of Temporary Workers Subject to or Exempt From Annual Numerical Limitation; comments due by 5-23-08; published 3-24-08 [FR E8-05906]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants:

Coaster Brook Trout; comments due by 5-19-08; published 3-20-08 [FR E8-05618]

INTERIOR DEPARTMENT

Privacy Act; Systems of Records; comments due by 5-19-08; published 4-8-08 [FR E8-07273]

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

North Dakota Regulatory Program; comments due by 5-19-08; published 4-18-08 [FR E8-08408]

JUSTICE DEPARTMENT

DNA-Sample Collection Under the DNA Fingerprint Act (of 2005) and the Adam Walsh Child Protection and Safety Act (of 2006); comments due by 5-19-08; published 4-18-08 [FR E8-08339]

SECURITIES AND EXCHANGE COMMISSION

Exchange-Traded Funds; comments due by 5-19-08; published 3-18-08 [FR E8-05239]

Naked Short Selling Anti-Fraud Rule; comments due by 5-20-08; published 3-21-08 [FR E8-05697]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness Directives:

APEX Aircraft Model CAP 10 B Airplanes; comments due by 5-23-08; published 4-23-08 [FR E8-08752]

Bell Helicopter Textron Canada Model 230 Helicopters; comments due by 5-23-08; published 4-23-08 [FR E8-08755]

Boeing Model 737 300, 400, and 500 Series Airplanes; comments due by 5-23-08; published 3-24-08 [FR E8-05702]

Boeing Model 747 Airplanes and Model 767 Airplanes Equipped with General Electric CF6-80C2 and CF6-80A Series Engines; comments due by 5-22-08; published 4-7-08 [FR E8-07153]

Bombardier Model DHC 8 102, DHC-8-103, DHC 8 106, etc.; comments due by 5-21-08; published 5-1-08 [FR E8-09575]

Bombardier Model DHC 8 400 Series Airplanes; comments due by 5-21-08; published 5-1-08 [FR E8-09577]

Eurocopter France Model AS332 C, L, L1 and L2 Helicopters; comments due by 5-22-08; published 4-22-08 [FR E8-08641]

General Electric Co. Aircraft Engines CT7-8A Turboshaft Engines; comments due by 5-19-08; published 3-19-08 [FR E8-05492]

Lindstrand Balloons Ltd. Models 42A, 56A, 60A, 69A77A, 90A, 105A, 120A, 150A, 180A, 210A, 240A, 260A, and 310A Balloons; comments due by 5-19-08; published 4-18-08 [FR E8-08361]

McDonnell Douglas; comments due by 5-22-08; published 4-7-08 [FR E8-07151]

McDonnell Douglas Model 717-200 Airplanes; comments due by 5-22-08; published 4-7-08 [FR E8-07183]

Viking Air Limited Models DHC-2 Mk. I, DHC-2 Mk. II, and DHC-3 Airplanes; comments due by 5-19-08; published 4-18-08 [FR E8-08365]

Airworthiness Standards:

Fire Protection; comments due by 5-21-08; published 2-21-08 [FR E8-03271]

Class E Airspace; Amendment:

Black River Falls, WI; comments due by 5-19-08; published 4-2-08 [FR E8-06580]

Indianapolis, IN; comments due by 5-19-08; published 4-2-08 [FR E8-06572]

Class E Airspace; Establishment and Removal:

Roanoke Rapids, NC; comments due by 5-23-08; published 4-8-08 [FR E8-07092]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

S. 2929/P.L. 110–230

To temporarily extend the programs under the Higher Education Act of 1965. (May 13, 2008; 122 Stat. 877)

Last List May 9, 2008

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