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

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

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1989–0008; FRL–8761–2]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Direct final Notice of Partial Deletion of the Rentokil, Inc. (Virginia Wood Preserving Division) Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 3 is publishing a direct final Notice of Partial Deletion of former Wetland Areas B and C of the Rentokil, Inc. (Virginia Wood Preserving Division) Superfund Site (Site), located in Henrico County, near the city of Richmond, Virginia, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is Appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final partial deletion is being published by EPA with the concurrence of the Commonwealth of Virginia, through the Virginia Department of Environmental Quality (VDEQ) because EPA has determined that all appropriate response actions at these identified parcels under CERCLA, other than operation and maintenance and five-year reviews, have been completed. However, this partial deletion does not preclude future actions under Superfund.

This partial deletion pertains to the soil and sediment of former Wetland Areas B and C and the ground water at former Wetland Area C. The remaining areas and media of the Site will remain on the NPL and are not being considered for deletion as part of this action.

DATES: This direct final partial deletion is effective March 30, 2009 unless EPA receives adverse comments by February 26, 2009. If adverse comments are received, EPA will publish a timely withdrawal of the direct final partial deletion in the **Federal Register** informing the public that the partial deletion will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–1989–0008, by one of the following methods:

- *http://www.regulations.gov.* Follow on-line instructions for submitting comments.
- *E-mail:* Larry C. Johnson, Community Involvement Coordinator at *Johnson.larryc@epa.gov* or Andy Palestini, Remedial Project Manager at *Palestini.andy@epa.gov.*
- *Fax:* 1–215–814–3002.
- *Mail:* Larry C. Johnson, Community Involvement Coordinator, U.S. EPA Region 3, Mailcode 3HS52, Philadelphia, Pennsylvania 19103.
- *Hand delivery:* Larry C. Johnson, Community Involvement Coordinator, U.S. EPA Region 3, Mailcode 3HS52, Philadelphia, Pennsylvania 19103. 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–SFUND–1989–0008. 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:

U.S. EPA Region 3 Library, U.S. EPA Region 3, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029, (215) 814–5000, Monday through Friday 8 a.m. to 12 p.m.; Henrico County Municipal Reference and Law Library, Parham Road at Hungary Spring Road, Richmond, Virginia 23273.

FOR FURTHER INFORMATION CONTACT: Andy Palestini, Remedial Project Manager, U.S. Environmental Protection Agency, Region 3, 3HS23, 1650 Arch Street, Philadelphia, Pennsylvania 19103, 215–814–3233.

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II. NPL Deletion Criteria
III. Partial Deletion Procedures
IV. Basis for Partial Site Deletion
V. Deletion Action

I. Introduction

EPA Region 3 is publishing this direct final Notice of Partial Deletion for the Rentokil, Inc. (Virginia Wood Preserving Division) Superfund Site (Site), from the National Priorities List (NPL). This partial deletion pertains to the soil and sediment of former Wetland Areas B and C and the ground water at former Wetland Area C. The NPL constitutes Appendix B of 40 CFR part 300, which

is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), that EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended, 42 U.S.C. 9605. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of these sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). This partial deletion of the Rentokil, Inc. (Virginia Wood Preserving Division) Superfund Site is proposed in accordance with 40 CFR 300.425(e) and is consistent with the Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List. 60 FR 55,466 (Nov. 1, 1995). As described in 300.425(e)(3) of the NCP, a portion of a site deleted from the NPL remains eligible for Fund-financed remedial action if future conditions warrant such actions. Whenever there is a significant release from a site deleted or partially deleted from the NPL, the site shall be restored to the NPL.

Because EPA considers this action to be noncontroversial and routine, this action will be effective March 30, 2009 unless EPA receives adverse comments by February 26, 2009. Along with this direct final Notice of Partial Deletion, EPA is co-publishing a Notice of Intent for Partial Deletion in the ''Proposed Rules'' section of the **Federal Register**. If adverse comments are received within the 30-day public comment period on this partial deletion action, EPA will publish a timely withdrawal of this direct final Notice of Partial Deletion before the effective date of the partial deletion and the partial deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent for Partial Deletion and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses former Wetland Areas B and C of the Site and demonstrates how the deletion criteria are met. Section V discusses EPA's action to partially delete the Site parcels from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the State, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Pursuant to CERCLA Section 121(c) and the NCP, EPA conducts five-year reviews to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure. EPA conducts such five-year reviews even if a site is deleted from the NPL. EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Partial Deletion Procedures

The following procedures apply to the deletion of the soil and sediment of former Wetland Areas B and C and the ground water at former Wetland Area C of the Site:

(1) EPA has consulted with the Commonwealth of Virginia prior to developing this direct final Notice of Partial Deletion and the Notice of Intent for Partial Deletion co-published in the ''Proposed Rules'' section of the **Federal Register**.

(2) EPA has provided the Commonwealth 30 working days for review of this notice and the parallel Notice of Intent for Partial Deletion prior to their publication today, and the Commonwealth, through the Virginia Department of Environmental Quality (VDEQ), has concurred on the partial deletion of the Site from the NPL.

(3) Concurrently with the publication of this direct final Notice of Partial Deletion, a notice of the availability of the parallel Notice of Intent for Partial Deletion is being published in a major local newspaper, the Richmond *Times Dispatch.* The newspaper notice announces the 30-day public comment period concerning the Notice of Intent for Partial Deletion of the Site from the NPL.

(4) The EPA has placed copies of documents supporting the partial deletion in the deletion docket and made these items available for public inspection and copying at the Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this partial deletion action, EPA will publish a timely notice of withdrawal of this direct final Notice of Partial Deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent for Partial Deletion and the comments already received.

Deletion of a portion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a portion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a portion of a site from the NPL does not preclude eligibility for further response actions, should future conditions warrant such actions.

IV. Basis for Partial Site Deletion

The following information provides EPA's rationale for deleting the soil and sediment at former Wetland Areas B and C and the ground water at former Wetland Area C of the Rentokil, Inc. Superfund Site from the NPL:

Site Background and History

The Rentokil, Inc. Superfund Site (Site) is a former wood treating facility that operated under the name of Virginia Wood Preservers and that ceased operating in January 1990. The Site is located at 3000 Peyton Street at the intersection of Peyton Street and Ackley Avenue in Henrico County, near Richmond, Virginia. The Site includes the former wood treatment process area, the wood drying areas, Wetland Area A, and the two former wetland areas (Wetland Areas B and C). None of the wetland areas were used in the wood treating process; these areas became contaminated by runoff from the Site. Wetland Area A, the area immediately north of the former process area, is located within the flood plain of an unnamed tributary to North Run. Wetland Area A was remediated and re-vegetated to remain a wetland. Former

Wetland Area B, the area at the southeast corner of the Site, and former Wetland Area C, the area immediately south of the Site which is across Peyton Street, were connected by two culverts under Peyton Avenue. Surface runoff discharged from the Site through a ditch to former Wetland B, where it was retained and discharged to former Wetland C when flow was high. A ditch along the north side of Peyton Avenue also collected runoff from the Site. This runoff flowed through the west culvert to former Wetland Area C. A ditch parallel to the south side of Peyton Avenue carried runoff from former Wetland Area C to the east and ultimately to a 24-inch culvert under Ackley Avenue. Because the invert of the 24-inch culvert was about two feet above the flow line of the south ditch and the normal elevation of former Wetland Area C, Site-related runoff waters were retained within former Wetland Area C.

Wood treating operations at the Site were initiated in 1957 and continued under several different owners/operators. In 1974, Rentokil, Inc. purchased the stock of TaCo, one of the previous owners. Both TaCo and the Virginia Wood Preserving Corporation (the owner prior to 1974) were subsequently merged into Rentokil. Rentokil later changed its name to Rentokil SupaTimber, Inc. and, in September 1989, changed its name to Virginia Properties, Inc. (VPI), a wholly owned subsidiary of Rentokil, Inc.

The land immediately surrounding the Site is mostly open space/woodlands. Nearby development is comprised of light industrial, commercial, and low density residential. A private developer has purchased former Wetland Area B in preparation of placing new commercial/office buildings in this area. The surrounding area is served by public water supply.

EPA proposed that the Site be listed on the NPL in January 1987. The Site was placed on the NPL in March 1989. Pursuant to CERCLA, Rentokil, Inc. and EPA signed an Administrative Order by Consent in December 1987 to conduct a Remedial Investigation/Feasibility Study (RI/FS) to identify the types, quantities, and locations of contaminants and to develop ways of addressing Site contamination. The two phases of field work for the RI were conducted from May to August 1989 and from June to July 1991. In March 1992, VPI and EPA entered into an Administrative Order by Consent for Removal Action (Order). The purpose of the Order was to design and construct sediment control structures to prevent additional migration of contaminated sediment from the Site into North Run Creek. These structures were completed by June 22, 1992.

EPA issued a Record of Decision (ROD) for the Site on June 22, 1993. The ROD addressed all aspects of Site cleanup: Existing structures, ''hot spots'', ground water, surface water, soil, sediment, mitigation for the loss of wetlands, and institutional controls, as described more completely below. A Consent Decree, whereby VPI agreed to implement the requirements of the ROD, was signed by VPI in 1994.

Remedial Investigation and Feasibility Study (RI/FS)

Analytical results of the sampling performed for the RI indicate that the surface soil, subsurface soil, ground water, and sediments posed unacceptable risks to human health and the environment, mainly through exposure to the following Site-related contaminants: Arsenic, chromium, copper, pentachlorophenol, and polynuclear aromatic hydrocarbons (from using creosote).

Record of Decision Findings

The major components of the remedy selected in the ROD include: Demolition, decontamination, and off-site disposal of the existing structures; excavation, treatment (if necessary) and off-site disposal of the on-site pond sediments; excavation and on-site disposal of the contaminated soil and sediment in Wetland Areas A, B, and C; construction of an impermeable cap; excavation, low temperature thermal desorption treatment, and on-site disposal of the ''hot spots'', the soil in the CCA Disposal Area, the Fill Area, and the source material within 25 feet of the concrete drip pad, the on-site pond, and the former blowdown sump; construction of a slurry wall; construction of a dewatering system within the cap/slurry wall containment system; institutional controls; mitigation for the loss or damage to the wetland areas; and, long-term ground water monitoring.

Although Remedial Action Objectives were not specifically identified in the ROD, the following objectives can be inferred from the major components of the remedy: Reduce risks to human health by preventing direct contact with, and ingestion of, contaminants in the site soil, wetland sediments, and pond sediments, and by preventing potential ingestion of contaminated ground water; reduce risks to the environment by preventing direct contact with, and ingestion of, contaminants in the wetland sediments; minimize the migration of contaminants from site soil and wetland sediments that could result in surface water concentrations in excess of Ambient Water Quality Criteria; eliminate or minimize the threat posed to human health and the environment by preventing exposure to the contaminants in the ground water; and contain contaminated ground water to protect human health and the environment.

EPA amended the ROD on August 27, 1996, with the concurrence of VDEQ to delete the requirement for treatment of the ''hot spots'' at the Site because ground water modeling indicated that treating the ''hot spots'' had no effect on the levels of contaminants in the ground water.

Response Actions

Remedial construction of former Wetland Area B started in June 1998 with the clearing and grubbing of the existing vegetation. All of the clearing and grubbing materials were chipped in a tub grinder and were disposed of at the Old Dominion (BFI) landfill in Richmond, Virginia. Excavation of the top 24 inches of contaminated soil occurred in July 1998, immediately followed by backfilling the excavated area with clean soil. The remedial construction was completed in August 1998 when the area was seeded with an approved seed mix. A total of 3,339 cubic yards of contaminated soil was excavated and placed under the cap constructed in the area of the former rail spur.

Remedial construction of former Wetland Area C also started in June 1998 with the clearing and grubbing of the existing vegetation. All of the clearing and grubbing materials were chipped in a tub grinder and were disposed of at the Old Dominion (BFI) landfill in Richmond, Virginia. Excavation of the top 24 inches of contaminated soil occurred in August 1998, immediately followed by backfilling the excavated area with clean soil. The remedial construction was completed in October 1998 when the area was seeded with an approved seed mix. A total of 5,380 cubic yards of contaminated soil was excavated and placed under the cap constructed in the area of the former rail spur.

In the ROD, EPA, with the advice of the U.S. Fish and Wildlife Service, selected wetlands mitigation because of the damage caused to former Wetland Areas B and C. The mitigation consisted of purchasing approximately 6.81 acres of prior converted cropland and reconstructing the land to simulate natural wetland conditions. Mitigation

occurred in the Virginia Wood Preserving portion of the Chickahominy LLC mitigation area located in Charles City County, Virginia, approximately 25 miles east of Richmond, in the Chickahominy River floodplain.

Cleanup Standards

Arsenic was the primary contaminant of concern in the wetland areas. As such, all soil exceeding the site-specific cleanup level for arsenic of 33 mg/kg was excavated to a depth of 24 inches. Confirmatory sampling was performed during the remedial action to confirm that the soil cleanup level was achieved.

Operation and Maintenance

The cap at the Site is routinely monitored to make sure the fence is in good condition, to determine when to mow the grass, to check if there are any problems with erosion of the cap surface that needs repair, and to locate any trees which require cutting down.

Rentokil, Inc. takes ground water samples semi-annually to monitor the levels of contaminants. The selected remedy includes withdrawing ground water from within the area enclosed by the cap/slurry wall. However, EPA, with the concurrence of the VDEQ, has agreed to a request by Rentokil, Inc. to place a moratorium on the withdrawal of ground water to determine whether this practice has any effect on the levels or dispersion of the contaminants in the ground water outside of this enclosed area.

Institutional controls in the form of a Deed Notice and Declaration of Restrictive Covenants for Certain property at the Rentokil Superfund Site was recorded in the Clerk's Office of Henrico County on December 1, 2005. Included in the Restrictive Covenant are provisions precluding residential development and ground water use in former Wetland Area B. Even though the ground water at former Wetland Area B is not contaminated, EPA required the restriction on ground water use to prevent the possibility of drawing contamination in that direction. There are no use restrictions for former Wetland Area C.

EPA and the U.S. Fish and Wildlife Service continue to monitor progress at the mitigation site in Charles City County. Two issues were brought up as a result of the latest site visit in September 2007. First, Japanese honeysuckle, should be treated with an herbicide to allow other desirable vegetation to grow. Secondly, the tree tubes used during the initial planting effort should be removed because they are restricting the growth of the tree trunks.

Five-Year Review

EPA issued the first five-year review report for the Site on September 17, 2003. In the report, EPA stated that a protectiveness determination of the remedy could not be made until a determination is made as to whether the contaminant levels at monitoring well number 2 is due to leakage from the cap/slurry wall containment system. No issues were identified for the implementation of the remedy or the protectiveness at either former Wetland Area B or C.

The second five-year review report was issued on September 22, 2008. In the second five-year review report, EPA determined that the remedy is protective of human health and the environment. All threats at the Site associated with ingestion or dermal contact with contaminated soil and sediments have been addressed through capping of the Site and excavation and consolidation of those areas of contaminated soil and sediments previously located beyond the extent of the cap (including the soil and sediment at former Wetland Areas B and C). The ground water clean-up goals selected for the Site are protective of human health and the environment. In the interim, exposure pathways that could result in unacceptable risks are being controlled. Even though no one currently uses the contaminated ground water, institutional controls have been implemented to prevent exposure to, or ingestion of, contaminated ground water (an institutional control has also been placed on the ground water at former Wetland Area B to prevent drawing the contaminated ground water to that area). Long-term protectiveness of the remedial action will be verified by obtaining ground water samples to fully evaluate migration of the contaminant plume downgradient of the slurry wall. Current data indicated that the plume remains in the area of VPMW–02 and is not expanding.

EPA will need to conduct the next five-year review of the Site by September 2013. Former Wetland Area C will not be subject to future five-year reviews because all response actions are complete and conditions allow for unlimited use and unrestricted exposure.

Community Involvement

The most recent community involvement activity for this Site was placing the newspaper ad informing the public that EPA was conducting a five-year review of the Site. The ad was placed in the Richmond *Times Dispatch* on August 21, 2008. In the ad, EPA solicited the general sentiment from the local community on how Site operations affected them and whether anyone had any comments, suggestions, or recommendations regarding the management or operation of the Site. No feedback was received from the community.

Concurrently with the publication of this direct final Notice of Partial Deletion, a notice of the availability of the parallel Notice of Intent for Partial Deletion will be published in the Richmond *Times Dispatch.* The newspaper notice will announce the 30-day public comment period concerning the Notice of Intent for Partial Deletion of the Site from the NPL.

Determination That the Criteria for Deletion Have Been Met

The soil and sediments in former Wetland Areas B and C and the ground water at former Wetland Area C are being proposed for deletion because the Responsible Party completed all appropriate response actions required by the ROD. The remedy selected in the ROD for these two areas included excavating the contaminated soil and disposing the material under the cap. All soil exceeding the site-specific cleanup level of 33 mg/kg of arsenic was excavated to a depth of 24 inches, with the extent of excavation determined by confirmatory sampling. The excavated areas were then backfilled with clean soil and seeded. This work was completed during the remedial action, as documented in the Preliminary Close Out Report dated September 2, 1999. Mitigation for the damage to the wetland areas occurred in the Virginia Wood Preserving portion of the Chickahominy LLC mitigation area located in Charles City County, Virginia.

EPA is deleting former Wetland Areas B and C from the NPL as requested by Parham Forest Partners, LLC, the purchaser of the former Wetland Area B parcel of the Site, and VDEQ. EPA Region 3 submitted the direct final Notice of Partial Deletion and the Notice of Intent of Partial Deletion to EPA Headquarters and to the VDEQ for their concurrence.

V. Deletion Action

The EPA, with concurrence of the Commonwealth of Virginia through the Virginia Department of Environmental Quality, has determined that all appropriate response actions under CERCLA, other than operation and maintenance and five-year reviews, have been completed. Therefore, EPA is deleting the soil and sediments in former Wetland Areas B and C and the

ground water at former Wetland Area C of the Rentokil, Inc. Site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication. This action will be effective *March 30, 2009,* unless EPA receives adverse comments by *February 26, 2009.* If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final notice of partial deletion before the effective date of the partial deletion and it will not take effect. EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to partially delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: December 16, 2008.

William T. Wisniewski,

Acting Regional Administrator, Region 3.

■ For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR 1987 Comp., p. 193.

Appendix B—[Amended]

■ 2. Table 1 of Appendix B to part 300 is amended under ''VA'' by revising the entry for ''Rentokil, Inc.'', (Virginia Wood Preserving Division) to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1—GENERAL SUPERFUND SECTION

State	Site name	City/county	Note (a)
Virginia	Rentokil, Inc. (Virginia Wood Preserving Division)	Richmond	P

(a) * * *

P = Sites with partial deletion(s).

[FR Doc. E9–1704 Filed 1–26–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 08–255; FCC 09–2]

Implementation of Short-Term Analog Flash and Emergency Readiness Act; Establishment of DTV Transition ''Analog Nightlight'' Program

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: With this document, the Commission implements the Short-term Analog Flash and Emergency Readiness Act, Public Law 110–459, 122 Stat. 5121 (2008). The Analog Nightlight Act requires the Commission to develop and implement a program by January 15, 2009, to ''encourage and permit'' continued analog TV service for a period of 30 days after the February 17, 2009 DTV transition date, to the extent technically feasible, for the purpose of providing emergency and DTV transition information to viewers who may not obtain the necessary equipment to receive digital broadcasts by the transition deadline. The Act intends to provide short-term assistance to viewers as the nation transitions from analog to digital television service. This document adopts the policies to implement this Act and the analog nightlight program.

DATES: Effective January 27, 2009.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Kim Matthews, *Kim.Matthews@fcc.gov*, or Evan Baranoff, *Evan.Baranoff@fcc.gov* of the Media Bureau, Policy Division, (202) 418–2120; or John Gabrysch, *John.Gabrysch@fcc.gov*, of the Media Bureau, Engineering Division, (202) 418–7000.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* (Order), FCC 09–2, adopted and released on January 15, 2009. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Summary of the Notice of Proposed Rulemaking

I. Introduction and Background

1. The Short-term Analog Flash and Emergency Readiness Act (''Analog Nightlight Act'' or ''Act''), Pub. L. 110–459, 122 Stat. 5121 (2008), requires the Commission to develop and implement a program by January 15, 2009, to ''encourage and permit'' continued analog TV service for a period of 30 days after the February 17, 2009 DTV transition date, to the extent technically feasible, for the purpose of providing ''public safety information'' and ''DTV transition information'' to viewers who may not obtain the necessary equipment to receive digital broadcasts by the transition deadline. This Report and Order (''Order'') adopts the requirements to implement the Act.

2. Congress has mandated that after February 17, 2009, full-power television broadcast stations must transmit only digital signals, and may no longer transmit analog signals. (*See* Digital Television and Public Safety Act of 2005 (''DTV Act''), which is Title III of the Deficit Reduction Act of 2005, Public Law 109–171, 120 Stat. 4 (2006) (codified at 47 U.S.C. 309(j)(14) and 337(e)).) The Analog Nightlight Act is designed to ensure that those consumers who are not able to receive digital signals after the DTV transition on February 17, 2009 will not be left without access to emergency information. The Act is also intended to help consumers understand the steps they need to take in order to restore their television service. (The analog

nightlight concept was first used by the broadcasters in Wilmington, North Carolina, who volunteered to transition their market on September 8, 2008. They ceased analog broadcasting on that date but continued to broadcast their analog signals for roughly one month, displaying a ''slate'' describing the transition and where people could obtain information about it.) In enacting the Analog Nightlight Act, Congress acknowledged that the FCC and others ''have been working furiously'' to inform viewers about the transition, but also recognized that there will inevitably be some consumers left behind. Congress also recognized that when viewers are cut off from their televisions, it is not just a matter of convenience but also one of public safety. The concern about readiness is especially acute with regard to the nation's more vulnerable citizens—such as the poor, the elderly, the disabled, and those with language barriers—who may be less prepared to ensure they will have continued access to television service.

3. The Analog Nightlight Act was signed into law on December 23, 2008. (The Analog Nightlight legislation (S. 3663) was adopted by Congress on December 10, 2008 and sent to the President for signature on December 12, 2008.) On December 24, 2008, the Commission adopted and released a Notice of Proposed Rule Making (''*NPRM*'') in this proceeding. (*See Implementation of Short-term Analog Flash and Emergency Readiness Act; Establishment of DTV Transition ''Analog Nightlight'' Program*, MB Docket No. 08–255, Notice of Proposed Rule Making, 73 FR 80332 (December 31, 2008). In light of the extremely short period of time in which the Commission was directed to implement the Act (*i.e.*, the January 15, 2009 statutory deadline), the Commission acted quickly to adopt and release the *NPRM* in order to give interested parties a short period of time in which to participate. Although the Commission found that there was good cause to dispense with notice and comment requirements under the Administrative Procedure Act (''APA'') because of this time frame, the Commission nonetheless sought comment from interested parties in order to assist in the development of the analog nightlight program. The Commission noted the ''urgent necessity for rapid administrative action under the circumstances.'') Based on consideration of the comments and replies we received, this Report and Order adopts an analog nightlight program with practical procedures and maximum flexibility for participating broadcasters, consistent with the intent of the statute to permit and encourage participation. (A list of the comments and reply comments filed in response to the *NPRM* is attached hereto at Appendix B.) Specifically, we expand herein the list of stations pre-approved to provide nightlight service, adopt streamlined procedures for stations to follow to notify the Commission of participation in the nightlight program, and permit the provision of limited sponsorship information as part of nightlight programming to help stations defray the cost of providing critical nightlight service. The decisions made in this Order are guided solely by the goal of the Analog Nightlight Act to provide short-term assistance to viewers as we transition from analog to digital television service. Accordingly, we emphasize that these decisions are not intended to stand as precedent for future proceedings involving different circumstances. Nevertheless, we find these decisions are appropriate for the unique circumstances involved here.

4. We strongly encourage all eligible stations to participate in the provision of a nightlight service to assist consumers during the 30-day period following the digital transition. The revised, expanded list of eligible nightlight stations is attached as Appendix A hereto. In addition, we urge any station not listed on the attached Appendix A to consider and determine whether it can participate in providing analog nightlight service by demonstrating that it will not cause harmful interference to any digital station. (We note that the Community Broadcasters Association (''CBA''), which is concerned that continued occupancy of analog channels will delay the initiation of digital service by some Class A and Low Power Television (''LPTV'') stations, prefers that the Commission not pressure full power stations that prefer not to participate in the nightlight program to change their mind and participate, as long as there is at least one full power station in each Designated Market Area (''DMA'') that is willing and able to participate. While we recognize that some Class A and LPTV stations are waiting for analog spectrum to become available so they can commence digital service, we believe that our primary goal in implementing the Analog Nightlight Act is to ensure widespread participation to assist viewers that are unprepared for the transition. The nightlight period is short—limited to 30 days—so any delay caused to a Class A or LPTV station would be brief.) We also urge stations that are unable to provide nightlight service on their own analog channel to coordinate with other broadcasters in their service area to share the costs of analog nightlight operation to reach their viewers. We strongly encourage all stations to work together to ensure that at least one station serving each community provides a nightlight service to assist that community. As proposed in the *NPRM*, the station whose channel is being used to provide the nightlight service will remain responsible for the content of the programming.

5. The Commission, in conjunction with industry stakeholders, state and local officials, community grassroots organizations, and consumer groups, has worked hard to increase consumer awareness of the digital transition, and these efforts have made a significant impact. (Many industry members have been working hard to educate consumers about the upcoming transition, including broadcasters, multichannel video programming distributors, telecommunications companies, satellite providers, manufacturers, and retailers. According to the latest Nielsen DTV report, more than 92 percent of U.S. households are aware of and prepared, at least to some extent, for the transition.) All of our efforts will continue and intensify up to and beyond the transition deadline. However, it is inevitable that on February 17, 2009, some consumers will be unaware of the transition, some will be unprepared to receive digital signals, and others will experience unexpected technical difficulties. For those consumers, the analog nightlight program adopted by Congress and implemented herein will help to ensure that there is no interruption in the provision of critical emergency information and will provide useful information regarding the transition to help consumers establish digital service.

II. Discussion

A. Duration of the Analog Nightlight Program

6. We find that the Act authorizes full-power television stations to provide analog nightlight service for up to 30 days after the February 17, 2009 transition date. Section 2(a) of the Analog Nightlight Act states:

> Notwithstanding any other provision of law, the Federal Communications Commission shall, not later than January 15, 2009, develop and implement a program to encourage and permit, to the extent technically feasible and subject to such limitations as the Commission finds to be consistent with the public interest and requirements of this Act, the broadcasting in the analog television service of only the

public safety information and digital transition information specified in subsection (b) during the 30-day period beginning on the day after the date established by law under section 3002(b) of the [DTV Act] for termination of all licenses for full-power television stations in the analog television service and cessation of broadcasting by full-power stations in the analog television service.

7. Thus, as required by this Act, our analog nightlight program will permit eligible full-power television stations, as defined below, to continue their analog broadcasting for a period of up to 30 days beginning on February 18, 2009, for the limited purpose of providing public safety and digital transition information, as further described below. (One commenter proposed that we authorize Class A, LPTV, TV translator, and other secondary television stations to participate in making public service announcements regarding the DTV transition, and make an exception where necessary to any rules that might prohibit these stations from making such announcements (*e.g.*, some secondary television stations are either prohibited from originating programming or restricted in the amount of programming they may originate.) Class A and LPTV stations are not prohibited from making such public service announcements and we encourage these stations to consider doing so, particularly if they serve rural areas that are served by few full-power stations.) The 30-day period ends at 11:59:59 p.m. local time on March 19, 2009. Cohen, Dippell and Everist, P.C. (''CDE'') request in their comments that the Commission permit continuation of analog service for more than 30 days following the transition deadline in special cases. We decline CDE's request as it is contrary to the explicit language of the Act.

8. Although we encourage stations that elect to participate in the analog nightlight program to provide nightlight service for the entire 30-day period provided by the Act, they are not required to do so. The Analog Nightlight Act limits the duration of the nightlight service but does not specify that the service must be provided for the entire 30-day period. Consistent with the Act, we find that participating stations have the flexibility to provide nightlight service for a shorter period of time and terminate service before March 19, 2009. However, we urge stations that volunteer to provide nightlight service to commit to airing the nightlight programming for at least two weeks, as we believe that a minimum period of two weeks is necessary to ensure that the information provided by the nightlight service reaches viewers who were unprepared for the transition. In addition, we believe that it is important for emergency information to remain available to all viewers during the 30-day nightlight period wherever possible. We require stations that elect to participate in the nightlight program to inform us in their notification, as described below, if they are planning to cease nightlight service before March 19, 2009.

B. Eligibility for the Analog Nightlight Program

9. Based on Section 3 of the Act, we conclude, as we proposed in the *NPRM*, that only stations operating on channels 2 through 51 are eligible to broadcast in analog pursuant to the Act. Section 3 of the Act requires, among other things, that the Commission consider ''market-by-market needs, based on factors such as channel and transmitter availability'' in developing the nightlight program, and requires the Commission to ensure that the broadcasting of analog nightlight information will not cause ''harmful interference'' to digital television signals. In addition, Section 3 prohibits the broadcasting of analog nightlight signals on spectrum ''approved or pending approval by the Commission to be used for public safety radio services'' and on channels 52–69.

10. We also conclude, as we proposed in the *NPRM*, that channels cannot be used for analog nightlight service if they cause harmful interference to digital television signals. (Section 3 also mandates that the Commission ''not require'' that analog nightlight signals be subject to mandatory cable carriage and retransmission requirements. Analog Nightlight Act, Section 3(3).) Therefore, a station that is ''flashcutting'' on its analog channel to post-transition digital operation will not be eligible to use its analog channel for the analog nightlight service because to do so would unavoidably interfere with its digital service. (As discussed below, a station that is approved for a phased transition to remain on its pre-transition digital channel may be permitted to use its analog channel for the analog nightlight program if doing so does not delay its transition to digital service. These circumstances will be evaluated on a case-by case basis.)

1. Stations Initially Determined To Be Eligible

11. After reviewing the comments received on this issue, we have decided that we can increase the number of stations initially determined to be eligible for the analog nightlight program. We will expand the list of eligible stations, attached as Appendix A, to include 826 stations that cover 47 states, the District of Columbia and Puerto Rico, and 202 designated market areas (''DMAs''). (The eight DMAs without a station pre-approved for nightlight service are: Harrisburg-Lancaster-Lebanon-York, PA; Hattiesburg-Laurel, MS; Lafayette, IN; Palm Springs, CA; Presque Isle, ME; Providence, RI-New Bedford, MA; Springfield-Holyoke, MA; and Toledo, OH. In six of these eight DMAs, we have identified at least one station that might be able to provide analog nightlight service at reduced power (four stations in the Harrisburg-Lancaster-Lebanon-York DMA; one in the Hattiesburg-Laurel DMA, the Lafayette, IN DMA, and the Palm Springs DMA; two stations in the Providence (RI)-New Bedford (MA) DMA and three in the Toledo DMA. There are no eligible stations in the Springfield-Holyoke DMA because all of them either have an out-of-core analog channel, are using their analog channel for digital service, or would interfere with a co-channel station, but we believe portions of this market may be served by nightlight stations in adjacent markets. In the Presque Isle DMA, both stations in the market are using their analog channel for digital service, preventing them from providing nightlight service. We will continue to explore potential solutions for these markets.) We agree with those commenters, including the National Association of Broadcasters (''NAB'') and the Association for Maximum Service Television (''MSTV''), who advocate that we expand as much as possible the list of stations that are pre-approved for nightlight service and thus can participate in the nightlight program through a simple notification procedure. In developing the list of pre-approved eligible stations that we proposed in the *NPRM* (''*NPRM* Appendix A''), our intention was to be conservative in order to fully protect digital signals rather than risk interference. (With respect to Section 3(2), in considering interference protection for digital TV stations, we developed minimum co-channel and adjacent channel spacing measures and presumed that analog stations that are located the specified distance or greater from any operating DTV stations would not cause interference to signals in the digital television service.) We find that adopting a less conservative approach will make it easier for stations to participate and thereby further the goal of encouraging widespread nightlight service. We also find that the approach set forth below, which relies on stations

to address interference issues in the first instance based on market-by-market needs, is consistent with the Commission's discretion under the Act to provide for nightlight service that furthers the public interest. The list in *NPRM* Appendix A was not intended to be an exhaustive list of the stations that may be eligible to participate in the analog nightlight program, and we noted that it underestimated the stations that could qualify.

12. Accordingly, we will use the alternative list of pre-approved stations provided by NAB/MSTV in their comments, which contains more stations than our list in *NPRM* Appendix A, with some changes as discussed below. The NAB/MSTV list was developed by assuming that most analog stations now operating on low VHF channels 2–6 should be eligible for nightlight operations as there will be relatively few digital stations occupying these channels and therefore few chances for either co-channel or adjacent channel interference. Like the *NPRM* Appendix A list, the NAB/MSTV list relies on spacing criteria rather than individual interference analyses, an approach necessitated by the short time available to develop the list. In developing the spacing criteria used by the Commission, we assumed that both the analog station being studied and DTV stations in the same vicinity are operating at maximum power and antenna height allowed under the rules. (The maximum transmit antenna height above average terrain (antenna HAAT) and power limits for low-VHF (channels 2–6), high-VHF (channels 7–13), and UHF (channels 14–51) stations are set forth in 47 CFR 73.622(f). The maximum antenna HAAT allowed for DTV stations on channels 2–13 is 305 meters and on channels 14–51 is 365 meters (power reductions are required if higher antennas are used), the maximum power limits are (1) for low-VHF, 10 kW in Zone I and 45 kW in Zones II and III (2) for high-VHF, 30 kW in Zone I and 160 kW in Zone II and (3) for UHF, 1,000 kW. Certain stations were allowed to use somewhat higher power on their DTV channels in order to replicate their analog stations; however, for purposes of this brief 30-day extension of analog operation we assume that all stations are operating at power levels no higher than the maximum levels in the rules. The minimum technical criteria (D/U ratios) for protection of digital television signals from interference from analog signals are set forth in 47 CFR 73.623(c)(2). In developing these spacing measures we also used (1) the F(50,90) curves as derived from the F(50,50) and F(50,10) curves in 47 CFR 73.699, and the DTV service thresholds in 47 CFR 73.622(e), to calculate DTV service areas and (2) the analog maximum power and antenna height standards in 47 CFR 73.614, and the F(50,10) curves in Section 73.699 to calculate analog interference potential.) One difference between the lists is NAB/MSTV's application of a uniform 170 kilometer (km) co-channel spacing standard to expand the list of pre-approved stations, which is a shorter distance than we used for the *NPRM* Appendix A list. (The minimum spacing measures used in developing the *NPRM* Appendix A list were:

Channel band	Zone (*see* 47 CFR 73.609)	Co-channel minimum spacing	Adjacent channel minimum spacing
2–6 (Low-VHF)	1	302 km (188 miles)	131 km (81 miles).
2–6 (Low-VHF)	2 and 3	344 km (214 miles)	156 km (97 miles).
7–13 (High-VHF)	1	264 km (164 miles)	118 km (73 miles).
7–13 (High-VHF)	2 and 3	308 km (191 miles)	149 km (93 miles).
14–51 (UHF)	1, 2 and 3	283 km (176 miles)	134 km (83 miles).

We presumed that meeting geographic spacing measures, which vary by channel band and Zone, would ensure that analog stations that are located the specified distance or greater from any operating DTV stations would not cause interference to signals in the digital television service. We also assumed that viewers would orient their antennas toward the desired DTV station and away from an analog station in a neighboring or distant market so that the front-to-back reception ratio of a user's antenna would be 10 dB at low-VHF, 12 dB at high VHF and 14 dB at UHF as indicated in the DTV planning factors set forth in our OET Bulletin No. 69 (OET–69).) We further assumed that an analog station would not cause interference to a co-located adjacent channel digital station, *i.e.*, a digital station within 5 km (3 miles), while NAB/MSTV allows for co-location within 20 km. (We also did not apply adjacent channel protection between channels 4 and 5, channels 6 and 7 and channels 13 and 14 as those channels are not adjacent in the frequency spectrum. NAB/MSTV also used a minimum spacing of 90 km to stations not located within 20 km.) With respect to the Act's requirement regarding the protection of public safety land mobile operations on channels 14–20, both our list and that of NAB/MSTV used the Commission's existing geographic spacing criteria to ensure that pre-approved eligible analog nightlight stations will not cause interference to land mobile operations in the TV bands. (Public safety services operate in the TV bands in 13 metropolitan areas on channels in the range of 14–20 (470–412 MHz) that have previously been identified in each area. *See* 47 CFR 73.623(e) for the list of land mobile communities and channels. Public safety services operate on specified channels in the TV bands as part of the Private Land Mobile Radio Service (PLMRS), see 47 CFR 90.303(a). PLMRS base stations on these channels must be located within 80 kilometers (50 miles) of the center of the cities where they are permitted to operate on channels 14–20 (470–512 MHz), and mobile units may be operated within 48 kilometers (30 miles) of their associated base station or stations. Thus, mobile stations may be operated at up to 128 kilometers (80 miles) from the city center, *see* 47 CFR 90.305.)

13. While NAB/MSTV acknowledges that its list may be more likely to result in interference at the outer edges of a DTV station's service area during the temporary 30-day nightlight period, it argues this result should be balanced against the need for DTV and emergency information throughout a station's market. NAB/MSTV notes that, while its priority generally is to protect digital stations from interference, in this proceeding, ensuring that as many stations as possible have the opportunity to provide nightlight service is vitally important. As stated above, we agree that a less conservative, more balanced approach than that proposed in the *NPRM* is warranted and would be consistent with the requirements of the Act, and we conclude that use of NAB/MSTV's list of pre-approved stations, with the modifications described below, will serve the public interest.

14. The revised list of stations pre-approved for nightlight service in Appendix A includes most of the stations listed on Appendix A to the *NPRM*, plus most of the stations on the NAB/MSTV list. (Consistent with the statute, the *NPRM* Appendix A and Appendix A adopted herein include only those stations that operate on analog channels 2–51. The NAB/MSTV list also includes only these stations.) We are excluding four stations that are not presently broadcasting. (The four stations are KYUK–TV, Bethel AK; 960703KK, Price UT; New34, Senatobia MS; and 960920LX, Tupelo MS. Bethel Broadcasting, Inc. filed comments on behalf of KYUK noting that the station was erroneously listed in the *NPRM* Attachment A.) NAB/MSTV did not include in their list stations that have requested and received permission from the Commission to remain on their pre-transition DTV channel after the February 17, 2009 transition date pursuant to the ''phased-transition'' relief provisions adopted in the *Third DTV Periodic Report and Order* and that were listed on the *NPRM* Appendix A. These stations' analog channels will be available for nightlight service and, accordingly, we have retained them in Appendix A, as adopted here. In addition, we have added to the NAB/MSTV list 12 stations (indicated in Appendix A in column I with an asterisk (*)) that our analysis indicates may operate with contour protection equivalent to that described in the *NPRM*. (In order to improve the accuracy of the initial analysis upon which the Appendix A list in the *NPRM* was based, we generated a revised list of eligible stations that were determined using spacing criteria for the individual station power levels and heights above average terrain using the appropriate propagation curves. As with the initial list, the spacing distances were calculated such that the interfering contour of the candidate analog station did not overlap the protected noise-limited contour of any potentially-affected DTV station. This improved analysis removed some stations that were on the Appendix A list in the *NPRM*, namely stations having facilities in excess of the maximum power and height specified in our rules for either the candidate analog station or the protected DTV station. This improved analysis also added to the list some stations that have facilities less than the maximum power and height specified in our rules. The resulting revised list contained about 360 stations, but did not significantly increase the number of DMAs that would have access to nightlight service. This revised list was compared with the list of stations submitted by NAB/MSTV, and all but 12 of the stations on our revised list also appeared on the NAB/MSTV list. Those 12 stations were added to the NAB/MSTV list to produce the list shown in Appendix A herein; those stations are indicated on that list by an asterisk.) Appendix A identifies those stations that have already indicated to the Commission that they are interested in providing nightlight service (*see* column K).

15. We have also identified in Appendix A hereto the stations that, while they are pre-approved to provide nightlight service, may pose a greater risk of interference to digital stations under the less-conservative spacing methodology used to derive the Appendix A. These stations are identified by an asterisk in the column J headed ''short spaced.'' We note that NAB/MSTV state that, if interference were to occur, it can be easily identified and corrected by having the Nightlight stations reduce power. In this regard, we are continuing to perform analyses to identify any potential significant interference problems and will work with broadcasters to mitigate any such interference. In the meantime we urge these stations to consider providing nightlight service, but we also ask that they consider whether reducing their analog signal strength to mitigate possible interference to DTV stations can be done without significantly affecting the population receiving nightlight service. For example, if there are already several stations in the market providing nightlight service, it may be preferable for a station whose nightlight operation is short-spaced to support the service provided by other stations in the market rather than itself broadcasting an analog signal. If, however, a station listed in Appendix A that is short-spaced is the sole station that can provide nightlight service in a community, we urge that station to consider providing the service with reduced power so as to avoid harmful interference to digital stations.

16. Consistent with the Act and the public interest, we encourage stations to make these initial determinations on their own after considering circumstances in their local market area and in consultation with other stations. (This approach is consistent with the Act's directive that the Commission take into account market-by-market needs in developing the nightlight program.) Stations that decide to participate in the analog nightlight program using reduced analog power should so indicate in their notification to us. Stations that decide to reduce power after commencing provision of the nightlight service, likewise, must notify us of their power reduction via the notification process described below.

17. The Commission ultimately reserves the right to rescind any station's authority to provide analog nightlight service, including the authority of any station listed on Appendix A. Among other things, we will weigh the benefits of the 30-day nightlight service against the interference caused to post-transition digital service in making any such determination. We will rescind the authority of any station's analog nightlight transmission that results in a valid complaint of harmful interference. (Although we urge stations to work together to resolve any concerns regarding interference, complaints that cannot be resolved may be sent by e-mail to *nightlight@fcc.gov*.)

2. Other Stations That May Meet Eligibility Requirements

18. As we proposed in the *NPRM*, we will permit broadcasters whose stations are not listed in Appendix A and who are interested in providing nightlight service to submit engineering and other information to demonstrate why they believe they meet the criteria identified in the Act and the requirements we adopt here. We recognize that there are many analog stations that are currently operating close to digital stations without causing interference. In such cases, interference is avoided by stations operating at less than the maximum allowed technical facilities, terrain features, or other conditions affecting propagation. These stations may notify us through the Engineering STA process described below and explain how they could operate without causing harmful interference to nearby digital station(s). Such explanations may consist of analyses using the methods in OET–69 or other recognized methodologies for evaluating TV station interference. We anticipate that we will be able to rely on the submissions we receive and public review to identify stations that may pose a problem. As we stated in the *NPRM*, we delegate to the Media Bureau authority to address expeditiously issues that may arise associated with this process and to authorize additional stations to participate.

19. In the *NPRM* we proposed to permit a station not listed in Appendix A to provide nightlight service if the station would cause no more than 0.1 percent new interference to a digital station in addition to that reflected in the DTV Table Appendix B. (After February 17, 2009, any interference

from a full power analog station to a post-transition digital signal will be treated as new interference. The details of each station's DTV (post-transition) channel assignment, including technical facilities and predicted service and interference information, are set forth in the Appendix B to the final order in the DTV Table proceeding, MB Docket No. 87–268 (''DTV Table Appendix B'').) We also proposed that, in areas where there is no station listed as eligible in Appendix A or that would meet the 0.1 percent interference standard, we will permit a station to cause up to, but no more than, 0.5 percent new interference to a digital station in addition to the interference included in DTV Table Appendix B. (For purposes of this discussion, an ''area'' means a viewing area, which may be a city, county, community, market, DMA, or other geographic area in which people receive over-the-air television service. Stations seeking to participate under this standard should make their argument and basis for inclusion clear in their STA submission.) Because we have adopted a more expansive list of pre-approved nightlight eligible stations herein, we find that it is appropriate to also be more flexible with respect to stations that are not listed in Appendix A but that wish to provide nightlight service. Accordingly, we will not require stations that wish to provide nightlight service but are not listed in Appendix A to demonstrate that they meet the proposed 0.1 percent new interference standard. Instead, these stations should demonstrate in their Engineering STA how they plan to provide nightlight service and how they plan to minimize interference to affected stations by, among other things, reducing analog power. We urge broadcasters not listed in Appendix A who desire to participate in the nightlight program to contact affected stations to try to reach an agreement on how nightlight service can be provided without causing harmful interference to digital stations. If there are already several stations in the market providing nightlight service, it may be prudent that a station not listed in Appendix A, and whose nightlight operation would cause interference to a digital station, to elect not to provide nightlight service but instead cooperate with the service provided by other stations in the market. If, however, a station not in Appendix A that desires to provide nightlight service would be the sole participant in its service area, we urge that station to try to come to an agreement with stations that could be affected by nightlight service on how the nightlight service can be provided without causing harmful interference. We ask stations to make these initial efforts to reach an agreement on their own after considering circumstances in their local market area and in consultation with other stations. As noted above, we reserve the right to rescind, at any time, any station's authority to provide analog nightlight service.

C. Notifications to the Commission of Program Participation

20. We adopt a streamlined process for stations to notify us of their intent to participate in the analog nightlight program. In addition, we take the other steps discussed below to facilitate participation in the analog nightlight program. Notification by stations of participation is critical for three reasons. First, the Commission and the public need to know which stations are participating to help ensure the widest possible coverage of the nightlight service. By identifying the areas that will be covered, we can determine which areas will rely more heavily on other sources of continuing transition information, including radio broadcasts and local newspapers. Second, in the event of interference, the list of participants will help the Commission and local stations to determine whether a nightlight participant is the source of the interfering signal. Third, as described below, stations participating in the analog nightlight program will be granted an extension of their analog broadcast license for the limited purpose of providing this service. Stations must notify us of their participation in order to be included on the list and be eligible for this blanket extension.

21. In response to the concerns expressed by a number of commenters regarding the notification procedures we proposed in the *NPRM*, we adopt revised procedures to make participation easier and to reduce the time and costs potentially associated with notification. (NAB/MSTV supported expanding the list of pre-approved nightlight eligible stations in part to reduce the number of stations that would be required to submit additional engineering documentation in order to provide nightlight service.) First, we note that, by expanding the list of stations pre-approved as eligible to participate in the analog nightlight program, we have increased the number of stations that may simply notify the Commission of their intent to participate without providing any additional engineering information. This will simplify program participation for many stations. Second, as described below, we will permit pre-approved eligible stations identified in Appendix A to notify us of their participation in the analog nightlight program by either filing a Legal STA or by simply sending us an e-mail. The option of using an e-mail will make notification easier for stations that choose to use this method to announce their intention to participate. Stations that are not listed in Appendix A must file an Engineering STA if they wish to participate. Third, we will not require stations that elect to participate in the nightlight program to file an update to their Transition Status Report (FCC Form 387). Several commenters advocated eliminating this proposed requirement, and we agree.

1. Notifications by Pre-Approved Eligible Stations

22. We will permit pre-approved eligible stations identified on Appendix A to notify us of their participation in the analog nightlight program by either filing a Legal STA electronically through the Commission's Consolidated Database System (''CDBS'') using the Informal Application filing form or by sending an e-mail to *nightlight@fcc.gov.* Stations must inform us about their decision to participate in the program no later than February 10, 2009. This deadline will allow us to determine where the analog nightlight service will be available, which may influence our determination of whether to make additional stations eligible. We will not require an engineering or other showing from these stations and, as indicated in the *NPRM*, we will waive the fee for these notifications.

23. While we encourage stations to file a Legal STA through CDBS so that information about their participation in the analog nightlight program is readily available both to the Commission and the public, we realize that this filing procedure may be burdensome to some stations, especially small broadcasters, and could deter these stations from participating in the analog nightlight program. Accordingly, stations may simply provide notification by sending an e-mail message to the Commission at *nightlight@fcc.gov*. The e-mail should include the following information: (1) Name, title, phone number, and, if available, e-mail address and mobile telephone number of sender; (2) licensee name; (3) FCC Registration Number (FRN); (4) Facility Identification Number; (5) call sign; (6) city and state; (7) analog and digital channel numbers; and (8) name, title, phone number and, if available, e-mail address and mobile telephone number of a contact person (if different from sender) who can provide

more information about the station's participation in the analog nightlight program. The e-mail should also provide information about the station's planned analog nightlight service, including whether the station plans to participate at reduced analog power, as well as the period of time analog nightlight service will be provided (if service will be discontinued before March 19, 2009). Stations that reduce power during their period of nightlight service should also notify the Commission of this change, either by filing another Legal STA or by sending an e-mail to *nightlight@fcc.gov.* The information provided in the e-mails will be entered into CDBS so that it will be available to the public.

24. The Media Bureau will announce publicly (by issuing a public notice and/or by posting a list on the Commission's Web site) those stations that have indicated their participation in the analog nightlight program via an e-mail notification. (We note that filings via CDBS are available to the public and interested parties, but e-mail notifications are not otherwise publicly available.) We note that NAB/MSTV has offered to coordinate with the Commission to assemble a complete list of the participating stations in Microsoft Excel or other searchable format, and we will post the list on the DTV.gov Web site.

2. Requests for Program Participation With Eligibility Showings

25. As proposed in the *NPRM* and discussed above, we will permit stations that are not listed in Appendix A to request participation in the analog nightlight program by filing an Engineering STA notification electronically through CDBS using the Informal Application filing form. (We will not accept this type of notification via e-mail.) Stations must file these Engineering STA notifications no later than February 3, 2009. This deadline will allow the Commission, the public, and interested parties an opportunity to review and evaluate these requests. The Media Bureau will announce by public notice those stations that have filed a request to participate in the program. (The public notice will set forth a brief period of time within which an objection based on interference may be filed and will describe the expedited process for filing such objections.) In their Engineering STAs, stations should demonstrate how they plan to provide nightlight service while avoiding harmful interference to affected stations (*e.g.*, due to intervening terrain or by reducing analog power). Stations with requests that are not subject to any pending objection will be considered eligible to participate in the program and will qualify for the blanket license extension discussed below. As noted above, the Commission reserves the right to require stations to cease or reduce analog nightlight service, in the event there are valid complaints of interference to DTV stations or other statutorily protected operations.

D. Analog License Extension for Participating Stations

26. As we proposed in the *NPRM*, we hereby grant a blanket extension of license to broadcasters who are eligible to participate in the analog nightlight program and notify the Commission as required of their intent to operate analog nightlight service for a period of up to 30 days after February 17, 2009, i.e., until and including March 19, 2009. Television broadcast licenses currently contain the following language concerning analog service:

> This is to notify you that your application for license is subject to the condition that on February 17, 2009, or by such other date as the Commission may establish in the future under Section 309(j)(14)(a) and (b) of the Communications Act, the licensee shall surrender either its analog or digital television channel for reallocation or reassignment pursuant to Commission regulations. The Channel retained by the licensee will be used to broadcast digital television only after this date.

27. After stations have notified the Commission of their intention to provide nightlight service, and after stations and the public have had an opportunity to object to any notifications filed by stations not listed in Appendix A, the Media Bureau will issue a public notice prior to the transition date announcing those stations that are participating in the analog nightlight program. The Media Bureau will update that public notice later, if necessary. The Media Bureau's public notice will establish the right of those licensees whose stations are identified in the public notice to continue to operate their stations in analog on their analog channels solely for the purpose of providing the analog nightlight service as described in this Report and Order. Notification of participation pursuant to the requirements adopted in this Report and Order is necessary for a participating station to qualify for the blanket license extension.

E. Permissible Analog Nightlight Programming

28. We find that the Analog Nightlight Act authorizes the broadcast of only emergency information, information regarding the digital television transition, and the related sponsorship information set forth below. Section 2(b) of the Act describes the programming that stations will be permitted to broadcast during the nightlight period. That section states that the nightlight program shall provide for the broadcast of:

(1) Emergency information, including critical details regarding the emergency, as broadcast or required to be broadcast by full-power stations in the digital television service (Section 4 of the Act states that the term ''emergency information'' has the same meaning as that term has under Part 79 of the FCC's rules);

(2) Information, in both English and Spanish, and accessible to persons with disabilities, concerning—

(A) The digital television transition, including the fact that a transition has taken place and that additional action is required to continue receiving television service, including emergency notifications; and

(B) The steps required to enable viewers to receive such emergency information via the digital television service and to convert to receiving digital television service, including a phone number and Internet address by which help with such transition may be obtained in both English and Spanish; and

(3) Such other information related to consumer education about the digital television transition or public health and safety or emergencies as the Commission may find to be consistent with the public interest.

29. Consistent with the explicit language of the Act, with the exception of the limited sponsorship information that we will permit (as set forth below) we conclude that nightlight programming may convey only emergency information and information regarding the digital transition. As we stated in the *NPRM*, the Act does not contemplate the provision of other programming that is unrelated to these two categories. Thus, we deny the request made by CDE that the Commission permit, under unique circumstances, analog service to continue after the transition with regular programming aired during the majority of the broadcast period in addition to public safety and DTV transition information. (Other commenters that addressed this issue agreed that nightlight programming should be limited to transition-related and emergency programming.) DTV transition information should be available in both English and Spanish, and all nightlight information should be

accessible to persons with disabilities. We encourage participating stations to provide the information in additional languages where appropriate and beneficial for their viewers. One commenter asked whether station identification will be required for nightlight stations. We conclude that nightlight stations should comply with station identification requirements to ensure that the source of the programming is readily identifiable. In addition, we expect stations that provide nightlight service to maintain the same hours of operation that were in effect on their analog channel prior to the transition deadline.

30. We also tentatively concluded in the *NPRM* that the Act does not contemplate the provision of advertisements as part of nightlight programming. After further consideration of this issue, we conclude that the provision of limited sponsorship information as part of nightlight programming is consistent with the Act and will be permitted to help stations defray the cost of providing nightlight service.

1. Emergency Information

31. In the event of an emergency situation during the 30-day analog nightlight service period, stations may broadcast video and audio programming with emergency information, including but not limited to a crawl or text describing the emergency and live or taped action regarding the emergency. Licensees providing emergency information must make that information accessible to persons with disabilities under 47 CFR 79.2. We also conclude that the Emergency Alert System (''EAS'') applies to the analog nightlight service if an emergency arises during the 30-day time frame. EAS ''provides the President with the capability to provide immediate communications and information to the general public at the National, State and Local Area levels during periods of national emergency,'' and, in addition, ''may be used to provide the heads of State and local government, or their designated representatives, with a means of emergency communication with the public in their State or Local Area.'' (Part 11 of the Commission's rules describes the required technical standards and operational procedures of the EAS for TV broadcast and other stations. As noted, in addition to compliance with EAS standards the Commission requires TV broadcast stations that provide emergency information to make the critical details of that information accessible to people with hearing and visual disabilities.)

32. For implementation of the analog nightlight, ''emergency information'' is as defined in part 79 of our rules. (47 CFR 79.2(a)(2) defines emergency information as follows:

> Information about a current emergency, that is intended to further the protection of life, health, safety, and property, i.e., critical details regarding the emergency and how to respond to the emergency. Examples of the types of emergencies covered include tornadoes, hurricanes, floods, tidal waves, earthquakes, icing conditions, heavy snows, widespread fires, discharge of toxic gases, widespread power failures, industrial explosions, civil disorders, school closings and changes in school bus schedules resulting from such conditions, and warning and watches of impending changes in weather.

The note to paragraph (a)(2) reads: ''Critical details include, but are not limited to, specific details regarding the areas that will be affected by the emergency, evacuation orders, detailed descriptions of areas to be evacuated, specific evacuation routes, approved shelters or the way to take shelter in one's home, instructions on how to secure personal property, road closures, and how to obtain relief assistance.'' In addition, we include Amber Alerts as emergency events pursuant to the Commission's EAS rules.

33. In its reply comments, NAB/MSTV state that, while they are in full agreement that nightlight stations should provide emergency information, stations may face some practical implementation problems, particularly with respect to communicating late-breaking emergency information. NAB/MSTV note that, if there is late breaking emergency information, the only effective means of communicating the emergency information from the studio to the nightlight station may necessitate using the station's digital transmission, which could result in broadcasting the station's standard news and emergency programming may be broadcast over the nightlight station, including traditional programming and commercials.

34. In establishing rules providing for the analog nightlight emergency service, we seek to support broadcasters' efforts to provide EAS and other emergency information to their viewers during the limited 30-day nightlight service window. While the Act permits nightlight stations to broadcast only emergency and DTV transition-related information, and does not permit the broadcast of standard programming and commercials, we recognize that flexibility may be required during this limited 30-day window to ensure that nightlight stations provide critical emergency information. (As discussed below, we conclude that limited sponsorship announcements are permitted as part of nightlight programming.) Thus, while nightlight stations must provide only DTV transition-related and emergency information pursuant to the Act, if a circumstance arises that requires other programming to be transmitted for a limited period of time in order that the emergency information can be provided in a timely manner, we will not be inclined to sanction the broadcaster for violation of the Act. We limit this flexibility to those circumstances where, for technical reasons, other programming must be transmitted in order to transmit emergency information, and only for the period of time necessary to adequately convey the emergency information to viewers. (Our flexibility in this regard only applies to those programming segments containing the emergency information. For instance, if emergency information were being provided solely during a specific portion of a newscast, other portions of the newscast should not be transmitted.)

2. Transition Information

35. With respect to the digital television transition, as proposed in the *NPRM* we conclude that stations airing a nightlight signal may broadcast any information that is relevant to informing viewers about the transition and how they can continue to obtain television service. (Commenters that addressed this issue generally supported giving stations flexibility regarding the DTV transition-related information they can display.) Examples of the kind of information a station may want to air include, but are not limited to: General information about the transition; information about how viewers can receive digital signals; information about the circumstances related to the DTV transition in the station's market; answers to commonly asked questions and other useful information (*e.g.*, how to re-position an antenna, install a converter box, or rescan for new channels); where viewers can obtain more information about the transition, including national or local call centers, converter box manufacturer help lines, a telephone number and Web site address for local stations in the community, and any other local sources of transition information and assistance; information about the DTV converter box coupon program; and information or links to other Web sites containing DTV information, including the Federal Communications Commission (''FCC''), National Association of Broadcasters (''NAB'') and National

Telecommunications and Information Administration (''NTIA'').

36. Section 2(b)(2) of the Act provides for the broadcast of information, ''in English and Spanish and accessible to persons with disabilities,'' concerning the digital transition and certain other information. We conclude that such information must be captioned to assist persons with hearing disabilities, and may be made available in either open or closed captioning. In addition, such information must not only be accessible to individuals who are deaf and hard of hearing, but also to individuals who are blind or have low vision. This may be achieved through open aural description of the critical aspects of the transition information that is appearing on the screen. In addition, as the Act provides, the analog nightlight information should include a telephone number and Internet address by which help with the transition may be obtained in both English and Spanish. This information must also be made accessible. We urge stations to consider broadcasting information in additional languages, consistent with the needs of their particular viewing audience.

37. The analog nightlight information may be aired using a ''slate'' with text and audio of the text or other DTV information, as well as information, if necessary describing the steps viewers must take to obtain emergency information. Participants in the analog nightlight program may also air a video loop with audio, or broadcast live action with audio format, or any combination thereof. (Stations choosing a video loop format may use the FCC's educational video showing how to install a converter box. See *http://www.dtv.gov/video_audio.html*.) Additional formats of the video are available upon request. We note that during the early transition in Wilmington, NC, stations used a slate to provide nightlight service. The text of the ''slate'' consisted of the following: ''At 12 noon on September 8, 2008, commercial television stations in Wilmington, North Carolina began to broadcast programming exclusively in a digital format. If you are viewing this message, this television set has not yet been upgraded to digital. To receive your television signals, upgrade to digital now with a converter box, a new TV set with a digital (ATSC) tuner or by subscribing to a pay service like cable or satellite. For more information call: 1–877–DTV–0908 or TTY: 1–866–644–0908 or visit *www.DTVWilmington.com.*'') NAB has also recently announced that it will produce and distribute a brief DTV educational video that stations can air as part of the analog nightlight program.

3. Sponsorship Information

38. In the *NPRM* we tentatively concluded that advertisements would not be permitted to be included in the analog nightlight program. However, after further consideration, we conclude that permitting limited mention of sponsors to encourage stations to provide nightlight service and to defray the cost is appropriate and consistent with the Analog Nightlight Act. Accordingly, we will permit stations providing nightlight service to include brief announcements identifying sponsors that have made financial or other contributions to the nightlight service, including commercial entities such as retailers and manufacturers. According to NAB/MSTV, these contributors might include other stations in the market that are not themselves providing nightlight service, multichannel video programming distributors (''MVPDs''), local municipalities, retailers, or other entities. Consistent with the Analog Nightlight Act provisions discussed below, the sponsorship announcements should be very brief and should not interfere with or obscure the DTV or emergency-related information being provided. For example, a brief statement at the bottom of the screen that: ''this programming is paid for, sponsored, or furnished by X'' would be appropriate under the Analog Nightlight Act and would fulfill any applicable sponsorship identification requirements. The sponsorship information may be visual or aural. If stations use a visual identification, however, the visual identification should only remain on the screen for as long as necessary to provide a reasonable identification. Keeping a visual identification, such as a corporate logo or ''bug,'' on the screen throughout the sponsored programming might violate the Act's limitation of programming to only public safety, digital transition and information related to consumer education about the digital transition that is consistent with the public interest.

39. We agree with those commenters who argued that the Analog Nightlight Act can be interpreted to permit stations to provide sponsorship information in order to help defray the cost of providing nightlight service. Section 2(a) of the Act directs the Commission to implement a nightlight program ''subject to such limitations as the Commission finds to be consistent with the public interest and the requirements of this Act * * *.'' Section 3 of the Act lists the explicit ''limitations'' of the nightlight program, none of which addresses programming. Section 2(a) of the Act permits ''the broadcasting in the analog television service of only the public safety information and digital transition information specified in subsection (b) * * *.'' Sections 2(b)(1) and (2) require the Commission to provide for the broadcast of specified information (i.e., emergency information and information relating to the digital television transition) and Section 2(b)(3) allows the broadcast of ''such other information related to the digital transition * * * as the Commission may find to be consistent with the public interest.''

40. We find that the mention of the sponsor or source of the information related to consumer education about the digital transition is ''related'' information within the meaning of Section 2(b)(3). We also believe that permitting the broadcast of limited sponsorship information will increase the number of stations that volunteer to provide critical nightlight service and thus would further the public interest in facilitating the transition to digital television. In this regard, NAB/MSTV states that maintaining analog service during the nightlight period could cost stations between $3,500 to over $15,000 per station, while the state broadcasters associations estimate the cost, including electricity, production and other costs, will range from $10,000 to $20,000 per station for the 30-day nightlight period. APTS states that the Public Broadcasting Service has estimated that public television stations spend $3 million per month just in electricity costs to provide analog service, a cost they had planned to shed after the transition deadline. (In addition, APTS urges the Commission to examine ways to provide funding for stations, including public television stations, who would like to participate in the nightlight program but lack the financial means to do so.) For many stations, the issue of the cost associated with nightlight service could be determinative of their ability to participate in the nightlight program. For these reasons, we interpret the Analog Nightlight Act to allow licensees to include in their nightlight programming a brief aural or visual announcement identifying the sponsor of the program.

41. Finally, we note that, if a station broadcasts programming during the nightlight period for which it receives or is promised money, service, or other valuable consideration from any third party, it must comply with the sponsorship identification requirements in Section 317 of the Act and our rules. In addition to the restrictions discussed

above, non-commercial educational broadcast stations must also comply with Section 399B of the Communications Act.

III. Procedural Matters

A. Regulatory Flexibility Act Analysis Not Required

42. We find that no Final Regulatory Flexibility Analysis (FRFA) is required for this Report and Order. In the *NPRM*, the Commission determined that no Regulatory Flexibility Analysis was required. The Commission found that, in light of the extraordinarily short time period for it to meet the analog nightlight statutory deadline of January 15, 2009, there was good cause to dispense with notice and comment requirements under the Administrative Procedure Act (''APA''). For this reason, we find that a FRFA is not required.

B. Final Paperwork Reduction Act of 1995 Analysis

43. This Report and Order was analyzed with respect to the Paperwork Reduction Act of 1995 (''PRA'') and contains a modified information collection requirement. (The Paperwork Reduction Act of 1995 (''PRA''), Pub. L. 104–13, 109 Stat 163 (1995) (codified in Chapter 35 of Title 44 U.S.C.).) On December 29, 2008, after release of the *NPRM* in this proceeding, the Commission received OMB approval for the modified information collection requirement contained in this Report and Order. (*See* Notice of Office of Management and Budget Action, OMB Control No. 3060–0386 (approved Dec. 29, 2008). The Commission sought and obtained approval under OMB's emergency processing rules (*see* 5 CFR 1320.13) for this modified collection in order to implement the Congressional mandate for the FCC to develop and implement a program by January 15, 2009, to encourage and permit TV broadcast stations to use this opportunity to provide public safety information and DTV transition information.) For additional information concerning the information collection requirement contained in this Report and Order, contact Cathy Williams at 202–418–2918, or via the Internet to *Cathy.Williams@fcc.gov.*

C. Congressional Review Act

44. 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). The Congressional Review Act is contained in Title II, sec. 251, of the CWAAA; *see* Pub. L. 104–121, Title II, sec. 251, 110 Stat. 868.)

D. Additional Information

45. For more information on this Report and Order, please contact Kim Matthews, *Kim.Matthews@fcc.gov*, or Evan Baranoff, *Evan.Baranoff@fcc.gov*, in the Policy Division, Media Bureau at (202) 418–2120.

IV. Ordering Clauses

46. Accordingly, *it is ordered* that, pursuant to Sections 1, 4(i), 303(r), 316, and 336 of the Communications Act of 1934, 47 U.S.C. 151, 154(i), 303(r), 316, and 336, and the Short-term Analog Flash and Emergency Readiness Act of 2008, Pub. L. No. 110–459, this Report and Order *is adopted* and *shall be effective* upon the date of publication of the summary of the Report and Order in the **Federal Register**. We find good cause under the APA for the analog nightlight program adopted in this Report and Order to be effective upon publication of the summary of the Report and Order in the **Federal Register** because of the January 15, 2009 statutory deadline for implementing the Analog Nightlight Act, which was enacted by Congress only last month, as well as the brief 30-day period during which the Act's provisions will be in force. (*See* 5 U.S.C. 553(d)(3) (''The required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except * * * as otherwise provided by the agency for good cause found and published with the rule.'').) In addition, any delay in implementing this program, which was mandated by Congress, can result in harm to TV stations, and, in turn, to their viewers.

47. *It is further ordered* that, pursuant to Section 5(c) of the Communications Act of 1934, 47 U.S.C. 155(c), the Chief, Media Bureau, is *granted delegated authority* to implement the analog nightlight program described in this document.

48. *It is further ordered* that, pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A), the Commission *shall send* a copy of this Report and Order in a report to Congress and the General Accounting Office.

49. *It is further ordered* that the Reference Information Center, Consumer Information Bureau, shall send a copy of this Report and Order to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Appendix A: List of Stations Eligible for Analog Nightlight Program

DMA name	Call sign	City	State	Analog channel	Network affiliation	Post-transition DTV channel	Pre-transition DTV channel	Not on MSTV list	May be short-spaced	Indicated interest in participating
Abilene-Sweetwater	KRBC	ABILENE	TX	9	NBC	29	29		**	
Abilene-Sweetwater	KTXS	SWEETWATER	TX	12		20	20		**	
Abilene-Sweetwater	KTAB	ABILENE	TX	32	CBS	24	24		**	
Albany, GA	WABW	PELHAM	GA	14	PBS	20	6		**	
Albany, GA	WACS	DAWSON	GA	25	PBS	26	8		**	
Albany, GA	WFXL	ALBANY	GA	31	Fox	30	12		**	
Albany-Schenectady-Troy.	WXXA	ALBANY	NY	23	Fox	4	7		**	
Albuquerque-Santa Fe.	KASA	SANTA FE	NM	2	Fox	27	27			
Albuquerque-Santa Fe.	KOFT	FARMINGTON	NM	3		8	8		**	
Albuquerque-Santa Fe.	KOB	ALBUQUERQUE	NM	4	NBC	26	26			
Albuquerque-Santa Fe.	KNME	ALBUQUERQUE	NM	5	PBS	25	35			
Albuquerque-Santa Fe.	KCHF	SANTA FE	NM	11		10	10			
Albuquerque-Santa Fe.	KVIH	Clovis	NM	12	ABC	20	20	*		
Albuquerque-Santa Fe.	KTFQ	ALBUQUERQUE	NM	14			22			

DMA name	Call sign	City	State	Analog channel	Network affiliation	Post-transition DTV channel	Pre-transition DTV channel	Not on MSTV list	May be short-spaced	Indicated interest in participating
Albuquerque-Santa Fe.	KWBQ	SANTA FE	NM	19		29	29		**	
Albuquerque-Santa Fe.	KAZQ	ALBUQUERQUE	NM	32		17	17		**	
Albuquerque-Santa Fe.	KLUZ	ALBUQUERQUE	NM	41		42	42			
Albuquerque-Santa Fe.	KASY	ALBUQUERQUE	NM	50		51	45			
Alexandria, LA	KALB	ALEXANDRIA	LA	5	NBC	35	35			
Alexandria, LA	KLPA	ALEXANDRIA	LA	25	PBS	26	26		**	
Alpena	WTOM	CHEBOYGAN	MI	4	NBC	14	35			
Alpena	WCML	ALPENA	MI	6	PBS	57	24			
Amarillo	KACV	AMARILLO	TX	2	PBS	21	8			
Amarillo	KSWK	LAKIN	KS	3	PBS	23	8			
Amarillo	KAMR	AMARILLO	TX	4	NBC	19	19			
Amarillo	KCIT	AMARILLO	TX	14	Fox	15	15			
Anchorage	KTUU	ANCHORAGE	AK	2	NBC	18	10			
Anchorage	KTBY	ANCHORAGE	AK	4	Fox	20	20			
Anchorage	KAKM	ANCHORAGE	AK	7	PBS	24	8			
Anchorage	KIMO	ANCHORAGE	AK	13	ABC	30	12			
Atlanta	WSB	ATLANTA	GA	2	ABC	39	39			
Atlanta	WAGA	ATLANTA	GA	5	Fox	27	27		**	
Atlanta	WPXA	ROME	GA	14		51	51		**	
Atlanta	WPCH	ATLANTA	GA	17		20	20		**	
Atlanta	WPBA	ATLANTA	GA	30	PBS	21	21		**	
Atlanta	WUVG	ATHENS	GA	34		48	48		**	
Atlanta	WATL	ATLANTA	GA	36		25	25		**	
Atlanta	WGCL	ATLANTA	GA	46	CBS	19	19		**	
Augusta	WEBA	ALLENDALE	SC	14	PBS	33	33		**	
Augusta	WCES	WRENS	GA	20	PBS	36	6		**	
Augusta	WAGT	AUGUSTA	GA	26	NBC	30	30			
Austin	KXAM	LLANO	TX	14	NBC	27	27		**	
Austin	KVUE	AUSTIN	TX	24	ABC	33	33		**	
Austin	KXAN	AUSTIN	TX	36	NBC	21	21		**	
Austin	KEYE	AUSTIN	TX	42	CBS	43	43		**	
Bakersfield	KGET	BAKERSFIELD	CA	17	NBC	25	25		**	
Baltimore	WMAR	BALTIMORE	MD	2	ABC	52	38			
Baltimore	WMPT	ANNAPOLIS	MD	22	PBS	42	42		**	
Baltimore	WBFF	BALTIMORE	MD	45	Fox	46	46		**	
Bangor	WABI	BANGOR	ME	5	CBS	19	19			
Bangor	WMEB	Orono	ME	12	PBS	22	9	*		
Bangor	WMED	CALAIS	ME	13	PBS	15	10			
Baton Rouge	WBRZ	BATON ROUGE	LA	2	ABC	42	13			
Baton Rouge	WMAU	BUDE	MS	17	PBS	18	18		**	
Baton Rouge	WLPB	BATON ROUGE	LA	27	PBS	25	25		**	
Baton Rouge	WVLA	BATON ROUGE	LA	33	NBC	34	34		**	
Baton Rouge	WGMB	BATON ROUGE	LA	44	Fox	45	45		**	
Beaumont-Port Arthur.	KBTV	PORT ARTHUR	TX	4	NBC	40	40			
Beaumont-Port Arthur.	KFDM	BEAUMONT	TX	6	CBS	21	21			
Beaumont-Port Arthur.	KITU	BEAUMONT	TX	34		33	33		**	
Bend, OR	KOAB	BEND	OR	3	PBS	11	11			
Billings	KTVQ	BILLINGS	MT	2	CBS	17	10		**	
Billings	KHMT	HARDIN	MT	4	Fox	22	22			
Billings	KSVI	BILLINGS	MT	6	ABC	18	18		**	
Billings	KULR	BILLINGS	MT	8	NBC	11	11		**	
Billings	KSGW	SHERIDAN	WY	12		21	13		**	
Biloxi-Gulfport	WMAH	BILOXI	MS	19	PBS	16	16		**	
Binghamton	WBNG	BINGHAMTON	NY	12	CBS	7	7		**	
Binghamton	WICZ	BINGHAMTON	NY	40	Fox	8	8		**	
Binghamton	WSKG	BINGHAMTON	NY	46	PBS	42	42		**	
Birmingham (Ann and Tusc).	WDBB	BESSEMER	AL	17		18	18		**	
Birmingham (Ann and Tusc).	WTTO	HOMEWOOD	AL	21		28	28		**	
Birmingham (Ann and Tusc).	WUOA	TUSCALOOSA	AL	23			23		**	
Birmingham (Ann and Tusc).	WJSU	ANNISTON	AL	40	ABC	58	9		**	
Birmingham (Ann and Tusc).	WPXH	GADSDEN	AL	44		45	45		**	
Bluefield-Beckley-Oak Hill.	WVVA	BLUEFIELD	WV	6	NBC	46	46		**	
Boise	KBCI	BOISE	ID	2	CBS	28	28			
Boise	KAID	BOISE	ID	4	PBS	21	21			
Boise	KIVI	NAMPA	ID	6	ABC	24	24		**	
Boise	KNIN	CALDWELL	ID	9		10	10			
Boise	KTRV	NAMPA	ID	12	Fox	44	12		**	
Boston (Manchester).	WGBH	BOSTON	MA	2	PBS	19	19			

DMA name	Call sign	City	State	Analog channel	Network affiliation	Post-transition DTV channel	Pre-transition DTV channel	Not on MSTV list	May be short-spaced	Indicated interest in participating
Boston (Manchester).	WBZ	BOSTON	MA	4	CBS	30	30			
Boston (Manchester).	WCVB	BOSTON	MA	5	ABC	20	20			***
Boston (Manchester).	WSBK	BOSTON	MA	38		39	39		**	
Boston (Manchester).	WGBX	BOSTON	MA	44	PBS	43	43		**	
Bowling Green	WKYU	BOWLING GREEN	KY	24	PBS	18	18		**	
Bowling Green	WNKY	BOWLING GREEN	KY	40	NBC	16	16		**	
Buffalo	WGRZ	BUFFALO	NY	2	NBC	33	33			
Buffalo	WIVB	BUFFALO	NY	4	CBS	39	39		**	
Buffalo	WNED	BUFFALO	NY	17	PBS	43	43		**	
Buffalo	WNYO	BUFFALO	NY	49		34	34		**	
Burlington-Plattsburgh.	WCAX	BURLINGTON	VT	3	CBS	53	22			
Burlington-Plattsburgh.	WPTZ	NORTH POLE	NY	5	NBC	14	14			***
Burlington-Plattsburgh.	WVTB	ST. JOHNSBURY	VT	20	PBS	18	18		**	
Burlington-Plattsburgh.	WVER	RUTLAND	VT	28	PBS	56	9			
Burlington-Plattsburgh.	WETK	BURLINGTON	VT	33	PBS	32	32		**	
Burlington-Plattsburgh.	WFFF	BURLINGTON	VT	44		43	43		**	
Butte	KXLF	BUTTE	MT	4	CBS	15	5			
Butte	KBZK	BOZEMAN	MT	7	CBS	16	13		**	
Butte	KUSM	BOZEMAN	MT	9	PBS	20	8			
Butte	KWYB	BUTTE	MT	18	ABC	19	19		**	
Casper-Riverton	KTWO	CASPER	WY	2	ABC	17	17		**	
Casper-Riverton	KCWC	LANDER	WY	4	PBS	8	8			
Casper-Riverton	KGWL	LANDER	WY	5	CBS	7	7			
Casper-Riverton	KFNR	RAWLINS	WY	11	Fox	9	9			
Casper-Riverton	KCWY	CASPER	WY	13	NBC		12		**	
Cedar Rapids-Wtrlo-IWC&Dub.	KGAN	CEDAR RAPIDS	IA	2	CBS	51	51			
Cedar Rapids-Wtrlo-IWC&Dub.	KWKB	IOWA CITY	IA	20		25	25		**	
Cedar Rapids-Wtrlo-IWC&Dub.	KFXA	CEDAR RAPIDS	IA	28	Fox	27	27		**	
Cedar Rapids-Wtrlo-IWC&Dub.	KRIN	WATERLOO	IA	32	PBS	35	35		**	
Cedar Rapids-Wtrlo-IWC&Dub.	KFXB	DUBUQUE	IA	40		43	43		**	
Cedar Rapids-Wtrlo-IWC&Dub.	KPXR	CEDAR RAPIDS	IA	48		47	47			
Champaign&Sprngfld-Decatur.	WCIA	CHAMPAIGN	IL	3	CBS	48	48			
Champaign&Sprngfld-Decatur.	WICD	CHAMPAIGN	IL	15	ABC	41	41		**	
Champaign&Sprngfld-Decatur.	WAND	DECATUR	IL	17	NBC	18	18		**	
Champaign&Sprngfld-Decatur.	WBUI	DECATUR	IL	23		22	22		**	
Champaign&Sprngfld-Decatur.	WCCU	URBANA	IL	27	Fox	26	26		**	
Charleston, SC	WCBD	CHARLESTON	SC	2	NBC	59	50			
Charleston, SC	WCIV	CHARLESTON	SC	4	ABC	53	34			
Charleston, SC	WCSC	CHARLESTON	SC	5	CBS	52	47			
Charleston, SC	WJWJ	BEAUFORT	SC	16	PBS	44	44		**	
Charleston-Huntington.	WSAZ	HUNTINGTON	WV	3	NBC	23	23		**	
Charleston-Huntington.	WOAY	OAK HILL	WV	4	ABC	50	50		**	
Charleston-Huntington.	WVAH	CHARLESTON	WV	11	Fox	19	19		**	
Charleston-Huntington.	WKAS	ASHLAND	KY	25	PBS	26	26			
Charleston-Huntington.	WLPX	CHARLESTON	WV	29		39	39		**	
Charleston-Huntington.	WPBY	HUNTINGTON	WV	33	PBS	34	34		**	
Charlotte	WBTV	CHARLOTTE	NC	3	CBS	23	23		**	
Charlotte	WNSC	ROCK HILL	SC	30	PBS	15	15		**	
Charlotte	WTVI	CHARLOTTE	NC	42	PBS	24	11		**	
Charlotte	WJZY	BELMONT	NC	46		47	47		**	

DMA name	Call sign	City	State	Analog channel	Network affiliation	Post-transition DTV channel	Pre-transition DTV channel	Not on MSTV list	May be short-spaced	Indicated interest in participating
Charlottesville	WVIR	CHARLOTTESVILLE.	VA	29	NBC	32	32		**	
Charlottesville	WHTJ	CHARLOTTESVILLE.	VA	41	PBS	14	46		**	
Chattanooga	WRCB	CHATTANOOGA	TN	3	NBC	55	13			
Chattanooga	WNGH	CHATSWORTH	GA	18	PBS	33	33		**	
Chattanooga	WELF	DALTON	GA	23		16	16		**	
Chattanooga	WTCI	CHATTANOOGA	TN	45	PBS	29	29		**	
Cheyenne, WY-Scottsbluff.	KCDO	STERLING	CO	3		23	23			
Cheyenne, WY-Scottsbluff.	KDUH	SCOTTSBLUFF	NE	4	ABC	20	7			
Cheyenne, WY-Scottsbluff.	KGWN	CHEYENNE	WY	5	CBS	30	30			
Cheyenne, WY-Scottsbluff.	KSTF	SCOTTSBLUFF	NE	10	CBS	29	29		**	
Cheyenne, WY-Scottsbluff.	KFCT	FORT COLLINS	CO	22	Fox	21	21		**	
Cheyenne, WY-Scottsbluff.	KQCK	CHEYENNE	WY	33		11	11			
Chicago	WBBM	CHICAGO	IL	2	CBS	3	12			
Chicago	WGN	CHICAGO	IL	9		19	19		**	
Chicago	WTTW	CHICAGO	IL	11	PBS	47	47		**	
Chicago	WYCC	CHICAGO	IL	20	PBS	21	21		**	
Chicago	WCIU	CHICAGO	IL	26		27	27		**	
Chicago	WFLD	CHICAGO	IL	32	Fox	31	31		**	
Chicago	WSNS	CHICAGO	IL	44		45	45		**	
Chico-Redding	KHSL	CHICO	CA	12	CBS	43	43		**	
Chico-Redding	KCVU	PARADISE	CA	30	Fox	20	20		**	
Cincinnati	WLWT	CINCINNATI	OH	5	NBC	35	35		**	
Cincinnati	WXIX	NEWPORT	KY	19	Fox	29	29		**	
Clarksburg-Weston	WVFX	CLARKSBURG	WV	46	Fox	28	10		**	
Cleveland-Akron (Canton).	WKYC	CLEVELAND	OH	3	NBC	2	17			
Cleveland-Akron (Canton).	WEWS	CLEVELAND	OH	5	ABC	15	15		**	
Cleveland-Akron (Canton).	WOIO	SHAKER HEIGHTS	OH	19	CBS	10	10		**	
Cleveland-Akron (Canton).	WVIZ	CLEVELAND	OH	25	PBS	26	26		**	
Colorado Springs-Pueblo.	KOAA	PUEBLO	CO	5	NBC	42	42			
Colorado Springs-Pueblo.	KKTV	COLORADO SPRINGS.	CO	11	CBS	10	10		**	
Colorado Springs-Pueblo.	KXRM	COLORADO SPRINGS.	CO	21	Fox	22	22		**	
Columbia, SC	WLTX	COLUMBIA	SC	19	CBS	17	17		**	
Columbia, SC	WOLO	COLUMBIA	SC	25	ABC	8	8		**	
Columbia, SC	WRLK	COLUMBIA	SC	35	PBS	32	32		**	
Columbia-Jefferson City.	KMOS	SEDALIA	MO	6	PBS	15	15			
Columbia-Jefferson City.	KRCG	JEFFERSON CITY	MO	13	CBS	12	12		**	
Columbia-Jefferson City.	KNLJ	JEFFERSON CITY	MO	25		20	20		**	
Columbus	WCMH	COLUMBUS	OH	4	NBC	14	14		**	
Columbus	WSYX	COLUMBUS	OH	6	ABC	13	13			
Columbus	WOSU	COLUMBUS	OH	34	PBS	38	38		**	
Columbus, GA	WRBL	COLUMBUS	GA	3	CBS	15	15			
Columbus, GA	WJSP	COLUMBUS	GA	28	PBS	23	23		**	
Columbus, GA	WLTZ	COLUMBUS	GA	38	NBC	35	35		**	
Columbus-Tupelo-West Point.	WMAB	MISSISSIPPI STATE.	MS	2	PBS	10	10			
Columbus-Tupelo-West Point.	WCBI	COLUMBUS	MS	4	CBS	35	35			
Columbus-Tupelo-West Point.	WLOV	WEST POINT	MS	27	Fox	16	16		**	
Corpus Christi	KIII	CORPUS CHRISTI	TX	3	ABC	47	8			
Corpus Christi	KRIS	CORPUS CHRISTI	TX	6	NBC	50	13			
Corpus Christi	KEDT	CORPUS CHRISTI	TX	16	PBS	23	23		**	
Corpus Christi	KORO	CORPUS CHRISTI	TX	28		27	27			
Dallas-Ft. Worth	KDTN	DENTON	TX	2		43	43			
Dallas-Ft. Worth	KDFW	DALLAS	TX	4	Fox	35	35			***
Dallas-Ft. Worth	KXAS	FORT WORTH	TX	5	NBC	41	41		**	
Dallas-Ft. Worth	KERA	DALLAS	TX	13	PBS	14	14		**	
Dallas-Ft. Worth	KTXA	FORT WORTH	TX	21		18	18		**	
Dallas-Ft. Worth	KDFI	DALLAS	TX	27		36	36		**	
Dallas-Ft. Worth	KMPX	DECATUR	TX	29		30	30		**	
Dallas-Ft. Worth	KDAF	DALLAS	TX	33		32	32		**	
Dallas-Ft. Worth	KSTR	IRVING	TX	49		48	48		**	
Davenport-R.Island-Moline.	KWQC	DAVENPORT	IA	6	NBC	56	36			

DMA name	Call sign	City	State	Analog channel	Network affiliation	Post-transition DTV channel	Pre-transition DTV channel	Not on MSTV list	May be short-spaced	Indicated interest in participating
Davenport-R.Island-Moline.	KLJB	DAVENPORT	IA	18	Fox	49	49		**	
Davenport-R.Island-Moline.	WQPT	MOLINE	IL	24	PBS	23	23		**	
Davenport-R.Island-Moline.	KGCW	BURLINGTON	IA	26		41	41		**	
Dayton	WDTN	DAYTON	OH	2	NBC	50	50			
Dayton	WHIO	DAYTON	OH	7	CBS	41	41		**	
Dayton	WKEF	DAYTON	OH	22	ABC	51	51		**	
Denver	KWGN	DENVER	CO	2		34	34		**	
Denver	KCNC	DENVER	CO	4	CBS	35	35			
Denver	KRMA	DENVER	CO	6	PBS	18	18			***
Denver	KBDI	BROOMFIELD	CO	12	PBS	38	13		**	
Denver	KTFD	BOULDER	CO	14		15	15			
Denver	KTVD	DENVER	CO	20		19	19		**	
Denver	KRMZ	STEAMBOAT SPRINGS.	CO	24	PBS	10	10			
Denver	KDEN	LONGMONT	CO	25		29	29		**	
Denver	KDVR	DENVER	CO	31	Fox	32	32			
Denver	KRMT	DENVER	CO	41		40	40		**	
Denver	KCEC	DENVER	CO	50		51	51			
Des Moines-Ames	KDSM	DES MOINES	IA	17	Fox	16	16		**	
Des Moines-Ames	KTIN	FORT DODGE	IA	21	PBS	25	25			
Detroit	WJBK	DETROIT	MI	2	Fox	58	7			***
Detroit	WDIV	DETROIT	MI	4	NBC	45	45			
Detroit	WMYD	DETROIT	MI	20		21	21		**	
Detroit	WKBD	DETROIT	MI	50		14	14		**	
Dothan	WTVY	DOTHAN	AL	4	CBS	36	36			
Dothan	WDHN	DOTHAN	AL	18	ABC	21	21		**	
Dothan	WDFX	OZARK	AL	34	Fox	33	33		**	
Dothan	WGIQ	LOUISVILLE	AL	43	PBS	44	44		**	
Duluth-Superior	KDLH	DULUTH	MN	3	CBS	33	33			
Duluth-Superior	KBJR	SUPERIOR	WI	6	NBC	19	19			
Duluth-Superior	KQDS	DULUTH	MN	21	Fox	17	17			
Duluth-Superior	KAWB	BRAINERD	MN	22	PBS	28	28		**	
Eau Claire	WEUX	CHIPPEWA FALLS	WI	48	Fox	49	49	*		
El Paso (Las Cruces).	KDBC	EL PASO	TX	4	CBS	18	18			
El Paso (Las Cruces).	KOBG	SILVER CITY	NM	6	NBC		12			
El Paso (Las Cruces).	KFOX	EL PASO	TX	14	Fox	15	15			
El Paso (Las Cruces).	KINT	EL PASO	TX	26		25	25			
El Paso (Las Cruces).	KSCE	EL PASO	TX	38		39	39			
El Paso (Las Cruces).	KTDO	LAS CRUCES	NM	48		36	47			
Erie	WSEE	ERIE	PA	35	CBS	16	16		**	
Eugene	KPIC	ROSEBURG	OR	4	CBS	19	19			
Eugene	KMTR	EUGENE	OR	16	NBC	17	17		**	
Eugene	KMCB	COOS BAY	OR	23	NBC	22	22			
Eugene	KEPB	EUGENE	OR	28	PBS	29	29			
Eugene	KLSR	EUGENE	OR	34	Fox	31	31			
Eugene	KTVC	ROSEBURG	OR	36		18	18			
Eugene	KTCW	ROSEBURG	OR	46	NBC	45	45			
Eureka	KVIQ	EUREKA	CA	6	CBS	17	17			
Eureka	KEET	EUREKA	CA	13	PBS	11	11		**	
Eureka	KAEF	ARCATA	CA	23	ABC	22	22		**	
Eureka	KBVU	EUREKA	CA	29	Fox	28	28		**	
Evansville	WEHT	EVANSVILLE	IN	25	ABC	59	25		**	
Evansville	WKOH	OWENSBORO	KY	31	PBS	30	30		**	
Evansville	WKMA	MADISONVILLE	KY	35	PBS	42	42		**	
Evansville	WEVV	EVANSVILLE	IN	44	CBS	45	45		**	
Fairbanks	KATN	FAIRBANKS	AK	2	ABC	18	18			
Fairbanks	KJNP	NORTH POLE	AK	4		20	20			
Fairbanks	KTVF	FAIRBANKS	AK	11	NBC	26	11			
Fargo-Valley City	KGFE	GRAND FORKS	ND	2	PBS	56	15			
Fargo-Valley City	KXJB	VALLEY CITY	ND	4	CBS	38	38			
Fargo-Valley City	WDAY	FARGO	ND	6	ABC	21	21			
Fargo-Valley City	KVLY	FARGO	ND	11	NBC	58	44		**	
Fargo-Valley City	KVRR	FARGO	ND	15	Fox	19	19		**	
Fargo-Valley City	KDSD	ABERDEEN	SD	16	PBS	17	17			
Fargo-Valley City	KJRE	ELLENDALE	ND	19	PBS	20	20		**	
Flint-Saginaw-Bay City.	WNEM	BAY CITY	MI	5	CBS	22	22		**	
Flint-Saginaw-Bay City.	WEYI	SAGINAW	MI	25	NBC	30	30		**	
Flint-Saginaw-Bay City.	WDCQ	BAD AXE	MI	35	PBS	15	15			
Flint-Saginaw-Bay City.	WAQP	SAGINAW	MI	49		48	48		**	

DMA name	Call sign	City	State	Analog channel	Network affiliation	Post-transition DTV channel	Pre-transition DTV channel	Not on MSTV list	May be short-spaced	Indicated interest in participating
Fresno-Visalia	KEGS	GOLDFIELD	NV	7			50		**	
Fresno-Visalia	KVPT	FRESNO	CA	18	PBS	40	40		**	
Fresno-Visalia	KFTV	HANFORD	CA	21		20	20		**	
Fresno-Visalia	KSEE	FRESNO	CA	24	NBC	16	38		**	
Fresno-Visalia	KMPH	VISALIA	CA	26	Fox	28	28		**	
Fresno-Visalia	KGPE	FRESNO	CA	47	CBS	14	34		**	
Fresno-Visalia	KNXT	VISALIA	CA	49		50	50		**	
Fresno-Visalia	KNSO	MERCED	CA	51		38	11		**	
Ft. Myers-Naples	WINK	FORT MYERS	FL	11	CBS	53	9		**	
Ft. Myers-Naples	WBBH	FORT MYERS	FL	20	NBC	15	15		**	
Ft. Myers-Naples	WZVN	NAPLES	FL	26	ABC	41	41		**	
Ft. Myers-Naples	WGCU	FORT MYERS	FL	30	PBS	31	31		**	
Ft. Myers-Naples	WXCW	NAPLES	FL	46		45	45		**	
Ft. Smith-Fay-Sprngdl-Rgrs.	KOET	EUFAULA	OK	3	PBS	31	31			
Ft. Smith-Fay-Sprngdl-Rgrs.	KFSM	FORT SMITH	AR	5	CBS	18	18			
Ft. Smith-Fay-Sprngdl-Rgrs.	KFTA	FORT SMITH	AR	24	Fox	27	27		**	
Ft. Smith-Fay-Sprngdl-Rgrs.	KHOG	FAYETTEVILLE	AR	29	ABC	15	15		**	***
Ft. Smith-Fay-Sprngdl-Rgrs.	KHBS	FORT SMITH	AR	40	ABC	21	21		**	
Ft. Wayne	WANE	FORT WAYNE	IN	15	CBS	4	31		**	
Ft. Wayne	WISE	FORT WAYNE	IN	33	NBC	19	19		**	
Ft. Wayne	WFWA	FORT WAYNE	IN	39	PBS	40	40		**	
Gainesville	WUFT	GAINESVILLE	FL	5	PBS	36	36			
Gainesville	WCJB	GAINESVILLE	FL	20	ABC	16	16		**	
Gainesville	WNBW	GAINESVILLE	FL	29		9	9		**	
Glendive	KXMA	DICKINSON	ND	2	CBS	19	19		**	
Glendive	KWSE	WILLISTON	ND	4	PBS	51	51			
Glendive	KXGN	Glendive	MT	5	CBS	15	10	*		
Grand Junction-Montrose.	KREG	GLENWOOD SPRINGS.	CO	3	CBS	23	23			
Grand Junction-Montrose.	KFQX	GRAND JUNCTION	CO	4	Fox	15	15			
Grand Junction-Montrose.	KREX	GRAND JUNCTION	CO	5	CBS	2	2			
Grand Junction-Montrose.	KREZ	DURANGO	CO	6	CBS	15	15			
Grand Junction-Montrose.	KBCJ	VERNAL	UT	6			16		**	
Grand Junction-Montrose.	KJCT	GRAND JUNCTION	CO	8	ABC	7	7		**	
Grand Junction-Montrose.	KREY	MONTROSE	CO	10	CBS	13	13			
Grand Junction-Montrose.	KKCO	GRAND JUNCTION	CO	11	NBC	12	12		**	
Grand Rapids-Kalmzoo-B.Crk.	WWMT	KALAMAZOO	MI	3	CBS	2	8			
Grand Rapids-Kalmzoo-B.Crk.	WXMI	GRAND RAPIDS	MI	17	Fox	19	19		**	
Great Falls	KRTV	GREAT FALLS	MT	3	CBS	44	7			
Great Falls	KFBB	GREAT FALLS	MT	5	ABC	39	8		**	
Great Falls	KTGF	GREAT FALLS	MT	16		45	45			
Green Bay-Appleton	WBAY	GREEN BAY	WI	2	ABC	23	23			
Green Bay-Appleton	WIWB	SURING	WI	14		21	21		**	
Green Bay-Appleton	WGBA	GREEN BAY	WI	26	NBC	41	41		**	
Green Bay-Appleton	WACY	APPLETON	WI	32		59	27		**	
Green Bay-Appleton	WPNE	GREEN BAY	WI	38	PBS	42	42		**	
Greensboro-H.Point-W.Salem.	WFMY	GREENSBORO	NC	2	CBS	51	51		**	
Greensboro-H.Point-W.Salem.	WXII	WINSTON-SALEM	NC	12	NBC	31	31		**	
Greensboro-H.Point-W.Salem.	WGPX	BURLINGTON	NC	16		14	14		**	
Greensboro-H.Point-W.Salem.	WXLV	WINSTON-SALEM	NC	45	ABC	29	29		**	
Greenville-N.Bern-Washngtn.	WUND	EDENTON	NC	2	PBS	20	20			***
Greenville-N.Bern-Washngtn.	WITN	WASHINGTON	NC	7	NBC	32	32		**	
Greenville-N.Bern-Washngtn.	WNCT	GREENVILLE	NC	9	CBS	10	10		**	
Greenvll-Spart-Ashevll-And.	WYFF	GREENVILLE	SC	4	NBC	59	36		**	
Greenvll-Spart-Ashevll-And.	WNTV	GREENVILLE	SC	29	PBS	9	9		**	
Greenvll-Spart-Ashevll-And.	WNEG	TOCCOA	GA	32	CBS	24	24		**	
Greenvll-Spart-Ashevll-And.	WUNF	ASHEVILLE	NC	33	PBS	25	25		**	

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Greenvll-Spart-Ashevll-And.	WNEH	GREENWOOD	SC	38	PBS	18	18		**	
Greenvll-Spart-Ashevll-And.	WRET	SPARTANBURG	SC	49	PBS	43	43		**	
Greenwood-Greenville.	WABG	GREENWOOD	MS	6	ABC	54	32		**	
Greenwood-Greenville.	WMAV	OXFORD	MS	18	PBS	36	36		**	
Greenwood-Greenville.	WMAO	GREENWOOD	MS	23	PBS	25	25		**	
Harlingen-Wslco-Brnsvl-McA.	KGBT	HARLINGEN	TX	4	CBS	31	31			
Harlingen-Wslco-Brnsvl-McA.	KRGV	WESLACO	TX	5	ABC	13	13			
Harlingen-Wslco-Brnsvl-McA.	KVEO	BROWNSVILLE	TX	23	NBC	24	24		**	
Harlingen-Wslco-Brnsvl-McA.	KTLM	Rio Grande City	TX	40		20	20	*		***
Harlingen-Wslco-Brnsvl-McA.	KLUJ	HARLINGEN	TX	44		34	34			
Harlingen-Wslco-Brnsvl-McA.	KNVO	MCALLEN	TX	48		46	49			
Harrisonburg	WHSV	HARRISONBURG	VA	3	ABC	49	49		**	
Hartford & New Haven.	WFSB	HARTFORD	CT	3	CBS	33	33			
Helena	KMTF	HELENA	MT	10		29	29		**	
Honolulu	KHBC	HILO	HI	2	NBC	22	22			
Honolulu	KHON	HONOLULU	HI	2	Fox	22	8			
Honolulu	KGMV	WAILUKU	HI	3	CBS	24	24			
Honolulu	KITV	HONOLULU	HI	4	ABC	40	40			***
Honolulu	KFVE	HONOLULU	HI	5		23	23			
Honolulu	KLEI	KAILUA KONA	HI	6		25	25			
Honolulu	KHNL	HONOLULU	HI	13	NBC	35	35			
Honolulu	KWHE	HONOLULU	HI	14		31	31			
Honolulu	KWHH	HILO	HI	14		23	23			
Honolulu	KOGG	Wailuku	HI	15	NBC	16	16	*		
Honolulu	KIKU	HONOLULU	HI	20		19	19			
Honolulu	KAAH	HONOLULU	HI	26		27	27			
Honolulu	KBFD	Honolulu	HI	32		33	33	*	**	
Honolulu	KALO	Honolulu	HI	38		39	10	*		
Honolulu	KWBN	HONOLULU	HI	44		43	43			
Houston	KPRC	HOUSTON	TX	2	NBC	35	35			
Houston	KBTX	BRYAN	TX	3	CBS	59	50			
Houston	KETH	HOUSTON	TX	14		24	24			
Houston	KTXH	HOUSTON	TX	20		19	19		**	
Houston	KLTJ	GALVESTON	TX	22		23	23		**	
Houston	KIAH	HOUSTON	TX	39		38	38		**	
Houston	KPXB	CONROE	TX	49		5	32		**	
Houston	KNWS	KATY	TX	51		52	47		**	
Huntsville-Decatur (Flor).	WHIQ	HUNTSVILLE	AL	25	PBS	24	24		**	
Huntsville-Decatur (Flor).	WAAY	HUNTSVILLE	AL	31	ABC	32	32		**	
Idaho Falls-Pocatello.	KIDK	IDAHO FALLS	ID	3	CBS	36	36			
Idaho Falls-Pocatello.	KPVI	POCATELLO	ID	6	NBC	23	23		**	
Idaho Falls-Pocatello.	KISU	POCATELLO	ID	10	PBS	17	17		**	
Indianapolis	WTTV	BLOOMINGTON	IN	4		53	48		**	
Indianapolis	WRTV	INDIANAPOLIS	IN	6	ABC	25	25			
Indianapolis	WISH	INDIANAPOLIS	IN	8	CBS	9	9		**	
Indianapolis	WIPB	MUNCIE	IN	49	PBS	52	23		**	
Jackson, MS	WLBT	JACKSON	MS	3	NBC	51	7			
Jackson, MS	WAPT	JACKSON	MS	16	ABC	21	21		**	
Jackson, MS	WMPN	JACKSON	MS	29	PBS	20	20		**	
Jackson, MS	WUFX	VICKSBURG	MS	35		41	35		**	
Jackson, TN	WBBJ	JACKSON	TN	7	ABC	43	43		**	
Jackson, TN	WLJT	LEXINGTON	TN	11	PBS	47	47		**	
Jackson, TN	WJKT	JACKSON	TN	16	Fox	39	39		**	
Jacksonville, Brunswick.	WJXT	JACKSONVILLE	FL	4		42	42			***
Jacksonville, Brunswick.	WTLV	JACKSONVILLE	FL	12	NBC	13	13		**	
Jacksonville, Brunswick.	WCWJ	JACKSONVILLE	FL	17		34	34		**	
Jacksonville, Brunswick.	WPXC	BRUNSWICK	GA	21		24	24		**	
Jacksonville, Brunswick.	WAWS	JACKSONVILLE	FL	30	Fox	32	32		**	
Jacksonville, Brunswick.	WTEV	JACKSONVILLE	FL	47	CBS	19	19		**	

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Johnstown-Altoona	WPSU	CLEARFIELD	PA	3	PBS	15	15			
Johnstown-Altoona	WJAC	JOHNSTOWN	PA	6	NBC	34	34		**	
Johnstown-Altoona	WPCW	JEANNETTE	PA	19		49	49		**	
Johnstown-Altoona	WATM	ALTOONA	PA	23	ABC	24	24		**	
Johnstown-Altoona	WHAG	HAGERSTOWN	MD	25	NBC	55	26		**	
Johnstown-Altoona	WWPB	HAGERSTOWN	MD	31	PBS	44	44		**	
Jonesboro	KTEJ	JONESBORO	AR	19	PBS	20	20		**	
Joplin-Pittsburg	KFJX	PITTSBURG	KS	14	Fox	—	13			
Joplin-Pittsburg	KSNF	JOPLIN	MO	16	NBC	46	46			
Joplin-Pittsburg	KOZJ	JOPLIN	MO	26	PBS	25	25			
Joplin-Pittsburg	KNWA	ROGERS	AR	51	NBC	50	50		**	
Juneau, AK	KTOO	JUNEAU	AK	3	PBS	6	10			
Juneau, AK	KUBD	KETCHIKAN	AK	4	CBS	13	13			
Juneau, AK	KJUD	JUNEAU	AK	8	ABC	11	11			
Juneau, AK	KTNL	SITKA	AK	13	CBS	2	7			
Kansas City	WDAF	KANSAS CITY	MO	4	Fox	34	34			
Kansas City	KCTV	KANSAS CITY	MO	5	CBS	24	24		**	
Kansas City	KCPT	KANSAS CITY	MO	19	PBS	18	18		**	
Kansas City	KCWE	KANSAS CITY	MO	29		31	31	*		
Kansas City	KMCI	LAWRENCE	KS	38		36	41			
Kansas City	KPXE	KANSAS CITY	MO	50		51	51		**	
Kansas City	KMBC	KANSAS CITY	MO	9		9	7	*		***
Knoxville	WETP	SNEEDVILLE	TN	2	PBS	41	41			
Knoxville	WATE	KNOXVILLE	TN	6	ABC	26	26		**	
Knoxville	WVLT	KNOXVILLE	TN	8	CBS	30	30		**	
Knoxville	WKOP	KNOXVILLE	TN	15	PBS	17	17		**	
Knoxville	WTNZ	KNOXVILLE	TN	43	Fox	34	34		**	
Knoxville	WAGV	HARLAN	KY	44		51	51		**	
La Crosse-Eau Claire.	WQOW	EAU CLAIRE	WI	18	ABC	15	15		**	
La Crosse-Eau Claire.	WXOW	LACROSSE	WI	19	ABC	14	14		**	
La Crosse-Eau Claire.	WLAX	LA CROSSE	WI	25	Fox	17	17		**	
La Crosse-Eau Claire.	WHLA	LA CROSSE	WI	31	PBS	30	30		**	
Lafayette, LA	KATC	LAFAYETTE	LA	3	ABC	28	28			
Lafayette, LA	KADN	LAFAYETTE	LA	15	Fox	16	16		**	
Lake Charles	KLTL	LAKE CHARLES	LA	18	PBS	20	20		**	
Lake Charles	KVHP	LAKE CHARLES	LA	29	Fox	30	30		**	
Lansing	WLNS	LANSING	MI	6	CBS	59	36		**	
Lansing	WKAR	EAST LANSING	MI	23	PBS	55	40		**	
Lansing	WSYM	LANSING	MI	47	Fox	38	38		**	
Laredo	KVAW	EAGLE PASS	TX	16		18	18			
Laredo	KLDO	LAREDO	TX	27		19	19		**	
Las Vegas	KVBC	LAS VEGAS	NV	3	NBC	2	2			
Las Vegas	KCSG	CEDAR CITY	UT	4		14	14			
Las Vegas	KVVU	HENDERSON	NV	5	Fox	24	9			
Las Vegas	KMOH	KINGMAN	AZ	6		19	19			
Las Vegas	KLAS	LAS VEGAS	NV	8	CBS	7	7		**	
Las Vegas	KLVX	LAS VEGAS	NV	10	PBS	11	11		**	
Las Vegas	KUSG	ST. GEORGE	UT	12		9	9			
Las Vegas	KINC	LAS VEGAS	NV	15		16	16			
Las Vegas	KVMY	LAS VEGAS	NV	21		22	22			
Las Vegas	KMCC	LAUGHLIN	NV	34		32	32			
Las Vegas	KBLR	PARADISE	NV	39		40	40			
Lexington	WLEX	LEXINGTON	KY	18	NBC	22	39		**	
Lexington	WKYT	LEXINGTON	KY	27	CBS	59	13		**	
Lexington	WKSO	SOMERSET	KY	29	PBS	14	14		**	
Lexington	WTVQ	LEXINGTON	KY	36	ABC	40	40		**	
Lexington	WKLE	LEXINGTON	KY	46	PBS	42	42		**	
Lima	WLIO	LIMA	OH	35	NBC	20	8		**	
Lincoln & Hstngs-Krny Plus.	KSNB	SUPERIOR	NE	4	Fox	34	34	*		
Lincoln & Hstngs-Krny Plus.	KTVG	GRAND ISLAND	NE	17	Fox	19	19		**	
Lincoln & Hstngs-Krny Plus.	KHNE	HASTINGS	NE	29	PBS	14	28			
Little Rock-Pine Bluff.	KETS	LITTLE ROCK	AR	2	PBS	47	7			
Little Rock-Pine Bluff.	KARK	LITTLE ROCK	AR	4	NBC	32	32			
Little Rock-Pine Bluff.	KEMV	MOUNTAIN VIEW	AR	6	PBS	35	13			
Little Rock-Pine Bluff.	KETG	ARKADELPHIA	AR	9	PBS	46	13		**	
Little Rock-Pine Bluff.	KTHV	LITTLE ROCK	AR	11	CBS	12	12		**	
Little Rock-Pine Bluff.	KLRT	LITTLE ROCK	AR	16	Fox	30	30		**	
Little Rock-Pine Bluff.	KVTN	PINE BLUFF	AR	25		24	24		**	

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Little Rock-Pine Bluff.	KASN	PINE BLUFF	AR	38		39	39		**	
Little Rock-Pine Bluff.	KWBF	LITTLE ROCK	AR	42		43	44		**	
Los Angeles	KCBS	LOS ANGELES	CA	2	CBS	60	43		**	
Los Angeles	KNBC	LOS ANGELES	CA	4	NBC	36	36			***
Los Angeles	KTLA	LOS ANGELES	CA	5		31	31		**	
Los Angeles	KWHY	LOS ANGELES	CA	22		42	42		**	***
Los Angeles	KTBN	SANTA ANA	CA	40		23	23		**	
Louisville	WAVE	LOUISVILLE	KY	3	NBC	47	47		**	
Louisville	WKPC	LOUISVILLE	KY	15	PBS	17	17		**	
Louisville	WBNA	LOUISVILLE	KY	21		8	8		**	
Louisville	WKZT	ELIZABETHTOWN	KY	23	PBS	43	43		**	
Louisville	WLKY	LOUISVILLE	KY	32	CBS	26	26		**	
Louisville	WBKI	CAMPBELLSVILLE	KY	34		19	19		**	
Louisville	WDRB	LOUISVILLE	KY	41	Fox	49	49		**	
Lubbock	KENW	PORTALES	NM	3	PBS	32	32			
Lubbock	KTXT	LUBBOCK	TX	5	PBS	39	39			
Lubbock	KLBK	LUBBOCK	TX	13	CBS	38	40			
Lubbock	KLCW	WOLFFORTH	TX	22			43			
Lubbock	KAMC	LUBBOCK	TX	28	ABC	27	27		**	
Lubbock	KJTV	LUBBOCK	TX	34	Fox	35	35			
Macon	WGXA	MACON	GA	24	Fox	16	16		**	
Macon	WMUM	COCHRAN	GA	29	PBS	7	7		**	
Madison	WISC	MADISON	WI	3	CBS	50	50			
Madison	WHA	MADISON	WI	21	PBS	20	20		**	
Madison	WKOW	MADISON	WI	27	ABC	26	26		**	
Madison	WMSN	MADISON	WI	47	Fox	11	11		**	
Mankato	KRWF	REDWOOD FALLS	MN	43	ABC	27	27			
Marquette	WJMN	ESCANABA	MI	3	CBS	48	48			
Marquette	WLUC	MARQUETTE	MI	6	NBC	35	35		**	
Medford-Klamath Falls.	KOTI	KLAMATH FALLS	OR	2	NBC	40	13			
Medford-Klamath Falls.	KFTS	KLAMATH FALLS	OR	22	PBS	33	33			
Medford-Klamath Falls.	KDKF	KLAMATH FALLS	OR	31	ABC	29	29			
Memphis	WREG	MEMPHIS	TN	3	CBS	28	28			
Memphis	WLMT	MEMPHIS	TN	30		31	31		**	
Memphis	WBUY	HOLLY SPRINGS	MS	40		41	41		**	
Memphis	WPXX	MEMPHIS	TN	50		51	51			
Meridian	WMAW	MERIDIAN	MS	14	PBS	44	44			
Meridian	WGBC	MERIDIAN	MS	30	NBC	31	31		**	
Meridian	WIIQ	DEMOPOLIS	AL	41	PBS	19	19		**	
Miami-Ft. Lauderdale.	WKAQ	SAN JUAN	PR	2		28	28			
Miami-Ft. Lauderdale.	WPBT	MIAMI	FL	2	PBS	18	18			
Miami-Ft. Lauderdale.	WIPM	MAYAGUEZ	PR	3	PBS	35	35			
Miami-Ft. Lauderdale.	WAPA	SAN JUAN	PR	4		27	27			
Miami-Ft. Lauderdale.	WFOR	MIAMI	FL	4	CBS	22	22			
Miami-Ft. Lauderdale.	WORA	MAYAGUEZ	PR	5		29	29			***
Miami-Ft. Lauderdale.	WIPR	SAN JUAN	PR	6	PBS	55	43			
Miami-Ft. Lauderdale.	WTVJ	MIAMI	FL	6	NBC	30	31			
Miami-Ft. Lauderdale.	WSVI	CHRISTIANSTED, ST. C.	VI	8	ABC	20	20			
Miami-Ft. Lauderdale.	WLRN	MIAMI	FL	17	PBS	20	20		**	
Miami-Ft. Lauderdale.	WKPV	PONCE	PR	20		19	19		**	
Miami-Ft. Lauderdale.	WSBS	KEY WEST	FL	22		3	3			
Miami-Ft. Lauderdale.	WJPX	SAN JUAN	PR	24		21	21		**	
Miami-Ft. Lauderdale.	WBFS	MIAMI	FL	33		32	32		**	
Miami-Ft. Lauderdale.	WDWL	BAYAMON	PR	36		59	30		**	
Miami-Ft. Lauderdale.	WCVI	CHRISTIANSTED	VI	39		23	23			
Miami-Ft. Lauderdale.	WSFL	MIAMI	FL	39		19	19		**	
Miami-Ft. Lauderdale.	WVEO	AGUADILLA	PR	44		17	17		**	
Miami-Ft. Lauderdale.	WSCV	FORT LAUDERDALE.	FL	51		52	30		**	

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Milwaukee	WTMJ	MILWAUKEE	WI	4	NBC	28	28		**	
Milwaukee	WITI	MILWAUKEE	WI	6		33	33			
Milwaukee	WMVS	MILWAUKEE	WI	10	PBS	8	8		**	
Milwaukee	WVCY	MILWAUKEE	WI	30		22	22		**	
Minneapolis-St. Paul.	KTCA	ST. PAUL	MN	2	PBS	34	34			
Minneapolis-St. Paul.	WCCO	MINNEAPOLIS	MN	4	CBS	32	32			
Minneapolis-St. Paul.	KSTC	MINNEAPOLIS	MN	45		45	44	*		***
Minneapolis-St. Paul.	KSTP	ST. PAUL	MN	5	ABC	50	35			***
Minneapolis-St. Paul.	KTCI	ST. PAUL	MN	17	PBS	16	26		**	
Minneapolis-St. Paul.	WUCW	MINNEAPOLIS	MN	23		22	22			
Minneapolis-St. Paul.	WHWC	MENOMONIE	WI	28	PBS	27	27		**	
Minneapolis-St. Paul.	KPXM	ST. CLOUD	MN	41		40	40		**	
Minot-Bismarck-Dickinson.	KBME	BISMARCK	ND	3	PBS	22	22		**	
Minot-Bismarck-Dickinson.	KFYR	BISMARCK	ND	5	NBC	31	31			
Minot-Bismarck-Dickinson.	KSRE	MINOT	ND	6	PBS	57	40			
Minot-Bismarck-Dickinson.	KXMD	WILLISTON	ND	11	CBS	14	14	*		
Missoula	KPAX	MISSOULA	MT	8	CBS	35	7		**	
Mobile-Pensacola (Ft Walt).	WEAR	PENSACOLA	FL	3	ABC	17	17			
Mobile-Pensacola (Ft Walt).	WKRG	MOBILE	AL	5	CBS	27	27		**	
Mobile-Pensacola (Ft Walt).	WMPV	MOBILE	AL	21		20	20		**	
Mobile-Pensacola (Ft Walt).	WHBR	PENSACOLA	FL	33		34	34		**	
Mobile-Pensacola (Ft Walt).	WEIQ	MOBILE	AL	42	PBS	41	41		**	
Mobile-Pensacola (Ft Walt).	WJTC	PENSACOLA	FL	44		45	45		**	
Monroe-El Dorado	KARD	WEST MONROE	LA	14	Fox	36	36			
Monroe-El Dorado	KMCT	WEST MONROE	LA	39		38	38		**	
Monterey-Salinas	KION	MONTEREY	CA	46	CBS	32	32		**	
Montgomery-Selma	WDIQ	DOZIER	AL	2	PBS	59	10			
Montgomery-Selma	WAKA	SELMA	AL	8	CBS	55	42		**	
Myrtle Beach-Florence.	WHMC	CONWAY	SC	23	PBS	58	9		**	
Nashville	WKRN	NASHVILLE	TN	2	ABC	27	27			
Nashville	WSMV	NASHVILLE	TN	4	NBC	10	10		**	
Nashville	WZTV	NASHVILLE	TN	17	Fox	15	15		**	
Nashville	WUXP	NASHVILLE	TN	30		21	21		**	
Nashville	WHTN	MURFREESBORO	TN	39		38	38		**	
New Orleans	WWL	NEW ORLEANS	LA	4		30	36			
New Orleans	WDSU	NEW ORLEANS	LA	6	NBC	43	43			***
New Orleans	WYES	NEW ORLEANS	LA	12	PBS	11	11		**	
New Orleans	WHNO	NEW ORLEANS	LA	20		14	21		**	
New Orleans	WLAE	NEW ORLEANS	LA	32	PBS	31	31			
New Orleans	WNOL	NEW ORLEANS	LA	38		40	15			
New Orleans	WPXL	NEW ORLEANS	LA	49		50	50		**	
New York	WCBS	NEW YORK	NY	2	CBS	56	33			
New York	WNBC	NEW YORK	NY	4	NBC	28	28		**	
New York	WNYW	NEW YORK	NY	5	Fox	44	44		**	
Norfolk-Portsmth-Newpt Nws.	WTKR	NORFOLK	VA	3	CBS	58	40		**	
Norfolk-Portsmth-Newpt Nws.	WSKY	MANTEO	NC	4		4	9		**	
Norfolk-Portsmth-Newpt Nws.	WHRO	HAMPTON-NORFOLK.	VA	15	PBS	16	16		**	
Norfolk-Portsmth-Newpt Nws.	WHRE	VIRGINIA BEACH	VA	21			7		**	
Norfolk-Portsmth-Newpt Nws.	WGNT	PORTSMOUTH	VA	27		19	50		**	
Norfolk-Portsmth-Newpt Nws.	WVBT	VIRGINIA BEACH	VA	43	Fox	29	29		**	
Norfolk-Portsmth-Newpt Nws.	WPXV	NORFOLK	VA	49		46	46		**	
North Platte	KLNE	LEXINGTON	NE	3	PBS	26	26			
North Platte	KLBY	COLBY	KS	4	ABC	17	17			
North Platte	KSNK	MCCOOK	NE	8	NBC	12	12		**	
Odessa-Midland	KMID	MIDLAND	TX	2	ABC	26	26			
Odessa-Midland	KWAB	BIG SPRING	TX	4	NBC	33	33			

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Odessa-Midland	KOCT	CARLSBAD	NM	6	ABC	19	19			***
Odessa-Midland	KPEJ	ODESSA	TX	24	Fox	23	23		**	
Odessa-Midland	KPBT	ODESSA	TX	36	PBS	22	38			
Oklahoma City	KFOR	OKLAHOMA CITY	OK	4	NBC	27	27			
Oklahoma City	KOCO	OKLAHOMA CITY	OK	5	ABC	16	7			***
Oklahoma City	KWET	CHEYENNE	OK	12	PBS	8	8		**	
Oklahoma City	KOKH	OKLAHOMA CITY	OK	25	Fox	24	24		**	
Oklahoma City	KTUZ	SHAWNEE	OK	30		29	29		**	
Oklahoma City	KOCB	OKLAHOMA CITY	OK	34		33	33			
Oklahoma City	KAUT	OKLAHOMA CITY	OK	43		42	40		**	
Omaha	KMTV	OMAHA	NE	3	CBS	45	45			
Omaha	WOWT	OMAHA	NE	6	NBC	22	22			
Omaha	KETV	OMAHA	NE	7	ABC	20	20		**	
Omaha	KYNE	OMAHA	NE	26	PBS	17	17			
Omaha	KBIN	COUNCIL BLUFFS	IA	32	PBS	33	33			
Omaha	KHIN	RED OAK	IA	36	PBS	35	35		**	
Omaha	KPTM	OMAHA	NE	42	Fox	43	43		**	
Orlando-Daytona Bch-Melbrn.	WESH	DAYTONA BEACH	FL	2	NBC	11	11			***
Orlando-Daytona Bch-Melbrn.	WKMG	ORLANDO	FL	6	CBS	58	26			
Orlando-Daytona Bch-Melbrn.	WFTV	ORLANDO	FL	9	ABC	39	39		**	
Orlando-Daytona Bch-Melbrn.	WDSC	NEW SMYRNA BEACH.	FL	15			33		**	
Orlando-Daytona Bch-Melbrn.	WKCF	CLERMONT	FL	18		17	17		**	***
Orlando-Daytona Bch-Melbrn.	WMFE	ORLANDO	FL	24	PBS	23	23		**	
Orlando-Daytona Bch-Melbrn.	WOFL	ORLANDO	FL	35	Fox	22	22		**	
Orlando-Daytona Bch-Melbrn.	WTGL	LEESBURG	FL	45		46	46		**	
Ottumwa-Kirksville	KTVO	KIRKSVILLE	MO	3	ABC	33	33			
Paducah-Cape Girard-Harsbg.	WSIL	HARRISBURG	IL	3	ABC	34	34			***
Paducah-Cape Girard-Harsbg.	WPSD	PADUCAH	KY	6	NBC	32	32			
Paducah-Cape Girard-Harsbg.	KBSI	CAPE GIRARDEAU	MO	23	Fox	22	22		**	
Paducah-Cape Girard-Harsbg.	WTCT	MARION	IL	27		17	17		**	
Paducah-Cape Girard-Harsbg.	WKPD	PADUCAH	KY	29	PBS	41	41		**	
Panama City	WPGX	PANAMA CITY	FL	28	Fox	29	9			
Panama City	WFGX	FORT WALTON BEACH.	FL	35		50	50		**	
Panama City	WPCT	PANAMA CITY BEACH.	FL	46		47	47		**	
Parkersburg	WTAP	PARKERSBURG	WV	15	NBC	49	49		**	
Parkersburg	WOUB	ATHENS	OH	20	PBS	27	27		**	
Peoria-Bloomington	WICS	SPRINGFIELD	IL	20	ABC	42	42		**	
Peoria-Bloomington	WMBD	PEORIA	IL	31	CBS	30	30		**	
Peoria-Bloomington	WWTO	LA SALLE	IL	35		10	10		**	
Peoria-Bloomington	WYZZ	BLOOMINGTON	IL	43	Fox	28	28		**	
Peoria-Bloomington	WTVP	PEORIA	IL	47	PBS	46	46		**	
Peoria-Bloomington	WCFN	SPRINGFIELD	IL	49		53	13		**	
Philadelphia	KYW	PHILADELPHIA	PA	3	CBS	26	26			
Phoenix (Prescott)	KTVK	PHOENIX	AZ	3		24	24			
Phoenix (Prescott)	KPHO	PHOENIX	AZ	5	CBS	17	17			
Phoenix (Prescott)	KPAZ	PHOENIX	AZ	21		20	20			
Phoenix (Prescott)	KUTP	PHOENIX	AZ	45		26	26			
Pittsburgh	KDKA	PITTSBURGH	PA	2	CBS	25	25			
Pittsburgh	WTAE	PITTSBURGH	PA	4	ABC	51	51			
Pittsburgh	WQEX	PITTSBURGH	PA	16		26	38		**	
Pittsburgh	WPMY	PITTSBURGH	PA	22		42	42		**	
Pittsburgh	WPCB	GREENSBURG	PA	40		50	50		**	
Portland	KATU	PORTLAND	OR	2	ABC	43	43			
Portland	KOIN	PORTLAND	OR	6	CBS	40	40			***
Portland	KCKA	CENTRALIA	WA	15	PBS	19	19		**	
Portland	KNMT	PORTLAND	OR	24		45	45			
Portland	KPDX	VANCOUVER	WA	49		48	30			
Portland-Auburn	WCSH	PORTLAND	ME	6	NBC	44	44		**	
Portland-Auburn	WGME	PORTLAND	ME	13	CBS	38	38		**	
Portland-Auburn	WMEA	BIDDEFORD	ME	26	PBS	45	45			
Portland-Auburn	WPXT	PORTLAND	ME	51		4	43		**	
Quincy-Hannibal-Keokuk.	WTJR	QUINCY	IL	16		32	32		**	
Quincy-Hannibal-Keokuk.	WQEC	QUINCY	IL	27	PBS	34	34			
Raleigh-Durham (Fayetvlle).	WUNC	CHAPEL HILL	NC	4	PBS	59	25		**	

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Raleigh-Durham (Fayetvlle).	WRAL	RALEIGH	NC	5	CBS	53	48		**	
Raleigh-Durham (Fayetvlle).	WLFL	RALEIGH	NC	22		57	27		**	
Raleigh-Durham (Fayetvlle).	WRAY	WILSON	NC	30		42	42		**	
Raleigh-Durham (Fayetvlle).	WUVC	FAYETTEVILLE	NC	40		38	38		**	
Raleigh-Durham (Fayetvlle).	WRAZ	RALEIGH	NC	50	Fox	49	49		**	
Rapid City	KOTA	RAPID CITY	SD	3	ABC	22	2			
Rapid City	KPRY	PIERRE	SD	4	ABC	19	19			
Rapid City	KHSD	LEAD	SD	11	ABC	30	10		**	
Rapid City	KCLO	RAPID CITY	SD	15	CBS	16	16			
Reno	KTVN	RENO	NV	2	CBS	32	13			
Reno	KRNV	RENO	NV	4	NBC	34	7			
Reno	KNPB	RENO	NV	5	PBS	15	15			
Reno	KRXI	RENO	NV	11	Fox	44	44		**	
Reno	KAME	RENO	NV	21		22	20		**	
Reno	KREN	RENO	NV	27		26	26		**	
Richmond-Petersburg.	WTVR	RICHMOND	VA	6	CBS	25	25		**	
Richmond-Petersburg.	WRIC	PETERSBURG	VA	8	ABC	22	22		**	
Richmond-Petersburg.	WCVE	RICHMOND	VA	23	PBS	24	42		**	
Roanoke-Lynchburg	WBRA	ROANOKE	VA	15	PBS	3	3		**	
Roanoke-Lynchburg	WWCW	LYNCHBURG	VA	21	Fox	20	20		**	
Roanoke-Lynchburg	WFXR	ROANOKE	VA	27	Fox	17	17		**	
Roanoke-Lynchburg	WPXR	ROANOKE	VA	38		36	36		**	
Rochester, NY	WROC	ROCHESTER	NY	8	CBS	45	45		**	
Rochester, NY	WXXI	ROCHESTER	NY	21	PBS	16	16		**	***
Rochester, NY	WUHF	ROCHESTER	NY	31	Fox	28	28		**	
Rochester, NY	WPXJ	BATAVIA	NY	51		53	23		**	
Rochestr-Mason City-Austin.	KIMT	MASON CITY	IA	3	CBS	42	42			
Rochestr-Mason City-Austin.	KAAL	AUSTIN	MN	6	ABC	33	36			
Rochestr-Mason City-Austin.	KSMQ	AUSTIN	MN	15	PBS	20	20		**	
Rochestr-Mason City-Austin.	KYIN	MASON CITY	IA	24	PBS	18	18		**	
Rockford	WTVO	ROCKFORD	IL	17	ABC	16	16		**	
Rockford	WQRF	ROCKFORD	IL	39	Fox	42	42		**	
Sacramento-Stktn-Modesto.	KCRA	SACRAMENTO	CA	3	NBC	35	35			***
Sacramento-Stktn-Modesto.	KVIE	SACRAMENTO	CA	6	PBS	53	9			
Salisbury	WBOC	SALISBURY	MD	16	CBS	21	21		**	
Salt Lake City	KUTV	SALT LAKE CITY	UT	2	CBS	35	34		**	
Salt Lake City	KCBU	PRICE	UT	3		3	11		**	
Salt Lake City	KTVX	SALT LAKE CITY	UT	4	ABC	40	40			
Salt Lake City	KSL	SALT LAKE CITY	UT	5	NBC	38	38			***
Salt Lake City	KBNY	ELY	NV	6			27		**	
Salt Lake City	KUED	SALT LAKE CITY	UT	7	PBS	42	42			
Salt Lake City	KUEN	OGDEN	UT	9		34	36			
Salt Lake City	KJZZ	SALT LAKE CITY	UT	14		27	46			
Salt Lake City	KUPX	PROVO	UT	16		17	29		**	
Salt Lake City	KUCW	OGDEN	UT	30		29	48			
San Angelo	KSAN	SAN ANGELO	TX	3	NBC	16	16			
San Angelo	KIDY	SAN ANGELO	TX	6		19	19			
San Angelo	KLST	SAN ANGELO	TX	8	CBS	11	11		**	
San Antonio	KCWX	FREDERICKSBURG.	TX	2			5			
San Antonio	WOAI	SAN ANTONIO	TX	4	NBC	58	48			
San Antonio	KTRG	DEL RIO	TX	10		28	28			
San Antonio	KHCE	SAN ANTONIO	TX	23		16	16		**	
San Antonio	KABB	SAN ANTONIO	TX	29	Fox	30	30			
San Antonio	KMYS	KERRVILLE	TX	35		32	32		**	
San Diego	KPBS	SAN DIEGO	CA	15	PBS	30	30			
San Diego	KNSD	SAN DIEGO	CA	39	NBC	40	40		**	
San Diego	KUSI	SAN DIEGO	CA	51		18	18		**	
San Francisco-Oak-San Jose.	KTVU	OAKLAND	CA	2	Fox	56	44			
San Francisco-Oak-San Jose.	KRON	SAN FRANCISCO	CA	4		57	38			
San Francisco-Oak-San Jose.	KPIX	SAN FRANCISCO	CA	5	CBS	29	29		**	
San Francisco-Oak-San Jose.	KNTV	SAN JOSE	CA	11	NBC	12	12		**	
San Francisco-Oak-San Jose.	KOFY	SAN FRANCISCO	CA	20		19	19		**	

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San Francisco-Oak-San Jose.	KRCB	COTATI	CA	22	PBS	23	23		**	
SantaBarbra-SanMar-SanLuOb.	KEYT	SANTA BARBARA	CA	3	ABC	27	27			
SantaBarbra-SanMar-SanLuOb.	KSBY	SAN LUIS OBISPO	CA	6	NBC	15	15			
SantaBarbra-SanMar-SanLuOb.	KCOY	SANTA MARIA	CA	12	CBS	19	19			
SantaBarbra-SanMar-SanLuOb.	KTAS	SAN LUIS OBISPO	CA	33		34	34		**	
SantaBarbra-SanMar-SanLuOb.	KPMR	SANTA BARBARA	CA	38		21	21		**	
Savannah	WSAV	SAVANNAH	GA	3	NBC	39	39			
Seattle-Tacoma	KOMO	SEATTLE	WA	4	ABC	38	38			
Seattle-Tacoma	KING	SEATTLE	WA	5	NBC	48	48			
Seattle-Tacoma	KIRO	SEATTLE	WA	7	CBS	39	39			
Seattle-Tacoma	KVOS	BELLINGHAM	WA	12		35	35		**	
Seattle-Tacoma	KONG	EVERETT	WA	16		31	31		**	
Seattle-Tacoma	KTBW	TACOMA	WA	20		14	14		**	
Seattle-Tacoma	KMYQ	SEATTLE	WA	22		25	25		**	
Seattle-Tacoma	KBCB	BELLINGHAM	WA	24		19	19		**	
Seattle-Tacoma	KBTC	TACOMA	WA	28	PBS	27	27			
Seattle-Tacoma	KHCV	SEATTLE	WA	45		44	44		**	
Seattle-Tacoma	KUNS	BELLEVUE	WA	51		50	50			
Sherman, TX-Ada, OK.	KTEN	ADA	OK	10	NBC	26	26		**	
Sherman, TX-Ada, OK.	KTAQ	GREENVILLE	TX	47		46	46		**	
Shreveport	KTBS	SHREVEPORT	LA	3	ABC	28	28			***
Shreveport	KTAL	TEXARKANA	TX	6	NBC	15	15			
Shreveport	KSLA	SHREVEPORT	LA	12		17	17		**	
Shreveport	KMSS	SHREVEPORT	LA	33	Fox	34	34		**	
Shreveport	KSHV	SHREVEPORT	LA	45		44	44		**	
Sioux City	KTIV	SIOUX CITY	IA	4	NBC	41	41			
Sioux City	KMEG	SIOUX CITY	IA	14	CBS	39	39			
Sioux City	KSIN	SIOUX CITY	IA	27	PBS	28	28		**	
Sioux Falls(Mitchell)	KUSD	VERMILLION	SD	2	PBS	34	34			
Sioux Falls(Mitchell)	KDLV	MITCHELL	SD	5	NBC	26	26			
Sioux Falls(Mitchell)	KPLO	RELIANCE	SD	6	CBS	14	13			
Sioux Falls(Mitchell)	KTTW	SIOUX FALLS	SD	17	Fox	7	7			
Sioux Falls(Mitchell)	KSMN	WORTHINGTON	MN	20	PBS	15	15		**	
Sioux Falls(Mitchell)	KCSD	SIOUX FALLS	SD	23	PBS	24	24			
Sioux Falls(Mitchell)	KDLT	SIOUX FALLS	SD	46	NBC	47	47		**	
South Bend-Elkhart	WNDU	SOUTH BEND	IN	16	NBC	42	42		**	
Spokane	KREM	SPOKANE	WA	2	CBS	20	20			
Spokane	KLEW	LEWISTON	ID	3	CBS	32	32			
Spokane	KXLY	SPOKANE	WA	4	ABC	13	13			
Spokane	KHQ	SPOKANE	WA	6	NBC	15	7			
Spokane	KSKN	SPOKANE	WA	22		36	36			
Spokane	KCDT	COEUR D'ALENE	ID	26	PBS	45	45			
Spokane	KSPS	SPOKANE	WA	7	PBS	8	8	*		***
Springfield, MO	KYTV	SPRINGFIELD	MO	3	NBC	44	44			
Springfield, MO	KOZK	SPRINGFIELD	MO	21	PBS	23	23		**	
Springfield, MO	KSFX	SPRINGFIELD	MO	27	Fox	28	28		**	
Springfield, MO	KSPR	SPRINGFIELD	MO	33	ABC	19	19			
St. Joseph	KQTV	ST. JOSEPH	MO	2	ABC	53	7			
St. Joseph	KTAJ	ST. JOSEPH	MO	16		21	21		**	
St. Louis	KTVI	ST. LOUIS	MO	2	Fox	43	43			
St. Louis	KMOV	ST. LOUIS	MO	4	CBS	56	24		**	
St. Louis	KSDK	ST LOUIS	MO	5	NBC	35	35			
St. Louis	KETC	ST. LOUIS	MO	9	PBS	39	39		**	
St. Louis	KPLR	ST. LOUIS	MO	11		26	26		**	
St. Louis	KDNL	ST. LOUIS	MO	30	ABC	31	31		**	
St. Louis	WRBU	EAST ST. LOUIS	IL	46		47	47		**	
Syracuse	WSTM	SYRACUSE	NY	3	NBC	54	24		**	
Syracuse	WTVH	SYRACUSE	NY	5	CBS	47	47			
Syracuse	WSYR	SYRACUSE	NY	9	ABC	17	17		**	
Syracuse	WNYS	SYRACUSE	NY	43		44	44		**	
Tallahassee-Thomasville.	WFSU	TALLAHASSEE	FL	11	PBS	32	32		**	
Tampa-St. Pete (Sarasota).	WEDU	TAMPA	FL	3	PBS	54	13			
Tampa-St. Pete (Sarasota).	WFLA	TAMPA	FL	8	NBC	7	7		**	
Tampa-St. Pete (Sarasota).	WUSF	TAMPA	FL	16	PBS	34	34		**	***
Tampa-St. Pete (Sarasota).	WFTS	TAMPA	FL	28	ABC	29	29		**	
Tampa-St. Pete (Sarasota).	WMOR	LAKELAND	FL	32		19	19		**	
Tampa-St. Pete (Sarasota).	WFTT	TAMPA	FL	50		47	47			

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Terre Haute	WTWO	TERRE HAUTE	IN	2	NBC	36	36			
Terre Haute	WUSI	OLNEY	IL	16	PBS	19	19		**	
Terre Haute	WEIU	CHARLESTON	IL	51	PBS	50	50		**	
Topeka	KAAS	SALINA	KS	18	Fox	17	17		**	
Topeka	KSQA	TOPEKA	KS	22			12		**	
Traverse City-Cadillac.	WFQX	CADILLAC	MI	33	Fox	47	47		**	
Tri-Cities, TN-VA	WKPT	KINGSPORT	TN	19	ABC	27	19		**	
Tri-Cities, TN-VA	WKPI	PIKEVILLE	KY	22	PBS	24	24		**	
Tri-Cities, TN-VA	WKHA	HAZARD	KY	35	PBS	16	16		**	
Tri-Cities, TN-VA	WSBN	NORTON	VA	47	PBS	32	32		**	
Tucson (Sierra Vista).	KFTU	DOUGLAS	AZ	3			36			
Tucson (Sierra Vista).	KVOA	TUCSON	AZ	4	NBC	23	23			
Tucson (Sierra Vista).	KUAT	TUCSON	AZ	6	PBS	30	30			
Tucson (Sierra Vista).	KMSB	TUCSON	AZ	11	Fox	25	25			
Tucson (Sierra Vista).	KOLD	TUCSON	AZ	13	CBS	32	32		**	
Tucson (Sierra Vista).	KUAS	TUCSON	AZ	27	PBS	28	28			
Tulsa	KJRH	TULSA	OK	2	NBC	56	8			
Tulsa	KOTV	TULSA	OK	6	CBS	55	45			
Tulsa	KQCW	MUSKOGEE	OK	19			20		**	
Tulsa	KOKI	TULSA	OK	23	Fox	22	22		**	
Tulsa	KRSC	CLAREMORE	OK	35		36	36		**	
Tulsa	KMYT	TULSA	OK	41		42	42			
Twin Falls	KIPT	TWIN FALLS	ID	13	PBS	22	22		**	
Twin Falls	KBGH	FILER	ID	19		18	18			
Twin Falls	KXTF	TWIN FALLS	ID	35	Fox	34	34			
Tyler-Longview (Lfkn&Ncgd).	KYTX	NACOGDOCHES	TX	19	CBS	18	18		**	
Tyler-Longview (Lfkn&Ncgd).	KCEB	LONGVIEW	TX	38			38		**	
Tyler-Longview (Lfkn&Ncgd).	KFXK	LONGVIEW	TX	51	Fox	52	31	*		
Utica	WKTV	UTICA	NY	2	NBC	29	29			
Utica	WFXV	UTICA	NY	33	Fox	27	27		**	
Victoria	KVCT	VICTORIA	TX	19	Fox	34	11		**	
Victoria	KAVU	VICTORIA	TX	25	ABC	15	15			
Waco-Temple-Bryan	KCEN	TEMPLE	TX	6	NBC	50	9			
Waco-Temple-Bryan	KAMU	COLLEGE STATION.	TX	15	PBS	12	12			
Waco-Temple-Bryan	KXXV	WACO	TX	25	ABC	26	26	*		
Waco-Temple-Bryan	KWBU	WACO	TX	34	PBS	20	20		**	
Washington, DC	WRC	WASHINGTON	DC	4	NBC	48	48		**	
Washington, DC	WTTG	WASHINGTON	DC	5	Fox	36	36		**	
Washington, DC	WFDC	ARLINGTON	VA	14		15	15			
Washington, DC	WDCA	WASHINGTON	DC	20		35	35		**	
Watertown	WNPI	NORWOOD	NY	18	PBS	23	23		**	
Wausau-Rhinelander.	WBIJ	CRANDON	WI	4			12			
Wausau-Rhinelander.	WHRM	WAUSAU	WI	20	PBS	24	24		**	
Wausau-Rhinelander.	WYOW	EAGLE RIVER	WI	34	ABC	28	28		**	
West Palm Beach-Ft. Pierce.	WPTV	WEST PALM BEACH.	FL	5	NBC	55	12			
West Palm Beach-Ft. Pierce.	WTCE	FORT PIERCE	FL	21		38	38		**	
West Palm Beach-Ft. Pierce.	WPBF	TEQUESTA	FL	25	ABC	16	16		**	
Wheeling-Steubenville.	WOUC	CAMBRIDGE	OH	44	PBS	35	35		**	
Wichita Falls & Lawton.	KFDX	WICHITA FALLS	TX	3	NBC	28	28			
Wichita Falls & Lawton.	KAUZ	WICHITA FALLS	TX	6	CBS	22	22			
Wichita Falls & Lawton.	KSWO	LAWTON	OK	7	ABC	23	11		**	
Wichita Falls & Lawton.	KJTL	WICHITA FALLS	TX	18	Fox	15	15		**	
Wichita-Hutchinson Plus.	KSNC	GREAT BEND	KS	2	NBC	22	22			
Wichita-Hutchinson Plus.	KSNW	WICHITA	KS	3	NBC	45	45			
Wichita-Hutchinson Plus.	KOOD	HAYS	KS	9	PBS	16	16		**	
Wichita-Hutchinson Plus.	KSAS	WICHITA	KS	24	Fox	26	26		**	

DMA name	Call sign	City	State	Analog channel	Network affiliation	Post-transition DTV channel	Pre-transition DTV channel	Not on MSTV list	May be short-spaced	Indicated interest in participating
Wichita-Hutchinson Plus.	KSCW	WICHITA	KS	33		31	31		**	
Wichita-Hutchinson Plus.	KMTW	HUTCHINSON	KS	36		35	35		**	
Wilkes Barre-Scranton.	WNEP	SCRANTON	PA	16	ABC	49	49		**	
Wilkes Barre-Scranton.	WYOU	SCRANTON	PA	22	CBS	13	13		**	
Wilmington	WWAY	WILMINGTON	NC	3	ABC	46	46			
Wilmington	WECT	WILMINGTON	NC	6	NBC	54	44			
Wilmington	WSFX	WILMINGTON	NC	26	Fox	30	30			
Wilmington	WPXU	JACKSONVILLE	NC	35		34	34			
Yakima-Pasco-Rchlnd-Knnwck.	KEPR	PASCO	WA	19	CBS	18	18			
Yakima-Pasco-Rchlnd-Knnwck.	KNDO	YAKIMA	WA	23	NBC	16	16			
Yakima-Pasco-Rchlnd-Knnwck.	KNDU	RICHLAND	WA	25	NBC	26	26		**	
Yakima-Pasco-Rchlnd-Knnwck.	KIMA	YAKIMA	WA	29	CBS	33	33		**	
Yakima-Pasco-Rchlnd-Knnwck.	KTNW	RICHLAND	WA	31	PBS	38	38			
Yakima-Pasco-Rchlnd-Knnwck.	KAPP	YAKIMA	WA	35	ABC	14	14		**	
Yakima-Pasco-Rchlnd-Knnwck.	KVEW	KENNEWICK	WA	42	ABC	44	44		**	
Yakima-Pasco-Rchlnd-Knnwck.	KYVE	YAKIMA	WA	47	PBS	21	21			
Youngstown	WFMJ	YOUNGSTOWN	OH	21	NBC	20	20		**	
Youngstown	WKBN	YOUNGSTOWN	OH	27	CBS	41	41		**	
Yuma-El Centro	KVYE	EL CENTRO	CA	7		22	22		**	
Zanesville	WHIZ	ZANESVILLE	OH	18	NBC	40	40			

Appendix B: List of Commenters

Comments

1. Association of Public Safety Communications Officials International, Inc. (''APCO'') (filed 12/29/08).
2. Association of Public Television Stations (filed 1/5/09).
3. Bethel Broadcasting, Inc. (filed 1/2/09).
4. Coalition of Organizations for Accessible Technology (filed 1/8/09).
5. Cohen, Dippell, Everist, P.C. (''CDE'') (filed 1/5/09).
6. Community Broadcasters Association (''CBA'') (filed 1/2/09).
7. Fox Television Stations, Inc, WJBK License Inc., KDFW License, Inc. (filed 1/5/09).
8. Free State Communications, LLC (filed 1/5/09).
9. Hearst-Argyle Television Incorporated (filed 1/8/09).
10. James Bellaire (filed 1/5/09).
11. James Edwin Whedbee (filed 12/31/08).
12. KSPS–TV/Robert J. Wyatt (filed 1/5/09).
13. Mark J. Colombo (filed 1/7/09).
14. Named State Broadcasters Associations (filed 1/5/09).
15. National Association of Broadcasters (''NAB'') and Association for Maximum Service Television, Inc. (''MSTV'') (Joint Comments filed 1/5/09).
16. Rocky Mountain Public Broadcasting Network, Inc. (filed 1/5/09).
17. Sunbelt Multimedia Co. (filed 1/5/09).
18. Telecinco, Inc. (filed 1/5/09).
19. The University of North Carolina (filed 1/5/09).
20. Thomas C. Smith (filed 1/5/09).
21. William M. Sanford (1/6/09).
22. WJXT–TV (filed 1/12/09).
23. WSIL–TV, Inc. (filed 1/5/09).

Reply Comments

1. Bonneville International Corporation (filed 1/8/09).
2. CDE (filed 1/8/09).
3. Hank Bovis (filed 1/9/09).
4. KTBS, Inc (filed 1/8/09).
5. NAB and MSTV (Joint Reply filed 1/8/09).
6. National Cable and Telecommunications Association (''NCTA'') (filed 1/8/09).
7. Ohio Association of Broadcasters, Virginia Association of Broadcasters and North Carolina Association of Broadcasters (Joint Reply filed 1/8/09).
8. University of South Florida (filed 1/8/09).
9. WXXI Public Broadcasting Council (filed 1/8/09).

[FR Doc. E9–1543 Filed 1–26–09; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Parts 1002, 1011, and 1155

[STB Ex Parte No. 684]

Solid Waste Rail Transfer Facilities

AGENCY: Surface Transportation Board.

ACTION: Interim Rules with Request for Comments.

SUMMARY: The Clean Railroads Act of 2008 (Clean Railroads Act or CRA), enacted to remove from the jurisdiction of the Surface Transportation Board (Board or STB) the regulation of solid waste rail transfer facilities, except as provided for in that act. The Clean Railroads Act adds new sections to title 49 of the United States Code which limit the Board's authority with regard to solid waste rail transfer facilities to the issuance of land-use-exemption permits. Upon receiving a land-use-exemption permit, a solid waste rail transfer facility need not comply with state laws, regulations, orders, and other requirements affecting the siting of the facility, as those state laws, regulations, orders and requirements would be preempted under these circumstances. The Clean Railroads Act also requires that the Board issue procedures governing the submission and review of applications for land-use-exemption permits and related filings.

DATES: The interim rules are effective on January 27, 2009, and are applicable beginning January 14, 2009. Comments on the interim rules are due by February 23, 2009. Reply comments are due by March 23, 2009.

ADDRESSES: Comments may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E-FILING link on the Board's Web site, at *http://www.stb.dot.gov*. Any person

submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, *Attn:* STB Ex Parte No. 684, 395 E Street, SW., Washington, DC 20423–0001.

Copies of written comments will be available for viewing and self-copying at the Board's Public Docket Room, Room 131, and will be posted to the Board's Web site.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar at (202) 245–0395. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Section 10501(b) of the Interstate Commerce Act, 49 U.S.C. 10501(b), specifically provides that both ''the jurisdiction of the Board over transportation by rail carriers'' and the ''remedies provided under [49 U.S.C. 10101–11908] are exclusive and preempt the remedies under Federal or State law.'' Prior to enactment of the Clean Railroads Act, a solid waste rail transfer facility owned by a rail carrier, in general, came within the Board's jurisdiction as part of transportation by rail carrier. Accordingly, any form of state or local permitting or preclearance (including zoning) that, by its nature, could have been used to deny a railroad its ability to construct and conduct activities involving rail transportation at a solid waste rail transfer facility was preempted, as were other state laws that had the effect of managing or governing rail transportation. *See* 49 U.S.C. 10501(b); *N.Y. Susquehanna & W. Ry. Corp.* v. *Jackson*, 500 F.3d 238, 252–55 (3d Cir. 2007); *Green Mountain R.R.* v. *Vermont*, 404 F.3d 638, 641–43 (2d Cir. 2005) (*Green Mountain*).

The purpose of the Clean Railroads Act is to establish that solid waste rail transfer facilities, as defined in section 10908(e)(1)(H), must now comply with all applicable federal and state requirements respecting pollution prevention and abatement, environmental protection and restoration, and protection of public health and safety, including laws governing solid waste, to the same extent as any similar solid waste management facility. The CRA gives the Board the power, if petitioned, to determine the placement of solid waste rail transfer facilities that are part of the national rail system through the issuance of land-use-exemption permits, which preempt state and local laws and regulations ''affecting the siting'' of such facilities. *See* 49 U.S.C. 10909(f). The CRA focuses on the Board's jurisdiction and regulatory authority with regard to the siting of solid waste rail transfer facilities. It is not meant to affect a rail carrier's transportation-related activities involving other commodities. *See* 49 U.S.C. 10908(d).

More specifically, section 602 of the Clean Railroads Act amends 49 U.S.C. 10501(c)(2)(B) to remove the Board's jurisdiction over solid waste rail transfer facilities, except for the authority to preempt state and local laws and regulations through the issuance of land-use-exemption permits as set forth in sections 603–04 of that act, which are codified at 49 U.S.C. 10908–09. The Clean Railroads Act leaves all other regulation of solid waste rail transfer facilities to the states.

New section 10908, ''Regulation of solid waste rail transfer facilities,'' sets forth the general rule, in subsection (a), that a solid waste rail transfer facility must comply with federal and state laws regarding pollution, protection and restoration of the environment, and protection of public health and safety to the same extent that those laws would apply to any similar solid waste management facility that is not owned or operated by or on behalf of a rail carrier, except as provided in new section 10909, ''Solid waste rail transfer facility land-use exemption authority.'' Section 10908(b) sets forth transition rules for existing solid waste transfer facilities. An existing facility has 90 days to comply with all applicable federal and state requirements except for those requiring permits, *see* section 10908(b)(1), and 180 days to apply for all required federal and state non-siting permits, *see* section 10908(b)(2)(A). The facility can continue to operate during the pendency of the non-siting permitting process. *See id.* Existing facilities are not required to obtain state siting permits or a land-use-exemption permit from the Board. *See* section 10908(b)(2)(B). However, the governor of the state in which an existing facility is located may file a petition with the Board under section 10908(b)(2)(B) to require the facility to apply for a federal land-use-exemption permit. The Board must accept a complete petition filed by the Governor or his or her designee.[1]

New section 10909, ''Solid waste rail transfer facility land-use exemption,'' prescribes the land-use-exemption authority of the Board regarding solid waste rail transfer facilities. The Board's interpretation of section 10909(a) is discussed below. The Board may only grant a land-use-exemption permit if it determines that the facility does not pose an unreasonable risk to public health, safety or the environment at that location, after weighing, *inter alia*, the facility's potential benefits to and adverse impacts on public health and safety, the environment, interstate commerce, and the transportation of solid waste by rail. *See* section 10909(c). Congress also listed a number of factors for the Board to consider in a land-use-exemption proceeding. *See* section 10909(d). When the Board issues a land-use-exemption permit, all state laws, regulations, orders, or other requirements affecting the siting of the facility are preempted with respect to that facility. *See* section 10909(f). However, the Board may require compliance with some or all of those laws and regulations as a condition of its approval of an application for a land-use-exemption permit. *Id.*

The Clean Railroads Act also adds section 10910, ''Effect on other statutes and authorities,'' which preserves the state's traditional police powers to require railroads to comply with environmental, public health, and public safety regulations so long as the regulations are not unreasonably burdensome to interstate commerce and do not discriminate against rail carriers.

Pursuant to new section 10909(b), the Board must ''publish procedures governing the submission and review of applications for solid waste rail transfer facility land-use exemptions,'' not later than 90 days after the Clean Railroads Act became law. 49 U.S.C. 10909(b).[2]

[1] New section 10908 also includes a number of definitions, clarifies that the Clean Railroads Act does not affect railroad operations with respect to non-waste commodities, and also establishes that a railroad's common carrier obligation does not apply to a solid waste rail transfer facility that does not have the required federal and state permits, including a land-use-exemption permit, if necessary. *See* sections 10908(c)–(e).

[2] Specifically, the Clean Railroads Act requires that the regulations, which we are adopting today, include the following:

(1) The information that must be provided in the application for a land-use exemption that explains how the facility will not pose an unreasonable risk to public health, safety, or the environment, see Rule 1155.22, ''Contents of application.''

(2) The information necessary to give notice to the public and give the public time to comment, including specific notice to the municipality where the facility is located, the state where it is located, and any Federal or State regional planning entity where it is located, see Rules 1155.20, ''Notice of intent to apply for land-use-exemption permit,'' 1155.21, ''Form of notice,'' 1155.24, ''Filings and service of application,'' and 1155.25, ''Participation in application proceedings.''

(3) The Board's review timeline, with the understanding that a final decision must be issued 90 days from the close of the record, see Rule 1155.27, ''Board determination under 49 U.S.C. 10909.''

(4) The Board's expedited timelines for petitions to modify, amend, or revoke land-use exemptions, see Rule 1155.25, ''Participation in application proceedings.''

Continued

The purpose of this decision is to adopt interim rules, which will be codified as Part 1155 of Title 49 of the Code of Federal Regulations, as set forth below. The Board is seeking comment on these rules.

We recognize, however, that central to understanding these interim rules is an understanding of how we interpret the Clean Railroads Act itself. Therefore, we discuss the definitions of a solid waste rail transfer facility and a land-use-exemption permit; describe what the Clean Railroads Act requires of existing [3] and proposed solid waste rail transfer facilities; discuss the role of the Board; and describe the effects of the CRA and a land-use-exemption permit. We invite public comments on the interim rules and any other aspect of our interpretation of the Clean Railroads Act.

The Board's Interpretation of the Clean Railroads Act

The Board recognizes that the intent of the Clean Railroads Act is to regulate solid waste rail transfer facilities at the federal and state levels in the same manner as non-railroad solid waste management facilities. The CRA preserves an important role for the Board by establishing a permitting process regarding siting. The following discussion is organized as follows: (1) What is a solid waste rail transfer facility; (2) what is a land-use-exemption permit; (3) what must existing and proposed solid waste rail transfer facilities do to comply with the Clean Railroads Act; (4) what is the Board's role under the Clean Railroads Act; and (5) what are the effects of the Clean Railroads Act and a land-use-exemption permit.

1. What Is a Solid Waste Rail Transfer Facility?

The Clean Railroads Act applies only to solid waste rail transfer facilities. *See* section 10908(d). A solid waste rail transfer facility is defined as including the portion of a facility: (1) That is owned or operated by or on behalf of a rail carrier; (2) where solid waste is treated as a commodity transported for a charge; (3) where the solid waste is collected, stored, separated, processed, treated, managed, disposed of, or transferred; and (4) to the extent that solid-waste activity is conducted outside of the original shipping container. *See* section 10908(e)(1)(H)(i).[4] The CRA does not apply to any facility or portion of a facility that does not meet all of these factors. Whether a facility would fall within the state's or the Board's jurisdiction appears to depend upon which of those criteria the facility does not meet. For example, if a facility meets all other criteria but is not owned or operated by or on behalf of a rail carrier, then the Board has no jurisdiction. If, on the other hand, a facility meets all other criteria but the activity conducted at the facility is limited to transferring solid waste in the original shipping container, then the facility falls under the Board's general jurisdiction, not the Board's jurisdiction under the Clean Railroads Act.

The Clean Railroads Act excludes from the definition of solid waste rail transfer facility those facilities where the solid-waste activity is the direct transfer or transload of solid waste from a tank truck to a rail tank car. *See* 49 U.S.C. 10908(e)(1)(H)(ii)(II). The Clean Railroads Act also excludes from the definition the portion of a facility where the only activity is railroad transportation of solid waste after the waste has been loaded for shipment in or on a rail car, including interchanging rail cars of solid waste. *See* 49 U.S.C. 10908(e)(1)(H)(ii)(I). In such cases, assuming the facility, or portion thereof, meets the other necessary qualifications, it would be subject to the Board's general jurisdiction over rail transportation and entitled to preemption from most state and local laws, including siting laws, under section 10501(b). *See Green Mountain,* 404 F.3d at 641–43.

Due to Congress' intent to limit the definition of a solid waste rail transfer facility in this matter, we provide in Rule 1155.10, ''Contents of petition,'' that when a state petitions the Board to require an existing facility to apply for a land-use exemption, the Governor or his or her designee must submit a good-faith certification that the subject facility meets the CRA's definition of a solid waste rail transfer facility.

A property could host different activities subject to varying levels of Board jurisdiction, or host activities not within the Board's jurisdiction at all. Because of this possibility, the Board also requires in Rule 1155.22, ''Contents of application,'' that a solid waste rail transfer facility's application contain a technical drawing of the facility with specific demarcations detailing what activities will be occurring in what portions of the facility. We will also require that a facility detail in its application those areas of the property that it has set aside for future growth, so that the land-use-exemption permit may include those areas where expansion may occur, without the need for modifying or amending the original permit. These requirements should help to clarify for states and the public at large the extent of a facility's activities and use of its land.

2. What Is a Land-Use-Exemption Permit?

A land-use-exemption permit is the license that the Board will issue under the Clean Railroads Act to a qualifying solid waste rail transfer facility. To have federal preemption under the CRA, a new solid waste rail transfer facility must possess a land-use-exemption permit. Below we clarify two issues with regard to land-use-exemption permits to aid in understanding what a land-use-exemption permit is and what it does.

A. ''Land-Use Exemption'' and ''Siting Permit''

The Clean Railroads Act uses two terms to describe the license that the Board may issue to a solid waste rail transfer facility. It uses the term ''land-use exemption'' when the carrier or facility involved seeks the license (*see, e.g.*, new section 10909(a)(1), (b)(6)), and the term ''siting permit'' when the Governor of the state initiates the Board proceeding with respect to an existing facility (*see* new section 10909(a)(2), (b)(5)). The two instances in which the phrase ''siting permit'' is used to describe action of the Board are in section 10909(b)(5) and (e). Reading those references in context, we believe that Congress intended ''siting permit'' to be synonymous with ''land-use exemption.'' [5] For simplicity, we will

(5) The process for a State, under section 10908(b)(2)(B), to petition the Board to require an existing facility to apply for a land-use exemption, see subpart B.

(6) The process for a facility or rail carrier to petition the Board for a land-use exemption, see subpart C.

See 49 U.S.C. 10909(b). We have set forth interim rules below, and invite comment on them from the public, recognizing that changes to the interim rules may have an effect on the Board's narrative interpretation set forth in this notice, and vice versa.

[3] A solid waste rail transfer facility in existence on October 16, 2008, is considered an existing facility.

[4] *See* section 10908(e) for definitions of ''solid waste'' and related terms.

[5] Section 10909(b)(5) references the process to be employed by the Board when a state petitions the Board ''to require a solid waste transfer facility or a rail carrier that owns or operates such a facility to apply for a *siting permit.*'' This language refers to the state petition process in section 10908(b)(2)(B), which does not use ''siting permit'' to describe what the Board issues. Instead, it explains that the state ''may petition the Board to require the facility to apply for a *land-use exemption.*'' That section further states that the ''facility shall be required to have a Board-issued *land-use exemption*'' to operate.

Section 10909(e) states that a solid waste rail transfer facility ''shall submit a complete application for a *siting permit* to the Board pursuant

use the single term ''land-use-exemption permit'' to refer to any license the Board may issue to a solid waste rail transfer facility.

B. The Scope of the Phrase ''Affecting the Siting''

Central to an understanding of the extent of the Board's authority under the Clean Railroads Act and the scope of a land-use-exemption permit is the interpretation of the phrase ''affecting the siting.'' Section 10909(f) preempts a solid waste rail transfer facility from compliance with ''all State laws, regulations, orders, or other requirements *affecting the siting*'' of a facility if the solid waste rail transfer facility is granted a land-use-exemption permit by the Board.[6]

We believe that the term ''affecting the siting'' was purposefully chosen to provide facilities an opportunity to invoke the land-use-exemption-permit process regardless of the traditional characterization of a particular law.[7] But we also recognize that Congress did not want to shield solid waste rail transfer facilities from complying with the same types of pollution, public health and safety, and environmental laws with which other similar solid waste management facilities must comply. Until the Board gains experience applying the Clean Railroads Act, we are not prepared to determine what types of laws could ''affect siting'' for purposes of the Clean Railroads Act. As discussed below, applicants will be required to identify those laws that they believe affect the siting of a particular solid waste rail transfer facility, as will any public participant in the proceeding.

3. What Actions Must Facilities Take To Comply With the Clean Railroads Act?

If a facility, or portion thereof, may be categorized as a solid waste rail transfer facility, it must comply with all federal and state laws[8] regarding pollution, protection and restoration of the environment, and the protection of public health and safety, to the same extent as any similar solid waste management facility. *See* 49 U.S.C. 10908(a). Compliance with state and local laws that affect the siting of a facility will not be necessary if the Board issues a land-use-exemption permit. *See* 49 U.S.C. 10909(f). However, pursuant to that section, the Board may require compliance with such state laws, regulations, orders, or other requirements as a condition of a land-use-exemption permit. Section 10909(a) sets forth the circumstances in which an existing or proposed facility may obtain a Board-issued land-use-exemption permit.

In general, any facility may come to the Board under section 10909(a)(1). Indeed, the last clause of the subparagraph—permitting ''a rail carrier that owns or operates such a facility [to] petition[ ] the Board for such an exemption''—allows a rail carrier to petition the Board for a land-use-exemption permit without first receiving an unsatisfactory result from a state agency, regardless of the facility's characterization as existing or proposed. The rail carrier would not need to make any showing to the Board of unreasonable burden or discrimination prior to applying for a land-use-exemption permit. Rather, the rail carrier could come in under Subpart C of our interim rules to obtain a land-use-exemption permit.[9]

The first part of section 10909(a)(1) states, ''the Board finds that a State, local, or municipal law, regulation, order, or other requirement affecting the siting of such facility unreasonably burdens the interstate transportation of solid waste by railroad, discriminates against the railroad transportation of solid waste and a solid waste rail transfer facility.'' We believe that this clause contemplates a separate route for solid waste rail transfer facilities to come before the Board. It provides an opportunity to a facility that has first applied to the appropriate state agency for those state permits affecting the siting of a facility and that has received an unsatisfactory result to apply to the Board for a land-use-exemption permit. After receiving an unsatisfactory result from the state, a solid waste rail transfer facility could apply to the Board for a land-use-exemption permit. It must, however, make at least one of two showings with regard to the state's action or the state law: (1) The state has placed an unreasonable burden on railroad transportation of solid waste, or (2) a state law discriminates against railroad transportation of solid waste and a solid waste rail transfer facility.

The Board, prior to considering whether the solid waste rail transfer facility is an unreasonable risk to the public health, safety, or the environment under 10909(c)(1), would have to make an initial determination about the unreasonableness or discriminatory nature of the state action or law in question. Such an initial determination would be a predicate to any Board consideration of whether to grant or deny the application for a land-use-exemption permit. Rule 1155.23, ''Additional requirements when filing after an unsatisfactory result from a state, local, or municipal authority affecting the siting of the facility,'' provides additional requirements for a facility to satisfy were it to apply to the Board in this manner. We believe one of the purposes of section 10909(a)(1) is to provide a facility with an opportunity to seek a land-use-exemption permit after receiving an unsatisfactory result from the state if the facility believes that the state is unreasonably burdening the interstate transportation of solid waste by railroad or is discriminating against the railroad transportation of solid waste and a solid waste rail transfer facility.

It is important to note that a proposed facility might never come before the Board. If a proposed facility applies to the requisite state agency for all state permits affecting the siting and those permits are granted, the Board might never become involved in the process. Similarly, the Board would not become involved with state permits that do not affect the siting of the proposed facility, because the Board's jurisdiction under the Clean Railroads Act only extends to

to the procedures issued pursuant to subsection (b).'' Section 10909(b) is titled ''Land-Use Exemption Procedures'' and requires the Board to issue procedures for submission and review of ''land-use exemptions.'' Section 10909(e) also states that a state may not enforce certain laws affecting the siting of an existing facility until ''the Board has approved or denied a *permit* pursuant to subsection (c).'' Section 10909(c)(1) sets out the Board's standard of review, stating ''the Board may only issue a *land-use exemption* * * *'' in certain instances; while section 10909(c)(2) states ''the Board may not grant a *land-use exemption* * * *'' in other circumstances. Though section 10909(e) uses ''siting permit,'' neither of the other statutory sections referenced therein uses that phrase. Rather, each employs ''land-use exemption.''

[6] The term ''affecting the siting'' also is used in section 10909(a)(1), ''Authority,'' which authorizes the Board to issue a land-use-exemption permit to a facility if, among other things, the Board ''finds that a State, local, or municipal law, regulation, order, or other requirement *affecting the siting* of such facility'' is either unreasonably burdensome to interstate commerce or discriminates against solid waste rail transfer facilities or rail carriers; and in section 10909(e), ''Existing Facilities,'' which bars a state from enforcing any ''law, regulation, order, or other requirement *affecting the siting* of '' an existing solid waste rail transfer facility during the pendency of a facility's land-use-exemption permit application with the Board.

[7] We understand that ''siting'' laws or regulations, in general, may be read to refer to laws or regulations that traditionally are labeled as zoning or land-use laws. We recognize, however, that there also may be a variety of other laws, such as environmental laws, that are particular to solid waste rail transfer facilities and, when applied to a solid waste rail transfer facility, may affect the siting of the facility on a specific piece of property.

[8] We note that, under the CRA, the laws, regulations, ordinances, orders, and other requirements of a political subdivision of a state, such as a locality or municipality, are not applicable to solid waste rail transfer facilities unless the state has specifically delegated such power to the political subdivision. *See* 49 U.S.C. 10908(e)(3).

[9] Subpart C contains the rules for applying for a land-use-exemption permit.

land-use-exemption permits. Regardless of whether a proposed facility comes before the Board or not, we note that, in order to lawfully operate, a proposed solid waste rail transfer facility will need to comply with all state laws, as described in section 10908(a), that do not affect the siting of a facility.

As noted, existing solid waste rail transfer facilities have separate requirements they must meet under the Clean Railroads Act. To remain in operation, the CRA requires an existing facility to comply with all federal and state laws regarding pollution, protection and restoration of the environment, and the protection of public health and safety, except for permits, within 90 days, *i.e.*, by January 14, 2009. *See* 49 U.S.C. 10908(b)(1). For those state laws requiring permits, an existing facility need not possess any state (non-siting) permit to remain in operation if it has, in good faith, submitted an application to the proper state agency (or agencies) for each permit within 180 days of enactment, *i.e.*, by April 14, 2009. *See* 49 U.S.C. 10908(b)(2)(A)(i). After submitting a good-faith application, the existing facility may remain in operation until a final decision either approving or denying each one of those permits has been made.[10] *See* 49 U.S.C. 10908(b)(2)(A)(ii).

If an existing facility already has a state siting permit, it need not take any further steps to remain in operation, aside from those described above regarding federal and state non-siting laws. *See* section 10908(b)(2)(B). If the existing facility does not have a state siting permit, it need not obtain any siting permits from the state or the Board to continue operations or to be considered in compliance with state land-use requirements, *see* 49 U.S.C. 10908(b)(2)(B), unless the state, acting through the governor or his/her designee, petitions the Board to require that the solid waste rail transfer facility apply for a land-use-exemption permit from the Board. Once the state, acting through the governor or his/her designee submits a perfected petition, then the solid waste rail transfer facility must file an application with the Board and obtain a land-use-exemption permit to continue to operate. *See* 49 U.S.C. 10909(a)(2), 10908(b)(2)(B). The contents of the petition that the state must file with the Board is set forth in Rule 1155.10, ''Contents of petition.'' This includes the identifying information for the facility and a certification by the state that the facility meets the definition of solid waste rail transfer facility set forth in the Clean Railroads Act.

When a state petitions the Board, Rule 1155.12, ''Participation in petition proceedings,'' allows 20 days for the subject facility to reply regarding the classification by the state of that facility as an existing facility under section 10908(b). If the state's classification is not challenged, or if the state prevails in showing that the facility is a solid waste rail transfer facility, the Board will grant the petition, and the facility will be required to obtain a Board-issued land-use-exemption permit pursuant to section 10909 to continue to operate. *See* 49 U.S.C. 10908(b)(2)(B).

Upon the Board's acceptance of a state petition, the existing facility will be required to submit a complete application for a Board-issued land-use-exemption permit. *See* 49 U.S.C. 10909(e). The process for submitting an application and the information to be contained therein are set forth in Subpart C of the interim rules. *See* 49 U.S.C. 10909(b). During the time that an existing facility's application is pending before the Board, the state would be preempted from enforcing any laws, regulations, orders, or other requirements affecting the siting of a facility. *See* 49 U.S.C. 10909(e). We read section 10909(e) in conjunction with section 10908(b)(2)(B) to allow an existing facility that is the subject of a state petition to continue its operations until a final decision on the land-use-exemption-permit petition is made by the Board. *See* 49 U.S.C. 10908(b)(2)(B), 10909(e).

4. What Is the Board's Role Under the Clean Railroads Act?

The primary role of the Board under the Clean Railroads Act is to issue land-use-exemption permits for solid waste rail transfer facilities that meet the CRA's standards. The Board may issue land-use-exemption permits only for solid waste rail transfer facilities that are or are proposed to be operated by or on behalf of a rail carrier. *See* 49 U.S.C. 10909(a). A petition for such a land-use-exemption permit could reach the Board in one of three ways: (1) A proposed facility has been denied its state application for a permit that affects the siting of a facility, or received an otherwise unsatisfactory result from the state, including inordinate delay, and that facility attempts to demonstrate, as noted above, that the state is placing an unreasonable burden on rail transportation of solid waste, or that the state is discriminating against railroad transportation of solid waste and the facility; (2) a rail carrier that owns or operates an existing facility or plans to own or operate a new facility petitions the Board for a land-use-exemption permit without first receiving an unsatisfactory result from the state; or (3) a state petitions the Board to require an existing facility to apply for a land-use-exemption permit. *See* 49 U.S.C. 10909(a).

Once the matter is before the Board, the Board may issue a land-use-exemption permit if it finds the facility does not pose an unreasonable risk to public health, safety, or the environment. *See* 49 U.S.C. 10909(c)(1). To make this finding, the Board must weigh the facility's potential benefits to and adverse impacts on public health, public safety, the environment, interstate commerce, and transportation of solid waste by rail. *See* 49 U.S.C. 10909(c)(1). The Clean Railroads Act lists six factors the Board must consider in carrying out this balancing test, as follows:

(1) The land-use, zoning, and siting regulations or solid waste planning requirements of the State or State subdivision in which the facility is or will be located that are applicable to solid waste transfer facilities, including those that are not owned or operated by or on behalf of a rail carrier;

(2) The land-use, zoning, and siting regulations or solid waste planning requirements applicable to the property where the solid waste rail transfer facility is proposed to be located;

(3) Regional transportation planning requirements developed pursuant to Federal and State law;

(4) Regional solid waste disposal plans developed pursuant to State or Federal law;

(5) Any Federal and State environmental protection laws or regulations applicable to the site; and

(6) Any unreasonable burdens imposed on the interstate transportation of solid waste by railroad, or the potential for discrimination against the railroad transportation of solid waste, a solid waste rail transfer facility, or a rail carrier that owns or operates such a facility.

49 U.S.C. 10909(d)(1)–(6). The Board also can consider any other factors it deems relevant. *See* 49 U.S.C. 10909(d)(7).

To assist us in weighing all of these considerations, we require, in Rule

[10] For example, if an existing facility must receive state (non-siting) permits from five agencies, the existing facility may remain in operation until all five agencies have made their respective final decisions. If the state (non-siting) permits are all granted, the existing facility may continue to operate subject to the siting permit requirements discussed below. If any of those state (non-siting) permits are denied, the consequences set forth under the governing law(s) with regard to that permit would determine whether operations could continue.

1155.22, ''Contents of application,'' that the applicant organize its request in terms of (1) the Board's standards for review of an application and (2) all of the factors the Board is required to consider under the CRA, including an explanation of how those factors relate to the subject facility. The applicant should also address any additional factors that it believes the Board should consider.

The Clean Railroads Act precludes the Board from issuing a land-use-exemption permit if the proposed facility, or any part of the facility, is to be located on land affiliated with the National Park System, the National Wildlife Refuge System, the National Wilderness Preservation System, the National Trails System, the National Wild and Scenic Rivers System, a National Reserve, or a National Monument. *See* 49 U.S.C. 10909(c)(2). Moreover, if the facility would be located on lands referenced in the Highlands Conservation Act for which a state has implemented a conservation management plan, the Board may issue a land-use-exemption permit for the proposed facility only if operation of the facility would be consistent with restrictions placed on those lands. *See id.* Because of these restrictions, the Board requires in Rule 1155.22, ''Contents of application,'' that an applicant state whether the proposed solid waste rail transfer facility or any portion thereof is located on any of these lands of national interest.[11] We also require in Rule 1155.20, ''Notice of intent to apply for a land-use-exemption permit,'' that an applicant notify the managing agency of each land group noted above of the facility's proposed location so that those entities may verify, if they so chose, that the facility is not located on such lands.

Though not specifically mentioned in the Clean Railroads Act, the Board recognizes that the issuance of a land-use-exemption permit is a major federal action under the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.* The Board plans to conduct the appropriate level of environmental review for each land-use-exemption permit proceeding, pursuant to the Council on Environmental Quality's regulations, 40 CFR 1500–1508, and the Board's own environmental regulations, 49 CFR 1105. We also note that the Clean Railroads Act requires us to issue a final decision within 90 days of the close of the record, so that the time for issuance of a final decision will vary depending upon the type of environmental review conducted, if at all. *See* 49 U.S.C. 10909(b)(3).

The Clean Railroads Act also specifically authorizes the Board to set reasonable fees for permit applicants. *See* 49 U.S.C. 10909(h). Those fees may include the costs associated with retaining third-party consultants (which are not included in the filing fee). *See id.* We anticipate that the amount of Board resources that will be necessary for processing such applications, including legal and environmental analysis, will be similar to the amount of resources required in abandonment proceedings. Thus, we mirror the filing fees charged in abandonment proceedings as follows: (1) An application for a land-use-exemption permit for a facility not in existence as of October 16, 2008, will require a filing fee of $22,200 (the amount set for an abandonment application); and (2) an application for a land-use-exemption permit for a facility existing as of October 16, 2008, will require a filing fee of $6,300 (the amount set for an abandonment petition for exemption). We amend 49 CFR 1002.2(f), ''Schedule of filing fees,'' to reflect the new fees.

The fees set forth here reflect only an estimate of the amount of resources that the Board will use to process land-use-exemption permit applications. We will update these fees periodically based on the cost study formula set forth at 49 CFR 1002.3(d) and other factors relevant to Board fee policy. *See, e.g., Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services—2008 Update*, STB Ex Parte No. 542 (Sub-No. 15) (STB served June 18, 2008).

5. What Are the Effects of a Board-Issued Land-Use-Exemption Permit and the Clean Railroads Act?

The Clean Railroads Act only affects solid waste rail transfer facilities and not rail carriers' transportation-related activities regarding other, non-waste commodities. *See* 49 U.S.C. 10908(d). When the Board grants a land-use-exemption permit, a solid waste rail transfer facility is expressly preempted from complying with any and all State laws, regulations, orders, or other requirements affecting the siting of a facility except to the extent that the Board imposes as a condition of the exemption that the facility comply with particular state requirements. *See* 49 U.S.C. 10909(f). A solid waste rail transfer facility must comply, however, with all federal laws and with all other state laws regarding pollution, protection and restoration of the environment, and the protection of public safety.

We note that a land-use-exemption permit would not preempt a state's traditional police powers to require compliance with state and local environmental, public health, and public safety standards that are not unreasonably burdensome to interstate commerce and do not discriminate against rail carriers. *See* 49 U.S.C. 10910. Moreover, the Board may exempt a facility from compliance with state laws, regulations, orders, or other requirements affecting the siting of the facility only if it determines that a facility does not pose an unreasonable risk to public health, safety, or the environment.

If the Board denies a land-use-exemption permit application, the solid waste rail transfer facility would not come within the Board's preemptive jurisdiction and the state's laws, regulations, orders, or other requirements affecting the siting of a facility would govern that solid waste rail transfer facility. The facility would not be permitted to operate as a solid waste rail transfer facility at that location unless and until it obtained the necessary siting permits from the applicable state authority.

The Clean Railroads Act contemplates the possible need for changes to a Board-issued land-use-exemption permit. Under section 10909(b)(4), a Board-issued land-use-exemption permit is subject to petitions to modify, amend, or revoke, which must be considered by the Board in an expedited process. The Board establishes procedures in Rule 1155.28, ''Appellate Procedures.'' For petitions to modify, amend, or revoke a land-use-exemption permit, the interim rules apply the Board's normal standard of review for a petition to reopen an administratively final Board action. *See* 49 CFR 1115.4. The petition must demonstrate material error, new evidence, or substantially changed circumstances that warrant the requisite action sought. A Board decision will be due within 90 days after the record is complete.

Finally, the Clean Railroads Act specifically provides that if a facility does not have the requisite state permits or a Board-issued land-use-exemption permit (if required), it is not a violation of the rail carrier's common-carrier obligation for the carrier to deny service to a customer seeking solid waste rail transfer service at that facility. *See* 49 U.S.C. 10908(c). We clarify here that, if a facility does have the requisite state permits and (if required) a Board-issued

[11] While location on these lands of national interest is not a bar to the Board's issuance of a land-use-exemption permit for an existing facility, it would still be a relevant factor under 49 U.S.C. 10909(d)(7).

land-use-exemption permit, then the common-carrier obligation would apply.

Pursuant to 5 U.S.C. 605(b), the Board certifies that the proposed action will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The interim rules are adopted.

2. Comments on the interim rules are due by February 23, 2009, and reply comments are due by March 23, 2009.

3. This decision is effective on January 14, 2009.

Decided: January 14, 2009.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey.

Jeffrey Herzig,

Clearance Clerk.

List of Subjects

49 CFR Part 1001

Administrative practice and procedure.

49 CFR Part 1011

Administrative practice and procedure, Authority delegations (Government agencies), Organization and functions (Government agencies).

49 CFR Part 1155

Administrative practices and procedure, Railroad, Solid waste rail transfer facility.

■ For the reasons set forth in the preamble, the Surface Transportation Board amends title 49, chapter X, of the Code of Federal Regulations as follows:

PART 1002—FEES

■ 1. The authority citation for part 1002 continues to read as follows:

Authority: 5 U.S.C. 552(a)(4)(A) and 553; 31 U.S.C. 9701; and 49 U.S.C. 721. Section 1002.1(g)(11) also issued under 5 U.S.C. 5514 and 31 U.S.C. 3717.

■ 2. Amend § 1002.2 by adding paragraphs (f)(16), (17), and (18) to read as follows:

§ 1002.2 Filing fees.

* * * * *

(f) * * *

Type of proceeding	Fee
* * * * * * *	
(16) An application for a land-use-exemption permit for a facility existing as of October 16, 2008 under 49 U.S.C. 10909	6,300
(17) An application for a land-use-exemption permit for a facility not existing as of October 16, 2008 under 49 U.S.C. 10909	22,200
* * * * * * *	

PART 1011—BOARD ORGANIZATION; DELEGATIONS OF AUTHORITY

■ 3. The authority citation for part 1011 continues to read as follows:

Authority: 5 U.S.C. 553; 31 U.S.C. 9701; 49 U.S.C. 701, 721, 11123, 11124, 11144, 14122, and 15722.

■ 4. Amend § 1011.7 by adding paragraph (b)(17) to read as follows:

§ 1011.7 Delegation of authority by the Board to specific offices of the Board.

* * * * *

(b) * * *

(17) In land-use-exemption-permit application proceedings, whether to grant petitions for waiver of specific regulations listed in subpart C of 49 CFR part 1155.

* * * * *

■ 5. Part 1155 is added to read as follows:

PART 1155—SOLID WASTE RAIL TRANSFER FACILITIES

Subpart A—General

Sec.
1155.1 Purpose and scope.
1155.2 Definitions.

Subpart B—Procedures Governing Petitions To Require a Facility in Existence on October 16, 2008, To Apply for a Land-Use-Exemption Permit

1155.10 Contents of petition.
1155.11 Filing and service of petition.
1155.12 Participation in petition procedures.
1155.13 Board determination with respect to a Governor's petition.

Subpart C—Procedures Governing Applications for a Land-Use-Exemption Permit and Petitions for Modifications, Amendments, or Revocations

1155.20 Notice of intent to apply for a land-use-exemption permit.
1155.21 Form of notice.
1155.22 Contents of application.
1155.23 Additional requirements when filing after an unsatisfactory result from a state, local, or municipal authority affecting the siting of the facility.
1155.24 Filings and service of application.
1155.25 Participation in application proceedings.
1155.26 Transfer and termination of the land-use-exemption permit.
1155.27 Board determinations under 49 U.S.C. 10909.
1155.28 Appellate procedures.

Authority: 49 U.S.C. 10908, 49 U.S.C. 10909, 49 U.S.C. 10910.

Subpart A—General

§ 1155.1 Purpose and scope.

49 U.S.C. 10501(c)(2)(B) excludes solid waste rail transfer facilities from the Board's jurisdiction except as provided under 49 U.S.C. 10908 and 10909. Sections 10908 and 10909 provide the Board authority to issue land-use-exemption permits for solid waste rail transfer facilities when certain conditions are met. 49 CFR 1155 contains regulations concerning land-use-exemption permits and the Board's standard for review.

§ 1155.2 Definitions.

(a) Unless otherwise provided in the text of these regulations, the following definitions apply in this part:

(1) *Commercial and retail waste* means material discarded by stores, offices, restaurants, warehouses, nonmanufacturing activities at industrial facilities, and other similar establishments or facilities.

(2) *Construction and demolition debris* means waste building materials, packaging, and rubble resulting from construction, remodeling, repair, and demolition operations on pavements, houses, commercial buildings, and other structures.

(3) *Household waste* means material discarded by residential dwellings, hotels, motels, and other similar permanent or temporary housing establishments or facilities.

(4) *Industrial waste* means the solid waste generated by manufacturing and industrial and research and development processes and operations, including contaminated soil, nonhazardous oil spill cleanup waste and dry nonhazardous pesticides and chemical waste, but does not include hazardous waste regulated under subtitle C of the Solid Waste Disposal Act (42 U.S.C. 6921 et seq.), mining or oil and gas waste.

(5) *Institutional waste* means material discarded by schools, nonmedical waste discarded by hospitals, material discarded by nonmanufacturing activities at prisons and government facilities, and material discarded by other similar establishments or facilities.

(6) *Municipal solid waste* means household waste; commercial and retail waste; and institutional waste.

(7) With the exception of waste generated by a rail carrier during track, track structure, or right-of-way construction, maintenance, or repair (including railroad ties and line-side poles) or waste generated as a result of a railroad accident, incident, or derailment, the term *solid waste* means construction and demolition debris; municipal solid waste; household waste; commercial and retail waste; institutional waste; sludge; industrial waste; and other solid waste, as determined appropriate by the Board.

(8) *Solid waste rail transfer facility*—(i) Means the portion of a facility owned or operated by or on behalf of a rail carrier (as defined in 49 U.S.C. 10102) where solid waste, as a commodity to be transported for a charge, is collected, stored, separated, processed, treated, managed, disposed of, or transferred, when the activity takes place outside of original shipping containers; but (ii) Does not include—

(A) The portion of a facility to the extent that activities taking place at such portion are comprised solely of the railroad transportation of solid waste after the solid waste is loaded for shipment on or in a rail car, including railroad transportation for the purpose of interchanging railroad cars containing solid waste shipments; or

(B) A facility where solid waste is transferred or transloaded solely from a tank truck directly to a rail tank car.

(9) *Sludge* means any solid, semi-solid or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.

(b) *Exceptions.* Notwithstanding paragraph (a) of this section, the terms *household waste, commercial and retail waste, and institutional waste* do not include yard waste and refuse-derived fuel; used oil; wood pallets; clean wood; medical or infectious waste; or motor vehicles (including motor vehicle parts or vehicle fluff).

(c) ''*Land-use-exemption permit*'' means the authorization issued by the Board pursuant to the authority of 49 U.S.C. 10909(a) and includes the term ''siting permit'' in 49 U.S.C. 10909(e).

(d) ''*State laws, regulations, orders, or other requirements affecting the siting of a facility,*'' as used in 49 U.S.C. 10909(f) and 49 CFR 1155.27(d), include the requirements of a state or a political subdivision of a state, including a locality or municipality, affecting the siting of a facility.

(e) ''*State requirements*'' as used in 49 U.S.C. 10908 does not include the laws, regulations, ordinances, orders, or other requirements of a political subdivision of a state, including a locality or municipality, unless a state expressly delegates such authority to such political subdivision.

Subpart B—Procedures Governing Petitions To Require a Facility in Existence on October 16, 2008, To Apply for a Land-Use-Exemption Permit

§ 1155.10 Contents of petition.

A petition to require a solid waste rail transfer facility in existence on October 16, 2008, to apply for a land-use-exemption permit, submitted by the Governor of the state or that Governor's designee, shall contain the following information and shall be attested to by a person having personal knowledge of the matters contained therein:

(a) The Governor's name.

(b) The state's name and the name of any agency filing on behalf of the Governor.

(c) The full address of the solid waste rail transfer facility, or, if not available, the city, state, and United States Postal Service ZIP code.

(d) The name of the rail carrier that owns or operates the facility.

(e) A good-faith certification that the facility qualifies as a solid waste rail transfer facility pursuant to the definition in 49 U.S.C. 10908(e)(1)(H) and 49 CFR 1155.2 both as of the filing date of the petition and on October 16, 2008.

(f) Relief sought (that the rail carrier that owns or operates the facility be required to apply for a land-use-exemption permit).

(g) Name, title, and address of representative of petitioner to whom correspondence should be sent.

§ 1155.11 Filing and service of petition.

(a) When the petition is filed with the Board, the petitioner shall serve, by first class mail, a copy of the petition on the rail carrier that owns or operates the solid waste rail transfer facility and on the facility if the address is different than the rail carrier's address. A copy of the certificate of service shall be filed with the Board at the same time.

(b) Upon the filing of a petition, the Board will review the petition and determine whether it conforms to all applicable regulations. If the petition is substantially incomplete or its filing otherwise defective, the Board will reject the petition for stated reasons by order (which order will be administratively final) within 15 days from the date of filing of the petition.

§ 1155.12 Participation in petition proceedings.

(a) An interested person may file a reply to the petition challenging the Governor's classification of the facility as a solid waste rail transfer facility and may offer evidence to support its contention. The petitioner will have an opportunity to file a rebuttal.

(b) Filing and service of replies.

(1) Any reply shall be filed with the Board (the Secretary, Surface Transportation Board, 395 E Street, SW., Washington, DC 20423) within 20 days of the filing with the Board of a petition to require a solid waste rail transfer facility in existence on October 16, 2008, to apply for a land-use-exemption permit.

(2) A copy of the reply shall be served on petitioner or its representative at the time of filing with the Board. Each filing shall contain a certificate of service.

(3) Any rebuttal to a reply shall be filed and served by petitioner no later than 30 days after the filing of the petition.

§ 1155.13 Board determination with respect to a Governor's petition.

(a) The following schedule shall govern the process for Board consideration of and decisions regarding a petition to require a solid waste rail transfer facility in existence on October 16, 2008, to apply for a land-use-exemption permit, from the time the petition is filed until the time of the Board's decision on the merits:

Day 0—Petition filed.
Day 20—Due date for reply.
Day 30—Due date for response to reply.

(b) The Board shall accept the Governor's complete petition on a finding that the facility qualifies as a solid waste rail transfer facility pursuant to the definition in 49 U.S.C. 10908(e)(1)(H) and 49 CFR 1155.2 both on the filing date of the petition and on October 16, 2008. In the decision accepting the Governor's petition, the Board shall require that the rail carrier that owns or operates the facility file a land-use-exemption-permit application within 120 days of the service date of the decision.

Subpart C—Procedures Governing Applications for a Land-Use-Exemption Permit

§ 1155.20 Notice of intent to apply for a land-use-exemption permit.

(a) *Filing and publication requirements.* An applicant (*i.e.*, a solid waste rail transfer facility, or the rail carrier that owns or operates the facility) shall give Notice of Intent to file a land-use-exemption permit application by complying with the following procedures:

(1) *Filing.* Applicant must serve its Notice of Intent on the Board in the format prescribed in 49 CFR 1155.21. The Notice of Intent shall be filed in accordance with the time requirements of paragraph (b) of this section.

(2) Service. Applicant must serve, by first-class mail (unless otherwise specified), its Notice of Intent upon:

(i) The Governor of the state where the facility is located;

(ii) The state agency/ies and/or municipal agency/ies that would have permitting or review authority over the solid waste rail transfer facility absent 49 U.S.C. 10908 and 10909, these regulations, and federal preemption under 49 U.S.C. 10501(b); and

(iii) The appropriate managing government agencies responsible for the groups of land listed in 49 U.S.C. 10909(c)(2).

(3) Newspaper publication. Applicant must publish its Notice of Intent at least once during each of 3 consecutive weeks in a newspaper of general circulation in each county in which any part of the proposed or existing facility is located.

(b) *Time limits.* (1) The Notice of Intent must be served on the parties discussed above at least 15 days, but not more than 30 days, prior to the filing of the land-use-exemption permit application;

(2) The three required newspaper Notices must be published within the 30-day period prior to the filing of the application; and

(3) The Notice of Intent must be filed with the Board either concurrently with service on the required parties or when the Notice is first published (whichever occurs first).

(c) *Environmental and Historic Reports.* Applicant for a solid waste rail transfer facility, other than those in existence on October 16, 2008, must also submit an Environmental Report containing the information described at 49 CFR 1105.7 at least 20 days prior to filing an application. Applicants shall concurrently file an historic report containing the information at 49 CFR 1105.8 if that regulation is applicable. The environmental and historic reporting requirements that would otherwise apply are waived, however, if the applicant hires a third-party consultant, the Board's Section of Environmental Analysis (SEA) approves the scope of the consultant's work, and the consultant works under SEA's supervision to prepare any environmental documentation that might be warranted. In such a case, the consultant acts on behalf of the Board, working under SEA's direction to collect the needed environmental information and compile it into a draft of the appropriate environmental documentation (an Environmental Impact Statement or a more limited Environmental Assessment). *See* 49 CFR 1105.10(d).

§ 1155.21 Form of notice.

The Notice of Intent to petition for a land-use-exemption permit shall be in the following form:

STB Finance Docket No. ____(Sub-No. ____)

Notice of Intent to petition for a land-use-exemption permit for a solid waste rail transfer facility.

(Name of Applicant) gives notice that on or about (insert date application will be filed with the Board) it intends to file with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423, an application for a land-use-exemption permit for a solid waste rail transfer facility as defined in 49 U.S.C. 10908(e)(1)(H) and 49 CFR 1155.2. The solid waste rail transfer facility is located at (full address, or, if not available, provide city, state, and United States Postal Service ZIP code). The solid waste rail transfer facility is located on a line of railroad known as ____ at milepost ____ between (station name) at milepost ____ and (station name) at milepost ____.

The reason(s) for the proposed permit application is (are) ____ (explain briefly and clearly the activities undertaken, or proposed to be undertaken, by the applicant at the solid waste rail transfer facility. Also describe the specific state and local laws, regulations, orders or other requirements affecting siting from which the applicant requests entire or partial exemption that would otherwise apply and any action that the state, local, or municipal authority has taken affecting the siting of the facility.)

(Include this paragraph for facilities not in existence on October 16, 2008). Applicant certifies that, based on information in its possession, the facility is not proposed to be located on land within any unit of or land affiliated with the National Park System, the National Wildlife Refuge System, the National Wilderness Preservation System, the National Trails System, the National Wild and Scenic Rivers System, a National Reserve, or a National Monument. Applicant further certifies that the facility is not proposed to be located on lands referenced in The Highlands Conservation Act, Public Law No. 108–421, for which a state has implemented a conservation management plan (or, The facility is consistent with the restrictions implemented by (state) under The Highlands Conservation Act, Pub. L. No. 108–421, placed at its proposed location). Any relevant documentation in the railroad's possession on these issues will be made available promptly to those requesting it.

(For facilities already in existence on October 16, 2008, address the extent to which the facility is or is not located in any of these types of lands, and to the extent that it is so located address any relevant criteria, and so certify.)

The application containing the information set forth at 49 CFR 1155.22 will include the applicant's entire case for the granting of the land-use-exemption permit (case in chief). Any interested person, after the application is filed on (insert date), may file with the Surface Transportation Board written comments concerning the application within 45 days after the application is filed.

Comments should contain that party's entire case in support or opposition including the following, as appropriate:

(1) Name, address, and organizational affiliation.

(2) A statement describing commenter's interest in the proceeding, including information concerning the organization or public interest the commenter represents.

(3) Specific reasons why commenter supports or opposes the application, taking into account the standards for the Board's review and consideration provided in 49 U.S.C. 10909(c), (d) and these regulations.

(4) If the applicant files under 49 CFR 1155.23, specific reasons why commenter supports or opposes the Board's accepting the application.

(5) Any rebuttal of material submitted by applicant.

Written comments will be considered by the Board in determining what disposition to make of the application. Parties seeking information concerning the filing of comments should refer to 49 CFR 1155.25.

Written comments should indicate the proceeding designation STB Finance Docket No.____ (Sub-No. ____) and must be filed with the Secretary, Surface Transportation Board, 395 E Street, SW., Washington, DC 20423, no later than (insert the date 45 days after the date applicant intends to file its application). A copy of each written comment shall be served upon the representative of the applicant (insert name, address, and phone number). Except as otherwise set forth in 49 CFR 1155, each document filed with the Board must be served on all parties to the land-use-exemption-permit proceeding. 49 CFR 1104.12(a).

Persons seeking further information concerning land-use-exemption-permit procedures may contact the Surface Transportation Board or refer to 49 U.S.C. 10908, 10909, and the full land-use-exemption-permit regulations at 49 CFR 1155.

A copy of the application will be available for public inspection on or after (insert date the land-use-exemption-permit application is to be filed with Board). The applicant shall furnish a copy of the application to any

interested person proposing to file a comment, upon request.

Questions concerning potential environmental issues may be directed to the Board's Section of Environmental Analysis. Where the preparation of environmental documentation under the National Environmental Policy Act is warranted, a Draft Environmental Impact Statement (EIS) (or more limited Environmental Assessment (EA), if appropriate) prepared by the Section of Environmental Analysis will be issued for public review and comment and served upon all parties of record and upon any agencies or other persons who commented during its preparation. The comments received will be addressed in the Final EIS or Post EA. The Board will take into account the results of the environmental review and any final recommended environmental mitigation in deciding what action to take on the application.

§ 1155.22 Contents of application.

Applications for land-use-exemption permits shall contain the following information, including supporting documentation:

(a) *General.* (1) Exact name of applicant.

(2) Whether applicant is a common carrier by railroad subject to 49 U.S.C. Subtitle IV, chapter 105.

(3) Summary of why a land-use-exemption permit is being sought.

(4) The full address of the solid waste rail transfer facility, or, if not available, the city, state, and United States Postal Service ZIP code.

(5) The line of railroad serving the facility, the milepost location of the facility, and the milepost and names of the stations that the facility is located between.

(6) Name, title, and address of representative of applicant to whom comments should be sent.

(7) Citation to all state, local, or municipal laws, regulations, orders, or other requirements affecting the siting of the solid waste rail transfer facility.

(8) Copies of the specific state, local, or municipal laws, regulations, orders, or other requirements affecting the siting of the solid waste rail transfer facility from which the applicant requests entire or partial exemption that would otherwise apply, any publicly available material providing the criteria in the application of the regulations, and a description of any action that the state, local, or municipal authority has taken affecting the siting of the facility.

(9) Certification that the laws, regulations, orders or other requirements from which the applicant requests exemption are not based on Federal laws, regulations, orders, or other requirements.

(10) Certification that the facility complies with all state, local, or municipal laws, regulations, orders, or other requirements affecting the siting of the facility except those for which it seeks exemption.

(11) Citation to the regulations listed in 49 CFR 1155.27(c)(1) through (5).

(12) Certification that the applicant has applied or will apply for the appropriate state permits not affecting siting.

(13) For facilities not in existence as of October 16, 2008, certification that the facility is not proposed to be located on land within any unit of or land affiliated with the National Park System, the National Wildlife Refuge System, the National Wilderness Preservation System, the National Trails System, the National Wild and Scenic Rivers System, a National Reserve, or a National Monument. For facilities in existence as of October 16, 2008, state whether the facility is located in any of these types of lands.

(14) For facilities not in existence as of October 16, 2008, certification that the facility is not proposed to be located on lands referenced in The Highlands Conservation Act, Public Law No. 108–421, for which a state has implemented a conservation management plan, or, that the facility is consistent with the restrictions implemented by the applicable state under The Highlands Conservation Act, Public Law No. 108–421, placed on its proposed location. For facilities in existence as of October 16, 2008, state whether the facility is located in any of these lands, and, if so, address whether the facility is consistent with the restrictions placed on the location by the applicable state under that law.

(15) A detailed description of the operations and activities that will occur/are occurring at the facility.

(16) Detailed map showing the subject facility on a sheet not larger than 8 x 10½ inches, drawn to scale, and with the scale shown thereon. The map must show, in clear relief, the exact location of the facility on the rail line and its relation to other rail lines in the area, highways, water routes, population centers and any geographic features that should be considered in determining whether the facility would pose an unreasonable risk to public health, safety, or the environment, pursuant to 49 U.S.C. 10909(c)(1).

(17) Detailed drawing of the subject facility on a sheet not larger than 8 x 10½ inches, drawn to scale, and with the scale shown thereon. The drawing must show, in clear relief, the exact boundaries of the facility, structures at the facility, the location and type of the operations taking place at the facility, the proposed traffic configuration for the solid waste entering and leaving the facility, reasonable future expansion that the applicant requests to be included in the land-use-exemption permit, any geographic features that should be considered in determining whether the facility would pose an unreasonable risk to public health, safety, or the environment, pursuant to 49 U.S.C. 10909(c)(1), and any other information that the applicant would like to show.

(b) *A statement that sets forth in detail the reasons why the Board should grant a land-use-exemption permit to the applicant.* The applicant shall organize its request in terms of the standards for the Board's review and consideration provided in 49 U.S.C. 10909(c), (d) and these regulations.

(c) *Environmental impact.* The applicant shall certify that it has submitted an environmental and/or historical report containing the information in 49 CFR 1105.7 and 1105.8, if one is required, to allow the Board's Section of Environmental Analysis to determine whether preparation of environmental documentation is warranted, and, if so, whether a full Environmental Impact Statement or a more limited Environmental Assessment should be prepared.

(d) *Additional information.* The applicant shall submit such additional information to support its application as the Board may require.

(e) *Draft* **Federal Register** *Notice.* The applicant shall submit a draft notice of its application to be published by the Board. In addition to the regular number of copies that must be filed with the Board, the applicant must submit a copy of the draft notice as data contained on a computer diskette compatible with the Board's current word processing capabilities. The Board will publish the notice in the **Federal Register** within 20 days of the application's filing with the Board. The draft notice shall be in the following form:

STB Finance Docket No.____ (Sub-No. ____)

Notice of Application for a land-use-exemption permit for a solid waste rail transfer facility.

On (insert date application was filed with the Board) (name of applicant) filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423, an application for a land-use-exemption permit for a solid waste rail transfer facility. The solid waste rail transfer station is located at (full address, or, if not available, provide city, state, and United States Postal Service ZIP code). The solid waste rail transfer facility is located on a line of railroad known as ____at milepost ____between (station name) at milepost ____and (station name) at milepost ____. The

application explains why applicant believes its request for a land-use-exemption permit should be granted.

(Include this paragraph for facilities not in existence on October 16, 2008). The facility is not proposed to be located on land within any unit of or land affiliated with the National Park System, the National Wildlife Refuge System, the National Wilderness Preservation System, the National Trails System, the National Wild and Scenic Rivers System, a National Reserve, or a National Monument. The facility is not proposed to be located on lands referenced in The Highlands Conservation Act, Public Law No. 108–421, for which a state has implemented a conservation management plan (or, The facility is consistent with the restrictions implemented by (state) under The Highlands Conservation Act, Pub. L. No. 108–421, placed on its proposed location). Any relevant documentation in the railroad's possession will be made available promptly to those requesting it.

(For facilities already in existence on October 16, 2008, address the extent to which the facility is or is not located in any of these types of lands, and to the extent that it is so located address any relevant criteria, and so certify.)

Any interested person may file with the Surface Transportation Board written comments concerning the application within 45 days of the filing of the application. Persons seeking information concerning the filing of comments should refer to 49 CFR 1155.25.

Written comments should indicate the proceeding designation STB Finance Docket No. ____ (Sub-No. ____) and must be filed with the Secretary, Surface Transportation Board, 395 E Street, SW., Washington, DC 20423, no later than (insert the date 45 days after the date applicant intends to file its application). A copy of each written comment shall be served upon the representative of the applicant (insert name, address, and phone number). Except as otherwise set forth in 49 CFR 1155, each document filed with the Board must be served on all parties to the land-use-exemption permit proceeding. 49 CFR 1104.12(a).

Persons seeking further information concerning land-use-exemption-permit procedures may contact the Surface Transportation Board or refer to 49 U.S.C. 10908, 10909, and the full land-use-exemption-permit regulations at 49 CFR 1155.

A copy of the application is available for public inspection. The applicant shall furnish a copy of the application to any interested person proposing to file a comment, upon request.

Questions concerning potential environmental issues may be directed to the Board's Section of Environmental Analysis. Where the preparation of environmental documentation under the National Environmental Policy Act is warranted, a Draft Environmental Impact Statement (EIS) (or more limited Environmental Assessment (EA), if appropriate) prepared by the Section of Environmental Analysis will be issued for public review and comment and served upon all parties of record and upon any agencies or other persons who commented during its preparation. The comments received will be addressed in the Final EIS or Post EA. The Board will take into account the results of the environmental review and any final recommended environmental mitigation in deciding what action to take on the application.

(f) *Verification.* The original application shall be executed and verified in the form set forth below by an officer of the applicant having knowledge of the facts and matters relied upon.

Verification
State of ____ ss.
County of ____

____ (Name of affiant) makes oath and says that (s)he is the ____ (title of affiant) of the ____ (name of applicant) applicant herein; that (s)he has been authorized by the applicant (or as appropriate, a court) to verify and file with the Surface Transportation Board the foregoing application in STB Finance Docket No. ____ (Sub-No. ____); that (s)he has carefully examined all of the statements in the application as well as the exhibits attached thereto and made a part thereof; that (s)he has knowledge of the facts and matters relied upon in the application; and that all representations set forth therein are true and correct to the best of his/her knowledge, information, and belief.
(Signature)

Subscribed and sworn to before me ____ in and for the State and County above named, this ____ day of ____, 20____.

My commission expires ____.

§ 1155.23 Additional requirements when filing after an unsatisfactory result from a State, local, or municipal authority affecting the siting of the facility.

(a) When an applicant has previously sought permission from the applicable state, local, or municipal authority and received an unsatisfactory result, such as inordinate delay, affecting the siting of the facility, the applicant may petition the Board to accept an application for a land-use-exemption permit. The applicant shall address in its petition why applicant believes it can make the showing required in 49 CFR 1155.23(b). The petition shall be filed simultaneously with the land-use-exemption permit application.

(b) Standard for review. The Board will not consider a land-use-exemption-permit application regarding laws, regulations, or other requirements upon which the applicant has received an unsatisfactory result from a state, local, or municipal authority, unless the Board finds that the laws, regulations, or other requirements affect the siting of the facility, on their face or as applied, either

(1) Unreasonably burden the interstate transportation of solid waste by railroad, or

(2) Discriminate against the railroad transportation of solid waste and a solid waste rail transfer facility.

§ 1155.24 Filings and service of application.

(a) The applicant shall tender with its application an affidavit attesting to its compliance with the notice requirements of 49 CFR 1155.20. The affidavit shall include the dates of service, posting, and newspaper publication of the Notice of Intent.

(b) When the application is filed with the Board, the applicant shall serve, by first-class mail, a copy on the Governor of the state where the facility is located, and the state, local, and/or municipal agency/ies that would have permitting or review authority of the solid waste rail transfer facility if there were no federal preemption. A copy of the certificate of service shall be filed with the Board at the same time.

(c) The applicant shall promptly furnish by first class mail a copy of the application to any interested person proposing to file a written comment upon request. A copy of the certificate of service shall be filed with the Board at the same time.

(d)(1) Upon the filing of a land-use-exemption-permit application, the Board will review the application and determine whether it conforms to all applicable regulations. If the application is substantially incomplete or its filing otherwise defective, the Board shall reject the application for stated reasons by order (which order will be administratively final) within 20 days from the date of filing of the application. If the Board does not reject the application, notice of the filing of the application shall be published in the **Federal Register** by the Board, through the Director of the Office of Proceedings, within 20 days of the filing of the application.

(2) An applicant may seek waiver of specific regulations listed in subpart C of this part by filing a petition for waiver with the Board. A decision by the Director of the Office of Proceedings granting or denying a waiver petition will be issued within 30 days of the date the petition is filed. Appeals from the Director's decision will be decided by the entire Board. If waiver is not obtained prior to the filing of the application, the application may be subject to rejection.

§ 1155.25 Participation in application proceedings.

(a) *Public participation.* (1) *Comments.* Interested persons may become parties to a land-use-exemption-permit proceeding by filing written comments with the Board within 45 days of the filing of the application. Comments should contain the following information, as appropriate:

(i) Name, address, and organizational affiliation.

(ii) A statement describing commenter's interest in the proceeding, including information concerning any organization or public interest it represents; and

(iii) Specific reasons why commenter supports or opposes the application, taking into account the standards for the Board's review and consideration set forth in 49 U.S.C. 10909(c), (d) and 49 CFR part 1155.

(iv) If the applicant files under 49 CFR 1155.23, specific reasons why the commenter supports or opposes the Board considering the application.

(v) Any rebuttal to the evidence and argument submitted by applicant.

(vi) Any State, local, or municipal law, regulation, order, or other requirement affecting the siting of the facility not included in the application and any argument concerning its bearing on the merits of the application in terms of the standards for the Board's review and consideration set forth in 49 U.S.C. 10909(c), (d) and 49 CFR part 1155.

(b) *Filing and service of written comments, along with evidence and argument, and rebuttals.* (1) Written comments shall be filed with the Board (addressed to the Secretary, Surface Transportation Board, 395 E Street, SW., Washington, DC 20423) within 45 days of the filing with the Board of a land-use-exemption permit application. An original and 10 copies of each written comment shall be filed with the Board. A copy of each written comment shall be served on applicant or its representative at the time of filing with the Board. Each filing shall contain a certificate of service.

(2) Rebuttals to written comments shall be filed and served by applicants no later than 60 days after the filing of the application. An original and 10 copies of such replies shall be filed with the Board.

§ 1155.26 Transfer and termination of a land-use-exemption permit.

(a) A land-use-exemption permit will be transferred to an acquiring rail carrier without the need for a new application for a land-use-exemption permit if the rail line associated with the solid waste rail transfer facility is transferred to another rail carrier or to an entity formed to become a rail carrier pursuant to authority granted by the Board under 49 U.S.C. 10901, 10902, or 11323. When seeking Board authority under 49 U.S.C. 10901, 10902, or 11323, the applicant(s) should specifically advise the Board of the intended transfer.

(b) When a carrier plans to cease using a facility as a solid waste rail transfer facility, or when a facility is transferred to any party in any manner other than that described in 49 CFR 1155.26(a), the entity that received the land-use-exemption permit must notify the Board in writing no later than 60 days prior to the proposed cessation or transfer. Upon receipt of that notice, the Board will publish notice in the **Federal Register** that the land-use-exemption permit will be terminated on the 60th day unless otherwise ordered by the Board.

§ 1155.27 Board determinations under 49 U.S.C. 10909.

(a) *Procedural schedule.* (1) The following schedule shall govern the process for Board consideration and decisions in land-use-exemption permit application proceedings from the time the application is filed until the time of the Board's decision on the merits:

Day 0—Application filed, including applicant's case in chief.

Day 20—Due date for Notice of Application to be published in the **Federal Register**.

Day 45—Due date for comments.

Day 60—Due date for applicant's rebuttal.

(2) A decision on the merits will be due 90 days after a full record is developed, including the appropriate environmental review, if any.

(b) *Standard for review.* (1) The Board will issue a land-use-exemption permit only if it determines that the facility at the existing or proposed location would not pose an unreasonable risk to public health, safety, or the environment. In deciding whether a solid waste rail transfer facility that is or proposed to be constructed or operated by or on behalf of a rail carrier poses an unreasonable risk to public health, safety, or the environment, the Board shall weigh the particular facility's potential benefits to and the adverse impacts on public health, public safety, the environment, interstate commerce, and transportation of solid waste by rail.

(2) The Board will not grant a land-use-exemption permit for a solid waste rail transfer facility proposed to be located on land within any unit of or land affiliated with the National Park System, the National Wildlife Refuge System, the National Wilderness Preservation System, the National Trails System, the National Wild and Scenic Rivers System, a National Reserve, or a National Monument.

(3) The Board will not grant a land-use-exemption permit for a solid waste rail transfer facility proposed to be located on land within any unit of or land affiliated with lands referenced in The Highlands Conservation Act, Public Law No. 108–421, for which a state has implemented a conservation management plan, if operation of the facility would be inconsistent with restrictions placed on such land.

(4) A land-use-exemption permit will not exempt a state requirement that a rail carrier comply with an environmental, public health, or public safety standard that falls under the traditional police powers of the state unless the requirement is unreasonably burdensome to interstate commerce or discriminates against rail carriers.

(5) A land-use-exemption permit will only exempt state, local, or municipal laws, regulations, orders, or other requirements affecting the siting of the solid waste rail transfer facility.

(c) *Considerations.* The Board will consider and give due weight to the following, as applicable:

(1) The land-use, zoning, and siting regulations or solid waste planning requirements of the state or state subdivision in which the facility is or will be located that are applicable to solid waste transfer facilities, including those that are not owned or operated by or on behalf of a rail carrier;

(2) The land-use, zoning, and siting regulations or solid waste planning requirements applicable to the property where the solid waste rail transfer facility is proposed to be located;

(3) Regional transportation planning requirements developed pursuant to Federal and state law;

(4) Regional solid waste disposal plans developed pursuant to Federal or state law;

(5) Any Federal and State environmental protection laws or regulations applicable to the site;

(6) Any unreasonable burdens imposed on the interstate transportation of solid waste by railroad, or the potential for discrimination against the railroad transportation of solid waste, a solid waste rail transfer facility, or a rail carrier that owns or operates such a facility; and

(7) Any other relevant factors, as determined by the Board.

(d) If the Board grants a land-use-exemption permit to a solid waste rail transfer facility, all State laws, regulations, orders, or other requirements affecting the siting of a facility are preempted with regard to

that facility. A Board issued land-use-exemption permit may require compliance with such State laws, regulations, orders, or other requirements.

§ 1155.28 Appellate procedures.

General rule. Petitions to modify, amend, or revoke land-use-exemption permits shall be decided in accordance with the Board's normal standard of review for petitions to reopen administratively final Board actions at 49 CFR 1115.4. The petition must demonstrate material error, new evidence, or substantially changed circumstances that warrant the requested action, and is subject to these additional conditions:

(a) An entity that petitions for a modification or amendment requesting an expansion of federal preemption or the facility's operations or physical size is subject to the notice and application requirements in this subpart C. The language of the notifications shall be modified to note that the petition is for a modification or amendment.

(b) The Board will approve or deny petitions to modify, amend, or revoke a land-use-exemption permit within 90 days after the full record for the petition is developed.

[FR Doc. E9–1304 Filed 1–26–09; 8:45 am]

BILLING CODE 4915–01–P

Proposed Rules

Federal Register
Vol. 74, No. 16
Tuesday, January 27, 2009

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

POSTAL SERVICE

39 CFR Part 111

Insurance Claims Process Changes

AGENCY: Postal Service™.

ACTION: Proposed rule.

SUMMARY: The Postal Service proposes to revise its regulations governing the processing and adjudication of domestic mail insurance claims in order to streamline the claims process and to provide customers with more consistent service.

DATES: Submit comments on or before February 26, 2009.

ADDRESSES: Address all comments to the Manager, Mailing Standards, U.S. Postal Service, Room 3436, 475 L'Enfant Plaza, SW., Washington, DC 20260–3436. Copies of all comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday in the USPS Headquarters Library on the 11th Floor at the above address.

FOR FURTHER INFORMATION CONTACT: Monica Grein, 202–268–8411.

SUPPLEMENTARY INFORMATION: The Postal Service is proposing to revise its procedures for processing and adjudicating domestic mail insurance claims in order to streamline the claims process and to provide its customers with more consistent service. It proposes to do this by making its online claims processing service available to customers who purchase domestic insurance through *any* retail channel—*i.e.*, usps.com, Automated Postal Center® kiosks, local Post Office™ facilities, or authorized PC Postage® providers. Currently, the online process can only be used by customers who purchase postage and insurance through Click-N-Ship® or eBay®. In addition, the proposal would allow Express Mail® customers to file online claims, even if no additional insurance was purchased. The proposal would also allow Collect on Delivery (COD) and Registered Mail™ claims to be filed by mail or at a Post Office; however, they could not be filed online.

The proposal would also permit a customer to file a claim by downloading a form from usps.com and mailing it directly to Postal Service Accounting Services in St. Louis, MO. Customers also could continue to file claim forms at a local Post Office.

Under the proposal, local Post Office facilities would no longer adjudicate insurance claims. To ensure consistency and service quality, all claims would be adjudicated by Accounting Services.

The proposal also would change the current damaged goods inspection policy for domestic claims. The proposal would require a customer to retain her or his damaged article and container, including packaging, wrapping, and any other contents received, until the claim is fully resolved. Customers would no longer be required to take these materials to the Post Office at the time a claim is filed. Rather, upon receiving a request from the Postal Service, they would be required to turn the materials over to their local Post Office for inspection, retention, and disposition in accordance with the claims decision.

This proposal also would update the Registered Mail section by changing the term uninsured Registered Mail to Registered Mail with no declared value to reflect current policy.

Although exempt from the notice and comment requirements of the Administrative Procedure Act [5 U.S.C. 553(b), (c)], regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comments on the following proposed revision of the Domestic Mail Manual, incorporated by reference in the Code of Federal Regulations. See 39 CFR part 111.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

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 Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM) as follows:

* * * * *

500 Additional Mailing Services

503 Extra Services

* * * * *

2.0 Registered Mail

* * * * *

[Revise heading of 2.6 as follows:]

2.6 Inquiry on Article With No Declared Value

2.6.1 Who May File

[Revise 2.6.1 to read as follows:]

If postal insurance was purchased, the claim procedures in 609 apply. The procedures in this section apply only to Registered Mail with no declared value. Only the mailer may file an inquiry on Registered Mail with no declared value. For matter registered with no declared value but with merchandise return service, only the permit holder may file an inquiry.

[Revise the heading of 2.6.2 to read as follows:]

2.6.2 When and How To File

[Revise introductory paragraph to read as follows, and delete items 2.6.2a, 2.6.2b, and 2.6.2c:]

The mailer may not file any inquiry until 15 days after the mailing date of the article. An inquiry may be filed at any Post Office, classified station, or classified branch, except for an inquiry about matter registered with merchandise return service, which must be filed by the permit holder at the Post Office where the permit is held. An inquiry for Registered Mail with no declared value must be filed by completing a PS Form 1000, *Domestic or International Claim*, which may be obtained from any Post Office or online at *www.usps.com/forms/_pdf/ps1000.pdf*.

* * * * *

600 Basic Standards for All Mailing Services

* * * * *

609 Filing Indemnity Claims for Loss or Damage

1.0 General Filing Instructions

* * * * *

1.5 Where To File

[Revise 1.5 to read as follows:]

A claim may be filed:

a. Via mail to Domestic Claims, Accounting Services (see 608.8.0 for address) for insured mail, Registered Mail, COD, and Express Mail.

b. Online at *www.usps.com/insuranceclaims/online.htm* for domestic insured mail and Express Mail. Claims for COD and Registered Mail cannot be filed online.

c. By submitting the required information at any Post Office facility for mailing to Accounting Services in St. Louis.

* * * * *

1.6 How To File

[Revise 1.6 by deleting existing text and adding 1.6.1 and 1.6.2 to read as follows:]

1.6.1 Claims Filed by Mail

Customers may file a claim by completing a PS Form 1000, *Domestic or International Claim*, and mailing it to Domestic Claims, Accounting Services (see 608.8.0 for address). Customers may print PS Form 1000 from *www.usps.com/insuranceclaims*. Evidence of value is required and must accompany the PS Form 1000. Evidence of insurance must be retained by the customer until the claim is resolved. For Express Mail COD and Registered Mail COD claims, the customer must provide both the original COD receipt and the Express Mail receipt or the Registered Mail receipt. Upon written request by the USPS, the customer must submit proof of damage (see 2.0) for damaged items or missing contents, in person to a local Post Office for inspection, retention, and disposition in accordance with the claims decision.

1.6.2 Claims Filed Online

Customers may file a claim online for insured mail and Express Mail at *www.usps.com/insuranceclaims/online.htm*. Evidence of value is required and may be submitted as an uploaded file or sent via First-Class Mail to Domestic Claims, Accounting Services (see 608.8.0 for address). Evidence of insurance must be retained by the customer until the claim is resolved. Upon written request by the USPS, the customer must submit proof of damage (see 2.0) for damaged items or missing contents, in person to a local Post Office for inspection, retention, and disposition in accordance with the claims decision. COD and Registered Mail claims cannot be filed online.

1.6.3 Claims Filed at the Post Office

A customer may file a claim form, PS Form 1000, at a local Post Office, which will then forward the form to Accounting Services in St. Louis. Customers may print PS Form 1000 from *www.usps.com/insuranceclaims*. Evidence of value is required and must accompany the PS Form 1000. Evidence of insurance must be retained by the customer until the claim is resolved. For Express Mail COD and Registered Mail COD claims, the customer must provide both the original COD receipt and the Express Mail receipt or the Registered Mail receipt. Upon written request by the USPS, the customer must submit proof of damage (see 2.0) for damaged items or missing contents, in person to a local Post Office for inspection, retention, and disposition in accordance with the claims decision.

* * * * *

2.0 Providing Proof of Loss or Damage

2.1 Missing Contents

[Revise the first sentence of 2.1 to read as follows:]

If a claim is filed because some or all of the contents are missing, the addressee must retain the mailing container, including wrapping, packaging, and any contents that were received, and must, upon written request by the USPS, make them available to the local Post Office for inspection, retention, and disposition in accordance with the claims decision.

* * *

2.2 Proof of Damage

[Revise the first and second sentences of 2.2 to read as follows:]

If the addressee files the claim, the addressee must retain the damaged article and mailing container, including wrapping, packaging, and contents, and must, upon written request by the USPS, make them available for inspection. If the mailer files the claim, Accounting Services in St. Louis may notify the addressee by letter to present the damaged article and mailing container, including any wrapping, packaging, and any other contents received, to a local Post Office for inspection, retention, and disposition in accordance with the claims decision.

* * *

3.0 Providing Evidence of Insurance and Value

3.1 Evidence of Insurance

[Revise introductory paragraph and item 3.1a to read as follows:]

For a claim involving insured mail, Registered Mail, COD, or Express Mail, the customer must retain evidence showing that the particular service was purchased until the claim is resolved. Examples of acceptable evidence of insurance are:

a. The original mailing receipt issued at the time of mailing (retail insured mail, Registered Mail, and COD receipts must contain a USPS postmark). If the original mailing receipt is not available, the original USPS sales receipt listing the mailing receipt number and insurance amount is acceptable. Reproduced copies are not acceptable for Registered Mail and COD claims. Customers filing online claims may scan the receipt and submit as an uploaded file.

* * * * *

[Delete item 3.1d, and redesignate current items 3.1e and 3.1f as 3.1d and 3.1e.]

* * * * *

3.2 Evidence of Value

[Revise introductory paragraph of 3.2 to add online option as follows:]

The customer (either the mailer or the addressee) must submit acceptable evidence to establish the cost or value of the article at the time it was mailed. For claims submitted online, the evidence may be scanned and uploaded or sent via First-Class Mail to Domestic Claims, Accounting Services (see 608.8.0 for address). (Other evidence may be requested to help determine an accurate value.) Examples of acceptable evidence are:

* * * * *

6.0 Adjudication of Claims

6.1 Initial Adjudication of Claims

[Revise 6.1 to read as follows:]

Accounting Services in St. Louis adjudicates and determines whether to uphold a claim in full, uphold a claim in part, or deny a claim in full. Domestic insurance claims may be filed online through *www.usps.com/insuranceclaims/online.htm*, via mail to Domestic Claims Accounting Services (see 608.8 for address), or by filing it at a local Post Office. Claims for COD and Registered Mail cannot be filed online.

6.2 Appealing a Claim Decision

[Revise 6.2 to read as follows:]

A customer may appeal a claim decision by filing a written appeal to Domestic Claims Appeals, Accounting Services (*see* 608.8 for address) within 60 days of the date of the original decision. A customer may also appeal a claim decision online through *www.usps.com/insuranceclaims/online.htm* if the original claim was filed online.

6.3 Final USPS Decision of Claims

[Revise text of 6.3 by adding a new last sentence as follows:]

* * * The customer may file the additional appeal online if the original appeal was filed online.

* * * * *

We will publish an appropriate amendment to 39 CFR 111 to reflect these changes if our proposal is adopted.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. E9–1645 Filed 1–26–09; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1989–0008; FRL–8761–1]

National Oil and Hazardous Substance Pollution Contingency Plan National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of Intent for Partial Deletion of the Rentokil, Inc. Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 3 is issuing a Notice of Intent to Delete former Wetland Areas B and C of the Rentokil, Inc. Superfund Site (Site) located in Henrico County, Virginia, from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is found at Appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the Commonwealth of Virginia, through the Virginia Department of Environmental Quality, have determined that all appropriate response actions at these identified parcels under CERCLA, other than operation and maintenance and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

This partial deletion pertains to the soil and sediment of former Wetland Areas B and C and the ground water at former Wetland Area C. The remaining areas/media will remain on the NPL and are not being considered for deletion as part of this action.

DATES: Comments must be received by *February 26, 2009.*

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–1989–0008, by one of the following methods:

- *http://www.regulations.gov.* Follow on-line instructions for submitting comments.
- *E-mail:* Larry C Johnson, Community Involvement Coordinator at *Johnson.larryc@epa.gov* or Andy Palestini, Remedial Project Manager at *Palestini.andy@epa.gov.*
- *Fax:* (215) 814–3002.
- *Mail:* Larry C Johnson, Community Involvement Coordinator, U.S. EPA Region 3, Mailcode 3HS52, Philadelphia, Pennsylvania 19103.
- *Hand delivery:* Larry C Johnson, Community Involvement Coordinator, U.S. EPA Region 3, Mailcode 3HS52, Philadelphia, Pennsylvania 19103. 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–SFUND–1989–0008. 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 statue. 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:

U.S. EPA Region 3 Library, U.S. EPA Region 3, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029, (215) 814–5000, Monday through Friday 8 a.m. to 12 p.m.;

Henrico County Municipal Reference and Law Library, Parham Road at Hungary Spring Road, Richmond, Virginia 23273.

FOR FURTHER INFORMATION CONTACT: Andy Palestini, Remedial Project Manager, U.S. Environmental Protection Agency, Region 3, Mailcode 3HS23, 1650 Arch Street, Philadelphia, Pennsylvania 19103, (215) 814–3233.

SUPPLEMENTARY INFORMATION: In the ''Rules and Regulations'' Section of today's **Federal Register**, we are publishing a direct final Notice of Partial Deletion for former Wetland Areas B and C of the Rentokil, Inc. Superfund Site without prior Notice of Intent for Partial Deletion because EPA views this as a noncontroversial revision and anticipates no adverse comment. We have explained our reasons for this partial deletion in the preamble to the direct final Notice of Partial Deletion, and those reasons are incorporated herein. If we receive no adverse comment(s) on this partial deletion action, we will not take further action on this Notice of Intent for Partial Deletion. If we receive adverse comment(s), we will withdraw the direct final Notice of Partial Deletion and it will not take effect. We will, as appropriate, address all public comments in a subsequent final Notice of Partial Deletion based on this Notice

of Intent for Partial Deletion. We will not institute a second comment period on this Notice of Intent for Partial Deletion. Any parties interested in commenting must do so at this time.

For additional information, see the direct final Notice of Partial Deletion which is located in the Rules section of this **Federal Register**.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: December 16, 2008.

William T. Wisniewski,

Acting Regional Administrator, Region 3.

[FR Doc. E9–1705 Filed 1–26–09; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 74, No. 16
Tuesday, January 27, 2009

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AFRICAN DEVELOPMENT FOUNDATION

Board of Directors Meeting

Meeting: African Development Foundation, Board of Directors Meeting.

Time: Tuesday, February 3, 2009, 9 a.m. to 1 p.m.

Place: African Development Foundation, Conference Room, 1400 I Street, NW., Suite 1000, Washington, DC 20005.

Dates: Tuesday, February 3, 2009.

Status:

1. Open session, Tuesday, February 3, 2009, 9 a.m. to 12:05 p.m.; and
2. Executive session, Tuesday, February 3, 2009, 12:10 p.m. to 1 p.m.

Due to security requirements and limited seating, all individuals wishing to attend the open session of the meeting must notify Doris Martin, General Counsel, at (202) 673–3916 or Michele M. Rivard at *mrivard@usadf.gov* of your request to attend by 4 p.m. on Friday, January 30, 2009.

Lloyd O. Pierson,

President.

[FR Doc. E9–1752 Filed 1–26–09; 8:45 am]

BILLING CODE 6117–01–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2008–0042]

Codex Alimentarius Commission: Meeting of the Codex Committee on Food Additives

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, U.S. Department of Agriculture (USDA), and the Food and Drug Administration (FDA), U.S. Department of Health and Human Services, are sponsoring a public meeting on February 10, 2009. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States positions that will be discussed at the 41st Session of the Codex Committee on Food Additives (CCFA) of the Codex Alimentarius Commission (Codex), which will be held in Shanghai, China, on March 16–20, 2009. The Under Secretary for Food Safety and FDA recognize the importance of providing interested parties the opportunity to obtain background information on the 41st Session of the CCFA and to address items on the agenda.

DATES: The public meeting is scheduled for Tuesday, February 10, 2009, from 1 p.m. to 4 p.m.

ADDRESSES: The public meeting will be held in the auditorium (Room 1A003), Harvey W. Wiley Federal Building, FDA, Center for Food Safety and Applied Nutrition (CFSAN), 5100 Paint Branch Highway, College Park MD 20740. Documents related to the 41st Session of the CCFA are accessible via the World Wide Web at the following address: *http://www.codexalimentarius.net/current.asp.*

The U.S. Delegate to the CCFA, Dr. Dennis Keefe, invites interested U.S. parties to submit their comments electronically to the following e-mail address: *ccfa@fda.hhs.gov. Registration:*

Attendees may register electronically to the same e-mail address above by February 6, 2009. Early registration is encouraged because it will expedite entry into the building and its parking area. If you require parking, please include the vehicle make and tag number when you register. Because the meeting will be held in a Federal building, you should also bring photo identification and plan for adequate time to pass through security screening systems.

FOR FURTHER INFORMATION ABOUT THE 41ST SESSION OF THE CCFA CONTACT: Dennis Keefe, Office of Food Additive Safety (HFS–205), CFSAN, FDA, 5100 Paint Branch Parkway, College Park, MD 20740. *Phone:* (301) 436–1284, *Fax:* (301) 436–2972, *e-mail: dennis.keefe@fda.hhs.gov.*

FOR FURTHER INFORMATION ABOUT THE PUBLIC MEETING CONTACT: Doreen Chen-Moulec, International Issues Analyst, U.S. Codex Office, Food Safety and Inspection Service (FSIS), Room 4865, South Building, 1400 Independence Ave SW., Washington, DC 20250. *Phone:* (202) 250–7760, *Fax:* (202) 720–3157, *e-mail: doreen.chen-moulec@fsis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Codex Alimentarius (Codex) was established in 1963 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure that fair practices are used in trade.

The CCFA was established to set or endorse maximum levels for individual food additives; prepare priority lists of food additives for risk assessment by the Joint FAO and WHO Expert Committee on Food Additives (JECFA); assign functional classes to individual food additives; recommend specifications of identity and purity for food additives for adoption by the Commission; consider methods of analysis for the determination of additives in food; and consider and elaborate standards or codes for related subjects such as the labeling of food additives when sold as such. The Committee is hosted by the People's Republic of China.

Issues To Be Discussed at the Public Meeting

The following items on the agenda for the 41st Session of the CCFA will be discussed during the public meeting:

- Matters Referred to the Committee from the Codex Alimentarius Commission and other Codex Bodies;
- Matters of Interest Arising from the FAO, WHO, and JECFA;
- Endorsement or Revision of Maximum Levels for Food Additives and Processing Aids in Codex Standards;
- Consideration of the Codex General Standard for Food Additives (GSFA);
- Discussion Paper on the Scope of Certain Food Categories of the GSFA;
- Discussion Paper on the Identification of Problems and

Recommendations Related to Inconsistent Presentation of Food Additive Provisions in Codex Commodity Standards;

- Discussion Paper on Inconsistencies in the Names of Compounds in the Codex Specifications for Identity and Purity of Food Additives and in the International Numbering System for Food Additives;
- Proposed Draft Guidelines and Principles for Substances Used as Processing Aids;
- International Numbering System (INS) for Food Additives;
- Specifications for the Identity and Purity of Food Additives; and
- Priority List of Food Additives Proposed for Evaluation by the JECFA

Each item listed above will be fully described in documents distributed, or to be distributed, by the Codex Secretariat prior to the March 16–20, 2009, meeting in Shanghai, China. Members of the public may access copies of these documents from *http://www.codexalimentarius.net/current.asp.*

Public Meeting

At the February 10, 2009, public meeting, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to the U.S. Delegate for the CCFA, Dr. Dennis Keefe at dennis.keefe@fda.hhs.gov. Written comments should state that they relate to activities of the 41st Session of the CCFA.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it online through the FSIS Web page located at *http://www.fsis.usda.gov/regulations/2009_Notices_Index/.* FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. Through the Listserv and Web page, FSIS is able to provide information to a much broader and more diverse audience. In addition, FSIS offers an electronic mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/.* Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Done at Washington, DC, on: January 22, 2009.

Paulo Almeida,

U.S. Associate Manager for Codex Alimentarius.

[FR Doc. E9–1726 Filed 1–26–09; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF COMMERCE

Office of the Secretary

Estimates of the Voting Age Population for 2008

AGENCY: Office of the Secretary, Commerce.

ACTION: General Notice Announcing Population Estimates.

SUMMARY: This notice announces the voting age population estimates, as of July 1, 2008, for each state and the District of Columbia. We are providing this notice in accordance with the 1976 amendment to the Federal Election Campaign Act, Title 2, United States Code, Section 441a(e).

FOR FURTHER INFORMATION CONTACT: Enrique Lamas, Chief, Population Division, U.S. Census Bureau, Room HQ–5H174, Washington, DC 20233, at (301) 763–2071.

SUPPLEMENTARY INFORMATION: Under the requirements of the 1976 amendment to the Federal Election Campaign Act, Title 2, United States Code, Section 441a(e), I hereby give notice that the estimates of the voting age population for July 1, 2008, for each state and the District of Columbia are as shown in the following table.

ESTIMATES OF THE POPULATION OF VOTING AGE FOR EACH STATE AND THE DISTRICT OF COLUMBIA: JULY 1, 2008

Area	Population 18 and over	Area	Population 18 and over
United States	230,117,876		
Alabama	3,540,023	Missouri	4,490,136
Alaska	506,417	Montana	747,082
Arizona	4,792,959	Nebraska	1,336,437
Arkansas	2,152,909	Nevada	1,932,366
California	27,392,136	New Hampshire	1,022,451
Colorado	3,732,321	New Jersey	6,635,079
Connecticut	2,689,039	New Mexico	1,481,906
Delaware	666,863	New York	15,082,281
District of Columbia	479,817	North Carolina	6,978,737
Florida	14,324,069	North Dakota	498,433
Georgia	7,136,903	Ohio	8,755,533
Hawaii	1,002,955	Oklahoma	2,736,326
Idaho	1,111,176	Oregon	2,922,485
Illinois	9,722,303	Pennsylvania	9,686,275
Indiana	4,792,111	Rhode Island	822,248
Iowa	2,289,942	South Carolina	3,413,573
Kansas	2,101,649	South Dakota	605,885
Kentucky	3,261,181	Tennessee	4,736,294
Louisiana	3,302,823	Texas	17,601,203
Maine	1,041,589	Utah	1,886,789
Maryland	4,293,014	Vermont	492,340

ESTIMATES OF THE POPULATION OF VOTING AGE FOR EACH STATE AND THE DISTRICT OF COLUMBIA: JULY 1, 2008—Continued

Area	Population 18 and over	Area	Population 18 and over
Massachusetts	5,070,934	Virginia	5,945,888
Michigan	7,613,224	Washington	5,008,049
Minnesota	3,965,749	West Virginia	1,428,310
Mississippi	2,171,898	Wisconsin	4,313,555
		Wyoming	404,211

I have certified these counts to the Federal Election Commission.

Dated: January 12, 2009.

Carlos M. Gutierrez,

Secretary, U.S. Department of Commerce.

[FR Doc. E9–1687 Filed 1–26–09; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Proposed Information Collection; Comment Request; Statement by Ultimate Consignee and Purchaser

AGENCY: Bureau of Industry and Security.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before March 30, 2009.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Larry Hall, BIS ICB Liaison, (202) 482–4895, *lhall@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Statement by Ultimate Consignee and Purchaser is required in support of an export license application where the country of ultimate destination is in Country Group Q,S,V,W,Y or Z. It is used by licensing officers in determining the validity of the end-use.

II. Method of Collection

Paper (Form BIS–711) or company letterhead.

III. Data

OMB Control Number: 0694–0021.

Form Number(s): BIS–711.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,884.

Estimated Time per Response: 16 minutes.

Estimated Total Annual Burden Hours: 582.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 22, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–1682 Filed 1–26–09; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–840]

Certain Orange Juice From Brazil: Final Results of Antidumping Duty Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* January 27, 2009.

SUMMARY: The Department of Commerce (the Department) has conducted a changed circumstances review on certain orange juice (OJ) from Brazil to determine whether the antidumping duty order should be revoked with respect to imports of ultra low pulp orange juice (ULPOJ). On October 10, 2008, the Department published the preliminary results of its changed circumstances review, in which we found that there was sufficient interest on the part of the domestic industry to justify maintaining the order with respect to ULPOJ. *See Certain Orange Juice from Brazil: Preliminary Results of Antidumping Duty Changed Circumstances Review and Intent Not to Revoke, In Part*, 73 FR 60241 (Oct. 10, 2008) (*Preliminary Results*).

We invited parties to comment on our preliminary results of review. Based on our analysis of the comments received, we have not changed the final results from those presented in the *Preliminary Results*.

FOR FURTHER INFORMATION CONTACT: Elizabeth Eastwood or Henry Almond; AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3874 or (202) 482–0049, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 9, 2006, the Department published in the **Federal Register** an antidumping duty order on OJ from Brazil. *See Antidumping Duty Order:*

Certain Orange Juice From Brazil, 72 FR 12183 (Mar. 9, 2006).

On April 29, 2008, at the request of Tropicana Products, Inc. (Tropicana), a domestic producer of orange juice, the Department initiated a changed circumstances review of the order to consider partially revoking the order with respect to ULPOJ, pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.216(b) and 351.222(g)(1)(i). *See Certain Orange Juice From Brazil: Initiation of Antidumping Duty Changed Circumstances Review*, 73 FR 23182 (Apr. 29, 2008). On October 10, 2008, the Department published the preliminary results of this changed circumstances review. *See Preliminary Results*, 73 FR 60241. In the *Preliminary Results*, we found that there was sufficient interest on the part of the domestic OJ industry to justify maintaining the order with respect to ULPOJ.

We invited parties to comment on our preliminary results of review. In November 2008, we received case and rebuttal briefs from Tropicana and the petitioners in this case (*i.e.*, Florida Citrus Mutual, A. Duda & Sons, Inc. (doing business as Citrus Belle), and Citrus World, Inc.).[1] Based on our analysis of the comments received, we have not changed the final results from those presented in the *Preliminary Results*.

Scope of the Order

The scope of this order includes certain orange juice for transport and/or further manufacturing, produced in two different forms: (1) Frozen orange juice in a highly concentrated form, sometimes referred to as frozen concentrated orange juice for manufacture (FCOJM); and (2) pasteurized single-strength orange juice which has not been concentrated, referred to as not-from-concentrate (NFC). At the time of the filing of the petition, there was an existing antidumping duty order on frozen concentrated orange juice (FCOJ) from Brazil. *See Antidumping Duty Order; Frozen Concentrated Orange Juice from Brazil*, 52 FR 16426 (May 5, 1987). Therefore, the scope of this order with regard to FCOJM covers only FCOJM produced and/or exported by those companies which were excluded or revoked from the pre-existing antidumping order on FCOJ from Brazil as of December 27, 2004. Those companies are Cargill Citrus Limitada; Coinbra-Frutesp S.A.; Sucocitrico Cutrale, S.A.; Fischer S.A. Comercio, Industria and Agricutura; and Montecitrus Trading S.A.

Excluded from the scope of the order are reconstituted orange juice and frozen concentrated orange juice for retail (FCOJR). Reconstituted orange juice is produced through further manufacture of FCOJM, by adding water, oils and essences to the orange juice concentrate. FCOJR is concentrated orange juice, typically at 42 Brix, in a frozen state, packed in retail-sized containers ready for sale to consumers. FCOJR, a finished consumer product, is produced through further manufacture of FCOJM, a bulk manufacturer's product.

The subject merchandise is currently classifiable under subheadings 2009.11.00, 2009.12.25, 2009.12.45, and 2009.19.00 of the Harmonized Tariff Schedule of the United States (HTSUS). These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive. Rather, the written description of the scope of the order is dispositive.

Scope of Changed Circumstances Review

The product subject to this changed circumstances review is ULPOJ, which is concentrated orange juice with a pulp content of two percent or less by weight/volume on an 11.8 degree brix equivalent base. This product is a form of FCOJM and is commonly used in the manufacture of soft drink concentrates.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this changed circumstances review, and to which we have responded, are listed in the Appendix to this notice and addressed in the Issues and Decision Memorandum (Decision Memo), which is adopted by this notice. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room 1117, of the main Department Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/frn/*. The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Changed Circumstances Review

More than 15 percent of the domestic industry has expressed opposition to excluding ULPOJ from the antidumping duty order on OJ from Brazil. As a result, we determine that producers accounting for substantially all of the production of the domestic like product have not expressed a lack of interest in maintaining the order with respect to ULPOJ. Thus, we find that changed circumstances sufficient to warrant revocation in part of the antidumping duty order on OJ from Brazil do not exist. The current requirements for the cash deposit of estimated antidumping duties on the subject merchandise will remain in effect until further notice.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306. Timely written notification of the return/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(b)(1) and 777(i)(1) of the Act and 19 CFR 351.216.

Dated: January 16, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

Appendix—Issue in the Decision Memorandum

Issue: Whether the Department Should Include Growers in its Industry Support Determination.

[FR Doc. E9–1586 Filed 1–26–09; 8:45 am]

BILLING CODE 3510–DS–P

[1] These entities are opposing revocation of the order in part in this changed circumstances review; however, another petitioner, Southern Gardens Citrus Processing Corporation, has not joined these entities in opposing Tropicana's request.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–819]

Certain Pasta From Italy: Notice of Partial Rescission of Twelfth (2007) Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* January 27, 2009.

FOR FURTHER INFORMATION CONTACT: Andrew McAllister or Brandon Farlander, AD/CVD Operations, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1174 and (202) 482–0182, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 24, 1996, the Department of Commerce (''the Department'') published a countervailing duty order on certain pasta from Italy. *See Notice of Countervailing Duty Order and Amended Final Affirmative Countervailing Duty Determination: Certain Pasta (''Pasta'') From Italy,* 61 FR 38543 (July 24, 1996). On July 28, 2008, we received a request for review from F.lli De Cecco di Filippo Fara San Martino S.p.A. (''De Cecco'') of the countervailing duty order on certain pasta from Italy covering the period January 1, 2007, through December 31, 2007. On July 31, 2008, we received a request for review from De Matteis Agroalimentare S.p.A. (''De Matteis''). On July 31, 2008, we received a request for review from New World Pasta Company, American Italian Pasta Company, and Dakota Growers Pasta Company (''petitioners'') for De Matteis.

In accordance with 19 CFR 351.221(c)(1)(i), we published a notice of initiation of the review on August 26, 2008. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 73 FR 50308 (August 26, 2008). On December 22, 2008, De Cecco withdrew its request for review. No other party requested a review for De Cecco.

Scope of the Order

Imports covered by the order are shipments of certain non-egg dry pasta in packages of five pounds four ounces or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastasis, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of the order are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Instituto Mediterraneo Di Certificazione, Bioagricoop S.r.l., QC&I International Services, Ecocert Italia, Consorzio per il Controllo dei Prodotti Biologici, Associazione Italiana per l'Agricoltura Biologica, or Codex S.r.l. In addition, based on publicly available information, the Department has determined that, as of August 4, 2004, imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by Bioagricert S.r.l. are also excluded from this order. *See* Memorandum from Eric B. Greynolds to Melissa G. Skinner, dated August 4, 2004, which is on file in the Department's Central Records Unit (''CRU'') in Room 1117 of the main Department building. In addition, based on publicly available information, the Department has determined that, as of March 13, 2003, imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by Instituto per la Certificazione Etica e Ambientale (ICEA) are also excluded from this order. *See* Memorandum from Audrey Twyman to Susan Kuhbach, dated February 28, 2006, entitled ''Recognition of Instituto per la Certificazione Etica e Ambientale (ICEA) as a Public Authority for Certifying Organic Pasta from Italy'' which is on file in the Department's CRU. The merchandise subject to review is currently classifiable under items 1901.90.90.95 and 1902.19.20 of the *Harmonized Tariff Schedule of the United States* (''*HTSUS*''). Although the *HTSUS* subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Scope Rulings

The Department has issued the following scope rulings to date:

(1) On August 25, 1997, the Department issued a scope ruling that multicolored pasta, imported in kitchen display bottles of decorative glass that are sealed with cork or paraffin and bound with raffia, is excluded from the scope of the antidumping and countervailing duty orders. *See* Memorandum from Edward Easton to Richard Moreland, dated August 25, 1997, which is on file in the CRU.

(2) On July 30, 1998, the Department issued a scope ruling finding that multipacks consisting of six one-pound packages of pasta that are shrink-wrapped into a single package are within the scope of the antidumping and countervailing duty orders. *See* Letter from Susan H. Kuhbach to Barbara P. Sidari, dated July 30, 1998, which is on file in the CRU.

(3) On October 26, 1998, the Department self-initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances is within the scope of the antidumping and countervailing duty orders. On May 24, 1999, we issued a final scope ruling finding that, effective October 26, 1998, pasta in packages weighing or labeled up to (and including) five pounds four ounces is within the scope of the antidumping and countervailing duty orders. *See* Memorandum from John Brinkmann to Richard Moreland, dated May 24, 1999, which is on file in the CRU.

(4) On April 27, 2000, the Department self-initiated an anti-circumvention inquiry to determine whether Pastificio Fratelli Pagani S.p.A.'s importation of pasta in bulk and subsequent repackaging in the United States into packages of five pounds or less constitutes circumvention with respect to the antidumping and countervailing duty orders on pasta from Italy pursuant to section 781(a) of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.225(b). *See Certain Pasta from Italy: Notice of Initiation of Anti-Circumvention Inquiry of the Antidumping and Countervailing Duty Orders,* 65 FR 26179 (May 5, 2000). On September 19, 2003, we published an affirmative finding of the anti-circumvention inquiry. *See Anti-Circumvention Inquiry of the Antidumping and Countervailing Duty Orders on Certain Pasta from Italy: Affirmative Final Determinations of Circumvention of Antidumping and Countervailing Duty Orders,* 68 FR 54888 (September 19, 2003).

Rescission of Review

Section 351.213(d)(1) of the Department's regulations provides that the Department will rescind an administrative review, in part, if the party that requested the review withdraws its request for review within 90 days of the date of publication of the notice of initiation of the requested review, or withdraws its request at a later date if the Department determines that it is reasonable to extend the time limit for withdrawing the request. De Cecco withdrew its request for review on December 22, 2008, which is after the 90-day deadline. Nonetheless, the Department accepts the withdrawal request because it has not yet expended significant resources on the review of De Cecco. Therefore, the Department is rescinding this administrative review with respect to De Cecco. We are continuing to conduct an administrative review with respect to De Matteis.

The Department intends to issue assessment instructions to U.S. Customs and Border Protection (''CBP'') 15 days after publication of this rescission notice. The Department will instruct CBP to assess countervailing duties on all entries from De Cecco between January 1, 2007, and December 31, 2007, at the rates in effect at the time of entry.

This notice serves as a reminder to parties subject to an administrative

protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with section 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: January 21, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–1718 Filed 1–26–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–904]

Certain Activated Carbon From the People's Republic of China: Notice of Initiation and Preliminary Results of Changed Circumstances Review, and Intent To Revoke Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* January 27, 2009.

SUMMARY: On December 15, 2008, the Department of Commerce (''Department'') received a request for a changed circumstances review and a request to revoke in part the antidumping duty order on certain activated carbon from the People's Republic of China with respect to certain parts of fish tank filters which contain no more than 500 grams of activated carbon, or a combination of activated carbon and zeolite, and are fitted to work with specific filters. Petitioners submitted a letter to the Department expressing lack of interest in antidumping duty relief from the imports of certain parts of fish tank filters as described below. Therefore, we are notifying the public of our intent to revoke, in part, the antidumping duty order as it relates to import of certain fish tank filters as described below. The Department invites interested parties to comment on these preliminary results.

FOR FURTHER INFORMATION CONTACT: Catherine Bertrand, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC. 20230; telephone (202) 482–3207.

Background

On April 27, 2007, the Department of Commerce (the ''Department'') published the antidumping duty order on certain activated carbon from the People's Republic of China. *See Notice of Antidumping Duty Order: Certain Activated Carbon from the People's Republic of China*, 72 FR 20988 (April 27, 2007). On December 15, 2008, the Department received a request on behalf of Rolf C. Hagen (USA), Corp. (''Hagen'') for a changed circumstances review and a request to revoke in part the antidumping duty order on certain activated carbon from the People's Republic of China with respect to certain parts of fish tank filters which contain no more than 500 grams of activated carbon, or a combination of activated carbon and zeolite, and fitted to work with specific filters. On December 17, 2008, Petitioners [1], Calgon Carbon Corporation and Norit Americans Inc. (collectively, ''Petitioners''), submitted a response on the record and stated that they agree with Hagen's request and agree with the specific proposed exclusion language from Hagen's December 15, 2008, submission, as described below.

Scope of the Order

The merchandise subject to this order is certain activated carbon. Certain activated carbon is a powdered, granular, or pelletized carbon product obtained by ''activating'' with heat and steam various materials containing carbon, including but not limited to coal (including bituminous, lignite, and anthracite), wood, coconut shells, olive stones, and peat. The thermal and steam treatments remove organic materials and create an internal pore structure in the carbon material. The producer can also use carbon dioxide gas (CO_2) in place of steam in this process. The vast majority of the internal porosity developed during the high temperature steam (or CO_2 gas) activated process is a direct result of oxidation of a portion of the solid carbon atoms in the raw material, converting them into a gaseous form of carbon.

The scope of this order covers all forms of activated carbon that are activated by steam or CO_2, regardless of the raw material, grade, mixture, additives, further washing or post-activation chemical treatment (chemical or water washing, chemical impregnation or other treatment), or product form. Unless specifically excluded, the scope of this order covers all physical forms of certain activated carbon, including powdered activated carbon (''PAC''), granular activated carbon (''GAC''), and pelletized activated carbon.

Excluded from the scope of the order are chemically activated carbons. The carbon-based raw material used in the chemical activation process is treated with a strong chemical agent, including but not limited to phosphoric acid, zinc chloride sulfuric acid or potassium hydroxide, that dehydrates molecules in the raw material, and results in the formation of water that is removed from the raw material by moderate heat treatment. The activated carbon created by chemical activation has internal porosity developed primarily due to the action of the chemical dehydration agent. Chemically activated carbons are typically used to activate raw materials with a lignocellulosic component such as cellulose, including wood, sawdust, paper mill waste and peat.

To the extent that an imported activated carbon product is a blend of steam and chemically activated carbons, products containing 50 percent or more steam (or CO_2 gas) activated carbons are within this scope, and those containing more than 50 percent chemically activated carbons are outside this scope. This exclusion language regarding blended material applies *only* to mixtures of steam and chemically activated carbons.

Also excluded from the scope are reactivated carbons. Reactivated carbons are previously used activated carbons that have had adsorbed materials removed from their pore structure after use through the application of heat, steam and/or chemicals.

Also excluded from the scope is activated carbon cloth. Activated carbon cloth is a woven textile fabric made of or containing activated carbon fibers. It is used in masks and filters and clothing of various types where a woven format is required.

Any activated carbon meeting the physical description of subject merchandise provided above that is not expressly excluded from the scope is included within this scope. The products subject to the order are currently classifiable under the Harmonized Tariff Schedule of the United States (''HTSUS'') subheading 3802.10.00. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

[1] *See* Memorandum to the File: Petitioners' Representation of Domestic Industry (January 6, 2009).

Initiation and Preliminary Results of Changed Circumstances Review, and Intent To Revoke Order in Part

At the request of Hagen, and with agreement by Petitioners, and in accordance with sections 751(d)(1) and 751(b)(1) of the Tariff Act of 1930, as amended (the ''Act'') and 19 CFR 351.216, the Department is initiating a changed circumstances review of certain activated carbon from the People's Republic of China to determine whether partial revocation of the antidumping duty order is warranted with respect to certain parts of fish tank filters which contain no more than 500 grams of activated carbon, or a combination of activated carbon and zeolite, and are fitted to work with specific filters. Section 782(h)(2) of the Act and 19 CFR 351.222(g)(1)(i) provide that the Department may revoke an order (in whole or in part) if it determines that producers accounting for substantially all of the production of the domestic like product have no further interest in the order, in whole or in part. In addition, in the event the Department determines that expedited action is warranted, 19 CFR 351.221(c)(3)(ii) permits the Department to combine the notices of initiation and preliminary results.

In accordance with section 751(b) of the Act, and 19 CFR 351.222(g)(l)(i) and 351.221(c)(3), we are initiating this changed circumstances review and have determined that expedited action is warranted. Based on information from the investigation placed on the record of this review [2], in accordance with 19 CFR 351.222(g)(1)(i), we find Petitioners comprise substantially all of the production of the domestic like product. Petitioners have expressed a lack of interest in the order, in part, with respect to certain fish tank filters. Because this changed circumstances request was filed less than 24 months after the date of publication of notice of the final determination in an investigation, pursuant to 19 CFR 351.216(c), the Department must determine whether good cause exists. We find that the Petitioners' affirmative statement of no interest in the order with respect to certain parts of fish tank filters, which contain no more than 500 grams of activated carbon, or a combination of activated carbon and zeolite, and are fitted to work with specific filters, constitutes good cause for the conduct of this review. Based on the expression of no interest by the Petitioners and absent any objection by any other domestic interested parties, we have preliminarily determined that the domestic producers of the like product have no interest in the continued application of the antidumping duty order on certain activated carbon to the merchandise that is subject to this request. Accordingly, we are notifying the public of our intent to revoke, in part, the antidumping duty order as it relates to imports of the certain parts of fish tank filters, which contain no more than 500 grams of activated carbon, or a combination of activated carbon and zeolite, and are fitted to work with specific filters, as described below. Therefore, we intend to change the scope of the order on certain activated carbon from the People's Republic of China to include the following exclusion:

Also excluded from the scope are molded plastic filter cartridges, woven textile filter pads and filter bags that contain not more than 500 grams of certain activated carbon alone, or a combined total of 500 grams of certain activated carbon and natural zeolite. Combinations of subject activated carbon and other materials are not subject to this exclusion. Molded plastic filter cartridges and woven textile filter pads subject to this exclusion must be packaged marked and ready for retail sales as ready-to-use aquarium filters and filter parts at the time of importation. Zeolite refers to a family of hydrous aluminum silicate minerals, whose molecules enclose cations of sodium, potassium, calcium, strontium or barium, used chiefly as molecular filters and ion-exchange agents. Some of the more common natural mineral zeolites include analcime, chabazite, heulandite, natroliote, phillipsite, and stilbite. Excluded filters cartridges, filter bags and woven filter bags are classified under subheading 8421.99.0040 of the HTSUS.

Public Comment

Interested parties are invited to comment on these preliminary results. Written comments may be submitted no later than 14 days after the date of publication of these preliminary results. Rebuttals to written comments, limited to issues raised in such comments, may be filed no later than 21 days after the date of publication. The Department will issue the final results of this changed circumstances review, which will include the results of its analysis raised in any such written comments, no later than 270 days after the date on which this review was initiated, or within 45 days if all parties agree to our preliminary results. *See* 19 CFR 351.216(e).

If final revocation occurs, we will instruct U.S. Customs and Border Protection to end the suspension of liquidation for the merchandise covered by the revocation on the effective date of the notice of revocation and to release any cash deposit or bond. *See* 19 CFR 351.222(g)(4). The current requirement for a cash deposit of estimated antidumping duties on all subject merchandise will continue unless and until it is modified pursuant to the final results of this changed circumstances review.

This initiation and preliminary results of review and notice are in accordance with sections 751(b) and 777(i) of the Act and 19 CFR 351.216, 351.221, and 351.222.

Dated: January 16, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–1584 Filed 1–26–09; 8:45 am]

BILLING CODE 3510–DS–P

[2] *See* Memorandum to the File: Petitioners' Representation of Domestic Industry (January 6, 2009).

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) 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: United States Patent and Trademark Office (USPTO).

Title: Rules for Patent Maintenance Fees.

Form Number(s): PTO/SB/45/47/65/66.

Agency Approval Number: 0651–0016.

Type of Request: Revision of a currently approved collection.

Burden: 33,426 hours annually.

Number of Respondents: 470,397 responses per year.

Avg. Hours per Response: The USPTO estimates that it will take the public approximately 20 seconds (0.006 hours) to eight hours to complete this information, depending on the form or petition. This includes time to gather the necessary information, prepare the form or petition, and submit the completed request.

Needs and Uses: Under 35 U.S.C. 41 and 37 CFR 1.20(e)–(i) and 1.362–1.378, the USPTO charges fees for maintaining in force all utility patents based on applications filed on or after December 12, 1980. Payment of these maintenance

fees is due at 3½, 7½, and 11½ years after the date the patent was granted. If the USPTO does not receive payment of the appropriate maintenance fee and any applicable surcharge within a grace period of six months following each of the above intervals, the patent will expire and no longer be enforceable. The public uses this collection to submit patent maintenance fee payments, to file petitions regarding delayed or refused payments, and to designate an address to be used for fee-related correspondence.

Affected Public: Individuals or households; businesses or other for-profits; and not-for-profit institutions.

Frequency: On occasion and three times at four-year intervals following the grant of the patent.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Nicholas A. Fraser, e-mail: *Nicholas_A._Fraser@omb.eop.gov*.

Once submitted, the request will be publicly available in electronic format through the Information Collection Review page at *www.reginfo.gov*.

Paper copies can be obtained by:

- *E-mail: Susan.Fawcett@uspto.gov*. Include ''0651–0016 Rules for Patent Maintenance Fees copy request'' in the subject line of the message.
- *Fax:* 571–273–0112, marked to the attention of Susan K. Fawcett.
- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before February 25, 2009 to Nicholas A. Fraser, OMB Desk Officer, via e-mail at *Nicholas_A._Fraser@omb.eop.gov*, or by fax to 202–395–5167, marked to the attention of Nicholas A. Fraser.

Dated: January 15, 2009.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division.

[FR Doc. E9–1617 Filed 1–26–09; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Foreign Overseas Per Diem Rates

AGENCY: DoD, Per Diem, Travel and Transportation Allowance Committee.

ACTION: Notice of Revised Non-Foreign Overseas Per Diem Rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 262. This bulletin lists revisions in the per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. AEA changes announced in Bulletin Number 194 remain in effect. Bulletin Number 262 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

DATES: *Effective Date:* February 1, 2009.

SUPPLEMENTARY INFORMATION: This document gives notice of revisions in per diem rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. It supersedes Civilian Personnel Per Diem Bulletin Number 261. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of revisions in per diem rates to agencies and establishments outside the Department of Defense. For more information or questions about per diem rates, please contact your local travel office. The text of the Bulletin follows:

Dated: January 15, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

Maximum Per Diem Rates for Official Travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government Civilian Employees

The only change in Civilian Bulletin 262 are updates to the rates for Fairbanks, Eielson AFB, Ft. Wainwright, Murphy Dome, Nome and Tanana Alaska.

Locality	Maximum lodging amount	M&IE rate	Maximum per diem rate	Effective date
	(A) +	(B) =	(C)	
ALASKA:				
ADAK	120	79	199	07/01/2003
ANCHORAGE [INCL NAV RES].				
05/01–09/15	181	97	278	04/01/2007
09/16–04/30	99	89	188	04/01/2007
BARROW	159	95	254	05/01/2002
BETHEL	139	87	226	01/01/2009
BETTLES	135	62	197	10/01/2004
CLEAR AB	90	82	172	10/01/2006
COLDFOOT	165	70	235	10/01/2006
COPPER CENTER.				
05/01–09/30	125	84	209	01/01/2009
10/01–04/30	95	81	176	01/01/2009
CORDOVA.				
05/01–09/30	95	78	173	06/01/2007
10/01–04/30	85	77	162	06/01/2007
CRAIG.				
05/16–09/30	236	80	316	07/01/2008
10/01–05/15	151	71	222	07/01/2008
DELTA JUNCTION	135	80	215	07/01/2008
DENALI NATIONAL PARK.				
06/01–08/31	135	80	215	01/01/2009

Locality	Maximum lodging amount (A)	+	M&IE rate (B)	=	Maximum per diem rate (C)	Effective date
09/01–05/31	79		74		153	01/01/2009
DILLINGHAM.						
04/15–10/15	185		83		268	01/01/2009
10/16–04/14	169		82		251	01/01/2009
DUTCH HARBOR-UNALASKA	121		86		207	01/01/2009
EARECKSON AIR STATION	90		77		167	06/01/2007
EIELSON AFB.						
05/01–09/15	175		88		263	02/01/2009
09/16–04/30	75		79		154	02/01/2009
ELMENDORF AFB.						
05/01–09/15	181		97		278	04/01/2007
09/16–04/30	99		89		188	04/01/2007
FAIRBANKS.						
05/01–09/15	175		88		263	02/01/2009
09/16–04/30	75		79		154	02/01/2009
FOOTLOOSE	175		18		193	06/01/2002
FT. GREELY	135		80		215	07/01/2008
FT. RICHARDSON.						
05/01–09/15	181		97		278	04/01/2007
09/16–04/30	99		89		188	04/01/2007
FT. WAINWRIGHT.						
05/01–09/15	175		88		263	02/01/2009
09/16–04/30	75		79		154	02/01/2009
GLENNALLEN.						
05/01–09/30	125		84		209	01/01/2009
10/01–04/30	95		81		176	01/01/2009
HAINES	109		75		184	01/01/2009
HEALY.						
06/01–08/31	135		80		215	01/01/2009
09/01–05/31	79		74		153	01/01/2009
HOMER.						
05/15–09/15	167		85		252	01/01/2009
09/16–05/14	79		78		157	01/01/2009
JUNEAU.						
05/01–09/30	149		85		234	01/01/2009
10/01–04/30	109		80		189	01/01/2009
KAKTOVIK	165		86		251	05/01/2002
KAVIK CAMP	150		69		219	05/01/2002
KENAI-SOLDOTNA.						
05/01–08/31	129		92		221	04/01/2006
09/01–04/30	79		87		166	04/01/2006
KENNICOTT	259		94		353	01/01/2009
KETCHIKAN.						
05/01–09/30	140		83		223	01/01/2009
10/01–04/30	98		78		176	01/01/2009
KING SALMON.						
05/01–10/01	225		91		316	05/01/2002
10/02–04/30	125		81		206	05/01/2002
KLAWOCK.						
05/16–09/30	236		80		316	07/01/2008
10/01–05/15	151		71		222	07/01/2008
KODIAK.						
05/01–09/30	136		85		221	01/01/2009
10/01–04/30	99		82		181	01/01/2009
KOTZEBUE	179		93		272	07/01/2008
KULIS AGS.						
05/01–09/15	181		97		278	04/01/2007
09/16–04/30	99		89		188	04/01/2007
MCCARTHY	259		94		353	01/01/2009
MCGRATH	165		69		234	10/01/2006
MURPHY DOME.						
05/01–09/15	175		88		263	02/01/2009
09/16–04/30	75		79		154	02/01/2009
NOME	135		97		232	02/01/2009
NUIQSUT	180		53		233	05/01/2002
PETERSBURG	100		71		171	07/01/2008
PORT ALSWORTH	135		88		223	05/01/2002
SELDOVIA.						
05/15–09/15	167		85		252	01/01/2009

Locality	Maximum lodging amount (A)	+	M&IE rate (B)	=	Maximum per diem rate (C)	Effective date
09/16–05/14	79		78		157	01/01/2009
SEWARD.						
05/01–09/30	174		85		259	01/01/2009
10/01–04/30	99		77		176	01/01/2009
SITKA-MT. EDGECUMBE.						
05/01–09/30	119		80		199	01/01/2009
10/01–04/30	99		77		176	01/01/2009
SKAGWAY.						
05/01–09/30	140		83		223	01/01/2009
10/01–04/30	98		78		176	01/01/2009
SLANA.						
05/01–09/30	139		55		194	02/01/2005
10/01–04/30	99		55		154	02/01/2005
SPRUCE CAPE.						
05/01–09/30	136		85		221	01/01/2009
10/01–04/30	99		82		181	01/01/2009
ST. GEORGE	129		55		184	06/01/2004
TALKEETNA	100		89		189	07/01/2002
TANANA	135		97		232	02/01/2009
TOGIAK	100		39		139	07/01/2002
TOK.						
05/01–09/30	109		72		181	01/01/2009
10/01–04/30	99		71		170	01/01/2009
UMIAT	350		35		385	10/01/2006
VALDEZ.						
05/01–09/30	159		88		247	01/01/2009
10/01–04/30	115		84		199	01/01/2009
WASILLA.						
05/01–09/30	151		89		240	01/01/2009
10/01–04/30	96		83		179	01/01/2009
WRANGELL.						
05/01–09/30	140		83		223	01/01/2009
10/01–04/30	98		78		176	01/01/2009
YAKUTAT	105		76		181	01/01/2009
[OTHER]	100		71		171	01/01/2009
AMERICAN SAMOA:						
AMERICAN SAMOA	122		73		195	12/01/2005
GUAM:						
GUAM (INCL ALL MIL INSTAL)	135		80		215	07/01/2008
HAWAII:						
CAMP H M SMITH	177		106		283	05/01/2008
EASTPAC NAVAL.						
COMP TELE AREA	177		106		283	05/01/2008
FT. DERUSSEY	177		106		283	05/01/2008
FT. SHAFTER	177		106		283	05/01/2008
HICKAM AFB	177		106		283	05/01/2008
HONOLULU	177		106		283	05/01/2008
ISLE OF HAWAII:						
HILO	112		104		216	06/01/2007
ISLE OF HAWAII:						
OTHER	180		104		284	06/01/2007
ISLE OF KAUAI	198		109		307	06/01/2007
ISLE OF MAUI	160		101		261	05/01/2008
ISLE OF OAHU	177		106		283	05/01/2008
KEKAHA PACIFIC						
MISSILE RANGE FAC	198		109		307	06/01/2007
KILAUEA MILITARY CAMP	112		104		216	06/01/2007
LANAI	269		124		393	06/01/2008
LUALUALEI NAVAL MAGAZINE	177		106		283	05/01/2008
MCB HAWAII	177		106		283	05/01/2008
MOLOKAI	139		94		233	06/01/2008
NAS BARBERS POINT	177		106		283	05/01/2008
PEARL HARBOR	177		106		283	05/01/2008
SCHOFIELD BARRACKS	177		106		283	05/01/2008
WHEELER ARMY AIRFIELD	177		106		283	05/01/2008
[OTHER]	112		104		216	05/01/2008
MIDWAY ISLANDS:						
MIDWAY ISLANDS						
INCL ALL MILITARY	125		45		170	07/01/2008

Locality	Maximum lodging amount (A)	+	M&IE rate (B)	=	Maximum per diem rate (C)	Effective date
NORTHERN MARIANA ISLANDS:						
ROTA	129		91		220	05/01/2006
SAIPAN	121		98		219	06/01/2007
TINIAN	138		71		209	07/01/2008
[OTHER]	55		72		127	04/01/2000
PUERTO RICO:						
AGUADILLA	75		64		139	11/01/2007
BAYAMON	195		82		277	10/01/2007
CAROLINA	195		82		277	10/01/2007
CEIBA.						
05/01–11/30	155		57		212	08/01/2006
12/01–04/30	185		57		242	08/01/2006
FAJARDO [INCL ROOSEVELT RDS NAVS].						
05/01–11/30	155		57		212	08/01/2006
12/01–04/30	185		57		242	08/01/2006
FT. BUCHANAN.						
[INCL GSA SVC CTR]	195		82		277	10/01/2007
HUMACAO.						
05/01–11/30	155		57		212	08/01/2006
12/01–04/30	185		57		242	08/01/2006
LUIS MUNOZ MARIN IAP AGS	195		82		277	10/01/2007
LUQUILLO.						
05/01–11/30	155		57		212	08/01/2006
12/01–04/30	185		57		242	08/01/2006
MAYAGUEZ	109		77		186	11/01/2007
PONCE	139		83		222	11/01/2007
SABANA SECA.						
[INCL ALL MILITARY]	195		82		277	10/01/2007
SAN JUAN & NAV RES STA	195		82		277	10/01/2007
[OTHER]	62		57		119	01/01/2000
VIRGIN ISLANDS (U.S.):						
ST. CROIX.						
04/15–12/14	135		92		227	05/01/2006
12/15–04/14	187		97		284	05/01/2006
ST. JOHN.						
04/15–12/14	163		98		261	05/01/2006
12/15–04/14	220		104		324	05/01/2006
ST. THOMAS.						
04/15–12/14	240		105		345	05/01/2006
12/15–04/14	299		111		410	05/01/2006
WAKE ISLAND:						
WAKE ISLAND	152		12		164	07/01/2008

[FR Doc. E9–1430 Filed 1–26–09; 8:45 am]
BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Notice of Intent To Prepare an Environmental Impact Statement/ Environmental Impact Report for the West Sacramento Levee Improvements Program, West Sacramento, CA

AGENCY: Department of the Army, U.S. Army Corps of Engineers; DoD.

ACTION: Notice of intent.

SUMMARY: The action being taken is the preparation of a programmatic and project-specific Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the West Sacramento Levee Improvements Program (WSLIP) in Yolo County and Solano County, CA. Under 33 U.S.C. 408, the Chief of Engineers grants permission to alter an existing flood control structure if it is not injurious to the public interest and does not impair the usefulness of such work. Under Section 404 of the Clean Water Act, the District Engineer permits the discharge of dredged or fill material into waters of the United States if the discharge meets the requirements for the Environmental Protection Agency's 404(b)(1) guidelines and is not contrary to the public interest. The U.S Army Corps of Engineers (Corps) will consider granting both 408 permission to the Central Valley Flood Protection Board (CVFPB) and 404 permit to West Sacramento Area Flood Control Agency (WSAFCA) for their work on the WSLIP. The CVFPB and WSAFCA are requesting this permission and permit in order to reduce flood risk the City of West Sacramento by meeting the following objectives for the project:

- Achieve a minimum of a 200-year level (an event that has a 0.5% chance of occurring in any given year) of flood protection for the entire City by improving approximately 50 miles of levees that protect it;
- Construct levee improvements as soon as possible to reduce flood risk as quickly as possible; and,
- Provide recreational and open space elements for the City that are compatible with flood improvement actions.

DATES: A public scoping meeting will be held on February 12, 2009 at 3:30 p.m. and 6:30 p.m. at the West Sacramento City Hall (see **ADDRESSES**). Send written

comments by February 26, 2009 to (see **ADDRESSES**).

ADDRESSES: Public Scoping meeting, West Sacramento City Hall, 1110 West Capitol Avenue, West Sacramento, CA. Send written comments and suggestions concerning this study to Mr. Brian Buttazoni, U.S. Army Corps of Engineers, Sacramento District, Attn: Planning Division (CESPK–PD–RA), 1325 J Street, Sacramento, CA 95814 or to Mr. John Powderly, City of West Sacramento, 1110 West Capitol, Sacramento, CA 95691. Requests to be placed on the mailing list should also be sent to this address.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and EIS/EIR should be addressed to Brian Buttazoni at (916) 557–6956, e-mail *Brian.L.Buttazoni@usace.army.mil* or John Powderly at (916) 617–4674, e-mail *johnp@cityofwestsacramento.org* or by mail (see **ADDRESSES**).

SUPPLEMENTARY INFORMATION:

1. Proposed Action. The Corps and WSAFCA are preparing an EIS/EIR to analyze the impacts of the work proposed in WSLIP. The Corps will serve as the lead agency under the provisions of NEPA and WSAFCA will serve as the lead agency under the provisions of the California Environmental Quality Act (CEQA).

Several studies have been conducted since 1989 by the Corps, California Department of Water Resources (DWR), and WSAFCA to evaluate the condition of the various levees protecting the City of West Sacramento. These studies have indicated that the levee system is deficient and that the consequences of levee failure from a major flood event would be significant.

Since the early 1990s, WSAFCA and its partners have undertaken several levee repair projects to address urgent levee deficiencies that pose serious flood risk. Many of these repair projects were the result of deficiencies noted during routine operations and maintenance inspections and repairs were performed on a case-by-case basis.

In July 2006, in response to new Corps design standards and the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Map modernization program, the City, as part of WSAFCA, determined that it was necessary to perform a comprehensive evaluation of all of the levees protecting the City to more definitely determine its current level of flood protection, determine the magnitude and severity of any deficiencies, and develop recommended strategies for improvement. For this most recent comprehensive evaluation, the levees were evaluated according to the latest Corps criteria for stability, seepage, erosion, geometry, and levee height. Data collected from the evaluation showed that much of the existing system does not provide protection from a 100-year flood event (an event having a 1% chance of occurring in any given year), the commonly accepted minimum level of flood protection.

WSAFCA has identified the primary deficiencies of the levee system, which include: Inadequate levee height, through-seepage and under-seepage, slope stability, seismic vulnerability, erosion, and non-compliant vegetation. The study area of the WSLIP includes the entire WSAFCA boundaries (over 50 miles of levees) which encompasses portions of the Sacramento River, the Yolo Bypass, the Sacramento Bypass, and the Sacramento Deep Water Ship Channel (DWSC). The study area has been subdivided into the following sub-reaches: Sacramento River Levee North, Sacramento River Levee South, Port North Levee, Port South Levee, South Cross Levee, Deep Water Ship Channel Levee East, Deep Water Ship Channel Levee West, Yolo Bypass Levee, and Sacramento Bypass Levee.

2. Alternatives. The EIS/EIR will address an array of flood control improvement alternatives at the *program level.* Alternatives analyzed during the investigation will include a combination of one or more flood protection measures. These measures include raising the existing levee; constructing an adjacent setback levee, cutoff walls, seepage berms, stability berms, internal drains, relief wells, or sheet-pile walls; slope flattening; placing stone protection; and vegetation removal.

Measures may be applied individually or combined to address deficiencies. For example, a seepage deficiency may be addressed by utilizing a seepage berm or a relief well, or a combination of both. Because each reach has a specific set of levee deficiencies and each levee deficiency has a number of different measures that could be utilized to improve the levee, WSAFCA is proposing to develop a range of alternatives on a reach-by-reach basis rather than basin-wide to provide greater flexibility. Constraints that would be considered during the development of alternatives for each reach could include land use (i.e., development immediately adjacent to the levee), available area for various types of construction activities necessary to construct improvements, and other environmental effects. Future actions analyzed at the program level may or may not require additional analysis under a separate tiered environmental document(s). A No-Action Alternative will be analyzed at the program level.

Three sites have been identified that would be analyzed at the *project level* and included within the EIS/EIR. Also known as ''Early Implementation Projects,'' these sites are known as CHP Academy, The Rivers, and the Sac Bank Extension Site. Analysis for the sites considered at the project level will include the analysis of No Action, a Preferred Alternative, and any other alternatives considered.

- *CHP Academy Site.* This site includes 4,500 feet of the Sacramento Bypass Levee and the northern 2,000 feet of the Sacramento River West North Levee, for a total length of 6,500 feet. Deficiencies include through-seepage and geometry. Under-seepage and stability deficiencies are also present in smaller pockets within this reach.
- *The Rivers Site.* This site is located just north of the confluence of the Sacramento and American Rivers, incorporating part of The Rivers residential development. The site extends from station 70+00 to station 115+00 on the Sacramento River, for a total length of approximately 4,500 feet. The site exhibits geometry, stability, and under-seepage deficiencies.
- *Sac Bank Extension Site.* This site is located just south of the barge canal on the Sacramento River and is the northern most end of the Sacramento River West South Levee. The site extends from station 270+00 to 332+50 for a total length of 6,250 feet. The site generally exhibits under-seepage, stability, and geometry deficiencies. There are a few locations which have erosion and levee height deficiencies as well. This site adjoins, complements, and extends a separate Corps project under the Sacramento River Bank Protection Project.

3. Scoping Process. *a.* Public scoping meetings will be held on February 12, 2009 to present information and to receive comments from the public. The Corps, with WSAFCA, has initiated a process to involve concerned individuals, and local, State, and Federal agencies.

b. Significant issues to be analyzed in depth in the EIS/EIR include effects on aesthetics, biological resources, hazards and hazardous materials, mineral resources, public services, utilities/service systems, agricultural resources, cultural resources, hydrology/water quality, noise, recreation, air quality, geology/soils, land use/planning, population/housing, transportation/traffic, and cumulative effects of related projects in the study area.

c. The Corps will consult with the State Historic Preservation Officer to comply with the National Historic Preservation Act, the U.S. Fish and Wildlife Service (FWS) and National Oceanic and Atmospheric Administration Fisheries Service to comply with the Endangered Species Act and the FWS to provide a Fish and Wildlife Coordination Act Report as an appendix to the EIS/EIR. Coordination will also be carried out with Native American and tribal groups. Consultation will be carried out on the three project level sites analyzed in the document. Those reaches considered at the program level would be fully analyzed in the future under separate tiered environmental document(s) and consultation would be carried out at that time.

d. A 45-day public review period will be provided for individuals and agencies to review and comment on the draft EIS/EIR. All interested parties are encouraged to respond to this notice and provide a current address if they wish to be notified of the draft EIS/EIR circulation.

4. Availability. The draft EIS/EIR is anticipated to be available for public review and comment in mid 2009.

Dated: January 13, 2009.

Thomas C. Chapman,

COL, EN Commanding.

[FR Doc. E9–1678 Filed 1–26–09; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 30, 2009.

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 Leader, 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: January 22, 2009.

Angela C. Arrington,

Leader, Information Collections Clearance Division, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Revision of a currently approved collection.

Title: National Evaluation of the Comprehensive Technical Assistance Centers.

Frequency: One time.

Affected Public: Businesses or other for-profit; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 130.

Burden Hours: 1,933.

Abstract: This is the third of three clearance requests submitted to OMB for the National Evaluation of the Comprehensive Technical Assistance Centers (''Centers''). This submission is necessitated because the National Center for Education Evaluation and Regional Assistance (NCEE), a division of the Institute for Education Sciences, U.S. Department of Education (ED), exercised an Option within the Base Contract in 2008 to conduct Case Studies of Comprehensive Center Technical Assistance. The Case Studies will focus on the extent to which such assistance has resulted in enhanced State Education Agency (SEA) capacity to implement key No Child Left Behind Act (NCLB) provisions.

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 3934. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–1703 Filed 1–26–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Ultra-Deepwater and Unconventional Natural Gas and Other Petroleum Resources Research and Development Program 2009 Annual Plan

AGENCY: Office of Fossil Energy, Department of Energy (DOE).

ACTION: Notice of Report Availability.

SUMMARY: The Office of Fossil Energy announces the availability of the *2009 Annual Plan* for the Ultra-Deepwater and Unconventional Natural Gas and Other Petroleum Resources Research and Development Program on the DOE Web site at *http://management.energy.gov/FOIA/1480.htm or in print form* (see **CONTACT** below). The *2009 Annual Plan* is in compliance with the *Energy Policy Act of 2005, Subtitle J, Section 999B(e)(3),* which requires the publication of this plan and all written comments in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Elena Melchert, U.S. Department of Energy, Office of Oil and Natural Gas, Mail Stop FE–30, 1000 Independence Avenue, SW., Washington, DC 20585 or phone: 202–586–5600 or e-mail to *UltraDeepwater@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: Executive Summary [excerpted from the *2009 Annual Plan* p. 3].

This document is the *2009 Annual Plan* for the Ultra-Deepwater and Unconventional Natural Gas and Other Petroleum Resources Research and Development Program established pursuant to Title IX, Subtitle J (Subtitle J) of the Energy Policy Act of 2005 (EPAct). Subtitle J is reproduced in Appendix A to the 2009 Annual Plan.

As required by Subtitle J, the Department of Energy (DOE) contracted with a consortium (Program Consortium) to administer three program elements identified in EPAct: Ultra-deepwater architecture and technology, unconventional natural gas and other petroleum resources exploration and production technology, and technology challenges of small producers.

A fourth program element of complementary research identified in EPAct is being performed by the National Energy Technology Laboratory (NETL). NETL is also tasked with management of the consortium contract, and review and oversight of the Program Consortium.

In 2006, NETL awarded a contract to the Research Partnership to Secure Energy for America (RPSEA) to function as the Program Consortium.

The 2007 Annual Plan, the first annual plan, resulted in a total of 15 solicitations from which 43 projects were selected.

In August 2008, the 2008 Annual Plan was transmitted to Congress and published in the **Federal Register**. Implementation will include a total of 13 solicitations that are expected to be issued by the Program Consortium in late fall/early winter 2008, with selections anticipated in early 2009.

As further required by Subtitle J, in September 2008, two Federal advisory committees, the Ultra-Deepwater Advisory Committee and the Unconventional Resources Technology Advisory Committee, began their respective reviews of the draft 2009 Annual Plan. In October 2008, the two advisory committees provided their recommendations.

Section 999B(e)(3) of EPAct requires DOE to publish all written comments on the annual plan. Accordingly, the Program Consortium's final 2009 draft Annual Plan is included here as Appendix B and the comments and recommendations provided by the advisory committees are included here as Appendix C. No other written comments were received.

The 2009 Annual Plan provides a comprehensive outline of the Program Consortium's research activities planned for 2009. The primary focus of these activities is to fill in any technology gaps not addressed by the projects and solicitations to date. A highlight of this year's plan is the attention that will be given to technology transfer.

Technology transfer is an important focus of the program. Section 999C(d) of EPAct requires 2.5% of the amount of each award to be designated for technology transfer activities. The Federal advisory committees recommended that more information on technology transfer be included in future annual plans. In response, the 2009 Annual Plan includes the structure for the overall technology transfer program.

Section 999 H(a) of EPAct provides that the Ultra-Deepwater and Unconventional Natural Gas and Other Petroleum Research Fund be funded at $50-million-per-year, with funds generated from Federal lease royalties, rents, and bonuses paid by oil and gas companies. Seventy-five percent of these funds are obligated to the Program Consortium's contract to execute three program elements. After allocations for program management by NETL and program administration by the Program Consortium, the amount to be invested in research activities by the Program Consortium totals $31.88 million per year.

Under the Stage/Gate approach applied to prior year activities, all Program Consortium administered projects will be fully funded to the completion of the appropriate decision point identified in each contract, which may include multiple stages. If a decision is made to move to the next stage or decision point or to gather additional data, additional funding will be provided from available funds.

The NETL Strategic Center for Natural Gas and Oil is responsible for management of the consortium contract, and review and oversight of the Program Consortium. Complementary R&D is being carried out by NETL's Office of Research and Development. Planning and analysis related to the program, including benefits assessment and technology impacts analysis, is being carried out by NETL's Office of Systems, Analysis, and Planning.

Section 999F of EPAct contains a general sunset provision for Title IX, Subtitle J, of September 30, 2014.

Issued in Washington, DC, on January 9, 2009.

Guido DeHoratiis,

Acting Deputy Assistant Secretary, Office of Oil and Natural Gas, Office of Fossil Energy.

[FR Doc. E9–1689 Filed 1–26–09; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2008–0926; FRL–8767–8]

Board of Scientific Counselors, Science and Technology for Sustainability Mid-Cycle Subcommittee Meetings—Winter 2009

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, the Environmental Protection Agency, Office of Research and Development (ORD), gives notice of a meeting of the Board of Scientific Counselors (BOSC) Science and Technology for Sustainability Subcommittee.

DATES: The first meeting (teleconference call) will be held on Thursday, February 12, 2009, from 8 p.m. to 10 p.m. Eastern Standard Time (EST). The second meeting (face-to-face) will be held on Thursday, March 12, 2009, from 9 a.m. to 4 p.m. EST. Meetings may adjourn early if all business is finished. Requests for the draft agenda or for making oral presentations at the meetings will be accepted up to one business day before the meeting.

ADDRESSES: Participation in the conference call will be by teleconference only—meeting rooms will not be used. Members of the public may obtain the call-in number and access code for the call from Greg Susanke, whose contact information is listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice. The face-to-face meeting will be held at the EPA Building—One Potomac Yard, 2777 S. Crystal Drive, Arlington, Virginia, 22202. The meeting is in the Fourth Floor Conference Center North, room N–4830. Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2008–0926, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* Send comments by electronic mail (e-mail) to: *ORD.Docket@epa.gov*, Attention Docket ID No. EPA–HQ–ORD–2008–0926.

• *Fax:* Fax comments to: (202) 566–0224, Attention Docket ID No. EPA–HQ–ORD–2008–0926.

• *Mail:* Send comments by mail to: Board of Scientific Counselors, Science and Technology for Sustainability Mid-Cycle Subcommittee Meetings—Winter 2009 Docket, *Mailcode:* 28221T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. EPA–HQ–ORD–2008–0926.

• *Hand Delivery or Courier.* Deliver comments to: EPA Docket Center (EPA/DC), Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID No. EPA–HQ–ORD–2008–0926. Note: this is not a mailing address. 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–ORD–2008–0926. 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.*

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 Board of Scientific Counselors, Science and Technology for Sustainability Mid-Cycle Subcommittee Meetings—Winter 2009 Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the ORD Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: The Designated Federal Officer via mail at: Greg Susanke, Mail Drop 8104–R, Office of Science Policy, Office of Research and Development, Environmental Protection Agency, 1300 Pennsylvania Ave., NW., Washington, DC 20460; via phone/voice mail at: (202) 564–9945; via fax at: (202) 565–2911; or via e-mail at: *susanke.greg@epa.gov.*

SUPPLEMENTARY INFORMATION:

General Information

The meetings are open to the public. Any member of the public interested in receiving a draft BOSC agenda or making a presentation at the meeting may contact Greg Susanke, the Designated Federal Officer, via any of the contact methods listed in the **FOR FURTHER INFORMATION CONTACT** section above. In general, each individual making an oral presentation will be limited to a total of three minutes.

EPA ORD is conducting an independent expert review through the BOSC, to evaluate the progress made by the Science and Technology for Sustainability Research Program towards addressing the recommendations that resulted from its initial program review in April 2007; and to evaluate and obtain advice on key future directions for the research program which have been developed and other potential areas that could be considered. Proposed agenda items for the meetings include, but are not limited to: *Teleconference:* objectives of the review; an overview of ORD's Science and Technology for Sustainability Research Program; a summary of major changes in the research program since 2007; *Face-to-face meeting:* ORD progress in response to recommendations from the previous BOSC program review and other activities; subcommittee discussions.

Information on Services for Individuals with Disabilities: For information on access or services for individuals with disabilities, please contact Greg Susanke at (202) 564–9945 or *susanke.greg@epa.gov.* To request accommodation of a disability, please contact Greg Susanke, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: January 15, 2009.

Fred Hauchman,

Director, Office of Science Policy.

[FR Doc. E9–1701 Filed 1–26–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8768–4]

EPA Office of Children's Health Protection and Environmental Education Staff Office; Notice of Public Meetings for the National Environmental Education Advisory Council

AGENCY: Environmental Protection Agency.

ACTION: Notice of meetings.

SUMMARY: The U.S. Environmental Protection Agency (EPA or Agency) Office of Children's Health Protection and Environmental Education Office hereby gives notice that the National Environmental Education Advisory Council will hold public meetings by conference call on the 2nd Wednesday of each month, beginning with February 11, 2009 from 12 p.m. to 1 p.m. All times noted are eastern time. The purpose of these meetings is to provide the Council with the opportunity to advise the Environmental Education Division on its implementation of the National Environmental Protection Act of 1990. Requests for the draft agenda will be accepted up to 1 business day before the meeting.

DATES: This notice is applicable for the following dates:

- February 11, 2009.
- March 11, 2009.
- April 8, 2009.
- May 13, 2009.
- June 10, 2009.
- July 8, 2009.

SUPPLEMENTARY INFORMATION: Participation in the conference calls will be by teleconference only—meeting rooms will not be used. Members of the public may obtain the call-in number

and access code for the call from Ginger Potter, the Designated Federal Officer, whose contact information is listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice. Any member of the public interested in receiving a draft meeting agenda may contact Ginger Potter via any of the contact methods listed in the **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: For information regarding this Notice, please contact Ms. Ginger Potter, Designated Federal Officer (DFO), EPA National Environmental Education Advisory Council, at *potter.ginger@epa.gov* or (202) 564–0453. General information concerning NEEAC can be found on the EPA Web site at: *http://www.epa.gov/enviroed.* For information on access or services for individuals with disabilities, please contact Ginger Potter as directed above. To request accommodation of a disability, please contact Ginger Potter, preferable at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: January 15, 2009.

Ginger Potter,

Designated Federal Officer.

[FR Doc. E9–1700 Filed 1–26–09; 8:45 am]

BILLING CODE 6560–50–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 the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10 a.m. on Tuesday, January 27, 2009, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' meetings.

Discussion Agenda:

Memorandum and resolution re: Proposed Rule for Interest Rate Restrictions for Institutions that are Less than Well-Capitalized.

Memorandum and resolution re: Final Rule on Processing Deposit Accounts in the Event of an Insured Depository Institution Failure.

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.

This Board meeting will be Webcast live via the Internet and subsequently made available on-demand approximately one week after the event. Visit *http://www.vodium.com/goto/fdic/boardmeetings.asp* to view the event. If you need any technical assistance, please visit our Video Help page at: *http://www.fdic.gov/video.html.*

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (703) 562–6067 (Voice or TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–7043.

Dated: January 22, 2009.

Federal Deposit Insurance Corporation

Robert E. Feldman,

Executive Secretary.

[FR Doc. E9–1707 Filed 1–26–09; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

AGENCY: Federal Election Commission.

DATE AND TIME: Tuesday, January 27, 2009, at 10 a.m.

Wednesday, January 28, 2009, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: These meetings will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. E9–1530 Filed 1–26–09; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL MARITIME COMMISSION

Meeting; Sunshine Act

AGENCY HOLDING THE MEETING: Federal Maritime Commission

TIME AND DATE: January 28, 2009—11 a.m.

PLACE: 800 North Capitol Street, NW., First Floor Hearing Room, Washington, DC.

STATUS: A portion of the meeting will be in Open Session and the remainder of the meeting will be in Closed Session.

MATTERS TO BE CONSIDERED:

Open Session

1. 2008 Funding for Purchase and Installation of Media Equipment for Commission Offices.
2. Docket No. 02–15 Passenger Vessel Financial Responsibility—Request of Commissioner Brennan.

Closed Session

1. FMC Agreement No. 011223–043: Transpacific Stabilization Agreement.
2. Internal Administrative Practices and Personnel Matters.

CONTACT PERSON FOR MORE INFORMATION: Karen V. Gregory, Secretary, (202) 523–5725.

Karen V. Gregory,

Secretary.

[FR Doc. E9–1755 Filed 1–23–09; 11:15 am]

BILLING CODE 6730–01–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 February 9, 2009.

A. Federal Reserve Bank of Atlanta (Steve Foley, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. David Weir Wood, II, Laura Halsey Wood, John Halsey Wood, David Weir Wood, II, Sidney Wood Clap, Katherine Wood Hamilton, all of Birmingham, Alabama, and Susan Soule Wood, Pensacola, Florida; to acquire additional shares of Capital South Bancorp, and its subsidiary CapitalSouth Bank, both of Birmingham, Alabama.

2. Harold B. Dunn, Birmingham, Alabama, Harold Crockett Dunn, Salinas, California, and Rebecca Dunn Bryant, Fairhope, Alabama; to acquire additional voting shares of CapitalSouth Bancorp, and its subsidiary, CapitalSouth Bank, both of Birmingham, Alabama.

B. Federal Reserve Bank of Kansas City (Todd Offerbacker, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Matthew A. Michaelis, New York, New York, and Amy L. Madsen, Wichita, Kansas, as proposed trustees of the M.D. Michaelis Trust F, the Paula Sue Michaelis Trust F, the Matthew Michaelis Trust F, the Amy Loflin Trust F, and the Laura Haunschild Trust F, all dated October 27, 2003, Wichita, Kansas; to acquire voting shares of Emprise Financial Corporation, and thereby acquire shares of Emprise Bank, both in Wichita, Kansas.

Board of Governors of the Federal Reserve System, January 22, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–1697 Filed 1–26–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of December 15 and 16, 2008

In accordance with § 271.25 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on December 15 and 16, 2008.[1]

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. To further its long–run objectives, the Committee seeks conditions in reserve markets consistent with federal funds trading in a range of 0 to ¼ percent. The Committee directs the Desk to purchase GSE debt and agency–guaranteed MBS during the intermeeting period with the aim of providing support to the mortgage and housing markets. The timing and pace of these purchases should depend on conditions in the markets for such securities and on a broader assessment of conditions in primary mortgage markets and the housing sector. By the end of the second quarter of next year, the Desk is expected to purchase up to $100 billion in housing–related GSE debt and up to $500 billion in agency–guaranteed MBS. The System Open Market Account Manager and the Secretary will keep the Committee informed of ongoing developments regarding the System's balance sheet that could affect the attainment over time of the Committee's objectives of maximum employment and price stability.

By order of the Federal Open Market Committee, January 14, 2009.

Brian F. Madigan,

Secretary, Federal Open Market Committee.

[FR Doc. E9–1603 Filed 1–26–09; 8:45 am]

BILLING CODE 6210–01–S

[1] Copies of the Minutes of the Federal Open Market Committee at its meeting held on December 15 and 16, 2008, which includes the domestic policy directive issued at the meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

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 February 20, 2009.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) P.O. Box 55882, Boston, Massachusetts 02106-2204:

1. Independent Bank Corp., Rockland, Massachusetts; to merge with Benjamin Franklin Bancorp, Inc., and thereby acquire its subsidiary bank, Benjamin Franklin Bank, both of Franklin, Massachusetts.

B. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Live Oak Bancshares, Inc., Wilmington, North Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Live Oak Banking Company, Wilmington, North Carolina.

C. Federal Reserve Bank of Kansas City (Todd Offerbacker, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Manhattan Banking Corporation, Manhattan, Kansas; to acquire 5.4 percent of the voting shares of Sonoran Bank, National Association, Phoenix Arizona.

2. Manhattan Banking Corporation, Manhattan, Kansas; to retain 5.1 percent of the voting shares of BOTS, Inc., and thereby retain shares of Vision Bank, both of Topeka Kansas.

Board of Governors of the Federal Reserve System, January 22, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–1698 Filed 1–26–09; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency Information Collection Request; 30-Day Public Comment Request, Grants

AGENCY: Office of the Secretary, HHS.

Agency Information Collection Request; 30-Day Public Comment Request, Grants.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is

publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden. To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be received within 30 days of this notice directly to the OS OMB Desk Officer all comments must be faxed to OMB at 202–395–6974.

Proposed Project: SF–424 Grants Application Form—OMB No. 4040–0004—Revision—Grants.gov.

The SF–424 form is an OMB approved collection (4040–0004). Proposed revisions of the SF-424 include global changes created by the Federal Funding Accountability and Transparency Act (Transparency Act). The Transparency Act was signed into law on September 26, 2006 (Pub. L. 109–282). The legislation requires the Office of Management and Budget (OMB) to establish a publicly available, online database containing information about entities that are awarded federal grants, loans, and contracts. The revised form will assist agencies in collecting some of the required data elements for the database through the SF–424 grant applications. This form will be utilized by up to 26 federal grant making agencies.

The SF–424 form revisions incorporate standard data elements required by the Transparency Act such as a nine-digit zip code, the addition of ''Parish'' to the ''County'' field, and common language in the form instructions to ''Areas Affected by Project'' and the ''Congressional District of.'' We are requesting a three year clearance of this form. The affected public may include: Federal, State, local, or tribal governments, business or other for profit, and not for profit institutions.

ESTIMATED ANNUALIZED BURDEN TABLE

Agency	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
DOC	16,460	1	30/60	8,230
DOE	2,700	1	60/60	2,700
ED	10,235	1	60/60	10,235
EPA	3,816	1	240/60	15,264
HHS	5,800	1.1551	270/60	30,148
SSA	1,000	2	20/60	667
USAID	200	2	15/60	100
USDA	229,946	1	60/60	229,946
DOI	11,604	1.8156	26/60	9,130
DOD	172	1.2	60/60	206
DOL	1,000	1	30/60	500
TOTAL				307,126

Seleda Perryman,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E9–1650 Filed 1–26–09; 8:45 am]

BILLING CODE 4151–AE–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Solicitation of Written Comments on Draft Centers for Disease Control and Prevention's Immunization Safety Office Scientific Agenda

AGENCY: Department of Health and Human Services, Office of the Secretary.

ACTION: Notice; correction.

SUMMARY: The Department of Health and Human Services published a document in the **Federal Register** of January 2, 2009 soliciting comments on the draft Centers for Disease Control and Prevention's Immunization Safety Office Scientific Agenda. Within the instructions for submitting comments electronically there was a typographical error in the e-mail address. The National Vaccine Program Office (NVPO) is requesting resubmission of any public comments sent prior to January 16, 2009 in response to the previously published Request for Information on the Immunization Safety Office Scientific Agenda.

FOR FURTHER INFORMATION CONTACT: Ms. Kirsten Vannice, (202) 690–5566; e-mail *vaccinesafetyRFI@hhs.gov*.

Correction

In the **Federal Register** of January 2, 2009, Vol. 74, No. 1, on page 107, in the 3rd column, correct the **ADDRESSES** caption to read:

ADDRESSES: Electronic responses are preferred and may be addressed to *vaccinesafetyRFI@hhs.gov.* Written responses should be addressed to the National Vaccine Program Office, U.S. Department of Health and Human Services, 200 Independence Avenue, SW., Washington, DC 20201, *Attention:* Vaccine Safety RFI.

Dated: January 22, 2009.

Bruce Gellin,

Deputy Assistant Secretary for Health, Director, National Vaccine Program Office, U.S. Department of Health and Human Services.

[FR Doc. E9–1692 Filed 1–26–09; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) allow information collection related to implementation of the Patient Safety and Quality Improvement Act of 2005, 42 U.S.C. 299b–21 to 299b–26, in: ''Patient Safety Organization Certification for Initial Listing and Related Forms and a Patient Safety Confidentiality Complaint Form'' In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by March 30, 2009.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, 540 Gaither Road, Room # 5036, Rockville, MD 20850, or by e-mail at *doris.lefkowitz@.ahrq.hhs.gov.*

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from AHRQ's Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ, Reports Clearance Officer, (301) 427–1477.

SUPPLEMENTARY INFORMATION: ''Patient Safety Organization Certification for Initial Listing and Related Forms and a Patient Safety Confidentiality Complaint Form.''

The Department of Health and Human Services' (HHS) Agency for Healthcare Research and Quality (AHRQ) has been delegated the authority to implement the provisions of the Patient Safety and Quality Improvement Act of 2005 (for brevity referenced here as the Patient Safety Act) that call for submission to the Secretary of certifications by entities seeking to become listed by the Secretary as Patient Safety Organizations (PSOs). These entities must certify that they meet or will meet specified statutory criteria and requirements for PSOs as further explained in the final rule to implement the Patient Safety Act, published in the **Federal Register** on November 21, 2008: 73 FR 70732.

The HHS Office for Civil Rights (OCR) has been delegated the authority to enforce the provisions of the Patient Safety Act that mandate confidentiality of ''patient safety work product.'' This term is defined in the statute, at 42 U.S.C. 299b–21(7), and further explained in the final rule (published in the **Federal Register** on November 1, 2008). Individuals may voluntarily submit complaints to OCR if they believe that an individual or organization in possession of patient safety work product unlawfully disclosed it.

Methods of Collection

While there are a number of information collection forms described below, they will be implemented at different times, some near the end of the three year approval period for these standard forms. The forms for certifications of information will collect only the minimum amount of information from entities necessary for the Secretary to determine compliance with statutory requirements for PSOs, *i.e.*, most of the required certification forms will consist of short attestations followed by ''yes'' and ''no'' checkboxes to be checked and initialed.

PSO Certification for Initial Listing and PSO Certification for Continued Listing Forms: The Patient Safety Act, at 42 U.S.C. 299b–24(a), and the final rule at 45 CFR 3.102 provide that an entity may seek an initial three-year listing as a PSO by submitting an initial certification that it has policies and procedures in place to perform eight patient safety activities (enumerated in the statute and the final rule), and that it will comply, upon listing, with seven other statutory criteria. The proposed Certification for Initial Listing Form also includes additional questions related to other requirements for listing related to eligibility and pertinent organizational history. Similarly, the proposed Certification for Continued Listing Form (for each successive three-year period after the initial listing period) would require certifications that the PSO is performing, and will continue to perform, the eight patient safety activities, and is complying with, and will continue to comply with, the seven statutory criteria. The average annual burden in the first three years of 17 hours per year for the collection of information requested by the certification form for initial listing is based upon a total average estimate of 33 respondents per year and an estimated time of 30 minutes per response. Information collection, *i.e.*, collection of initial certification forms, will begin as soon as the forms are approved for use. The average annual burden in the first three years of 8 hours per year for the collection of information requested by the certification form for continued listing is based upon a total average estimate of 17 respondents per year and an estimated time of 30 minutes per response. Collection of forms for continued listing will not begin until several months before November 2011 which is three years after the first PSOs were listed by the Secretary. (*See* Note after Exhibit 1.)

PSO Two Bona Fide Contracts Requirement Certification

To implement 42 U.S.C. 299b–24(b)(1)(C), the final rule states that, in order to maintain its PSO listing, a PSO will be required to submit a certification, at least once in every 24-month period after its initial date of listing, indicating that it has contracts with two providers (45 CFR 3.102(d)(1)). The annualized burden of 8 hours for the collection of information requested by the two bona fide contracts requirement is based upon an estimate of 33 respondents per year and an estimated 15 minutes per response. This collection of information will begin when the first PSO timely notifies the Secretary that it has entered into two contracts.

PSO Disclosure Statement Form

The Patient Safety statute at 42 U.S.C. 299b–24(b)(1)(E) requires a PSO to fully disclose information to the Secretary if the PSO has additional financial, contractual, or reporting relationships with any provider to which the PSO provides services pursuant to the Patient Safety Act under contract, or if the PSO is managed or controlled by, or is not operated independently from, any of its contracting providers. Disclosure statement Forms will be collected only when a PSO has such relationships with a contracting provider to report. The Secretary is required to review each disclosure statement and make public findings as to whether a PSO can fairly and accurately carry out its responsibilities. AHRQ assumes that only a small percentage of entities will need to file such disclosure forms. However, AHRQ is providing a high estimate of 17 respondents annually and thus presumably overestimating respondent burden. In summary, the annual burden of 8 hours for the collection of information requested by the disclosure form is based upon the high estimate of 17 respondents per year and an estimated 30 minutes per response. This information collection will begin when a PSO first reports having any of the specified types of additional relationships with a health care provider with which it has a contract to carry out patient safety activities.

PSO Information Form

Annual completion of a PSO Information Form will be voluntary and

will provide information to HHS on the type of healthcare settings that PSOs are working with to carry out patient safety activities. This form is designed to collect a minimum amount of data in order to gather aggregate statistics on the reach of the Patient Safety Act with respect to types of institutions participating and their general location in the United States. This information will be included in AHRQ's annual quality report, as required under Section 923(c) of the Patient Safety Act (42 U.S.C. 299b–23(c)). No PSO-specific data will be released without PSO consent. The overall annual burden estimate of 17 hours for the collection of information requested by the PSO Information Form is based upon an estimate of 33 respondents per year and an estimated 30 minutes per response. This information collection will begin one year after the first PSOs are listed by the Secretary.

OCR Complaint Form

The complaint form will collect from individuals only the minimum amount of information necessary for OCR to process and assess incoming complaints. The overall annual burden estimate of 17 hours for the collection of information requested by the underlying form is based upon an estimate of 50 respondents per year and an estimated 20 minutes per response. OCR's information collection using this form will not begin until after there is at least one PSO receiving and generating patient safety work product, and there is an allegation of a violation of the statutory protection of patient safety work product.

All Administrative Forms

The overall maximum anticipated annual burden estimate is 75 hours for all the above described collections of information. Because the forms filled out by PSOs vary over each of their first three years, the table below includes three-year total estimates divided by three to arrive at an annual estimate of burden hours. (See below.)

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Certification for Initial Listing Form	100/3	1	30/60	17
Certification for Continued Listing Form*	50/3	1	30/60	8
Two Bona Fide Contracts Requirement Form**	100/3	1	15/60	8
Disclosure Statement Form	50/3	1	30/60	8
Information Form***	100/3	1	30/60	17
Patient Safety Confidentiality Complaint Form	150/3	1	20/60	17
Total****	500/3	na	na	75

Note. * The Certification for Continued Listing Form will be completed by any interested PSO at least 75 days before the end of its then-current three-year listing period. Therefore, we anticipate that only those PSOs that have completed the Certification for Initial Listing Form in the first year that these forms are available will complete the Certification for Continued Listing Form during the three-year approval period for these forms. In the out-years, we expect the number of PSOs to remain stable, with the number of new entrants offset by the number of entities that will relinquish their status or be revoked

** The Two Bona Fide Contracts Requirement Form will be completed by each PSO within the 24-month period after initial listing by the Secretary.

*** 1AThe Information Form will collect data by calendar year, beginning in 2010, at a time when it is anticipated that PSOs will have submitted appreciable data to the Network of Patient Safety Databases.

**** A total of 100 PSOs are expected to apply over three years: 50 in year one; 25 in year two; and 25 in year three. Disclosure Statement, Two Bona Fide Contracts Requirement, and even voluntary Information Forms may be submitted by individual PSOs in different years. OCR is anticipating considerable variation in the number of complaints per year. Hence we have expressed the total for each year as the average of the expected total over the three year collection period.

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form	Number of respondents	Total burden hours	Average hourly wage rate	Total cost burden
Certification for Initial Listing Form	100/3	17	$31.26	$531.42
Certification for Continued Listing Form	50/3	8	31.26	250.08
Two Bona Fide Contracts Requirement Form	100/3	8	31.26	250.08
Disclosure Statement Form	50/3	8	31.26	250.08
Information Form	100/3	17	31.26	531.42
Patient Safety Confidentiality Complaint Form	150/3	17	31.26	531.42
Total	500/3	75	na	$2,344.50

* Based upon the mean of the hourly wages for healthcare practitioner and technical occupation, National Compensation Survey: Occupational wages in the United States 2007, U.S. Department of Labor, Bureau of Labor Statistics.

Estimated Annual Costs to the Federal Government

a. AHRQ

By statute, AHRQ must collect and review certifications from an entity that seeks listing or continued listing as a PSO under the Patient Safety Act. Additional information collection is also required for entities to remain listed as a PSO (i.e., submissions regarding compliance with the two bona fide contracts requirement and reports of certain relationships between a PSO and each of its contracting providers). The cost to AHRQ of processing the information collected with the above-described forms is minimal: An estimated equivalent of approximately 0.05 FTE or $7,500 per year and virtually no new overhead costs.

Description	Amount
Personnel & Support Staff	$7,500
Consultant (sub-contractor) services	0

Description	Amount
Equipment	0
Supplies	0
All other expenses	0
Average Annual Cost	7,500

b. OCR

OCR cannot conduct its work without collecting information through its proposed complaint forms. Even if OCR did not use complaint forms and only took information orally, it would still have to capture the same information in order to begin processing a complaint. Therefore, the incremental cost to OCR of processing the information collected from the complaint form is minimal and is equivalent to approximately 0.05 FTE or $7,500 per year with virtually no new overhead costs.

Description	Amount
Personnel & Support Staff	$7,500
Consultant (sub-contractor) services	0
Equipment	0
Supplies	0
All other expenses	0
Average Annual Cost	7,500

Request for Comments

In accordance with the above-cited Paperwork Reduction Act legislation, comments on the above-described AHRQ and OCR information collection to implement the Patient Safety Act are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ's health care research, quality improvement and information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: January 11, 2009.

Carolyn M. Clancy,

Director, AHRQ.

[FR Doc. E9–1009 Filed 1–26–09; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–251]

Availability of the Report ''ATSDR Studies on Chemical Releases in the Great Lakes Region''

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notification of publication.

SUMMARY: This report responds to a request from the International Joint Commission (IJC), the binational organization that works to implement the Great Lakes Water Quality Agreement (GLWQA) between the U.S. and Canada. The GLWQA calls for the two nations to define ''the threat to human health from critical pollutants'' found in the Great Lakes basin.

This notice announces the availability of the report entitled ''ATSDR Studies on Chemical Releases in the Great Lakes Region''. This report summarizes previously-published public health assessment products and chemical release information for the 26 U.S. AOCs and 54 counties that are in close geographic proximity to those AOCs. This is a descriptive report that does not make associations between health outcomes and chemical exposures. The compilation of environmental data, gathered by ATSDR and the Environmental Protection Agency (EPA), is intended to help decision-makers set future priorities.

ADDRESSES: Address all comments concerning this notice to Ms. Olga Dawkins, ATSDR, Division of Toxicology and Environmental Medicine, 1600 Clifton Road, NE., MS F–32, Atlanta, Georgia 30333.

FOR FURTHER INFORMATION CONTACT: Bruce Fowler, PhD, Division of Toxicology and Environmental Medicine, Agency for Toxic Substances and Disease Registry, Mailstop F–32, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone (770) 488–7250. Electronic access to these documents is also available at the ATSDR Web site: *http://www.atsdr.cdc.gov/.*

SUPPLEMENTARY INFORMATION: The geographic focus of this report is a set of 26 ''Areas of Concern'' (AOCs) along Great Lakes streams, rivers, and lakes. These AOCs are defined under the Agreement as ecologically degraded geographic areas requiring remediation. Much of the available data pertain to counties, and not to AOCs. Some AOCs occupy small parts of a single county, while others may reach across more than one county. The data come from publicly available data sets provided by ATSDR and the U.S. EPA.

The GLWQA defines ''critical pollutants'' as substances that persist in the environment, bioaccumulate in fish and wildlife, and are toxic to humans and animals. There are 12 categories of critical pollutants. This report emphasizes the critical pollutants (within the constraints imposed by using existing data) but also presents information on other pollutants, when such information is available and relevant.

This report compiles and presents previously collected environmental data from four sources:

- Data on hazardous waste sites in AOC counties, from evaluations prepared by the Agency for Toxic Substances and Disease Registry (ATSDR);
- Chemical release data from the U.S. Environmental Protection Agency's (EPA) Toxic Release Inventory (TRI);
- Data on pollutant discharges into water, from EPA's National Pollutant Discharge Elimination System (NPDES);
- Data on ''beneficial use impairments'' such as wildlife and drinking water advisories, from each of the Great Lakes states.

These data are presented in three ways: In text, in tables, and in Geographic Information System-based (GIS) maps created by ATSDR for each of the 26 U.S. AOCs.

This is a descriptive report that does not make associations between health outcomes and chemical exposures. The compilation of environmental data, gathered by ATSDR and EPA, is intended to help decision-makers set future priorities.

Dated: January 20, 2009.

Ken Rose,

Director, Office of Policy, Planning, and Evaluation National Center for Environmental Health/Agency for Toxic Substances and Disease Registry.

[FR Doc. E9–1597 Filed 1–26–09; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control

Special Emphasis Panel (SEP): Autism Therapy Evaluation Effects of Hyperbaric Oxygen Therapy on Children with Autism, Request For Application (RFA), DD8EM–801.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 1:30 p.m.–3 p.m., January 29, 2009 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of an application received in response to ''Autism Therapy Evaluation Effects of Hyperbaric Oxygen Therapy on Children with Autism, RFA DD8EM–801.''

This **Federal Register** notice is being published less than fifteen days prior to the meeting date, due to the decision of the National Center for Chronic Disease Prevention and Health Promotion to allow a deliberative discussion on this application.

Contact Person for More Information: Brenda Colley Gilbert, Ph.D., Scientific Review Administrator, 2877 Brandywine Road, Atlanta, Georgia 30341, *telephone:* (770) 488–8390.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Lorenzo J. Falgiano,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–1690 Filed 1–26–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket Number NIOSH–144]

Notice of Request for Public To Submit Comments; Extension of Comment Period

AGENCY: National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Extension of public comment period.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announced the availability of a draft document available for public comment entitled ''NIOSH Criteria Document Update: Occupational Exposure to Hexavalent Chromium'' on October 17, 2008, as well as a public meeting to be held on January 22, 2009. The document and instructions for submitting comments can be found at *http://www.cdc.gov/niosh/review/public/144/*. Comments were to be provided to the NIOSH docket by January 31, 2009, as well as given orally at the public meeting. A request has been received to extend the comment period to permit the public more time to gather and submit information.

Accordingly, NIOSH is extending the public comment period by 60 days to March 31, 2009.

DATES: Written comments to NIOSH must be sent or postmarked by March 31, 2009. The public meeting will still take place on January 22, 2009, at Robert A. Taft Laboratories, Taft Auditorium, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, OH 45226–1998.

Status: The public meeting will include scientists and representatives from various government agencies, industry, labor, and other stakeholders, and is open to the public, limited only by the space available. The meeting room accommodates 80 people. Persons wanting to attend or provide oral comments at the meeting were requested to notify the NIOSH Docket Office no later than January 7, 2009, at (513) 533–8611 or by e-mail at *nioshdocket@cdc.gov*.

Persons wanting to provide oral comments will be permitted up to 20 minutes. If additional time becomes available, presenters will be notified. Oral comments given at the meeting must also be submitted to the docket in writing in order to be considered by the Agency. Written comments will also be accepted at the meeting. Written comments may also be submitted to the NIOSH Docket Office, Robert A. Taft Laboratories, 4676 Columbia Parkway, MS–C34, Cincinnati, Ohio 45226, telephone (513) 533–8611. All material submitted to the Agency should reference docket number NIOSH–144 and must be submitted by March 31, 2009, to be considered by the Agency. All electronic comments should be formatted as Microsoft Word. Please make reference to docket number NIOSH–144.

All information received in response to this notice will be available for public examination and copying at the NIOSH Docket Office, Room 111, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

CONTACT PERSONS FOR TECHNICAL INFORMATION: Kathleen MacMahon, DVM; (513) 533–8547; MS–C32, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, OH, 45226–1998.

Dated: January 16, 2009.

James D. Seligman,

Chief Information Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–1694 Filed 1–26–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Pediatric Functional Neuroimaging Study.

Date: January 29, 2009.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Executive Boulevard, Room 5b01, Bethesda, MD 20892–9304, (301) 435–6680, *skandasa@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: January 16, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–1662 Filed 1–26–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; 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 of Mental Health Special Emphasis Panel; Mental Health Services Applications.

Date: February 17, 2009.

Time: 11:30 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW, Washington, DC 20036.

Contact Person: Marina Broitman, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6153, MSC 9608, Bethesda, MD 20892–9608, 301–402–8152, *mbroitman@mail.nih.gov*.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; NIMH K99 Review.

Date: February 23, 2009.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW, Washington, DC 20036.

Contact Person: Megan Libbey, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd, Room 6148, MSC 9609, Bethesda, MD 20892–9609, 301–402–6807, *libbeym@mail.nih.gov*.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Silvio O. Conte Centers for Basic and Translational Mental Health Research.

Date: February 24–25, 2009.

Time: 8 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: Francois Boller, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892–9606, 301–443–1513, *bollerf@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: January 16, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–1653 Filed 1–26–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Ancillary Studies in Immunomodulation Clinical Trials.

Date: February 17, 2009.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Paul A. Amstad, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, DHHS/National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–402–7098, *pamstad@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 16, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–1654 Filed 1–26–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed 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 of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; R13 Conference Application.

Date: February 23, 2009.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: D. G. Patel, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 756, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7682, *pateldg@niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Translation Research.

Date: March 12, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Michele L. Barnard, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–8898, *barnardm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: January 16, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–1655 Filed 1–26–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel.

Date: March 13, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Ruth Grossman, DDS, Scientific Review Officer, National Institutes of Biomedical Imaging, and Bioengineering, 6707 Democracy Boulevard, Room 960, Bethesda, MD 20892, 301–496–8775, *grossmanrs@mail.nih.gov.*

Dated: January 16, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–1659 Filed 1–26–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

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 meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Biomedical Behavioral Interface.

Date: February 5, 2009.

Time: 2:30 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, 3AN12c, Bethesda, MD, (Telephone Conference Call).

Contact Person: Meredith D. Temple-O'Connor, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN12C, Bethesda, MD 20892, 301–594–2772, *templeocm@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: January 16, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–1660 Filed 1–26–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; 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 of Dental and Craniofacial Research Special Emphasis Panel, Review of R03, R21 and R01 applications.

Date: February 26, 2009.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Jonathan Horsford, Ph.D., Scientific Review Officer, Natl Inst of Dental and Craniofacial Research, National Institutes of Health, 6701 Democracy Blvd, Room 664, Bethesda, MD 20892, 301–594–4859, *horsforj@mail.nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel. Review of R21 and R34 applications.

Date: February 27, 2009.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Jonathan Horsford, Ph.D., Scientific Review Officer, Natl Inst of Dental and Craniofacial Research, National Institutes of Health, 6701 Democracy Blvd, Room 664,

Bethesda, MD 20892, 301–594–4859, *horsforj@mail.nih.gov*.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, Review K23s, R03, F32.

Date: March 4, 2009.

Time: 2 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: Mary Kelly, Scientific Review Officer, Scientific Review Branch, National Inst of Dental & Craniofacial Research, NIH, 6701 Democracy Blvd., Room 672, MSC 4878, Bethesda, MD 20892–4878, 301–594–4809, *mary_kelly@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: January 16, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–1661 Filed 1–26–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Mental Health.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Mental Health, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Mental Health.

Date: February 9–11, 2009.

Time: February 9, 2009, 7 p.m. to 10 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Time: February 10, 2009, 8:30 a.m. to 11:40 a.m.

Agenda: To review and evaluate the Intramural Laboratories with site visits of the Section on Fundamental Neuroscience, Unit on Behavioral Genetics, Laboratory of Molecular Pathophysiology, and the Section on Molecular Neuroscience.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Time: February 10, 2009, 11:40 a.m. to 4 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Time: February 10, 2009, 7 p.m. to 10 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Time: February 11, 2009, 8:30 a.m. to 11:50 a.m.

Agenda: To review and evaluate the Intramural Laboratories with site visits of the Genes, Cognition and Psychosis Program, the Section on Clinical Studies, and the Section on Neuropathology.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Time: February 11, 2009, 11:50 a.m. to 12:10 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Time: February 11, 2009, 11:50 a.m. to 12:50 p.m.

Agenda: To review and evaluate site visits with Training Fellows and Staff Scientists.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Time: February 11, 2009, 12:50 p.m. to 4 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Dawn M. Johnson, PhD, Executive Secretary, Division of Intramural Research Programs, National Institute of Mental Health, 10 Center Drive, Building 10, Room 4N222, Bethesda, MD 20892, 301–402–5234, *dawnjohnson@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: January 16, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–1663 Filed 1–26–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

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 meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Neurological Sciences Training Initial Review Group; NST–1 Subcommittee.

Date: January 26–27, 2009.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036.

Contact Person: Raul A. Saavedra, PhD, Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, NSC; 6001 Executive Blvd., Ste. 3208, Bethesda, MD 20892–9529, 301–496–9223, *saavedrr@ninds.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: January 16, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–1664 Filed 1–26–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

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 meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Communication Disorders Review Committee.

Date: February 11–13, 2009.

Time: February 11, 2009, 8 p.m. to 10 p.m.

Agenda: To review and evaluate grant applications.

Place: Baltimore Marriott Waterfront, 700 Aliceanna Street, Baltimore, MD 21202.

Time: February 12, 2009, 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Baltimore Marriott Waterfront, 700 Aliceanna Street, Baltimore, MD 21202.

Time: February 13, 2009, 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Baltimore Marriott Waterfront, 700 Aliceanna Street, Baltimore, MD 21202.

Contact Person: Shiguang Yang, DVM, PhD, Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NIDCD, NIH, 6120 Executive Blvd., Suite 400C, Bethesda, MD 20892, 301–435–1425, *yangshi@nidcd.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: January 16, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–1665 Filed 1–26–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Multi-Domain Amphipathic Helical Peptides for the Treatment of Cardiovascular Diseases

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services (HHS), is contemplating the grant of an exclusive license worldwide to practice the invention embodied in: United States Provisional Patent Application No. 60/619,392, filed October 15, 2004, entitled ''Multi-Domain Amphipathic Helical Peptides and Methods of Their Use'' (HHS Ref. No. E–114–2004/0–US–01), United States Patent Application Serial No. 11/577,259, filed April 13, 2007, entitled ''Multi-Domain Amphipathic Helical Peptides and Methods of Their Use'' (HHS Ref. No. E–114–2004/0–US–07); Australian Patent Application Serial No. 2005295640, filed October 14, 2005, entitled ''Multi-Domain Amphipathic Helical Peptides and Methods of Their Use'' (HHS Ref. No. E–114–2004/0–AU–03); Canadian Patent Application Serial No. 2584048, filed October 14, 2005, entitled ''Multi-Domain Amphipathic Helical Peptides and Methods of Their Use'' (HHS Ref. No. E–114–2004/0–CA–04); European Patent Application Serial No. 05815961.7, filed October 14, 2005, entitled ''Multi-Domain Amphipathic Helical Peptides and Methods of Their Use'' (HHS Ref. No. E–114–2004/0–EP–05); Japanese Patent Application Serial No. 2007–536912, filed October 14, 2005, entitled ''Multi-Domain Amphipathic Helical Peptides and Methods of Their Use'' (HHS Ref. No. E–114–2004/0–JP–06) to KineMed, Inc., having a place of business in the State of California. The field of use may be limited to FDA or foreign regulatory body approved 5a peptide therapeutic for the prevention and treatment of cardiovascular diseases. The United States of America is the assignee of the patent rights in this invention. The territory may be worldwide. This announcement is the second notice to grant an exclusive license to this technology and supersedes any previous announcements including the Notice published in the **Federal Register** on Wednesday, May 11, 2005 (70 FR 24832).

DATES: Only written comments and/or application for a license, which are received by the NIH Office of Technology Transfer on or before March 30, 2009 will be considered.

ADDRESSES: Requests for a copy of the patent applications, inquiries, comments and other materials relating to the contemplated license should be directed to: Fatima Sayyid, M.H.P.M., Senior Licensing and Patenting Manager, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; *Telephone:* (301) 435–4521; *Facsimile:* (301) 402–0220; *e-mail: Fatima.Sayyid@nih.hhs.gov.*

SUPPLEMENTARY INFORMATION: Clearance of excess cholesterol from cells by high density lipoproteins (HDL) is facilitated by the interaction of HDL apolipoprotein with cell surface binding sites or receptors such as ABCA1. ABCA1 is a member of the ATP binding cassette transporter family and is expressed by many cell types. Mutations in the ABCA1 transporter lead to diseases characterized by the accumulation of excess cellular cholesterol, low levels of HDL and an increased risk for cardiovascular disease. Research has demonstrated an inverse correlation between the occurrence of atherosclerotic events and levels of HDL and its most abundant protein constituent, apolipoprotein A–1 (apoA–1). ApoA–1 has been shown to promote lipid efflux from ABCA1 transfected cells. However, the nature of the interaction between apoA–1 and ABCA1 is not fully understood. Several other exchangeable type apolipoproteins have been shown to efflux lipid from ABCA1 transfected cells. Although the exchangeable type apolipoproteins do not share a similar primary amino acid sequence, they all contain amphipathic helices, a structural motif known to facilitate the interaction of proteins with lipids. Recently, it has been shown in both animal models and humans that intravenous administration of apoA–1 can reduce the size of atherosclerotic plaques. It has also been observed that synthetic peptide mimics of apoA–1 can promote efflux of excess cholesterol from cells. Therefore, synthetic mimics of apoA–1 can potentially also be used as therapeutic compounds in the prevention and treatment of atherosclerosis.

Currently, there are a wide variety of treatments for dyslipidemia, which include, but are not limited to, pharmacologic regimens (mostly statins), partial ileal bypass surgery, portacaval shunt, liver transplantation, and removal of atherogenic lipoproteins by one of several apheresis procedures.

The subject technology is related to peptides and peptide analogs with multiple amphipathic alpha-helical domains that promote lipid efflux from cells and it relates to methods for identifying non-cytotoxic peptides that promote lipid efflux from cells that are useful in the treatment and prevention of dyslipidemic and vascular disorders. Dyslipidemic and vascular disorders amenable to treatment with the isolated multi-domain peptides include, but are not limited to, hyperlipidemia, hyperlipoproteinemia,

hypercholesterolemia, hypertriglyceridemia, HDL deficiency, apoA-I deficiency, coronary artery disease, atherosclerosis, thrombotic stroke, peripheral vascular disease, restenosis, acute coronary syndrome, and reperfusion myocardial injury.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: January 21, 2009.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E9–1754 Filed 1–26–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Center for Substance Abuse Prevention's (CSAP) National Advisory Council on February 10, 2009.

The meeting is open and will include discussion of the Center's policy issues, and current administrative, legislative and program developments.

Attendance by the public will be limited to space available. Public comments are welcome. Please communicate with the CSAP Council's Designated Federal Official, Ms. Tia Haynes (see contact information below), to make arrangements to attend, comment or to request special accommodations for persons with disabilities.

Substantive program information, a summary of the meeting, and a roster of Council members may be obtained as soon as possible after the meeting, either by accessing the SAMHSA Committee Web site, *https://nac.samhsa.gov/CSAPcouncil/index.aspx,* or by contacting Ms. Haynes. The transcript for the open session will also be available on the SAMHSA Council Web site within three weeks after the meeting.

Committee Name: Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Prevention National Advisory Council.

Date/Time/Type: February 10, 2009. From 1 p.m.–5 p.m.: Open.

Place: Gaylord Convention Center, 201 Waterfront Street, National Harbor Room–4 & 5, National Harbor, MD 20745.

Contact: Tia Haynes, Designated Federal Official, SAMHSA/CSAP National Advisory Council, 1 Choke Cherry Road, Room 4–1066, Rockville, MD 20857, Telephone: (240) 276–2436, *FAX:* (240) 276–2430, *E-mail: tia.haynes@samhsa.hhs.gov.*

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health, Services Administration.

[FR Doc. E9–1683 Filed 1–26–09; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Extension of Agency Information Collection Activity Under OMB Review: Federal Flight Deck Officer Program

AGENCY: Transportation Security Administration, DHS.

ACTION: 30-day notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), OMB control number 1652–0011, abstracted below to the Office of Management and Budget (OMB) for review and approval of an extension of the currently approved collection under the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden. TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on November 19, 2008, 73 FR 69670. The collection requires interested volunteers to fill out an application to determine their suitability for participating in the Federal Flight Deck Officer (FFDO) Program, and deputized FFDOs to submit written reports of certain prescribed incidents.

DATES: Send your comments by February 26, 2009. A comment to OMB is most effective if OMB receives it within 30 days of publication.

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. Comments should be addressed to Desk Officer, Department of Homeland Security/TSA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Ginger LeMay, Office of Information Technology, TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220; telephone (571) 227–3616; facsimile (571) 227–2907.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at *www.reginfo.gov*. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: Federal Flight Deck Officer Program.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 1652–0011.

Forms(s): N/A.

Affected Public: Volunteer pilots, flight engineers, and navigators.

Abstract: The Federal Flight Deck Officer (FFDO) Program enables TSA to

screen, select, train, deputize, and supervise qualified volunteer pilots, flight engineers, and navigators to defend the flight decks of commercial passenger and all-cargo airliners. Information collected as the result of this proposal would be used to assess the eligibility and suitability of prospective and current FFDOs, to ensure the readiness of every FFDO, to administer the program, and for security purposes.

Number of Respondents: 5,000.

Estimated Annual Burden Hours: An estimated 5,000 hours annually.

Issued in Arlington, Virginia, on January 21, 2009.

Ginger LeMay,

Paperwork Reduction Act Officer, Business Improvements and Communications, Office of Information Technology.

[FR Doc. E9–1648 Filed 1–26–09; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–9014–A, AA–9014–A2; AK–965–1410–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 Paimiut Corporation. The lands are in the vicinity of Paimiut, Alaska, and are located in:

Seward Meridian, Alaska

T. 18 N., R. 89 W.,
Secs. 1 to 5, inclusive;
Secs. 7 to 12, inclusive.
Containing approximately 4,551 acres.
T. 19 N., R. 89 W.,
Secs. 25 to 28, inclusive;
Secs. 30 to 36, inclusive.
Containing approximately 4,619 acres.
Aggregating approximately 9,170 acres.

These lands lie entirely within Clarence Rhode National Wildlife Range, established January 20, 1969. The subsurface estate will be reserved to the United States in the conveyance to Paimiut Corporation. Notice of the decision will also be published four times in the Tundra Drums.

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 February 26, 2009 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.

Robert Childers,

Land Law Examiner, Land Transfer Adjudication II.

[FR Doc. E9–1695 Filed 1–26–09; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNML00000 L16100000.DP0000]

Correction to Notice of Intent To Prepare an Amendment to the Mimbres Resource Management Plan (RMPA), and Associated Environmental Assessment (EA), Las Cruces District Office, NM

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Correction to Notice of Intent.

SUMMARY: This document contains corrections to the Notice of Intent published in the **Federal Register** [73 FR No. 240, pages 75764–75765] on Friday, December 12, 2008, under the **DATES** and **SUPPLEMENTARY INFORMATION**.

DATES: The heading, the 30-day public scoping period to identify relevant issues has been extended to February 23, 2009.

SUPPLEMENTARY INFORMATION: The heading for the legal description for T. 17 S., R. 12 W. should read:

New Mexico Principal Meridian

T. 17 S., R. 12 W.,
Secs 3, 4, 9, 10, 15, 16, 20, 21, 22, 23, 24, and 31.

FOR FURTHER INFORMATION CONTACT: Jennifer Montoya, Planning and Environmental Coordinator, at the Bureau of Land Management, Las Cruces District Office, 1800 Marquess Street, Las Cruces, New Mexico; telephone (575) 525–4316; or e-mail at *Jennifer_Montoya@nm.blm.gov*.

Leticia Lister,

Acting District Manager.

[FR Doc. E9–1600 Filed 1–26–09; 8:45 am]

BILLING CODE 4310–VC–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before January 10, 2009. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by February 11, 2009.

J. Paul Loether,

Chief, National Register of Historic Places/National, Historic Landmarks Program.

ILLINOIS

Cook County

Independence Park, 3945 N. Springfield Ave., Chicago, 09000023

Inland Steel Building, 30 W. Monroe St., Chicago, 09000024

Spiegel Office Building, 1038 W. 35th St., Chicago, 09000025

Hamilton County

Cloud, Chalon Guard and Emma Blades, House, 300 S. Washington St., McLeansboro, 09000026

Kane County

Wing Park Golf Course, 1000 Wing St., Elgin, 09000027

La Salle County

Hegeler I, Julius W., House, 1306 Seventh St., LaSalle, 09000028

KANSAS

Kiowa County

Robinett, S.D., Building, 148 S. Main, Greensburg, 09000029

Meade County

Fowler Swimming Pool and Bathhouse, (New Deal-Era Resources of Kansas MPS) 308 E. 6th, Fowler, 09000030

Riley County

Houston and Pierre Streets Residential Historic District (Late 19th and Early 20th Century Residential Resources in Manhattan, Kansas MPS), Bounded by S. 5th St., Pierre St., S. 9th St., and Houston St., Manhattan, 09000031

MASSACHUSETTS

Essex County

L.H. Hamel Leather Company Historic District, Bounded by Essex, Locke, Duncan, and Winter Sts., and the former Boston and Maine Railroad tracks, Haverhill, 09000032

Middlesex County

M.H. Merriam and Company, 7–9 Oakland St., Lexington, 09000033

MISSOURI

St. Louis Independent city

Central Carondelet Historic District (Boundary Increase II), Bounded by Iron St., Minnesota, Pennsylvania, and Holly Hills Aves., St. Louis, 09000034

Dreer, Dr. Herman S., House (The Ville, St. Louis, Missouri MPS), 4335 Cote Brilliante Ave., Saint Louis, 09000035

Phillips, Homer G., House (The Ville, St. Louis, Missouri MPS), 4524 Cottage Ave., St. Louis, 09000036

Turner, Dr. Charles Henry, House, (The Ville, St. Louis, Missouri MPS) 4540 Garfield Ave., Saint Louis, 09000037

NEW YORK

Cattaraugus County

House at 520 Hostageh Road, 520 Hostageh Rd., Rock City, 09000038

Suffolk County

Jamesport Meeting House, 1590 Main Rd., Jamesport, 09000039

Ulster County

Yeomans, Moses, House, 252–278 Delaware Ave., Kingston, 09000041

PUERTO RICO

Coamo Municipality

Puente de las Calabazas (Historic Bridges of Puerto Rico MPS), PR 14, km. 39.3, Cuyon Ward, Coamo, 09000042

SOUTH DAKOTA

Custer County

Hermosa Masonic Lodge, W. side of 2nd St., between Folsom St. and Hwy 40, Hermosa, 09000043

Hutchinson County

Tucek-Sykora Farmstead (Czech Folk Architecture in Southeastern South Dakota MRA), 28883 412th Ave., Tripp, 09000044

Lincoln County

Elster House, 27765 476th Ave., Canton, 09000045

VIRGINIA

Louisa County

Baker-Strickler House, 10074 W. Gordon Rd., Gordonsville, 09000046

WASHINGTON

King County

JOHN N. COBB (fisheries research vessel), NOAA NW Regional Office, 7600 Sand Point Way NE., Seattle, 09000047

WISCONSIN

Columbia County

Mills, Richard W. and Margaret, House, 104 Grand Ave., Lodi, 09000048

[FR Doc. E9–1666 Filed 1–26–09; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Weekly Listing of Historic Properties

Pursuant to (36 CFR 60.13(b,c)) and (36 CFR 63.5), this notice, through publication of the information included herein, is to appraise the public as well as governmental agencies, associations and all other organizations and individuals interested in historic preservation, of the properties added to, or determined eligible for listing in, the National Register of Historic Places from December 1 to December 5, 2008.

For further information, please contact Edson Beall via: United States Postal Service mail, at the National Register of Historic Places, 2280, National Park Service, 1849 C St., NW., Washington, DC 20240; in person (by appointment), 1201 Eye St., NW., 8th floor, Washington, DC 20005; by fax, 202–371–2229; by phone, 202–354–2255; or by e-mail, *Edson_Beall@nps.gov*.

Dated: January 6, 2009.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

KEY: State, County, Property Name, Address/Boundary, City, Vicinity, Reference Number, NHL, Action, Date, Multiple Name

GEORGIA

Bulloch County

Upper Lott's Creek Primitive Baptist Church and Cemetery, Metter-Portal Hwy. and Westside Rd., Metter vicinity, 08000967, LISTED, 12/04/08

Harris County

Copeland, William and Ann, Jr., House, 19444 GA 116, Shiloh vicinity, 08000969, LISTED, 12/04/08

ILLINOIS

Cook County

Lindemann and Hoverson Company Showroom and Warehouse, 2620 W. Washington Blvd., Chicago, 8001095, LISTED, 11/26/08

KENTUCKY

Fayette County

New Zion Historic District, 4972 Newtown Pike through 5200 Newtown Pike, and 103–135 New Zion Rd., Georgetown vicinity, 08001118, LISTED, 12/04/08

Green County

Creel, Elijah, House, E. Columbia Ave., Greensburg, 85003589, LISTED, 12/03/08 (Green County MRA)

Greenup County

Wurtland Union Church, 325 Wurtland Ave., Wurtland, 08001119, LISTED, 12/04/08

Jefferson County

Johnston, J. Stoddard, Elementary School, 2301 Bradley Blvd., Louisville, 82005031, LISTED, 12/03/08

MARYLAND

Baltimore Independent City

Park Circle Historic District, Roughly bounded by Overview Ave., Shirley Ave., Cottage Ave., and Henry G. Parks Jr. Circle, Baltimore, 08001124, LISTED, 12/04/08

Cecil County

Gilpin's Falls Covered Bridge, MD Rt. 272, North East vicinity, 08001125, LISTED, 12/03/08

MASSACHUSETTS

Dukes County

Tashmoo Springs Pumping Station, 325 W. Spring St., Tisbury, 08001126, LISTED, 12/03/08

Franklin County

Leverett Center Historic District, Amherst, Montague, Depot, and Shutesbury Rds., Leverett, 08001127, LISTED, 12/05/08

Norfolk County

Wollaston Congregational Church, 47–57 Lincoln Ave., Quincy, 08001128, LISTED, 12/05/08 (Quincy MRA)

MISSOURI

Pettis County

Jones, Henry, Farmstead, 17000 Hwy. EE, Sedalia vicinity, 08001129, LISTED, 12/03/08

St. Louis Independent City

More Automobile Company Building, 2801 Locust St., St. Louis, 08001130, LISTED, 12/03/08 (Auto-Related Resources of St. Louis, Missouri MPS)

St. Louis Independent City

Peabody Coal Company National Headquarters, 301 N. Memorial Dr., St. Louis, 08001131, LISTED, 12/03/08

NEBRASKA

Butler County

St. Mary of the Assumption Catholic Church, School and Grottoes, 336 W. Pine St., Dwight, 08001132, LISTED, 12/04/08

Hamilton County

United Brethren Church, 1103 K St., Aurora, 08001133, LISTED, 12/03/08

Madison County

First United Presbyterian Church, 104 E. 4th St., Madison, 08001134, LISTED, 12/03/08

NEW MEXICO

Roosevelt County Courthouse

Roosevelt County Courthouse, 100 W. 2nd St., Portales, 08001136, LISTED, 12/03/08 (New Deal in New Mexico MPS)

NEW YORK

Rockland County

Piermont Railroad Station, 50 Ash St., Piermont, 08001146, LISTED, 12/03/08

OKLAHOMA

Grady County

Silver City Cemetery, 6/10th of a mile from Section line on S. side of section 22, T10N, R6W I.M., Tuttle vicinity, 08001149, LISTED, 12/04/08

Oklahoma County

Kivlehen House, 525 N. Jackson St., Edmond, 08001150, LISTED, 12/04/08

Osage County

Woolaroc Ranch Historic District, Eight mi. E. of the jct. of St. Hwys. 11 and 123, Barnsdall vicinity, 08001151, LISTED, 12/05/08

Tulsa County

Mayo Building, 420 S. Main St., Tulsa, 08001152, LISTED, 12/04/08

Woodward County

Woodward Theater, The, 818 Main, Woodward, 08001153, LISTED, 12/04/08

OREGON

Multnomah County

Bohnsen Cottages, 1918–1926 SW. Elm St. and 2412–2416 SW. Vista Ave., Portland, 08001182, LISTED, 12/04/08

UTAH

Salt Lake County

Best, Amanda Conk, House, 3622 S. 1100 E., Millcreek, 08001154, LISTED, 12/04/08

Salt Lake County

Oquirrh School, 350 S. 400 E., Salt Lake City, 08001156, LISTED, 12/04/08

Uintah County

Bank of Vernal, 3 W. Main St., Vernal, 08001155, LISTED, 12/04/08 (Vernal—Maeser, Utah MPS)

WASHINGTON

King County

Preston Community Clubhouse, 8625 310th Ave. SE., Preston, 08001186, LISTED, 12/04/08

WISCONSIN

Oconto County

Citizens State Bank of Gillett, 137 E. Main St., Gillett, 08001159, LISTED, 12/04/08

[FR Doc. E9–1667 Filed 1–26–09; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–545 (Consolidated Enforcement and Advisory Opinion Proceeding)]

In the Matter of Certain Laminated Floor Panels Certain Laminated Floor Panels; Notice of a Commission Determination Not To Review an Initial Determination Terminating Consolidated Enforcement and Advisory Opinion Proceeding on the Basis of a Settlement Agreement and Cross-License Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 38) of the presiding administrative law judge (''ALJ'') in the above-captioned proceeding terminating the proceeding on the basis of a settlement agreement and cross-license agreement.

FOR FURTHER INFORMATION CONTACT: Michael K. Haldenstein, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3041. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted the underlying investigation on August 3, 2005, based on a complaint filed by Unilin Beheer B.V. of the Netherlands, Flooring Industries Ltd. of Ireland, and Unilin Flooring N.C., LLC of North Carolina (collectively ''Unilin''). 70 FR 44,694 (August 3, 2005). The complaint, as amended, alleged violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain laminated floor panels by reason of infringement of one or more of claims 1, 14, 17, 19–21, 37, 52, 65, and 66 of U.S. Patent No. 6,006,486; claims 1, 2, 10, 13, 18, 19, 22–24, and 27 of U.S. Patent No. 6,490,836 (''the '836 patent''); claims 1–6 of U.S. Patent No. 6,874,292 (''the '292 patent''); and claims 1, 5, 13, 17, 27 and 28 of U.S. Patent No. 6,928,779 (''the '779 patent'').

On January 5, 2007, the Commission issued its final determination finding a violation of section 337 and infringement of claims 1, 2, 10, 18, and 23 of the '836 patent, claims 5 and 17 of the '779 patent, and claims 3 and 4 of the '292 patent. The Commission determined to issue a general exclusion order under 19 U.S.C. 1337(d)(2), as well as cease and desist orders to certain respondents. On July 31, 2008, the U.S. Court of Appeals for the Federal Circuit issued a decision in *Yingbin-Nature (Guangdong) Wood Industry Co., Ltd.* v. *Int'l Trade Comm'n.,* 535 F.3d 1322 (Fed. Cir. 2008) affirming the Commission's final determination on violation.

Unilin filed a complaint on March 24, 2008, and a corrected complaint on April 30, 2008, requesting that the Commission institute a formal enforcement proceeding under Commission rule 210.75 to investigate violations of the general exclusion order. The complaint named as respondent Uniboard Canada, Inc. (Quebec, Canada) (''Uniboard''). On April 15, 2008, Uniboard filed a request for an advisory opinion that its products would not violate the general exclusion order. Uniboard requested that the advisory opinion proceeding be consolidated with the enforcement proceeding. On June 20, 2008, the Commission determined to consolidate the formal enforcement and advisory opinion proceedings and certify the consolidated proceedings to Judge Luckern. 73 FR. 36355 (June 25, 2008).

On December 8, 2008, Unilin and Uniboard jointly moved, pursuant to

Commission rule 210.21, to terminate the consolidated enforcement and advisory opinion proceeding in light of a settlement agreement and a cross-license agreement between Unilin and Uniboard. The Commission investigative attorney filed a response in support of the motion.

The ALJ issued the subject ID on December 29, 2008, granting the joint motion to terminate the proceeding. No petitions for review were filed and the Commission has determined not to review the subject ID. The consolidated enforcement and advisory opinion proceeding is terminated.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and Commission rules 210.21, 210.42, 19 CFR 210.21, 210.42.

By order of the Commission.
Issued: January 21, 2009.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–1702 Filed 1–26–09; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act

Notice is hereby given that on January 7, 2009, a proposed Consent Decree in *United States* v. *Citation Oil & Gas Corp. and Citation 1994 Investment Limited Partnership*, Civil Action No. 09–CV–0003–B was lodged with the United States District Court for the District of Wyoming.

In this action the United States seeks civil penalties and injunctive relief for violations of Sections 301(a) or, alternatively 311(b)(3), and Section 311(j) of the Clean Water Act (''CWA''), 33 U.S.C. 1311(a), or alternatively 1321(b)(3), and 1321(j), arising from the alleged unlawful discharge of approximately 597 barrels of crude oil and produced water into the North Fork Powder River and onto the banks adjacent to that river from Defendants' Celler Ranch Unit in Johnson County, Wyoming. Further, the United States also seeks civil penalties and injunctive relief from Defendants' alleged failure to prepare and fully implement an adequate Spill Prevention Control and Countermeasures Plan as required by 40 CFR Part 112.

The settlement secures $280,000 in civil penalties and an estimated $580,000 in injunctive relief from Citation. Among other things, the injunctive relief requires Citation to: Update its facility inventory and facility diagram; develop and implement an enhanced facility inspection, maintenance, and replacement plan; integrity test all buried flowlines that are not visually accessible for inspection; and bring the facility's Spill Prevention Control and Countermeasures Plan into compliance with the applicable regulatory requirements.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the settlement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Citation Oil & Gas Corp. and Citation 1994 Investment Limited Partnership*, Civil Action No. 09–CV–0003–B, D.J. Ref. 90–5–1–1–08867.

The Consent Decree may be examined at the United States Attorneys Office for the District of Wyoming, 2120 Capitol Avenue—4th Floor, Cheyenne, Wyoming 82001 (USAO No. 06V100) and at U.S. EPA Region 8, 1595 Wynkoop Street, Denver, CO 80202–1129. During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, follows *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $11.00 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address. In requesting a copy exclusive of exhibits and defendants' signatures, please enclose a check in the amount of: $9.75 (25 cents per page reproduction cost) payable to the U.S. Treasury; $11.25, exhibits included.

Robert Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–1657 Filed 1–26–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Stipulated Order for Preliminary Relief Under the Clean Water Act

Notice is hereby given that on January 15, 2009, the United States Department of Justice, on behalf of the U.S. Environmental Protection Agency (''EPA'') and the People of the State of California *ex. rel.* California State Water Resources Control Board and California Regional Water Quality Control Board, San Francisco Region (the ''State''), lodged with the United States District Court for the Northern District of California a stipulated order for preliminary relief with defendant East Bay Municipal Utility District (''EBMUD'') in the case of *United States et al.* v. *East Bay Municipal Utility District* (cv–09–0186). On the same day, the United States and the State filed a Complaint pursuant to the federal Clean Water Act, 33 U.S.C. 1319 and California Water Code Sections 13376, 13385 and 13386. Under the stipulated order, EBMUD shall perform various studies and take a number of interim steps aimed at the ultimate cessation of discharges from its three wet weather facilities. These facilities discharge partially treated sewage into the San Francisco Bay when wet weather flows exceed the capacity of EBMUD's treatment plant.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the stipulated order. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to the stipulated order between the United States, the State of California and EBMUD, DOJ Ref. No. 90–5–1–1–09361.

The proposed stipulated order may be examined at the office of the United States Attorney, 450 Golden Gate Ave., 11th Floor, San Francisco, CA 94102 and at EPA's office, 75 Hawthorne Street, San Francisco, CA 94105. During the public comment period, the Settlement 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 Settlement Agreement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 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 $11.50 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by email or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Henry Friedman,

Assistant Section Chief Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–1699 Filed 1–26–09; 8:45 am]

BILLING CODE 4410–15–P

LEGAL SERVICES CORPORATION

Sunshine Act Meetings of the Board of Directors and the Board's Five Committees; Notice

Times and Dates: The Legal Services Corporation Board of Directors and five of the Board's Committees will meet on January 30 & 31, 2009 in the order set forth in the following schedule, with each meeting commencing promptly upon adjournment of the immediately preceding meeting.

Public Observation by Telephone: Members of the public who wish to listen to the open portions of the meetings live may do so by following the telephone call-in directions given below. You are asked to keep your telephone muted to eliminate background noises. Comments from the public may from time to time be solicited by the presiding Chairman.

Call-In Directions for Open Sessions:

Friday, January 30, 2009

- Call toll-free number: 1–800–247-9979;
- When prompted, enter the following numeric pass code: 82624085;
- When connected to the call, please ''*MUTE*'' your telephone immediately.

Saturday, January 31, 2009

- Call toll-free number: 1–800–247-9979;
- When prompted, enter the following numeric pass code: 82625239;
- When connected to the call, please ''MUTE'' your telephone immediately.

MEETING SCHEDULE/TIME:[1]

Friday, January 30, 2009

1. Provision for the Delivery of Legal Services Committee (''Provisions Committee'').—1 p.m.
2. Operations & Regulations Committee.

Saturday, January 31, 2009

3. Governance and Performance Review Committee.—9 a.m.
4. Finance Committee.
5. Audit Committee.
6. Board of Directors.

LOCATION: Legal Services Corporation, 3333 K Street, NW., Washington, DC 20007.

STATUS OF MEETINGS: Open, except as noted below.

January 30, 2009 Board of Directors Meeting—Open, except that a portion of the meeting of the *Board of Directors* may be closed to the public pursuant to a vote of the *Board of Directors* to consider and perhaps act on the General Counsel's report on potential and pending litigation involving LSC. A *verbatim* written transcript of the session will be made. The transcript of any portions of the closed session falling within the relevant provisions of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(10), and the corresponding provisions of the Legal Services Corporation's implementing regulation, 45 CFR 1622.5(h), will not be available for public inspection. A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

Friday, January 30, 2009

Provision for the Delivery of Legal Services Committee

Agenda

1. Approval of agenda.
2. Approval of the minutes of the Committee's October 31, 2008 meeting
3. Staff Update on activities implementing the *LSC Private Attorney Involvement Action Plan—Help Close the Justice Gap: Unleash the Power of Pro Bono.*
   a. PAI Honor Roll.
   b. PAI Advisory Group.
   c. Law School Activities.
4. Staff Update on Pilot Loan Repayment Assistance Program.
5. Staff Update on Native American Delivery and Funding—Data Analysis Process.
6. Staff Update on Cooperative Agreement with the College of Law Practice Management.
7. Public comment.
8. Consider and act on other business.
9. Consider and act on adjournment of meeting.

Operations and Regulations Committee

Agenda

1. Approval of agenda.
2. Approval of the minutes of the Committee's October 31, 2008 meeting.
3. Panel Presentation by Grantee Board Chairs on the Role of Grantee Boards of Directors in Grantee Governance and Oversight.
   - Michael Doucette, Board Chair—Virginia Legal Aid Society.
   - Robert Goodin, Board Chair—Bay Area Legal Aid (California).
   - Diane Kutzko, Former Board Chair—Iowa Legal Aid.
   - Marjorie Anne McDiarmid, Board Chair—Legal Aid of West Virginia.
   - Fern Schair, Board Chair—Legal Services New York City.
4. Consider and act on rulemaking petition regarding financial eligibility requirements in disaster areas.
   - Staff report.
   - OIG comment.
   - Public comment.
5. Discussion of the responsibilities of Independent Public Accountants.
   - OIG report.
   - Staff comment.
6. Staff report on LSC's FOIA function.
7. Consider and act on other business.
8. Other public comment.
9. Consider and act on adjournment of meeting.

Saturday, January 31, 2009

Governance and Performance Review Committee

Agenda

1. Approval of agenda.
2. Approval of minutes of the Committee's November 1, 2008 meeting.
3. Consider and act on self-assessment documents for 2008–2009.
   - Committee Chairman's observations on individual self-assessments and possible follow-up.
   - Committee Chairman's observations on results of the Board self-assessment and the upcoming full Board discussion.
4. Transition materials and plan for new Board orientation.
   - Presentation by Victor Fortuno and John Constance.
5. Consider and act on other business.
6. Public comment.
7. Consider and act on motion to adjourn meeting.

Finance Committee

Agenda

1. Approval of agenda.
2. Approval of the minutes of the Committee's October 14, 2008 meeting.
3. Approval of the minutes of the Committee's November 1, 2008 meeting.
4. Staff report on FY 2009 Appropriations.
   - Report by John Constance.

[1] Please note that all times in this notice are *Eastern Daylight Time.*

5. Consider and act on revised Temporary Operating Budget for FY 2009, Resolution 2009–001.
- Presentation by David Richardson.
- Comments by Charles Jeffress.

6. Presentation on LSC's Financial Reports for the first three months of FY 2009.
- Presentation by David Richardson.
- Comments by Charles Jeffress.

7. Public comment.
8. Consider and act on other business.
9. Consider and act on adjournment of meeting.

Audit Committee

Agenda

1. Approval of agenda.
2. Approval of minutes of the Committee's October 31, 2008 meeting.
3. Presentation of the Fiscal Year 2008 Annual Financial Audit.
- Jeffrey Schanz, Inspector General.
- Nancy Davis, WithumSmith+Brown.
- David Karakashian, WithumSmith+Brown.

4. Review of Form 990 for FY 2008.
5. Consider and act on the establishment of procedures for the receipt, retention, processing and resolution of complaints or expressions of concern regarding accounting, internal controls and auditing issues.
6. Public comment.
7. Consider and act on other business.
8. Consider and act on adjournment of meeting.

Board of Directors

Agenda

Open Session

1. Approval of agenda.
2. Approval of minutes of the *Board's* Open Session of November 1, 2008.
3. Approval of minutes of the *Board's* Open Session Telephonic meeting of November 20, 2008.
4. *Chairman's* Report.
5. *Members'* Reports.
6. *President's* Report.
7. *Inspector General's* Report.
8. Consider and act on the report of the *Provision for the Delivery of Legal Services Committee.*
9. Consider and act on the report of the *Finance Committee.*
10. Consider and act on the report of the *Operations & Regulations Committee.*
11. Consider and act on the report of the *Audit Committee.*
12. Consider and act on the report of the Board's *2008 Ad Hoc Committee* Liaison.
13. Consider and act on the dissolution of the *2008 Ad Hoc Committee.*
14. Consider and act on the report of the *Governance & Performance Review Committee.*
15. Consider and act on Board self-assessment.
16. Consider and act on the draft Risk Management Program for LSC.
17. Consider and act on nominations for the Chairman of the Board of Directors.
18. Consider and act on nominations for the Vice Chairman of the Board of Directors.
19. Consider and act on delegation of authority to Chairman to make Committee assignments.
20. Public comment.
21. Consider and act on whether to authorize an executive session of the Board to address items listed below under Closed Session.

Closed Session

22. Consider and act on General Counsel's report on potential and pending litigation involving LSC.
23. Consider and act on other business.
24. Consider and act on motion to adjourn meeting.

Contact Person for Information: Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295–1500.

Special Needs: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Katherine Ward, at (202) 295–1500.

Dated: January 22, 2009.

Victor M. Fortuno,

Vice President & General Counsel.

[FR Doc. E9–1792 Filed 1–23–09; 4:15 pm]

BILLING CODE 7050–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (09–010)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Dr. Walter Kit, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dr. Walter Kit, NASA Clearance Officer, NASA Headquarters, 300 E Street SW., JE0000, Washington, DC 20546, (202) 358–1350, *Walter.Kit-1@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

NASA needs information pertaining to experiences of program beneficiaries in programs and activities receiving NASA financial assistance, such as student experiences in science, technology, engineering, and mathematics (STEM) programs, in order to more effectively conduct civil rights compliance reviews of programs receiving federal financial assistance from NASA. Such reviews are required by NASA regulations under Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and Section 619 of the NASA Authorization Act of 2005 (requiring NASA to conduct at least two Title IX reviews annually of NASA grant recipient institutions).

II. Method of Collection

NASA will utilize several on-line survey tools that will allow students at institutions on which NASA is conducting Title IX compliance reviews to provide responses by e-mail.

III. Data

Title: External Program: Civil Rights Survey.

OMB Number: 2700–XXXX.

Type of review: New Collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 500.

Estimated Number of Responses per Respondent: 1.

Estimated Time per Response: 0.25 hour.

Estimated Total Annual Burden Hours: 125 hours.

Estimated Total Annual Cost: $0.00.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Walter Kit,

NASA Clearance Officer.

[FR Doc. E9–1709 Filed 1–26–09; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Physics Proposal Review Panel; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: LIGO Annual Review Policy on access to LIGO Data for Physics (1208).

Date and Time: Tuesday, February 17, 2009; 8:30 a.m.–5 p.m.

Wednesday, February 18, 2009; 8:30 a.m.–3 p.m.

Place: National Science Foundation Rm. II–535 and Room 130.

Type of Meeting: Open.

Contact Person: Dr. Beverly Berger, Program Director for Gravitational Physics, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. *Telephone*: (703) 292–7372.

Purpose of Meeting: To provide advice and recommendations concerning NSF support of the LIGO project.

Agenda: To review and evaluate LIGO's practices and proposed policies regarding the availability of data.

Dated: January 21, 2009,

Susanne Bolton,

Committee Management Officer.

[FR Doc. E9–1658 Filed 1–26–09; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting; Agenda

TIME AND DATE: 9:30 a.m., Wednesday, January 28, 2009.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza SW., Washington, DC 20594.

STATUS: The two items are open to the public.

MATTERS TO BE CONSIDERED:

8077 *Aviation Accident Report*—Midair Collision of Electronic News Gathering (ENG) Helicopters, KTVK–TV, Eurocopter AS350B2, N613TV, and U.S. Helicopters, Inc., Eurocopter AS350B2, N215TV, Phoenix, Arizona, July 27, 2007.

7943A *Aircraft Accident (Summary) Report*—In-ifight Fire, Emergency Descent and Crash in a Residential Area, Cessna 310R, N501N, Sanford, Florida, July 10, 2007.

NEWS MEDIA CONTACT: *Telephone:* (202) 314–6100.

Individuals requesting specific accommodations should contact Rochelle Hall at (202) 314–6305 by Friday, January 23, 2008.

The public may view the meeting via a live or archived webcast by accessing a link under ''News & Events'' on the NTSB home page at *www.ntsb.gov.*

FOR FURTHER INFORMATION CONTACT: Vicky D'Onofrio, (202) 314–6410.

Dated: January 12, 2009.

Vicky D'Onofrio,

Federal Register Liaison Officer.

[FR Doc. E9–1619 Filed 1–26–09; 8:45 am]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0016]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from December 31, 2008 to January 13, 2009. The last biweekly notice was published on January 13, 2009 (74 FR 1712).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking, Directives and Editing Branch, TWB–05–B01M, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. 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 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. 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/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed within 60 days, 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 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 set forth 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/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor 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 amendment 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.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 28, 2007 (72 FR 49139). The E-Filing process requires participants to submit and serve all adjudicatory 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 five (5) 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 electronic filing Help Desk, which is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday. The help electronic filing Help Desk can be contacted by telephone at 1–866–672–7640 or by e-mail at *MSHD.Resource@nrc.gov*.

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).

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 submission.

For further details with respect to this amendment action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr.resource@nrc.gov*.

Arizona Public Service Company, *et al.*, Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of amendment request: July 2, 2008.

Description of amendment request: The amendments would revise Technical Specification (TS) 4.2.2, ''Control Element Assemblies,'' to support replacement of the full strength control element assemblies (CEAs) with a new design beginning with the 14th refueling outage (U3R14) for Palo Verde Nuclear Generating Station (PVNGS), Unit 3 in the spring of 2009. Additionally, Arizona Public Service Company (APS) will be updating the TS by removing the registered trademark ''Inconel'' while retaining the generic terminology ''Alloy 625'' and deleting the references to part-length CEAs in TS 4.2.2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Replacement of full-strength compression sleeve control element assemblies with full-strength silver (Ag)-indium (In)-Cadmium (Cd) control element assemblies.

Response: No.

The proposed change involves a new design for the full-strength Control Element Assemblies (CEA) that replaces a portion of B4C pellets (including the compression sleeve) in the tips of the CEA fingers with hollow silver-indium-cadmium slugs.

The following events are related to inadvertent movement of the CEAs; however, they are not initiated by the CEAs.

- Uncontrolled Control Element Assembly Withdrawal from a Subcritical or Low (Hot Zero) Power Condition.
- Uncontrolled Control Element Assembly Withdrawal at Power.
- Single Full-Strength Control Element Assembly Drop.
- Control Element Assembly Ejection.

These previously analyzed accidents are initiated by the failure of plant structures, systems, or components (SSC) other than the CEA itself. The proposed change to the CEA design does not have a detrimental impact on the integrity of any plant SSC that initiates an analyzed event. Additionally, the CEAs mitigate other events. In these events, the chrome plating on the portion of the clad exterior and the added weight has been conservatively accounted for in the SCRAM [safety control rod axe man] calculation. The change does not adversely affect the protective and mitigative capabilities of the plant, nor does the change affect the initiation or probability of occurrence of any accident. The SSCs will continue to perform their intended safety functions.

The proposed change in CEA design has resulted in a slight (less than 1%) reduction of total reactivity.

Computer modeling events which exhibit sensitivity to time dependent rod worth (sheared shaft/seized rotor, loss of flow from SAFDL [specified acceptable fuel design limits] and total loss of reactor coolant flow) demonstrate that all acceptance criteria continued to be met.

Therefore this change will not significantly increase the probability or consequences of any accident previously evaluated.

The removal of the registered trademark name ''Inconel''.

Response: No.

This change is considered editorial. Inconel is a registered trademark of Special Metals Corporation, while Alloy 625 is a generic alloy designation from the Unified Numbering System. Retaining the already referenced term ''Alloy 625'' does not involve a significant increase in the probability or consequences of an accident previously evaluated, as the material properties and application of Alloy 625 have not changed.

Deletion of the references to part-length control element assemblies.

Response: No.

This change is considered editorial. The removal of this information does not involve a significant increase in the probability or consequences of an accident previously evaluated as the part-length CEAs were

replaced in accordance with License Amendment 152, dated March 23, 2004 (Agency Document Access and Management System (ADAMS) Accession No. ML040860573) and the information is no longer applicable.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Replacement of full-strength compression sleeve control element assemblies with full-strength silver(Ag)-indium(In)-Cadmium(Cd) control element assemblies.

Response: No.

There are three differences in the replacement CEAs as compared to the current CEAs.

First, there is a very slight change in the outside diameter of a portion of the cladding on the replacement CEAs due to chrome plating on the lower portion of cladding. Analysis demonstrates that this change will not cause interference between the CEA cladding and the guide tube inside diameter in the buffer region. Secondly, there is a slight increase in weight with the Ag-In-Cd CEAs. However, this difference has been analyzed with respect to the performance capability of the CEDMs [Control Element Drive Mechanisms] and found to be within design capabilities and design analyses. Finally, the upper edges of the spider bosses have been chamfered to prevent damage to the self-latching mechanisms that can occur if the CEA hangs up when lifting through the upper guide structure cut outs. This change is for ease of maintenance and has no impact on operation of the CEAs.

Therefore, the Ag-In-Cd CEAs are identical to the compression sleeve CEAs in terms of form, fit and function and the proposed change will not introduce any new failure mechanisms, malfunctions, or accident initiators not already considered in the design and licensing bases. The possibility of a new or different malfunction of safety-related equipment is not created. No new accident scenarios, transient precursors, or limiting single failures are introduced as a result of these changes. There will be no adverse effects or challenges imposed on any safety-related system as a result of these changes. Therefore, the possibility of a new or different accident from any accident previously evaluated is not created as a result of any dimensional change.

The removal of the registered trademark name ''Inconel''.

Response: No.

This change is considered editorial. Inconel is a registered trademark of Special Metals Corporation, while Alloy 625 is a generic alloy designation from the Unified Numbering System. Retaining the already referenced term ''Alloy 625'' does not create the possibility of a new or different kind of accident from any accident previously evaluated, as the material properties and application of Alloy 625 have not changed.

Deletion of the references to part-length control element assemblies.

Response: No.

This change is considered editorial. The removal of this information does not create the possibility of a new or different kind of accident from any accident previously evaluated as the part-length CEAs were replaced in accordance with License Amendment 152, dated March 23, 2004 (Agency Document Access and Management System (ADAMS) Accession No. ML040860573) and the information is no longer applicable.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Replacement of full-strength compression sleeve control element assemblies with full-strength silver(Ac)-indium(In)-Cadmium(Cd) control element assemblies.

Response: No.

Reactor core safety limits are established in the PVNGS Technical Specifications to prevent overheating of the fuel and cladding that would result in the release of fission products to the reactor coolant during steady state operation, normal operational transients, and anticipated operational occurrences. The margin to these safety limits is not affected by the CEA design changes under consideration.

Overheating of the fuel is prevented by maintaining steady state, peak linear heat rate (LHR) below the level at which fuel centerline melting occurs. If the local LHR is high enough to cause the fuel centerline temperature to reach the melting point of the fuel, expansion of the pellet caused by centerline melting may cause the pellet to stress the cladding to the point of failure, allowing an uncontrolled release of activity to the reactor coolant.

Compliance with the DNBR [departure from nucleate boiling ratio] and fuel centerline melt specified acceptable fuel design limits (SAFDLs) is assured through the CEA insertion limits and alignment technical specifications, and through the power distribution limit technical specifications.

There is no change to the operation of the full-strength CEAs due to the change from compression sleeve CEAs to Ag-In-Cd CEAs. Since the Ag-In-Cd CEAs may be used to control power distribution similar to the compression sleeve CEAs, power distributions will still be controlled and maintained within the limits necessary to assure SAFDLs are met.

The proposed change in CEA design has resulted in a slight (less than 1%) reduction in total reactivity.

Computer modeling results of events which exhibit sensitivity to time dependent rod worth (sheared shaft/seized rotor, loss of flow from SAFDL and total loss of reactor coolant flow) demonstrate that all acceptance criteria continued to be met.

Therefore, since SAFDLs continue to be met, the change from compression sleeve CEAs to Ag-In-Cd CEAs does not involve a significant reduction in a margin of safety.

The removal of the registered trademark name ''Inconel''.

Response: No.

The removal of the registered trademark name ''Inconel'' [ ] is considered editorial. Inconel is a registered trademark of Special Metals Corporation, while Alloy 625 is a generic alloy designation from the Unified Numbering System. Retaining the already referenced term ''Alloy 625'' does not involve a significant reduction in the margin of safety as the material properties and application of Alloy 625 have not changed.

Deletion of the references to part-length control element assemblies.

Response: No.

This change is considered editorial. The removal of this information does not involve a significant reduction in the margin of safety as the part-length CEAs were replaced in accordance with Amendment 152, dated March 23, 2004 (Agency Document Access and Management System (ADAMS) Accession No. ML040860573) and the information is no longer applicable.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Michael G. Green, Senior Regulatory Counsel, Pinnacle West Capital Corporation, P.O. Box 52034, Mail Station 8695, Phoenix, Arizona 85072–2034.

NRC Branch Chief: Michael T. Markley.

Carolina Power & Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendments request: October 6, 2008.

Description of amendments request: The proposed change would remove work hour controls and/or references to the NRC Generic Letter 82–12 from the administrative control sections of the technical specifications. On April 17, 2007, the NRC approved a final rule that amended 10 CFR Part 26 and, among other changes, established requirements for managing worker fatigue at operating nuclear power plants. Subpart I, ''Managing Fatigue,'' specifically addresses managing worker fatigue by designating individual break requirements, work hour limits, and annual reporting requirements. Subpart I was published in the **Federal Register** on March 31, 2008 (73 FR 16966), with a required implementation period of 18 months. Compliance is, therefore, required by October 1, 2009. In order to support compliance with 10 CFR Part 26, Subpart I, the licensee is proposing to remove these work hour controls from Technical Specification 5.2.2.e at the Brunswick Steam Electric Plant, Units 1 and 2.

Basis for proposed no significant hazards consideration determination Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the

licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes remove TS [technical specification] controls on working hours for personnel who perform safety related functions. The TS controls are superseded by the worker fatigue requirements in 10 CFR Part 26. Removal of the TS requirements will be performed concurrently with the implementation of the 10 CFR Part 26, Subpart I requirements. The proposed changes do not impact the physical configuration or function of plant structures, systems, or components (SSCs) or the manner in which SSCs are operated, maintained, modified, tested, or inspected. The proposed changes do not impact the initiators or assumptions of analyzed events, nor do they impact the mitigation of accidents or transient events.

Therefore, it is concluded that these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes remove TS controls on working hours for personnel who perform safety related functions. The TS controls are superseded by the worker fatigue requirements in 10 CFR Part 26. Work hours will continue to be controlled in accordance with NRC requirements. The new rule allows for deviations from controls to mitigate or prevent a condition adverse to safety or as necessary to maintain the security of the facility. This ensures that the new rule will not restrict work hours and thereby create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not alter plant configuration, require that new plant equipment be installed, alter assumptions made about accidents previously evaluated, add any initiators, or effect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected.

Therefore, it is concluded that this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The proposed changes remove TS controls on working hours for personnel who perform safety related functions. The TS controls are superseded by the worker fatigue requirements in 10 CFR Part 26. The proposed changes do not involve any physical changes to plant or the manner in which plant systems are operated, maintained, modified, tested, or inspected. The proposed changes do not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The safety analysis acceptance criteria are not affected by this change. The proposed changes will not result in plant operation in a configuration outside the design basis. The proposed changes will not adversely affect systems that respond to safely shutdown the plant and to maintain the plant in a safe shutdown condition.

Removal of plant-specific TS administrative requirements will not reduce a margin of safety because the requirements in 10 CFR Part 26 are adequate to ensure that worker fatigue is managed. Therefore, it is concluded that these changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David T. Conley, Associate General Counsel II—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, NC 27602.

NRC Branch Chief: Thomas H. Boyce.

Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: October 6, 2008.

Description of amendments request: The proposed change would remove work hour controls and/or references to the NRC Generic Letter 82–12 from the administrative control sections of the technical specifications. On April 17, 2007, the NRC approved a final rule that amended 10 CFR Part 26 and, among other changes, established requirements for managing worker fatigue at operating nuclear power plants. Subpart I, ''Managing Fatigue,'' specifically addresses managing worker fatigue by designating individual break requirements, work hour limits, and annual reporting requirements. Subpart I was published in the **Federal Register** on March 31, 2008 (73 FR 16966), with a required implementation period of 18 months. Compliance is, therefore, required by October 1, 2009. In order to support compliance with 10 CFR Part 26, Subpart I, the licensee is proposing to remove these work hour controls from Technical Specification 5.2.2.e at the H. B. Robinson Steam Electric Plant, Unit 2.

Basis for proposed no significant hazards consideration determination Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes remove TS [technical specification] controls on working hours for personnel who perform safety related functions. The TS controls are superseded by the worker fatigue requirements in 10 CFR Part 26. Removal of the TS requirements will be performed concurrently with the implementation of the 10 CFR Part 26, Subpart I requirements. The proposed changes do not impact the physical configuration or function of plant structures, systems, or components (SSCs) or the manner in which SSCs are operated, maintained, modified, tested, or inspected. The proposed changes do not impact the initiators or assumptions of analyzed events, nor do they impact the mitigation of accidents or transient events.

Therefore, it is concluded that these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes remove TS controls on working hours for personnel who perform safety related functions. The TS controls are superseded by the worker fatigue requirements in 10 CFR Part 26. Work hours will continue to be controlled in accordance with NRC requirements. The new rule allows for deviations from controls to mitigate or prevent a condition adverse to safety or as necessary to maintain the security of the facility. This ensures that the new rule will not restrict work hours and thereby create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not alter plant configuration, require that new plant equipment be installed, alter assumptions made about accidents previously evaluated, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected.

Therefore, it is concluded that this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The proposed changes remove TS controls on working hours for personnel who perform safety related functions. The TS controls are superseded by the worker fatigue requirements in 10 CFR Part 26. The proposed changes do not involve any physical changes to the plant or the manner in which plant systems are operated,

maintained, modified, tested, or inspected. The proposed changes do not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The safety analysis acceptance criteria are not affected by this change. The proposed changes will not result in plant operation in a configuration outside the design basis. The proposed changes will not adversely affect systems that respond to safely shut down the plant and to maintain the plant in a safe shutdown condition.

Removal of plant-specific TS administrative requirements will not reduce a margin of safety because the requirements in 10 CFR Part 26 are adequate to ensure that worker fatigue is managed. Therefore, it is concluded that these changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David T. Conley, Associate General Counsel II—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, NC 27602.

NRC Branch Chief: Thomas H. Boyce.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: October 6, 2008.

Description of amendment request: The proposed change would remove work hour controls and/or references to the NRC Generic Letter 82–12 from the administrative control sections of the technical specifications. On April 17, 2007, the NRC approved a final rule that amended 10 CFR Part 26 and, among other changes, established requirements for managing worker fatigue at operating nuclear power plants. Subpart I, ''Managing Fatigue,'' specifically addresses managing worker fatigue by designating individual break requirements, work hour limits, and annual reporting requirements. Subpart I was published in the **Federal Register** on March 31, 2008 (73 FR 16966), with a required implementation period of 18 months. Compliance is, therefore, required by October 1, 2009. In order to support compliance with 10 CFR Part 26, Subpart I, the licensee is proposing to remove these work hour controls from Technical Specification 6.2.2.f at the Shearon Harris Nuclear Power Plant, Unit 1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes remove TS [technical specification] controls on working hours for personnel who perform safety related functions. The TS controls are superseded by the worker fatigue requirements in 10 CFR Part 26. Removal of the TS requirements will be performed concurrently with the implementation of the 10 CFR Part 26, Subpart I requirements. The proposed changes do not impact the physical configuration or function of plant structures, systems, or components (SSCs) or the manner in which SSCs are operated, maintained, modified, tested, or inspected. The proposed changes do not impact the initiators or assumptions of analyzed events, nor do they impact the mitigation of accidents or transient events.

Therefore, it is concluded that these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes remove TS controls on working hours for personnel who perform safety related functions. The TS controls are superseded by the worker fatigue requirements in 10 CFR Part 26. Work hours will continue to be controlled in accordance with NRC requirements. The new rule allows for deviations from controls to mitigate or prevent a condition adverse to safety or as necessary to maintain the security of the facility. This ensures that the new rule will not restrict work hours and thereby create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not alter plant configuration, require that new plant equipment be installed, alter assumptions made about accidents previously evaluated, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected.

Therefore, it is concluded that this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The proposed changes remove TS controls on working hours for personnel who perform safety related functions. The TS controls are superseded by the worker fatigue requirements in 10 CFR Part 26. The proposed changes do not involve any physical changes to the plant or the manner in which plant systems are operated, maintained, modified, tested, or inspected. The proposed changes do not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The safety analysis acceptance criteria are not affected by this change. The proposed changes will not result in plant operation in a configuration outside the design basis. The proposed changes will not adversely affect systems that respond to safely shut down the plant and to maintain the plant in a safe shutdown condition.

Removal of plant-specific TS administrative requirements will not reduce a margin of safety because the requirements in 10 CFR Part 26 are adequate to ensure that worker fatigue is managed. Therefore, it is concluded that these changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David T. Conley, Associate General Counsel II—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, NC 27602.

NRC Branch Chief: Thomas H. Boyce.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: November 13, 2008.

Description of amendment request: The proposed change will modify Technical Specification (TS) 3.3.1.1, ''Reactor Protective Instrumentation.'' Specifically, Table 4.3–1 and the associated Notes 7 and 8 will be revised to clarify and streamline the reactor coolant system (RCS) flow verification requirements associated with the departure from nucleate boiling ratio (DNBR) reactor trip signal.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The CPC [Core Protection Calculator] reactor protective function is not considered an accident initiator. The primary function is to initiate an automatic reactor trip signal when specific plant conditions are reached, thereby limiting the consequences of an accident. The proposed change acts to eliminate unnecessary conservatisms and accordingly increase operational margin by eliminating the requirement to use

calorimetric flow measurement in the CPC flow verification. This method of verification will normally only be used in the future during periods when the COLSS [Core Operating Limits Supervisory System] RCP [Reactor Coolant Pump] Δp flow measurement is unavailable. Regardless of the method of verification used, the CPC will continue to be verified to have an indicated RCS flow equal to or conservative relative to the measured RCS flow on a once per 12-hour basis. In so doing, the CPC will continue to act to generate a reactor trip on low DNBR as originally designed in order to ensure the DNBR reactor core Safety Limit is not exceeded.

The relocation of measurement uncertainty references to the TS Bases does not reduce the requirements to account for uncertainties in any Limiting Safety System Setting (LSSS) designed to protect reactor core Safety Limits. The necessary uncertainties will continue to be applied as required and will be controlled in accordance with TS 6.5.14, Technical Specification Bases Control Program, and station procedures.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not result in any physical plant modifications or changes in the way the plant is operated. In addition, the CPCs are unrelated to any type of accident initiator previously evaluated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change increases operating margin when the COLSS RCP Δp flow measurement is available for use while unaffecting the CPC ability to initiate an automatic reactor trip on low DNBR prior to the DNBR reactor core safety limit being exceeded. Relocating the references to measurement uncertainties to the TS Bases likewise has no impact on the CPC design function and the uncertainties will continue to be applied as required and controlled in accordance with TS 6.5.14, Technical Specification Bases Control Program, and station procedures.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Terence A. Burke, Associate General Counsel—Nuclear Entergy Services, Inc., 1340 Echelon Parkway, Jackson, Mississippi 39213.

NRC Branch Chief: Michael T. Markley.

Entergy Gulf States Louisiana, LLC, and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: December 8, 2008

Description of amendment request: The proposed amendment adds a license condition to allow a one-time extension of surveillance requirements involving the 18-month channel calibration and logic system functional tests for one channel of the reactor water level instrumentation system. The extension is to account for the effects of rescheduling the next refueling outage from early to late 2009.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The requested action is a one-time extension to the performance interval of certain TS [Technical Specification] surveillance requirements. The performance of the surveillances, or the failure to perform the surveillances, is not a precursor to an accident. Performing the surveillances or failing to perform the surveillances does not affect the probability of an accident. Therefore, the proposed delay in performance of the surveillance requirements in this amendment request does not increase the probability of an accident previously evaluated.

A delay in performing the surveillances does not result in a system being unable to perform its required function. Additionally, the defense in depth of the system design provides additional confidence that the safety function is maintained. In the case of this one-time extension request, the relatively short period of additional time that the systems and components will be in service before the next performance of the surveillance will not affect the ability of those systems to operate as designed. Therefore, the systems required to mitigate accidents will remain capable of performing their required function. No new failure modes have been introduced because of this action and the consequences remain consistent with previously evaluated accidents. Therefore, the proposed delay in performance of the surveillance requirement in this amendment request does not involve a significant increase in the consequences of an accident.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment does not involve a physical alteration of any system, structure, or component (SSC), or a change in the way any SSC is operated. The surveillance intervals of the level instrumentation are currently evaluated for 30 months, which bounds the requested interval extension. The proposed amendment does not involve operation of any SSCs in a manner or configuration different from those previously recognized or evaluated. No new failure mechanisms will be introduced by the one-time surveillance extension being requested.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment is a one-time extension of the performance-interval of certain TS surveillance requirements. Extending the surveillance requirements does not involve a modification of any TS Limiting Conditions for Operation. Extending the surveillance frequency does not involve a change to any limit on accident consequences specified in the license or regulations. Extending the surveillance frequency does not involve a change to how accidents are mitigated or a significant increase in the consequences of an accident. Extending the surveillance frequency does not involve a change in a methodology used to evaluate consequences of an accident. Extending the surveillance frequency does not involve a change in any operating procedure or process. The surveillance intervals of the level instrumentation are currently evaluated for 30 months which bounds the requested interval extension. The components involved in this request have exhibited reliable operation based on the results of the most recent performances of their 18-month surveillance requirements and the associated functional surveillances.

Based on the limited additional period of time that the systems and components will be in service before the surveillance is next performed, as well as the operating experience that these surveillances are typically successful when performed, it is reasonable to conclude that the margin of safety associated with the surveillance requirement will not be affected by the requested extension.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Terence A. Burke, Associate General Counsel—Nuclear Entergy Services, Inc., 1340 Echelon Parkway, Jackson, Mississippi 39213.

NRC Branch Chief: Michael T. Markley.

Exelon Generation Company, LLC, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Units 1 and 2, Will County, Illinois

Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois.

Date of amendment request: December 4, 2008.

Description of amendment request: The proposed amendments would revise Technical Specifications (TSs) 1.1, ''Definitions,'' and 3.4.16, ''RCS Specific Activity,'' and Surveillance Requirements 3.4.16.1 and 3.4.16.3. The proposed changes would replace the current TS 3.4.16 limit on reactor coolant system (RCS) gross specific activity with a new limit on RCS noble gas specific activity. The noble gas specific activity limit would be based on a new dose equivalent Xe–133 definition that would replace the current E Bar average disintegration energy definition. In addition, the current dose equivalent I–131 definition would be reformatted. The availability of this TS revision was announced in the **Federal Register** on March 15, 2007 (72 FR 12217) as part of the consolidated line item improvement process. The licensee affirmed the applicability of the model no significant hazards consideration determination in its application.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration adopted by the licensee is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

Reactor coolant specific activity is not an initiator for any accident previously evaluated. The Completion Time when primary coolant gross activity is not within limit is not an initiator for any accident previously evaluated. The current variable limit on primary coolant iodine concentration is not an initiator to any accident previously evaluated. As a result, the proposed change does not significantly increase the probability of an accident. The proposed change will limit primary coolant noble gases to concentrations consistent with the accident analyses. The proposed change to the Completion Time has no impact on the consequences of any design basis accident since the consequences of an accident during the extended Completion Time are the same as the consequences of an accident during the Completion Time. As a result, the consequences of any accident previously evaluated are not significantly increased.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Accident Previously Evaluated.

The proposed change in specific activity limits does not alter any physical part of the plant nor does it affect any plant operating parameter. The change does not create the potential for a new or different kind of accident from any previously calculated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety.

The proposed change revises the limits on noble gas radioactivity in the primary coolant. The proposed change is consistent with the assumptions in the safety analyses and will ensure the monitored values protect the initial assumptions in the safety analyses.

The Nuclear Regulatory Commission (NRC) staff has reviewed the analysis adopted by the licensee and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Bradley J. Fewell, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Russell Gibbs.

Exelon Generation Company, LLC, Docket No. 50–461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: September 2, 2008.

Description of amendment request: The proposed amendments would relocate Surveillance Requirements (SR) 3.8.3.6 from the technical specifications (TSs) to a licensee-controlled document. SR 3.8.3.6 requires Emergency Diesel Generator fuel oil storage tanks to be drained, sediment removed, and cleaned on a 10-year interval. The change is consistent with the current revision (*i.e.*, Rev. 3) of the Improved Standard Technical Specifications (ISTS), NUREG 1434, ''Standard Technical Specifications General Electric Plants, BWR/6.'' The SR was removed from the ISTS under Technical Specification Task Force (TSTF) Traveler No. 2, ''Relocate the 10–Year Sediment Cleaning of the Fuel Oil Storage Tank to Licensee Control,'' approved by the Nuclear Regulatory Commission on July 16, 1998.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The FOSTs [fuel oil storage tanks] provide the storage for the DG [diesel generator] fuel oil, assuring an adequate volume is available for each DG to operate for seven days in the event of a loss of offsite power concurrent with a loss of coolant accident. The relocation of the SR to drain and clean the FOSTs to a licensee-controlled document will not impact any of the previously analyzed accidents. Sediment in the tank, or failure to perform this SR, does not necessarily result in an inoperable storage tank. Fuel oil quantity and quality are assured by other TS SRs that remain unchanged. These SRs help ensure tank sediment is minimized and ensure that any degradation of the tank wall surface that results in fuel oil volume reduction is detected and corrected in a timely manner. Future changes to the licensee-controlled document will be evaluated pursuant to the requirements of 10 CFR 50.59, ''Changes, tests, and experiments,'' to ensure that such changes do not result in more than a minimal increase in the probability or consequences of an accident previously evaluated.

The proposed change does not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, and configuration or the manner in which the plant is operated and maintained. The proposed change does not adversely affect the ability of structures, systems or components (SSCs) to perform their intended safety function to mitigate the consequences of an initiating event within the assumed acceptance limits.

The proposed change does not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of any accident previously evaluated. Further, the proposed change does not increase the types and amounts of radiological effluent that may be released offsite, nor significantly increase individual or cumulative occupational/public radiation exposures.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed TS change does not involve the addition or modification of any plant equipment. Also, the proposed change will

not alter the design configuration, or method of operation of plant equipment beyond its normal functional capabilities. The requirements retained in the TS continue to require testing of the diesel fuel oil to ensure the proper functioning of the DGs. The proposed TS change does not create any new credible failure mechanisms, malfunctions or accident initiators.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change does not alter or exceed a design basis or safety limit. The requirements retained in the TS continue to require testing of the diesel fuel oil to ensure the DGs are able to perform their intended function.

Therefore, the proposed changes does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Bradley J. Fewell, Associate General Counsel, Exelon Nuclear, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Russell Gibbs.

FirstEnergy Nuclear Operating Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2 (BVPS–1 and 2), Beaver County, Pennsylvania

Date of amendment request: September 24, 2008.

Description of amendment request: The proposed amendment would modify Technical Specifications (TSs) to allow the BVPS–2 containment spray additive sodium hydroxide (NaOH) to be replaced by sodium tetraborate (NaTB).

Basis for proposed no significant hazards consideration determination: As required by10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Use of NaTB in lieu of NaOH would not involve a significant increase in probability of a previously evaluated accident because the containment spray additive is not an initiator of any analyzed accident. The NaTB would be stored and delivered by a passive method that does not have potential to affect plant operations. Any existing NaOH delivery system equipment which remains in place but is removed from service would meet existing seismic, electrical and containment isolation requirements. Therefore the change in additive, including removal of NaOH equipment from service, would not result in any failure modes that could initiate an accident.

The spray additive is used to mitigate the consequences of a LOCA [loss-of-coolant accident]. Use of NaTB as an additive in lieu of NaOH would not involve a significant increase in the consequences of a previously evaluated accident because the amount of NaTB specified in the proposed TS would achieve a pH of 7 or greater, consistent with the current licensing basis. This pH is sufficient to achieve long-term retention of iodine by the containment sump fluid for the purpose of reducing accident related radiation dose following a LOCA.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Regarding the proposed use of NaTB in lieu of NaOH, the NaTB would be stored and delivered by a passive method that does not have potential to affect plant operations. Any existing NaOH delivery system equipment remaining in place but which is removed from service would meet existing seismic, electrical and containment isolation requirements. Hydrogen generation would not be significantly impacted by the change. Therefore, no new failure mechanisms, malfunctions, or accident initiators would be introduced by the proposed change and it would not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Since the quantity of NaTB specified in the amended TS would reduce the potential for undesirable chemical effects while achieving radiation dose reductions, corrosion control and hydrogen generation effects that are comparable to NaOH, the proposed change does not involve a significant reduction in a margin of safety. The primary function of an additive is to reduce loss of coolant accident consequences by controlling the amount of iodine fission products released to containment atmosphere from reactor coolant accumulating in the sump during a LOCA. Because the amended technical specifications would achieve a pH of 7 or greater using NaTB, dose related safety margins would not be significantly reduced. Use of NaTB reduces the potential for undesirable chemical effects that could interfere with recirculation flow through the sump strainers. Any existing NaOH delivery system equipment which remains in place but is removed from service would meet existing seismic, electrical and containment isolation requirements and would not interfere with operation of the existing containment or containment spray system.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David W. Jenkins, FirstEnergy Nuclear Operating Company, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Branch Chief: Mark G. Kowal.

FirstEnergy Nuclear Operating Company (FENOC), et al., Docket No. 50–440, Perry Nuclear Power Plant, Unit No. 1 (PNPP), Lake County, Ohio

Date of amendment request: November 18, 2008

Description of amendment request: The proposed amendment would modify Technical Specification (TS) 5.5.6 to incorporate Technical Specification Task Force (TSTF) Travelers TSTF–479, ''Changes to Reflect Revision of 10 CFR 50.55a,'' and TSTF 497, ''Limit Inservice Testing Program SR [Surveillance Requirement] 3.0.2 Application to Frequencies of 2 Years or Less.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment revises TS 5.5.6, ''Inservice Testing Program,'' for consistency with 10 CFR 50.55a(f)(4) requirements regarding inservice testing of pumps and valves. The proposed amendment incorporates revisions to the ASME Code that result in a net improvement in the measures for testing pumps and valves. The proposed changes do not impact any accident initiators or analyzed events or assumed mitigation of accident or transient events. They do not involve the addition or removal of any equipment, or any design changes to the facility. Therefore, the proposed changes do not represent a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not involve a modification to the physical configuration of the plant. There is no new equipment to be installed or a change in the methods governing normal plant operation. The proposed change will not impose any new or different requirements or introduce a new

accident initiator, accident precursor, or malfunction mechanism. Additionally, there is no change in the types or increases in the amounts of any effluent that may be released off-site and there is no increase in individual cumulative occupational exposure. Therefore, the proposed change does not create the possibility of an accident of a different kind than previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment revises TS 5.5.6, ''Inservice Testing Program,'' for consistency with the requirements of 10 CFR 50.55a(f)(4) regarding the inservice testing of pumps and valves. The proposed amendment incorporates revisions to the ASME Code that result in a net improvement in the measures for testing pumps and valves. The safety function of the affected pumps and valves will be maintained. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David W. Jenkins, Attorney, FirstEnergy Corporation, Mail Stop A–GO–15, 76 South Main Street, Akron, OH 44308.

NRC Branch Chief: Russell Gibbs.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: October 6, 2008.

Description of amendment request: The proposed change would remove work hour controls and/or references to the NRC Generic Letter 82–12 from the administrative control sections of the technical specifications. On April 17, 2007, the NRC approved a final rule that amended 10 CFR Part 26 and, among other changes, established requirements for managing worker fatigue at operating nuclear power plants. Subpart I, ''Managing Fatigue,'' specifically addresses managing worker fatigue by designating individual break requirements, work hour limits, and annual reporting requirements. Subpart I was published in the **Federal Register** on March 31, 2008 (73 FR 16966), with a required implementation period of 18 months. Compliance is, therefore, required by October 1, 2009. In order to support compliance with 10 CFR Part 26, Subpart I, the licensee is proposing to remove these work hour controls from Technical Specification 5.2.2.e at the Crystal River Unit 3 Nuclear Generating Plant.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes remove TS [technical specification] controls on working hours for personnel who perform safety related functions. The TS controls are superseded by the worker fatigue requirements in 10 CFR Part 26. Removal of the TS requirements will be performed concurrently with the implementation of the 10 CFR Part 26, Subpart I requirements. The proposed changes do not impact the physical configuration or function of plant structures, systems, or components (SSCs) or the manner in which SSCs are operated, maintained, modified, tested, or inspected. The proposed changes do not impact the initiators or assumptions of analyzed events, nor do they impact the mitigation of accidents or transient events.

Therefore, it is concluded that these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes remove TS controls on working hours for personnel who perform safety related functions. The TS controls are superseded by the worker fatigue requirements in 10 CFR Part 26. Work hours will continue to be controlled in accordance with NRC requirements. The new rule allows for deviations from controls to mitigate or prevent a condition adverse to safety or as necessary to maintain the security of the facility. This ensures that the new rule will not restrict work hours and thereby create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not alter plant configuration, require that new plant equipment be installed, alter assumptions made about accidents previously evaluated, add any initiators, or effect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected.

Therefore, it is concluded that this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The proposed changes remove TS controls on working hours for personnel who perform safety related functions. The TS controls are superseded by the worker fatigue requirements in 10 CFR Part 26. The proposed changes do not involve any physical changes to plant or the manner in which plant systems are operated, maintained, modified, tested, or inspected. The proposed changes do not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The safety analysis acceptance criteria are not affected by this change. The proposed changes will not result in plant operation in a configuration outside the design basis. The proposed changes will not adversely affect systems that respond to safely shut down the plant and to maintain the plant in a safe shutdown condition.

Removal of plant-specific TS administrative requirements will not reduce a margin of safety because the requirements in 10 CFR Part 26 are adequate to ensure that worker fatigue is managed. Therefore, it is concluded that these changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David T. Conley, Associate General Counsel II—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, NC 27602.

NRC Branch Chief: Thomas H. Boyce.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: December 17, 2008.

Description of amendments request: The proposed change would revise the Crystal River Unit 3 Improved Technical Specifications Administrative Controls, Section 5.6, to revise the Inservice Testing Program to incorporate the Technical Specification Task Force (TSTF) Standard TS Change Traveler, TSTF–479, Revision 0, ''Changes to Reflect Revision of 10 CFR 50.55a,'' and TSTF–497, Revision 0, ''Limit Inservice Testing Program SR 3.0.2 Application to Frequencies of 2 Years or Less.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

4. Does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change revises the CR–3 [Crystal River Unit 3] ITS [Improved Technical Specifications], Section 5.6.2.9, ''Inservice Testing Program,'' for consistency with the requirements of 10 CFR 50.55a(f)(4) regarding the inservice testing of pumps and

valves which are classified as ASME [American Society of Mechanical Engineers] Code Class 1, Class 2, and Class 3. The proposed change incorporates revisions to the ASME Code that result in a net improvement in the measures for testing pumps and valves.

The proposed change does not impact any accident initiators or analyzed events or assumed mitigation of accident or transient events. The proposed change does not involve the addition or removal of any equipment, or any design changes to the facility. Therefore, this proposed change does not involve an increase in probability or consequences of an accident previously evaluated.

5. Does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change revises the CR–3 ITS, Section 5.6.2.9, ''Inservice Testing Program,'' for consistency with the requirements of 10 CFR 50.55a(f)(4) regarding the inservice testing of pumps and valves which are classified as ASME Code Class 1, Class 2, and Class 3. The proposed change incorporates revisions to the ASME Code that result in a net improvement in the measures for testing pumps and valves.

The proposed change does not involve a modification to the physical configuration of the plant (i.e., no new equipment will be installed) or involve a change in the methods governing normal plant operation. The proposed change will not introduce a new accident initiator, accident precursor, or malfunction mechanism. Additionally, there is no change in types or increases in the amounts of any effluents that may be released offsite and there is no increase in individual or cumulative occupational exposure. Therefore, the proposed change does not create the possibility of an accident of a different kind than previously evaluated.

6. Does not involve a significant reduction in a margin of safety[.]

The proposed change revises the CR–3 ITS, Section 5.6.2.9, ''Inservice Testing Program,'' for consistency with the requirements of 10 CFR 50.55a(f)(4) regarding the inservice testing of pumps and valves which are classified as ASME Code Class 1, Class 2, and Class 3. The proposed change does not involve a modification to the physical configuration of the plant (i.e., no new equipment will be installed) or change the methods governing normal plant operation. The proposed change incorporates revisions to the ASME Code that result in a net improvement in the measures for testing pumps and valves. The safety function of the affected pumps and valves will be maintained. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David T. Conley, Associate General Counsel II—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, NC 27602.

NRC Branch Chief: Thomas H. Boyce.

Northern States Power Company—Minnesota, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of amendment request: November 4, 2008.

Description of amendment request: The proposed amendments would make changes to the Technical Specifications to increase the 24 month test load for the Unit 1 Emergency Diesel Generators (EDGs), D1 and D2, reduce the monthly test load for the Unit 2 EDGs, D5 and D6, and reduce the 24 month test loads for the Unit 2 EDGs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This license amendment request proposes to increase a portion of the Prairie lsland Nuclear Generating Plant Unit 1 emergency diesel generator's 24-month test loading, reduce the Unit 2 emergency diesel generators' monthly test loading which demonstrates Technical Specification operability and revise the 24-month test to require the Unit 2 emergency diesel generators to operate for at least 2 hours at 100–110% of the continuous rated loading and the remainder of the 24-hour test at or above 4000 kW. The proposed test loads will continue to assure that the emergency diesel generators have the necessary reliability and availability for the design basis accidents and station blackout events.

The emergency diesel generators are required to be operable in the event of a design basis accident coincident with a loss of offsite power to mitigate the consequences of the accident. They are also the alternate AC source for a station blackout on the other Prairie lsland Nuclear Generating Plant unit. The emergency diesel generators are not accident initiators and therefore these changes do not involve a significant increase in the probability of an accident previously evaluated.

The accident analyses assume that at least one safeguards bus is provided with power either from the offsite sources or the emergency diesel generators. The Technical Specification changes proposed in this license amendment request will continue to assure that the emergency diesel generators have the capacity and capability to assume their maximum auto-connected loads. Thus, the changes proposed in this license amendment request do not involve a significant increase in the consequences of an accident previously evaluated.

The changes proposed in this license amendment do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This license amendment request proposes to increase a portion of the Prairie Island Nuclear Generating Plant Unit 1 emergency diesel generator's 24-month test loading, reduce the Unit 2 emergency diesel generators' monthly test loading which demonstrates Technical Specification operability and revise the 24-month test to require the Unit 2 emergency diesel generators to operate for at least 2 hours at 100–110% of the continuous rated loading and the remainder of the 24-hour test at or above 4000 kW. The proposed test loads will continue to assure that the emergency diesel generators have the necessary reliability and availability for the design basis accidents and station blackout events.

The proposed Technical Specification changes do not involve a change in the plant design, system operation, or the use of the emergency diesel generators. The proposed changes require the Unit 1 emergency diesel generators to be tested at increased loads and allow the Unit 2 emergency diesel generator to be tested at reduced loads which envelope the required safety function loads. These revised loads continue to demonstrate the capability and capacity of the emergency diesel generators to perform their required functions. There are no new failure modes or mechanisms created due to testing the emergency diesel generators at the proposed test loading. Testing of the emergency diesel generators at the proposed test loadings does not involve any modification in the operational limits or physical design of plant systems. There are no new accident precursors generated due to the proposed test loadings.

The Technical Specification changes proposed in this license amendment do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

This license amendment request proposes to increase a portion of the Prairie Island Nuclear Generating Plant Unit 1 emergency diesel generator's 24-month test loading, reduce the Unit 2 emergency diesel generators' monthly test loading which demonstrates Technical Specification operability and revise the 24-month test to require the Unit 2 emergency diesel generators to operate for at least 2 hours at 100–110% of the continuous rated loading and the remainder of the 24-hour test at or above 4000 kW. The proposed test loads will continue to assure that the emergency diesel generators have the necessary reliability and availability for the design basis accidents and station blackout events.

The proposed Technical Specification changes will continue to demonstrate that the emergency diesel generators meet the Technical Specification definition of operability, that is, the proposed tests will demonstrate that the emergency diesel generators will perform their safety function and the necessary emergency diesel generator attendant instrumentation, controls, cooling, lubrication and other auxiliary equipment required for the emergency diesel generators to perform their safety function loads are also tested at these proposed loadings. The proposed testing will also continue to demonstrate the capability and capacity of the emergency diesel generators to supply their required loss of offsite power loads coincident with station blackout loads from the opposite unit. Since the proposed surveillance testing will continue to demonstrate operability, and the capability and capacity to supply their required loss of offsite power coincident with opposite unit station blackout loads, the proposed Technical Specification changes do not involve a significant reduction in a margin of safety.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Peter M. Glass, Assistant General Counsel, Xcel Energy Services, Inc., 414 Nicollet Mall, Minneapolis, MN 55401.

NRC Branch Chief: Lois M. James.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260 and 50–296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment request: March 27, 2008, as supplemented by a letter December 19, 2008.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) requirements related to control building envelope habitability in TS Section 3.7.3 Control Room Emergency Ventilation (CREV) System, and add TS Section 5.5.13, Control Building Envelope Habitability Program, to the Administrative Section of the TSs. The licensee has included conforming technical changes to the TS Bases. The proposed revision to the Bases also includes editorial and administrative changes to reflect applicable changes to the corresponding TS Bases, which were made to improve clarity, conform to the latest information and references, correct factual errors, and achieve more consistency with the standard TS NUREGs. The proposed revision to the TS and associated Bases is similar to the TSTF–448, Revision 3. The supplement contains additional information related to smoke and chemical effects and addresses the associated proposed revision to TS Section 3.7.3, TS Section 5.5.13 and TS Bases 3.7.3.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed Technical Specification change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed change does not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, or configuration of the facility. The proposed change does not alter or prevent the ability of structures, systems, and components (SSCs) to perform their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed change revises the TS for the CRE emergency ventilation system, which is a mitigation system designed to minimize unfiltered air leakage into the CRE and to filter the CRE atmosphere to protect the CRE occupants in the event of accidents previously analyzed. An important part of the CRE emergency ventilation system is the CRE boundary. The CRE emergency ventilation system is not an initiator or precursor to any accident previously evaluated. Therefore, the probability of any accident previously evaluated is not increased. Performing tests to verify the operability of the CRE boundary and implementing a program to assess and maintain CRE habitability ensure that the CRE emergency ventilation system is capable of adequately mitigating radiological consequences to CRE occupants during accident conditions, and that the CRE emergency ventilation system will perform as assumed in the consequence analyses of design basis accidents. Thus, the consequences of any accident previously evaluated are not increased. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed Technical Specification change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed change does not impact the accident analysis. The proposed change does not alter the required mitigation capability of the CRE emergency ventilation system, or its functioning during accident conditions as assumed in the licensing basis analyses of design basis accident radiological consequences to CRE occupants. No new or different accidents result from performing the new surveillance or following the new program. The proposed change does not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or a significant change in the methods governing normal plant operation. The proposed change does not alter any safety analysis assumptions and is consistent with current plant operating practice. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed Technical Specification change involve a significant reduction in a margin of safety?

The proposed change does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The proposed change does not affect safety analysis acceptance criteria. The proposed change will not result in plant operation in a configuration outside the design basis for an unacceptable period of time without compensatory measures. The proposed change does not adversely affect systems that respond to safely shut down the plant and to maintain the plant in a safe shutdown condition. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Branch Chief: Thomas H. Boyce.

Tennessee Valley Authority, Docket No. 50–260, Browns Ferry Nuclear Plant, Unit 2, Limestone County, Alabama

Date of amendment request: December 22, 2008 (TS–463–T).

Description of amendment request: The proposed amendment would, on a one-time basis, extend several Technical Specification (TS) surveillance frequencies approximately 45 days.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The requested action is a one-time extension to the performance interval of a limited number of TS surveillance requirements. The performance of these surveillances, or the failure to perform these surveillances, is not a precursor to an accident. Performing these surveillances or

failing to perform these surveillances does not affect the probability of an accident. Therefore, the proposed delay in performance of the surveillance requirements in this amendment request does not increase the probability of an accident previously evaluated.

A delay in performing these surveillances does not result in a system being unable to perform its required function. In the case of this one-time extension request, the relatively short period of additional time that the systems and components will be in service before the next performance of the surveillance will not affect the ability of those systems to operate as designed. Therefore, the systems required to mitigate accidents will remain capable of performing their required function. No new failure modes have been introduced because of this action and the consequences remain consistent with previously evaluated accidents. Therefore, the proposed delay in performance of the surveillance requirements in this amendment request does not involve a significant increase in the consequences of an accident.

Therefore, operation of the facility in accordance with the proposed license amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment does not involve a physical alteration of any system, structure, or component (SSC) or a change in the way any SSC is operated. The proposed amendment does not involve operation of any SSCs in a manner or configuration different from those previously recognized or evaluated. No new failure mechanisms will be introduced by the one-time surveillance requirement extensions being requested.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment is a one-time extension of the performance interval of a limited number of TS surveillance requirements. Extending these surveillance requirements does not involve a modification of any TS Limiting Conditions for Operation. Extending these surveillance requirements does not involve a change to any limit on accident consequences specified in the license or regulations. Extending these surveillance requirements does not involve a change to how accidents are mitigated or a significant increase in the consequences of an accident. Extending these surveillance requirements does not involve a change in a methodology used to evaluate consequences of an accident. Extending these surveillance requirements does not involve a change in any operating procedure or process.

The instrumentation and components involved in this request have exhibited reliable operation based on the results of the most recent performance of their 24-month surveillance requirements.

Based on the limited additional period of time that the systems and components will be in service before the surveillances are next performed, as well as the operating experience that these surveillances are typically successful when performed, it is reasonable to conclude that the margins of safety associated with these surveillance requirements will not be affected by the requested extension.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Branch Chief: Thomas Boyce.

Tennessee Valley Authority, Docket No. 50 390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of amendment request: August 1, 2008, as supplemented November 25 and December 31, 2008 (2 letters).

Description of amendment request: The proposed amendment would revise the following: (1) Technical Specification (TS) 4.2.1, ''Fuel Assemblies,'' and TS Surveillance Requirements 3.5.1.4, ''Accumulators,'' and 3.5.4.3, ''RWST [Refueling Water Storage Tank],'' to increase the maximum number of Tritium Producing Burnable Absorber Rods (TPBARs) that can be irradiated per cycle from 400 to 704.

An application that addressed similar issues was previously submitted on August 1, 2008, and notice of that application was provided in the **Federal Register** on November 12, 2008 (73 FR 66946). Due to certain changes in the specifics of the December 31, 2008, revision from those proposed in the August 1, 2008, application, as supplemented on November 25 and December 31, 2008, the application is being renoticed in its entirety. This notice supersedes the notice published in the **Federal Register** on November 12, 2008.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change modifies the maximum number of TPBARs in the core. The required boron concentration for the cold leg accumulators (CLAs) and RWST remains unchanged. The current boron concentration has been demonstrated to maintain the required accident mitigation safety function for the CLAs and RWST with the higher number of TPBARs and this will be verified for each core that contains TPBARs as part of the normal reload analysis. The CLAs and RWST safety function is to mitigate accidents that require the injection of borated water to cool the core and to control reactivity. These functions are not potential sources for accident generation and the modification of the number of TPBARs will not increase the potential for an accident. Therefore, the possibility of an accident is not increased by the proposed changes. The current boron concentration levels are supported by the proposed number of TPBARs in the core. Since the current boron concentration levels will continue to maintain the safety function of the CLAs and RWST in the same manner as currently approved, the consequences of an accident are not increased by the proposed changes.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change only modifies the maximum number of TPBARs in the core. The boron concentrations for accident mitigation functions of the CLAs and RWST remain unchanged. These functions do not have a potential to generate accidents as they only serve to perform mitigation functions associated with an accident. The proposed modification will maintain the mitigation function in an identical manner as currently approved. There are no plant equipment or operational changes associated with the proposed revision. Therefore, since the CLA and RWST functions are not altered and the plant will continue to operate without change, the possibility of a new or different kind of an accident is not created.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

This change proposes a change to the maximum number of TPBARs in the core. The boron concentration requirements that support the accident mitigation functions of the CLAs and RWST remain unchanged. The proposed change does not alter any plant equipment or components and does not alter any setpoints utilized for the actuation of accident mitigation system or control functions. The proposed number of TPBARs, in conjunction with the current boron concentration values, has been demonstrated to provide an adequate level of reactivity control for accident mitigation and this will be verified for each core that contains TPBARs as part of the normal reload analysis. Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three

standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Acting Branch Chief: P. Milano.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Entergy Nuclear Operations, Inc., Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: November 25, 2008.

Brief description of amendment request: The proposed amendment would revise Appendix A, Technical Specifications (TS), as they apply to the spent fuel pool (SFP) storage requirements in TS section 3.7.16 and the criticality requirements for the Region I SFP and north tilt pit fuel storage racks, in TS section 4.3.1.1.

Date of publication of individual notice in **Federal Register**: January 2, 2009 (74 FR 123).

Expiration date of individual notice: February 3, 2009.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of amendment request: December 1, 2008.

Description of amendment request: By letter dated October 31, 2008, the Nuclear Regulatory Commission issued Amendment No. 186, to Callaway Plant, Unit 1, Facility Operating License No. NPF–30. The amendment allowed a one-time extension of the allowed outage time (completion time) for each of the two essential service water (ESW) trains (ESW Train A and Train B) from 72 hours to 14 days. The extended completion time was requested to support planned replacement of the underground carbon steel piping with new high density polyethylene (HDPE) piping for ESW Train A and ESW Train B during plant operation. The amendment was issued with a requirement to complete the replacement of carbon steel piping with HDPE piping for both ESW trains by December 31, 2008. By its application dated December 1, 2008, the licensee informed NRC that it had experienced significant delays in completing the replacement of underground piping/conduit due, in part, to underground obstructions during excavation, a longer refueling outage (Refuel 16) than anticipated, a forced outage at the beginning of Cycle 17, switchyard maintenance, and other equipment and personnel issues. However, the replacement of ESW Train A carbon steel piping was completed by the required date of December 31, 2008, but the replacement of ESW Train B carbon steel piping was deferred. Consequently, the licensee proposed to extend the implementation date for completion of replacement of carbon steel piping for ESW Train B from December 31, 2008, to April 30, 2009.

Date of publication of individual notice in **Federal Register**: December 23, 2008 (73 FR 78858).

Expiration date of individual notice comment period: January 22, 2009.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible 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/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr.resource@nrc.gov*.

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

AmerGen Energy Company, LLC, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

AmerGen Energy Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1 (TMI–1), Dauphin County, Pennsylvania

Date of application for amendments: June 20, 2008.

Brief description of amendments: The amendments conform the licenses to reflect the direct transfer of AmerGen Energy Company, LLC's ownership and operating authority for Clinton Power Station, Unit No. 1, Oyster Creek Nuclear Generating Station (Oyster Creek), and Three Mile Island Nuclear Station, Unit 1, to Exelon Generation Company, LLC, (ECG) as approved by Commission Order dated December 23, 2008. Transfer of the license for Oyster Creek will also authorize EGC to store spent fuel in the Oyster Creek independent spent fuel storage installation.

Date of issuance: January 8, 2009.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: CPS–183, Oyster Creek–271, and TMI–1–267.

Facility Operating License Nos. NPF–62, DPR–16, and DPR–50: The amendments revised the Technical Specifications and Licenses.

Date of initial notice in ***Federal Register***: August 26, 2008 (73 FR 50368). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 23, 2008.

No significant hazards consideration comments received: The NRC received three comments on August 27, 2008, one for each plant's initial notice. The comments did not provide any information additional to that in the application, nor did they provide any information contradictory to that provided in the application.

Dominion Energy Kewaunee, Inc. Docket No. 50–305, Kewaunee Power Station, Kewaunee County, Wisconsin

Date of application for amendment: April 4, 2008.

Brief description of amendment: The amendment revised the Technical Specifications by removing the operability and surveillance requirements for the shield building ventilation (SBV) and auxiliary building special ventilation filter train heaters, and reducing the operating time required to verify the SBV system operability from 10 hours to 15 minutes.

Date of issuance: December 30, 2008.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 201.

Facility Operating License No. DPR–43: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register***: June 3, 2008 (73 FR 31720) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 30, 2008.

No significant hazards consideration comments received: No.

Dominion Energy Kewaunee, Inc. Docket No. 50–305, Kewaunee Power Station, Kewaunee County, Wisconsin

Date of application for amendment: April 14, 2008, as supplemented by letter dated October 17, 2008.

Brief description of amendment: The amendment adds a new footnote to Kewaunee Technical Specifications Table 3.5–4, ''Instrument Operating Conditions for Isolation Functions.'' The new footnote allows the main steam line isolation circuitry to be inoperable when both main steam isolation valves are closed and deactivated.

Date of issuance: January 12, 2009.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 202.

Facility Operating License No. DPR–43: Amendment revised the operating license and Technical Specifications.

Date of initial notice in ***Federal Register***: June 17, 2008 (73 FR 34340) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 12, 2009.

No significant hazards consideration comments received: No.

Duke Energy Carolinas, LLC, et. al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: December 11, 2007, as supplemented December 18, 2008.

Brief description of amendments: The amendments revised the Technical Specifications sections to allow the bypass test times and Completion Times (CTs) for Limiting Condition for Operation (LCOs) 3.3.1, ''Reactor Trip System (RTS) Instrumentation;'' 3.3.2, ''Engineered Safety Feature Actuation System (ESFAS) Instrumentation;'' 3.3.6, ''Containment Air Release and Addition Isolation Instrumentation,'' and 3.3.9, ''Boron Dilution Mitigation System (BDMS).''

The proposed license amendment request (LAR) adopts changes as described in Westinghouse Commercial Atomic Power (WCAP) topical report WCAP–14333–P–A, Revision 1, ''Probabilistic Risk Analysis of the Reactor Protection System and Engineered Safety Features Actuation System Test Times and Completion Times,'' issued October 1998 and approved by U.S. Nuclear Regulatory Commission (NRC) letter dated July 15, 1998. Implementation of the proposed changes is consistent with Technical Specification Task Force (TSTF) Traveler TSTF–418, Revision 2, ''RPS [Reactor Protection System] and ESFAS Test Times and Completion Times (WCAP–14333).'' The NRC approved TSTF–418, Revision 2, by letter dated April 2, 2003.

In addition, the proposed LAR adopts changes as described in WCAP–15376–P–A, Revision 1, ''Risk-Informed Assessment of the RTS and ESFAS Surveillance Test Intervals and Reactor Trip Breaker Test and Completion Times,'' issued March 2003, as approved by NRC letter dated December 20, 2002. Implementation of the proposed changes is consistent with TSTF Traveler # TSTF–411, Revision 1, ''Surveillance Test Interval Extension for Components of the Reactor Protection System (WCAP–15376).'' The NRC approved TSTF–411, Revision 1, by letter dated August 30, 2002. The licensee also requested additional changes not specifically included in the above topical reports. These changes will be evaluated in a future amendment.

Date of issuance: December 22, 2008.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment Nos.: 247 and 240.

Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the licenses and the technical specifications.

Date of initial notice in ***Federal Register***: March 25, 2008 (73 FR 15783). The supplement dated December 18, 2008, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 22, 2008.

No significant hazards consideration comments received: No.

Duke Energy Carolinas, LLC, et. al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: December 11, 2007, as supplemented by letter dated December 18, 2008.

Brief description of amendments: The amendments revised the Technical Specification sections to allow the bypass test times and Completion Times for Limiting Condition for Operation 3.3.1, ''Reactor Trip System (RTS) Instrumentation'' and 3.3.2, ''Engineered Safety Feature Actuation System (ESFAS) Instrumentation.''

By letter dated December 30, 2008 (Agencywide Documents Access and Management System Accession No. ML0083460216), the NRC issued Amendment No. 247 and Amendment No. 240 for Catawba Units 1 and 2, respectively, for all the proposed changes approved by the NRC in TSTFs 411 and 418. The December 30, 2008, amendment stated that the following changes would be evaluated in a future amendment:

Surveillance requirement (SR) 3.3.1.5, Safety injection input from ESFAS, Condition J, Feedwater isolation with low average core temperature coincident with reactor trip P–4, SR 3.3.2.2, turbine

trip and feedwater isolation for steam generator water level high high.

(P–14), SR 3.3.2.4 turbine trip and feedwater isolation for steam generator water level high high (P–14), and SR 3.3.2.5 turbine trip and feedwater isolation for low average core temperature trip coincident with reactor trip P–4.

This amendment approves the above changes.

Date of issuance: January 9, 2009.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment Nos.: 248 and 241.

Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the licenses and the technical specifications.

Date of initial notice in ***Federal Register***: March 25, 2008 (73 FR 15783). The supplement dated December 18, 2008, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 9, 2009.

No significant hazards consideration comments received: No.

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc., Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: February 6, 2008, as supplemented by letter dated July 29, 2008.

Brief description of amendment: The amendment revised the Surveillance Requirements (SRs) for control rod exercising from weekly to monthly in Technical Specification (TS) 4.3.A.2, revise verification of control rod coupling integrity as described in TS 4.3.B.1, revise the scram insertion time Limiting Conditions for Operation (LCOs) and SRs as described in TS 3.3.C and 4.3.C, and enhance TS 3.3.D and 4.3.D, the LCO and SR for Control Rod Accumulators.

Date of issuance: January 7, 2009.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment No.: 233.

Facility Operating License No. DPR–28: Amendment revised the License and Technical Specifications.

Date of initial notice in ***Federal Register***: March 11, 2008 (73 FR 13024). The supplemental letter dated July 29, 2008, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination. The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated January 7, 2009.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: July 30, 2008, as supplemented by letter dated October 2, 2008.

Brief description of amendment: The amendment revises the current TS 3.6.6.3 surveillance requirements for sodium hydroxide (NaOH) concentration. Specifically, the amendment changes the surveillance requirements of the NaOH tank solution concentration from between 5.0 weight (wt.) percent and 16.5 wt. percent to between 6.0 wt. percent and 8.5 wt. percent.

Date of issuance: January 13, 2009.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: Unit 1—234.

Renewed Facility Operating License No. DPR–51: Amendment revised the License and Technical Specifications.

Date of initial notice in ***Federal Register***: November 4, 2008, (73 FR 65694). The supplement dated October 2, 2008, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 13, 2009.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: June 30, 2008.

Brief description of amendment: The amendment (1) deleted Technical Specification (TS) surveillance requirement (SR) 3.1.3.2 and revised SR 3.1.3.3; (2) removed the reference to SR 3.1.3.2 from Required Action A.2 of TS 3.1.3, ''Control Rod OPERABILITY''; (3) clarified the requirement to fully insert all insertable rods for the limiting condition for operation in TS 3.3.1.2 Required Action E.2, ''Source Range Monitoring Instrumentation''; and (4) revised Example 1.4–3 in Section 1.4, ''Frequency,'' to clarify the applicability of the 1.25 surveillance test interval extension.

Date of issuance: December 31, 2008.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No: 180.

Facility Operating License No. NPF–29: The amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register***: August 26, 2008 (73 FR 50359).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 31, 2008.

No significant hazards consideration comments received: No.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3, Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: January 17, 2008.

Brief description of amendment: The amendment revises the Crystal River, Unit 3 Improved Technical Specification Surveillance Requirement 3.7.5.2, ''Emergency Feedwater System,'' to align the text for the emergency feedwater system surveillance frequency with the text in the Technical Specifications Task Force Standard Technical Specification Change Traveler-101, Revision 0 and the NRC technical report, NUREG–1430, Volume 1, Revision 3, ''Standard Technical Specifications Babcock and Wilcox Plants—Specification.''

Date of issuance: January 9, 2009.

Effective date: Date of issuance, to be implemented within 60 days.

Amendment No.: 231.

Facility Operating License No. DPR–72: Amendment revises the technical specifications.

Date of initial notice in ***Federal Register***: May 20, 2008 (73 FR 29163).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 9, 2009.

No significant hazards consideration comments received: No.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: December 17, 2007, as supplemented by letters dated October 2, and November 18, 2008.

Brief description of amendments: The amendments increase the completion times (CTs) for required actions related to Technical Specifications (TS) 3.5.2, regarding the Emergency Core Cooling System, and 3.6.6, regarding the Containment Spray and Cooling Systems from 72 hours to 14 days. In addition, invalid notes were deleted from TSs 3.5.2 and 3.6.6 and new notes were added to specify the limitations on the use of the 14-day extended CT.

Date of issuance: December 31, 2008.

Effective date: As of its date of issuance and shall be implemented within 180 days from the date of issuance.

Amendment Nos.: Unit 1—202; Unit 2—203.

Facility Operating License Nos. DPR–80 and DPR–82: The amendments revised the Facility Operating Licenses and Technical Specifications.

Date of initial notice in ***Federal Register***: January 29, 2008 (73 FR 5227). The supplement(s) dated October 2 and November 18, 2008, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 31, 2008.

No significant hazards consideration comments received: No.

PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: July 7, 2008.

Brief description of amendments: The amendments revised the Technical Specification (TS) testing frequency for the Surveillance Requirement (SR) in TS 3.1.4, ''Control Rod Scram Times.'' The change revised the frequency of SR 3.1.4.2, control rod scram time testing, from ''120 days cumulative operation in Mode 1'' to ''200 days cumulative operation in Mode 1.'' These changes are based on TS Task Force (TSTF) change traveler TSTF–460 (Revision 0) that has been approved generically for the Boiling-Water Reactor (BWR) Standard TS, NUREG–1433 (BWR/4) and NUREG–1434 (BWR/6) by revising the frequency of SR 3.1.4.2, control rod scram time testing, from ''120 days cumulative operation in MODE 1'' to ''200 days cumulative operation in MODE 1.''

Date of issuance: January 2, 2009.

Effective date: January 2, 2009.

Amendment Nos.: 249 for Unit 1 and 228 for Unit 2

Facility Operating License Nos. NPF–14 and NPF–22: The amendments revised the License and Technical Specifications.

Date of initial notice in ***Federal Register***: October 7, 2008 (73 FR 58675).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 2, 2009.

No significant hazards consideration comments received: No.

PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: July 7, 2008.

Brief description of amendments: The amendment adopted the Nuclear Regulatory Commission (NRC) approved Technical Specification Task Force (TSTF) change traveler TSTF–475, (Revision 1), ''Control Rod Notch Testing Frequency and SRM [Source Range Monitor] Insert Control Rod Action,'' to change the Standard Technical Specifications (STS) for General Electric (GE) Plants (NUREG–1433, BWR/4 to the plant-specific TS, that allows: (1) Revising the frequency of Surveillance Requirement (SR) 3.1.3.2, notch testing of fully withdrawn control rod, from ''7 days after the control rod is withdrawn and THERMAL POWER is greater than the LPSP of RWM'' to ''31 days after the control rod is withdrawn and THERMAL POWER is greater than the LPSP [Low Power Set Point] of the RWM [Rod With Minimizer]'', and (2) revising Example 1.4–3 in Section 1.4 ''Frequency'' to clarify that the 1.25 surveillance test interval extension in SR 3.0.2 is applicable to time periods discussed in NOTES in the ''SURVEILLANCE'' column in addition to the time periods in the ''FREQUENCY'' column.

Date of issuance: January 2, 2009.

Effective date: January 2, 2009.

Amendment Nos.: 250 for Unit 1 and 229 for Unit 2.

Facility Operating License Nos. NPF–14 and NPF–22: The amendments revised the License and Technical Specifications.

Date of initial notice in ***Federal Register***: October 7, 2008 (73 FR 58675).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 2, 2009.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50 390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendment: September 19, 2008.

Brief description of amendment: The amendment modifies the Final Safety Analysis Report by requiring an inspection of the ice condenser within 24 hours of experiencing a seismic event greater than or equal to an operating basis earthquake within the 5-week period after ice basket replenishment has been completed to confirm that adverse ice fallout has not occurred that could impede the ability of the ice condenser lower inlet doors to open.

Date of issuance: January 6, 2009.

Effective date: As of the date of issuance and shall be implemented within 45 days of issuance.

Amendment No.: 73.

Facility Operating License No. NPF–90: Amendment authorizes revision to the FSAR.

Date of initial notice in ***Federal Register***: November 4, 2008 (73 FR 65698).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 6, 2009.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50 390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendment: March 27, 2008, as supplemented September 26, 2008.

Brief description of amendment: The amendment revises the allowable value listed for Function 3, ''Containment Purge Exhaust Radiation Monitors,'' in Table 3.3.6–1, ''Containment Vent Isolation Instrumentation,'' of the limited condition for operation 3.3.6.

Date of issuance: January 8, 2009.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment No.: 74.

Facility Operating License No. NPF–90: Amendment revises the Technical Specifications and License.

Date of initial notice in ***Federal Register***: May 6, 2008 (73 FR 25047). The supplement dated September 26,

2008, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 8, 2009.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units 1 and 2, Louisa County, Virginia

Date of application for amendment: December 17, 2007, as supplemented on July 22, 2008, September 26, 2008, and November 25, 2008.

Brief description of amendment: These amendments revised Technical Specification (TS) 3.8.3 to allow a one-time extended 14-day completion time (CT) for each of the two underground diesel fuel oil storage tanks (FOST) to permit removal of the current coating and to recoat the tanks in preparation for use of ultra-low sulfur diesel fuel oil. The change revised the TS to extend the CT associated with an inoperable emergency diesel generator FOST from 7 days to 14 days, applicable once for each of the two tanks.

Date of issuance: December 31, 2008.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 254 and 235.

Renewed Facility Operating License Nos. NPF–4 and NPF–7: Amendments change the licenses and the technical specifications.

*Date of initial notice in **Federal Register***: January 15, 2008 (73 FR 2552). The supplements dated July 22, 2008, September 26, 2008, and November 25, 2008, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 31, 2008.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 15th day of January 2009.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E9–1568 Filed 1–26–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[EA–09–001; NRC–2009–0017]

In the Matter of Certain General Material Licensees; Demand for Information

I

The Nuclear Regulatory Commission (NRC or Commission) is issuing this Demand for Information because it is our understanding that you possess radioactive material in the form of tritium in exit signs. Because you possess radioactive material in this form, you hold what is referred to as a ''general license'' to possess such material. In this case, your general license has been issued by the NRC pursuant to section 31.5 in Part 10 of the Code of Federal Regulations (10 CFR 31.5). This general license authorizes you, the licensee, to receive, possess, use, or transfer, in accordance with the provisions of paragraphs (b), (c) and (d) of 10 CFR 31.5, radioactive material contained in devices designed and manufactured for the purpose of producing light.

II

On December 7, 2006, NRC issued Regulatory Issue Summary (RIS) 2006–25, ''Requirements for the Distribution and Possession of Tritium Exit Signs and the Requirements in 10 CFR 31.5 and 32.51a.'' This RIS was issued in part to remind general licensees of the requirements in 10 CFR 31.5 regarding transfer and disposal of tritium exit signs. It was NRC's intent that issuance of this RIS would minimize the chances of improper disposal of tritium exit signs.

Despite the publication of the RIS in 2006, NRC has reason to believe that certain general licensees may lack awareness of their responsibility to account for and properly dispose of tritium exit signs. Therefore, the NRC needs further information to determine whether we can have reasonable assurance that general licensees are complying with NRC regulations applying to the possession, transfer, and disposal of tritium exit signs.

III

Accordingly, pursuant to sections 161c, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR 31.5, the NRC seeks information in order to determine whether additional regulatory action should be taken to ensure compliance with NRC requirements. Within 60 days of the date of this Demand for Information, you must submit a written answer to the Director, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Your answer must be submitted under oath or affirmation, and it must provide the following information:

A. Explain how you ensure compliance with the NRC requirements applying to the possession, transfer, and disposal of tritium exit signs you have acquired. Identify and provide contact information for the individual you have appointed who is responsible for ensuring day-to-day compliance with these requirements.

B. State the number of tritium exit signs you currently possess and the number of signs that, according to your records, should be in your possession.

C. Explain the reasons for any discrepancy between the number of tritium exit signs you currently possess and the number of signs that should be in your possession.

D. Describe any actions you have taken, or plan to take, to locate tritium exit signs that should be, but are not, in your possession.

E. Describe any actions you have taken, or plan to take, to prevent future losses of tritium exit signs.

After reviewing your response, the NRC will determine whether further action is necessary to ensure compliance with regulatory requirements.

The Director, Office of Federal and State Materials and Environmental Management Programs, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause, such as a particularly large number of signs spread over multiple locations. If you believe you cannot report the results within the 60-day deadline, you may forward a request to extend the deadline. Extensions will be granted if you can reasonably demonstrate an inability to meet the deadline. Additionally, any other requirement can be relaxed or rescinded, as long as you can reasonably demonstrate why that requirement should be relaxed or

rescinded. Such requests may be e-mailed to *MSEA@nrc.gov* or faxed to Angela McIntosh at (301) 415–5955. Questions about this Demand for Information may be referred to Tritium Exit Sign Inventory Support at (301) 415–3340.

Send responses to: Director, Office of Federal and State Materials and Environmental Management Programs, *Attention:* Angela R. McIntosh, Mail Stop T8–E24, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated this 16th day of January 2009.

For the Nuclear Regulatory Commission.

Cynthia A. Carpenter,

Director, Office of Enforcement.

Attachment 1—List of General Material Licensees

Church of Jesus Christ of Latter Day Saints, 50 E Temple St., Salt Lake City, UT 84150.
Eli Lilly, Lilly Corporate Center, 893 S. Delaware, Indianapolis, IN 46285.
Home Depot, Attention: Ryan Williams, 2455 Paces Ferry Rd., SE., Atlanta, GA 30339.
Federal Corrections, Attention: RADM Newton E. Kendig, Assistant Director, Health Services Division, 320 First St., NW., Washington, DC 20534.
Department of the Air Force, Attn: Robert A. Rodgers, Maj, USAF, BSC, USAF Radioisotope Committee, HQ AFMOA/SG3PR, 110 Luke Ave., Suite 405, Bowling AFB, Washington, DC 20322–7050.
Chief of Naval Operations, Environment Protection Division (N45), Radiological Controls and Health, Office of Chief of Naval Operations (N455), Attention: CAPT Lino Fragoso, PhD, RSO, 2000 Navy Pentagon (NC–1 Suite 2000), Washington, DC 20350–2000.
Department of the Army, Army Material Command, Director of Army Radiation Safety, Attention: Greg Komp, RSO, 223 23rd Street, Suite 980, Arlington, VA 22060–5527.
United States Army Garrison-Rock Island Arsenal, IMWE–RIA–ZA Bldg 90, 1 Rock Island Arsenal, Rock Island, IL 61299–5000.
Honeywell International Inc., Attention: Peter Jungfer, 101 Columbia Road, Morristown, NJ 07962.
Stusser Electric Co., Dave Lockwood, 411 E. 54th Ave., Anchorage, AK 99518.
Herb Stevens Labor & Industry Building, John Fitch Plaza, Room 209, Trenton, NJ 08625.
Nassau Electric, 106 Black Horse Pike, West Collingswood Heights, NJ 08059.
Alton Iron Works Inc, 1475 Palisado Ave., Windsor, CT 06095.
University of Alaska, Dr. Ivan va Tets, RSC Chairman, 3211 Providence Drive, Anchorage, AK 99508.
Giant Food, Landover Corporate Headquarters, 8301 Professional Place, Suite 115, Landover, MD 20785.
Bed Bath and Beyond, Attention: Michael Wilck, 650 Liberty Ave., Union, NJ 07083.
U.S. General Services Administration, 1800 F Street, NW., Washington, DC 20405.
Department of Veterans Affairs, E. Lynn McGuire, Director, NHPP (115HP–NLR), Veterans Health Administration, 2200 Fort Roots Drive North, Little Rock, AR 72114–1706.
Middlebury College, Ed Sullivan, Environ. Health & Safety, Coordinator, 161 Adirondack View, Middlebury, VT 05753.
State Farm Insurance, Attn: Mike Devore, One State Farm Plaza, E–4, Bloomington, IL 61710.
Dupont, 1007 N. Market St., Attention: Leo Hamilton, Rm D–6088, Wilmington, DE 19898.
Anchorage School District, Carol Comeau, Superintendent, 5530 E Northern Lights Blvd., Anchorage, AK 99504–3135.
AMC Theaters, 920 Main Street, #1400, Kansas City, MO 64105.
AMR Corporation, Capt. Al Madar, Director of Safety, 4333 Amon Carter Blvd., Fort Worth, TX 76155.
Federated Retail Holdings, Inc., Elena Pharr, Environmental Services Manager, 7 West Seventh Street, 15th Floor, Cincinnati, OH 45202.
Helicopter Support, Inc., Attn: Carmen Jausel, Director, Environmental Health, 124 Quarry Road, Trumbull, CT 06611.
Avon Community Schools Corporation, Attn: Brock Bowsher, 7203 East U.S. Highway 36, Avon, IN 46123.
S.A.S. Technical Forwarding Dept., 150 Newark Intl. Airport, Newark, NJ 07114.
MEMC Electronic Materials, Inc., 501 Pearl Drive (City of O'Fallon), St. Peters, MO 63376.
United States Postal Service, Carolyn C. Cole, Manager, Energy Initiatives, 475 L'Enfant Plaza, SW., Washington, DC 20260.
Northwest Airlines, Inc., Attention: Kenneth J. Hylander, 2700 Lone Oak Pky., Eagan, MN 55121.
Smithsonian Institution, 1000 Jefferson Dr., SW., Washington, DC 20560.
Defense General Supply Center, 8000 Jefferson Davis Highway, Richmond, VA 23297–5100.
Feldman Electric, 210 Spanglers Mill Rd., New Cumberland, PA 17070.
Outrigger Hotel, Attn: David Lee, Vice President Property Services, 2375 Kuhio Avenue, Honolulu, HI 96815–2992.
Dominion Virginia Power, Attn: Peter Moss, P.O. Box 26532, Richmond, VA 23261–6532.
Goodrich Corporation, Attn: Dennis Hussey, 2730 W Tyvola Rd #600, Charlotte, NC 28217.
Thomson Tinos, 101 West 103rd Street, Indianapolis, IN 46290–1102.
State of Alaska, Dept. of Health & Social Services, Division of Public Health, Section of Laboratories, Radiological Health Program, 4500 Boniface Parkway, Anchorage, AK 99507–1270.
United States Coast Guard, 2100 Second Street, SW., Washington, DC 20024.
Atlantic Aviation, 6504 International Pkwy #2400, Plano, TX 75093.
Military Academy, West Point, Attn: Keith Katz, Safety, 667A Ruger Road, West Point, NY 10996.
NASA Headquarters, Attn: Marla Newstadt, 300 E St., SW., Code LM031, Washington, DC 20546.
Air Cruisers Company, 1740 Highway 34 N., Wall, NJ 07719.
Pacific Electric Sales Agency, 541 Ahui Street, Honolulu, HI 96813.
Wallens Ridge Prison, Attn: Adam Harvey Assistant Warden, 272 Dogwood Drive, P.O. Box 759, Big Stone Gap, VA 24219.

[FR Doc. E9–1680 Filed 1–26–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards

In accordance with the purposes of Sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on February 5–7, 2009, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Monday, October 6, 2008, (73 FR 58268–58269).

Thursday, February 5, 2009, Conference Room T–2b3, Two White Flint North, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10:30 a.m.: Draft Final NUREG–1855, Guidance on the Treatment of Uncertainties Associated with PRAs in Risk-Informed Decisionmaking (Open)—The Committee will hear presentations by and hold discussions with

representatives of the NRC staff regarding the draft final NUREG–1855 and related matters.

10:45 a.m.–11:45 a.m.: Draft Final Regulatory Guide DG–5021, Safety/Security Interface (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the draft final Regulatory Guide DG–5021 on the Safety/Security Interface.

12:45 p.m.–2:45 p.m.: Digital Upgrade of the Oconee Reactor Protection System and Engineered Safety Features (Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and Duke Energy regarding the digital upgrade of the reactor protection system and engineered safety features at Oconee Nuclear Station, Units 1, 2, & 3, and related matters.

[**Note:** A portion of this session may be closed to discuss and protect information that is proprietary to Duke Energy or its contractors pursuant to 5 U.S.C. 552b(c)(4).]

3 p.m.–7 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters discussed during this meeting, as well as a proposed report on containment overpressure credit.

Friday, February 6, 2009, Conference Room T–2b3, Two White Flint North, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10 a.m.: SECY–08–0197, Options to Revise Radiation Protection Regulations and Guidance Based on Recommendations of the International Commission on Radiological Protection (ICRP) (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding options to revise the NRC radiation protection regulations and guidance based on the recommendations of the ICRP.

10:15 a.m.–10:45 a.m.: Subcommittee Reports (Open)—The Committee will hear reports by and hold discussions with the cognizant Chairman of the Plant License Renewal Subcommittee regarding interim reviews of the Beaver Valley and National Institute of Standards and Technology license renewal applications and the associated NRC Staff's Safety Evaluation Reports with Open Items that were discussed during meetings on February 4, 2009.

10:45 a.m.–11:45 a.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the Full Committee during future ACRS meetings and other matters related to the conduct of the ACRS business. [**NOTE:** A portion of this session may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy]

11:45 a.m.–12 p.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations to comments and recommendations included in recent ACRS reports and letters.

1 p.m.–7 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports.

Saturday, February 7, 2009, Conference Room T–2b3, Two White Flint North, Rockville, Maryland

8:30 a.m.–12:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports.

12:30 p.m.–1 p.m.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 6, 2008, (73 FR 58268–58269). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting. Persons desiring to make oral statements should notify the Cognizant ACRS staff named below five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Cognizant ACRS staff prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience.

In accordance with Subsection 10(d) Public Law 92–463, I have determined that it may be necessary to close portions of this meeting noted above to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552b(c)(2) and (6). In addition, it may be necessary to close a portion of the meeting to protect information designated as proprietary by Duke Energy or its contractors pursuant to 5 U.S.C. 552b(c)(4).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, as well as the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Girija Shukla, Cognizant ACRS staff (301–415–6855), between 7:15 a.m. and 5 p.m., (ET). ACRS meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr@nrc.gov*, or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/ACRS/*.

Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m., (ET), at least 10 days before the meeting to ensure the availability of this service.

Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated: January 21, 2009

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. E9–1679 Filed 1–22–09; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Weeks of January 26, February 2, 9, 16, 23, March 2, 2009.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of January 26, 2009

Tuesday, January 27, 2009

1:25 p.m. Affirmation Session (Public Meeting) (Tentative).

a. Shieldalloy Metallurgical Corporation (License Amendment Request for Decommissioning of the Newfield, New Jersey Facility) (Tentative).

Week of February 2, 2009—Tentative

Wednesday, February 4, 2009

1:25 p.m. Affirmation Session (Public Meeting) (Tentative).

a. AmerGen Energy Company, LLC (License Renewal for Oyster Creek Nuclear Generating Station), Docket No. 50–219–LR, Citizens' Petition for Review of LBP–07–17 and Other Interlocutory Decisions in the Oyster Creek Proceeding (Tentative).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov*.

1:30 p.m. Briefing on Risk-Informed, Performance-Based Regulation (Public Meeting) (Contact: Gary Demoss, 301–251–7584).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Thursday, February 5, 2009

9:30 a.m. Briefing on Uranium Enrichment—Part 1 (Public Meeting).

1:30 p.m. Briefing on Uranium Enrichment—Part 2 (Public Meeting). (Contact for both parts: Brian Smith, 301–492–3137).

Both parts of this meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

3 p.m. Briefing on Uranium Enrichment (Closed—Ex. 1).

Week of February 9, 2009—Tentative

There are no meetings scheduled for the week of February 9, 2009.

Week of February 16, 2009—Tentative

There are no meetings scheduled for the week of February 16, 2009.

Week of February 23, 2009—Tentative

There are no meetings scheduled for the week of February 23, 2009.

Week of March 2, 2009—Tentative

Wednesday, March 4, 2009

1:30 p.m. Briefing on Guidance for Implementation of Security Rulemaking (Public Meeting) (Contact: Rich Correia, 301–415–7674).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

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* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify the NRC's Disability Program Coordinator, Rohn Brown, at 301–492–2279, TDD: 301–415–2100, or by e-mail at *rohn.brown@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *darlene.wright@nrc.gov*.

January 22, 2009.

Richard J. Laufer,

Office of the Secretary.

[FR Doc. E9–1772 Filed 1–23–09; 11:15 am]

BILLING CODE 7590–01–P

PEACE CORPS

Notice of Information Collection

AGENCY: Peace Corps.

ACTION: Notice and request for OMB review and comment.

Title: Focus Groups with Returned Peace Corps Volunteers.

SUMMARY: In accordance with the Paperwork Reduction Act, this notice invites the public to comment on the collection of information by the Peace Corps and gives notice of the Peace Corps' intention to request Office of Management and Budget (OMB) approval of the information collection. The Peace Corps' Office of Strategic Information, Research and Planning wishes to conduct focus groups with Returned Peace Corps Volunteers (RPCVs) about their post-service transition, post-service education and career, and their third goal activities of promoting a better understanding of other peoples on the part of Americans. The data will be used to assess the range and type of services available to RPCVs and to support accurate interpretation of Agency level data. The initial **Federal Register** notice was published on December 2, 2008, Volume 73, No. 232, pg. 73356 for 60 days. Also available at GPO Access: *wais.access.gpo.gov*. No comments, inquiries or responses to the notice were received. A copy of the proposed information collections can be obtained from Susan Jenkins, Office of Strategic Information, Research and Planning, Peace Corps, 1111 20th Street, NW., Washington, DC 20526. Dr. Jenkins can be contacted by telephone at 202–692–1241 or e-mail at *SJenkin2@peacecorps.gov*. E-mail comments must be made in text and not in attachments. Comments on the collections should be addressed to the attention of Dr. Jenkins and should be received on or before February 26, 2009.

ADDRESSES: Written comments should be sent to the Peace Corps Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street, NW., Washington, DC 20503. And to Susan Jenkins, Office of Strategic Information, Research and Planning, Peace Corps, 1111 20th Street, NW., Washington, DC 20526. Dr. Jenkins can be contacted by telephone at 202–692–1241 or e-mail at *SJenkin2@peacecorps.gov*.

FOR FURTHER INFORMATION CONTACT: Susan Jenkins, Office of Strategic Information, Research and Planning, Peace Corps, 1111 20th Street, NW., Washington, DC 20526.

SUPPLEMENTARY INFORMATION:

Title: Focus Groups with Returned Peace Corps Volunteers.

Need for and Use of This Information: The third strategic goal in the Peace

Corps' 2009 to 2014 strategic plan, is to ''Foster outreach to Americans through agency programs that assist Volunteers and Returned Peace Corps Volunteers to help promote a better understanding of other peoples on the part of Americans.'' The Agency meets this goal through programs that encourage outreach to the American public through a variety of means such as personal interaction, electronic communication, and cross-cultural education curricula. The challenge for the Peace Corps in advancing such outreach is to ensure that the programs are publicized and on target in matching Volunteers and RPCVs with appropriate audiences, and that the agency uses technology effectively. The agency administers a Volunteer survey and project specific surveys to gather information about how active Volunteers support this goal. But, there is no similar mechanism for gathering such information from Returned Volunteers. These focus groups will be conducted to test the assumption that promoting a better understanding of the cultures in which they served is a lifelong commitment that becomes integrated into their lives but that RPCVs do not necessarily report such interactions to the agency. These focus groups will provide an opportunity for in-depth discussion with RPCVs about the long-term outcomes of their Service on their promotion of a better understanding of other peoples on the part of Americans. The information gathered will be used by the Office of Strategic Information, Research and Planning to identify the breadth and scope of third core goal activities by Returned Volunteers.

Respondents: 96.

Respondents' Obligation To Reply: Voluntary.

Burden on the Public:

a. *Annual reporting burden:* 144 hours.

b. *Annual recordkeeping burden:* 0 hours.

c. *Estimated average burden per response:* 90 minutes.

d. *Frequency of response:* One-time.

e. *Estimated number of respondents:* 96.

f. *Estimated cost to respondents:* $0.00/$0.00.

Wilbert Bryant,

Associate Director for Management.

[FR Doc. E9–1668 Filed 1–26–09; 8:45 am]

BILLING CODE 6015–01–P

PEACE CORPS

Notice of Information Collection

AGENCY: Peace Corps.

ACTION: Notice and request for OMB review and comment.

Title: Survey of Returned Peace Corps Volunteers.

SUMMARY: The Peace Corps has submitted to the Office of Management and Budget (OMB) for clearance, a proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995. The proposed collection will survey a sample of Returned Peace Corps Volunteers about their thoughts about their in-country experience, post-service transition, post-service education and career, and their third core goal activities of promoting a better understanding of other peoples on the part of Americans. The data collected will inform agency programming and help the Agency to assess, through updated and objective data, the extent of RPCVs' cross-cultural activities with their family, friends, and communities throughout the United States with whom RPCVs come in contact. The data will be used specifically by the Office of Domestic Programs to review the range and type of services and support available to RPCVs and by the Office of Strategic Information, Research, and Planning to support Agency level reporting. The initial **Federal Register** notice was published on December 2, 2008, Volume 73, No. 232, pgs. 73356–73357 for 60 days. Also available at GPO Access: *http://wais.access.gpo.gov*. No comments, inquiries or responses to the notice were received. A copy of the proposed information collections can be obtained from Susan Jenkins, Office of Strategic Information, Research and Planning, Peace Corps, 1111 20th Street, NW., Washington, DC 20526. Dr. Jenkins can be contacted by telephone at 202–692–1241 or e-mail at *SJenkin2@peacecorps.gov*. E-mail comments must be made in text and not in attachments. Comments on the collections should be addressed to the attention of Dr. Jenkins and should be received on or before February 26, 2009.

ADDRESSES: Written comments should be sent to the Peace Corps Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street, NW., Washington, DC 20503. And to Susan Jenkins, Office of Strategic Information, Research and Planning, Peace Corps, 1111 20th Street, NW., Washington, DC 20526. Dr. Jenkins can be contacted by telephone at 202–692–1241 or e-mail at *SJenkin2@peacecorps.gov*.

FOR FURTHER INFORMATION CONTACT: Susan Jenkins, Office of Strategic Information, Research and Planning, Peace Corps, 1111 20th Street, NW., Washington, DC 20526.

SUPPLEMENTARY INFORMATION:

Title: Survey of Returned Peace Corps Volunteers.

Need for and Use of This Information: The survey is the fourth in a series of Returned Peace Corps Volunteer surveys that have been administered approximately every ten years. This iteration will be a voluntary, Web-based survey to gather information about Volunteers' in-country experience, post-service transition, post-service education and career, and their third goal activities of promoting a better understanding of other peoples on the part of Americans. The data will be used to assess the range and type of services available to RPCVs, improve Peace Corps operations (e.g., recruitment for PC Response), and support Agency level performance reporting. Where possible, data will be compared across surveys to look for trends over time. Data will be collected from a simple random sample of Returned Peace Corps Volunteers sufficient to gather data with a 99 percent confidence level and a confidence interval of plus or minus 5.

Respondents: Returned Peace Corps Volunteers.

Respondents' Obligation To Reply: Voluntary.

Burden on the Public:

a. *Annual reporting burden:* 750 hours.

b. *Annual respondent recordkeeping burden:* 0 hours.

c. *Estimated average burden per response:* 30 minutes.

d. *Frequency of response:* One-time.

e. *Estimated number of respondents:* 1500.

f. *Estimated cost to respondents:* $0.00/$0.00.

Dated: January 15, 2009.

Wilbert Bryant,

Associate Director for Management.

[FR Doc. E9–1669 Filed 1–26–09; 8:45 am]

BILLING CODE 6051–01–P

PENSION BENEFIT GUARANTY CORPORATION

Submission of Information Collection for OMB Review; Comment Request; Notice of Failure To Make Required Contributions

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval of a currently approved collection (with modifications).

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) is requesting that the Office of Management and Budget (OMB) extend approval, under the Paperwork Reduction Act, of the collection of information (with modifications) under subparts A and D of Part 4043 of its regulations on Reportable Events and Certain Other Notification Requirements (OMB control number 1212–0041; expires February 28, 2009). This notice informs the public of PBGC's request and solicits public comment on the collection of information.

DATES: Comments must be submitted by February 26, 2009.

ADDRESSES: Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, via electronic mail at *OIRA_DOCKET@omb.eop.gov* or by fax to 202–395–6974.

Copies of the collection of information and comments may be obtained without charge by writing to the Disclosure Division, Office of General Counsel, 1200 K St., NW., Washington, DC 20005–4026, or by visiting the Disclosure Division or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.) The reportable events regulations, forms, and instructions may be accessed on PBGC's Web site at *http://www.pbgc.gov*.

FOR FURTHER INFORMATION CONTACT: James Bloch, Program Analyst, Legislative and Policy Division, or Catherine B. Klion, Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: Section 303(k) of the Employee Retirement Income Security Act of 1974 (''ERISA'') and section 430(k) of the Internal Revenue Code of 1986 (''Code'') impose a lien in favor of an underfunded single-employer plan that is covered by the termination insurance program if (1) any person fails to make a contribution payment when due, and (2) the unpaid balance of that payment (including interest), when added to the aggregate unpaid balance of all preceding payments for which payment was not made when due (including interest), exceeds $1 million. (For this purpose, a plan is underfunded if its funding target attainment percentage is less than 100 percent.) The lien is upon all property and rights to property belonging to the person or persons who are liable for required contributions (i.e., a contributing sponsor and each member of the controlled group of which that contributing sponsor is a member).

Only PBGC (or, at its direction, the plan's contributing sponsor or a member of the same controlled group) may perfect and enforce this lien. ERISA and the Code require persons committing payment failures to notify PBGC within 10 days of the due date whenever there is a failure to make a required payment and the total of the unpaid balances (including interest) exceeds $1 million.

These statutory requirements are implemented by subparts A and D of PBGC's regulation on Reportable Events and Certain Other Notification Requirements (29 CFR part 4043). Section 4043.81 of the regulation provides that required reports must be made using PBGC Form 200, Notice of Failure to Make Required Contributions, in accordance with the related filing instructions. The form and instructions have been revised to remove information that is no longer applicable in light of changes made by the Pension Protection Act of 2006.

The collection of information under the regulation has been approved through February 28, 2009, by OMB under control number 1212–0041. PBGC is requesting that OMB extend approval of the collection (with modifications) for another three years. 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.

PBGC estimates that it will receive 185 Form 200 filings per year under this collection of information. PBGC further estimates that the average annual burden of this collection of information is 873 hours and $305,550.

Issued in Washington, DC, this 21st day of January, 2009.

John H. Hanley,

Director, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation.

[FR Doc. E9–1783 Filed 1–26–09; 8:45 am]

BILLING CODE 7709–01–P

PENSION BENEFIT GUARANTY CORPORATION

Submission of Information Collection for OMB Review; Comment Request; Reportable Events

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval of a currently approved collection (with modifications).

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) is requesting that the Office of Management and Budget (OMB) extend approval, under the Paperwork Reduction Act, of the collection of information (with modifications) under subparts A, B, and C of Part 4043 of its regulations on Reportable Events and Certain Other Notification Requirements (OMB control number 1212–0013; expires February 28, 2009). This notice informs the public of PBGC's request and solicits public comment on the collection of information.

DATES: Comments must be submitted by February 26, 2009.

ADDRESSES: Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, via electronic mail at *OIRA_DOCKET@omb.eop.gov* or by fax to 202–395–6974.

Copies of the collection of information and comments may be obtained without charge by writing to the Disclosure Division, Office of General Counsel, 1200 K St., NW., Washington, DC 20005–4026, or by visiting the Disclosure Division or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.) The reportable events regulation, forms, and instructions may be accessed on PBGC's Web site at *http://www.pbgc.gov*.

FOR FURTHER INFORMATION CONTACT: James Bloch, Program Analyst, Legislative and Policy Division, or Catherine B. Klion, Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: Section 4043 of the Employee Retirement

Income Security Act of 1974 (ERISA) requires plan administrators and plan sponsors to report certain plan and employer events to PBGC. The reporting requirements give PBGC notice of events that indicate plan or employer financial problems. PBGC uses the information provided in determining what, if any, action it needs to take. For example, PBGC might need to institute proceedings to terminate a plan (placing it in trusteeship) under section 4042 of ERISA to ensure the continued payment of benefits to plan participants and their beneficiaries or to prevent unreasonable increases in its losses.

The forms and instructions have been revised to remove information that is no longer applicable in light of changes made by the Pension Protection Act of 2006 and to refer to interim guidance issued by PBGC.

The collection of information under the regulation has been approved through February 28, 2009, by OMB under control number 1212–0013. PBGC is requesting that OMB extend approval of the collection (with modifications) for another three years. 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.

PBGC estimates that it will receive 637 reportable events per year under this collection of information. PBGC further estimates that the average annual burden of this collection of information is 2,676 hours and $936,600.

Issued in Washington, DC, this 21st day of January 2009.

John H. Hanley,

Director, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation.

[FR Doc. E9–1790 Filed 1–26–09; 8:45 am]

BILLING CODE 7709–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review, Request for Comments

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) is forwarding two (2) Information Collection Requests (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB). Our ICR describes the information we seek to collect from the public. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

The RRB invites comments on the proposed collections of information to determine (1) The practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if RRB and OIRA receive them within 30 days of publication date.

1. *Title and purpose of information collection:*

Request to Non-Railroad Employer for Information About Annuitant's Work and Earnings; OMB 3220–0107.

Under Section 2 of the Railroad Retirement Act (RRA), a railroad employee's retirement annuity or an annuity paid to the spouse of a railroad employee is subject to work deductions in the Tier II component of the annuity and any employee supplemental annuity for any month in which the annuitant works for a Last Pre-Retirement Non-Railroad Employer (LPE). LPE is defined as the last person, company, or institution, other than a railroad employer, that employed an employee or spouse annuitant. In addition, the employee, spouse or divorced spouse Tier I annuity benefit is subject to work deductions under Section 2(F)(1) of the RRA for earnings from any non-railroad employer that are over the annual exempt amount. The regulations pertaining to non-payment of annuities by reason of work are contained in 20 CFR 230.1 and 230.2.

The RRB utilizes Form RL–231–F, Request to Non-Railroad Employer for Information About Annuitant's Work and Earnings, to obtain the information needed for determining if any work deductions should be applied because an annuitant worked in non-railroad employment after the annuity beginning date. One response is requested of each respondent. Completion is voluntary.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (73 FR 68462 and 68463 on November 18, 2008) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Request to Non-Railroad Employer for Information About Annuitant's Work and Earnings.

Form(s) submitted: RL–231–F.

OMB Control Number: 3220–0107.

Expiration date of current OMB clearance: 1/31/2009.

Type of request: Extension without change of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated annual number of respondents: 300.

Total annual responses: 300.

Total annual reporting hours: 150.

Abstract: Under the Railroad Retirement Act (RRA), benefits are not payable if an annuitant works for an employer covered under the RRA or last non-railroad employer. The collection obtains information regarding an annuitant's work and earnings from a non-railroad employer. The information will be used for determining whether benefits should be withheld.

Changes Proposed: The RRB proposes no changes to Form RL–231–F.

2. *Title and Purpose of Information Collection*

Supplemental Information on Accident and Insurance; OMB 3220–0036.

Under Section 12(o) of the Railroad Unemployment Insurance Act (RUIA), the Railroad Retirement Board is entitled to reimbursement of the sickness benefits paid to a railroad employee if the employee receives a sum or damages for the same infirmity for which the benefits are paid. Section 2(f) of the RUIA requires employers to reimburse the RRB for days in which salary, wages, pay for time lost or other remuneration is later determined to be payable. Reimbursements under section 2(f) generally result from the award of pay for time lost or the payment of guaranteed wages. The RUIA prescribes that the amount of benefits paid be deducted and held by the employer in a special fund for reimbursement to the RRB.

The RRB currently utilizes Form(s) SI–1c, (Supplemental Information on Accident and Insurance), SI–5 (Report of Payments to Employee Claiming Sickness Benefits Under the RUIA), ID–3s (Request for Lien Information), ID–3s–1, (Lien Information Under Section 12(o) of the RUIA), ID–3U (Request for Section 2(f) Information), ID–30k (Form Letter Asking Claimant for Additional Information on Injury or Illness), and ID–30k–1 (Request for Supplemental Information on Injury or Illness—3rd Party), to obtain the necessary information from claimants and railroad employers. Completion is required to obtain or retain benefits.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (73 FR 68462 and 68463 on November 18, 2008) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Supplemental Information on Accident and Insurance.

Form(s) submitted: SI–1c, SI–5, ID–3s–1, ID–3U, ID–30k, ID–30k–1, ID–3s.

OMB Control Number: 3220–0036.

Expiration date of current OMB clearance: 1/31/2009.

Type of request: Revision of a currently approved collection.

Affected Public: Individuals or Households, Business or other for-profit.

Estimated annual number of respondents: 10,000.

Total annual responses: 28,500.

Total annual reporting hours: 1,693.

Abstract: The Railroad Unemployment Insurance Act provides for the recovery of sickness benefits paid if an employee receives a settlement for the same injury for which benefits were paid. The collection obtains information abut the person or company responsible for such payments that is needed to determine the amount of the RRB's entitlement.

Changes Proposed: The RRB proposes minor non-burden impacting changes to Forms SI–1c, ID–3s, ID–3s–1 and ID–3U. No other changes are proposed.

Additional Information or Comments: Copies of the form and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer at (312–751–3363) or *Charles.Mierzwa@rrb.gov*.

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or *Ronald.Hodapp@rrb.gov* and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Charles Mierzwa,

Clearance Officer.

[FR Doc. E9–1649 Filed 1–26–09; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Form SE, OMB Control No. 3235–0327, SEC File No. 270–289.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form SE (17 CFR 239.64) is used by registrants to file paper copies of exhibits that would be difficult or impossible to submit electronically. The information contained in Form SE is used by the Commission to identify paper copies of exhibits. Form SE is filed by individuals, companies or other for-profit organizations that are required to file electronically. Approximately 782 registrants file Form SE and it takes an estimated .10 hours per response for a total annual burden of 78 hours.

Written comments are invited on: (a) Whether these proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Charles Boucher, Director/CIO, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*.

Dated: January 14, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–1676 Filed 1–26–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59258; File No. SR–BATS–2009–001]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend BATS Rule 11.9, entitled ''Orders and Modifiers''

January 15, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 12, 2009, BATS Exchange, Inc. (''BATS'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend BATS Rule 11.9, entitled ''Orders and Modifiers,'' to provide Exchange system functionality that will cancel any portion of a market order submitted to the Exchange (a ''BATS market order'') that would execute at a price that is more than 50 cents or 5 percent worse than the NBBO at the time the order initially reaches the Exchange (the ''Initial NBBO''), whichever is greater.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to protect market participants

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

from executions at prices that are significantly worse than the NBBO at the time of order entry by providing Exchange system functionality that will cancel any portion of a BATS market order that would execute at a price that is 50 cents or 5 percentage points worse than the Initial NBBO, whichever is greater. Any portion of a BATS market order that would otherwise execute outside of these thresholds will be immediately cancelled back to the User.[5] The Exchange believes that Users who submit market orders to the Exchange generally intend to receive executions for the full size of their orders at or near the Initial NBBO and are not always aware that there may not be enough liquidity at that price to fill the entire size of their orders. The Exchange believes that the market order thresholds proposed in this rule filing will help avoid executions of BATS market orders at prices that are significantly worse than the Initial NBBO, particularly in thinly-traded securities. The following example demonstrates how the BATS market order thresholds would operate:

- A User submits a routable BATS market order[6] (i.e., not designated as a ''BATS Only'' order) to buy 1,000 shares of ABC;
- The Initial NBBO in security ABC is $8.00 (bid) by $8.05 (offer), 100 shares each, both published by ''Market Center A'';
- The Exchange has 100 shares of liquidity at the $8.05 offer price and also has resting orders on its book to sell 100 shares at $8.15, 100 shares at $8.20 and 1,000 shares at $8.60; and
- Other than the $8.05 offer published by Market Center A there are no offers to sell the security at or between $8.05 and $8.60 at other market centers.

Under the circumstances described above, with the Initial NBBO of $8.00 (bid) by $8.05 (offer), the BATS market order would be executed as follows:

- 100 shares executed at the $8.05 price on the Exchange;
- 900 shares routed to Market Center A as an immediate or cancel order with a price of $8.05;
- 100 shares executed at Market Center A (presuming this offer was still available and there was no additional non-displayed liquidity at that price);
- 800 shares returned to the Exchange;
- 100 shares executed at the Exchange at the $8.15 price level;
- 100 shares executed at the Exchange at the $8.20 price level.

Under this example, 400 shares of the BATS market order would be executed. The remaining 600 shares of the BATS market order would be cancelled back to the User because the liquidity on the Exchange at the $8.60 price level exceeds the BATS market order thresholds set forth in proposed Rule 11.9(a)(2), and such order is not eligible for routing outside of such thresholds. Such BATS market order could only be executed or routed by the Exchange up to and including a price of $8.55 ($0.50 worse than the Initial NBBO).

For those Users who intend to trade against liquidity at multiple price points from the Initial NBBO beyond the BATS market order thresholds proposed in this rule filing, those Users can clearly and unambiguously specify that intent by submitting a marketable limit order to the Exchange. For example, using the scenario described above, if the User submitted a limit order to buy 1,000 shares of security ABC with a limit price of $9.00, such order would be executed up to its full size, either on the Exchange (provided that the Exchange would not trade through protected quotations) or at away market centers if the order was routable.

2. Statutory Basis

The Exchange believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[7] In particular, for the reasons described above, the proposed change is consistent with Section 6(b)(5) of the Act,[8] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest, by helping to avoid executions of market orders on the Exchange at prices that are significantly worse than the NBBO at the time an order is initially received by the Exchange. The Exchange believes that the Initial NBBO is a fair representation of then-available prices and accordingly provides for an appropriate pricing mechanism such that BATS market orders should not be executed at a significantly worse price. Also, the Exchange believes that this proposal is consistent with existing exchange rules that allow for the breaking of trades deemed clearly erroneous by reference to objective thresholds away from the NBBO.[9] Accordingly, the modifications to BATS Rule 11.9 promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system.

A. Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

B. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Changes Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

i. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Because the foregoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[12] However, Rule 19b–4(f)(6)(iii)[13] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the

[5] As defined in Exchange Rule 1.5(bb).

[6] If the order is not routable then it would be executed on the Exchange only if such executions would not trade through the protected quotations of other market centers. If the order is a routable order, then such order will be executed in accordance with BATS Rule 11.13(a), however, orders will not be routed away for execution at prices outside of the market order thresholds proposed in this rule filing, which applies both to market orders executed on the Exchange and to market orders that are to be routed away.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] *See, e.g.*, NASDAQ Rule 11890.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this notice requirement.

[13] *Id.*

protection of investors and the public interest because such waiver will allow BATS Users to immediately benefit from the protections provided by BATS market orders. The Commission hereby grants the Exchange's request and designates the proposal operative upon filing.[14]

At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

ii. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–BATS–2009–001 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–BATS–2009–001. 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 changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of BATS. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BATS–2009–001 and should be submitted on or before February 17, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–1670 Filed 1–26–09; 8:45 am]

BILLING CODE 8011–01–P

[14] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59265; File No. SR–BSE–2008–36]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Delisting Standards

January 16, 2009.

I. Introduction

On November 3, 2008, the Boston Stock Exchange, Inc. (''BSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt new criteria permitting the delisting of a security when the Exchange has terminated its program for listing and trading cash equities (''Listing Program'') in connection with the discontinuation of trading in all securities listed on its market. The proposed rule change was published for comment in the **Federal Register** on November 28, 2008.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

On September 5, 2007, the Exchange announced the discontinuation of the operations of the Boston Equities Exchange. In addition to that announcement, in October 2007, all issuers were given additional notice that the BSE had terminated its Listing Program. While trading in all securities on the BSE ceased on September 5, 2007, not all companies have delisted their securities from the Exchange by filing a Form 25 with the Commission.[4] As a result, the Exchange proposes to adopt new rules that would give it the authority to delist, under certain conditions, the remaining BSE-listed companies, because there is no basis to involuntarily delist these companies under BSE's existing rules.

Under the proposal, the Exchange may determine to delist a security when the Exchange has terminated its Listing Program in connection with the discontinuation of trading in all securities listed on its market. The proposed new rule will provide that at least 15 days before issuing such delisting determination, the Board of Directors or its designee must give notice of the delisting to the company. As soon as practicable after the issuance of the delisting determination, notice will be provided to the company and the Commission of such delisting determination. Notice to the company of the delisting determination shall inform the company of the opportunity to appeal, applying the same appeal rights that exist under BSE rules for any company involuntarily delisted by the Exchange when the BSE was operational.[5]

The Exchange represents that it would use this authority to delist on the grounds that BSE is not currently operating a listing program and, therefore, it is in the public interest that the Exchange not maintain any appearance of having any listings on the Exchange as long as programs for listing and trading cash equities and related activity have ceased. In addition, prior to implementing any involuntary delistings, the Exchange represented that it will contact each company and suggest that it file a Form 25 to effect a voluntary delisting before the Exchange issues any delisting determination. Thereafter, the Exchange will move to delist those companies that do not act

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 58990 (November 20, 2008), 73 FR 72534 (''Notice''). In order for a company to voluntarily delist from the Exchange, it would have to follow the procedures set forth in Rule 12d2–2 under the Act, which includes the filing of a Form 25 with the Commission. *See* Rule 12d2–2 under the Act, 17 CFR 240.12d2–2.

[4] As of the date of the Notice, twenty-nine issuers currently have listings with the Exchange.

[5] *See infra* note 6.

in accordance with that suggestion. Companies that are involuntarily delisted under the rule being adopted in this filing will have the appeal right provided for by new Section 2(c)(3) of Chapter XXVII of the Rules of the Exchange.[6]

In its filing, BSE noted that the NASDAQ OMX Group, Inc. (''NASDAQ OMX'') has acquired the Exchange. According to BSE, NASDAQ OMX expects that the Exchange will resume a program for listing and trading cash equities. Accordingly, the Exchange believes it is appropriate to leave all of its listing rules, as amended, in place pending rule changes to its listing rules.[7] Upon the resumption of a listing business by the Exchange, delisted companies may be eligible for relisting if their securities meet the applicable standards of the Exchange.[8]

III. Discussion and Commission Findings

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[9] and, in particular, the requirements of Section 6 of the Act.[10] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[11] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. The Commission also finds that the proposed rule change is consistent with Section 6(b)(7) of the Act,[12] which requires, among other things, that the rules of the exchange provide a fair procedure for the prohibition or limitation by the exchange of any person with respect to access to services offered by the exchange.

The BSE proposes to adopt new criteria permitting the delisting of securities that are no longer being traded in connection with the discontinuation of trading in all securities listed on its market. The Commission notes that the new delisting standard can only be utilized in rare and unusual circumstances and emphasizes that it can only be used to involuntarily delist companies when the Exchange has discontinued trading in all listed securities in its marketplace, as BSE has done. Specifically, the Exchange announced in September 2007 that it was terminating its Listings Program, and in October 2007, all issuers were given additional notice that the Listings Program had ceased. However, not all issuers have voluntarily delisted their securities in accordance with the requirements in Rule 12d2–2 under the Act[13] and BSE rules. The proposed rule change should also make the delisting process more efficient for both the Exchange and listed companies in light of the cessation of trading on the BSE market. The new delisting standard should provide the Exchange with an additional means of ensuring the quality of and public confidence in BSE as a national securities exchange during its reorganization.

The proposed rule change further serves to protect the public from being mislead into believing that these securities retain the imprimatur of an exchange listing on an active trading market. In this regard, the Commission notes that companies listed on a national securities exchange retain certain benefits and privileges. If an exchange has ceased all trading in all securities due to discontinuation of its marketplace, companies generally should not be able to retain their exchange listing and corresponding privileges, as they are no longer providing liquidity via the market. Moreover, these companies would no longer be monitored for compliance with maintenance listing criteria, and thus investors and the public would not have necessary information regarding these companies' viability. The Commission thus believes that the proposed new delisting standard is consistent with the protection of investors under Section 6(b)(5) of the Act.[14]

The Commission also believes the proposal provides sufficient notice to companies facing delisting pursuant to the new criteria consistent with the Act. First, notice will be given to the company at least 15 days before the Exchange issues its delisting determination. The Commission believes that the proposed rule affords sufficient time for interested parties to submit to the Exchange and/or Commission any comments they have on the anticipated delisting, or to take any other action as permitted under state and federal law including commencing a voluntary delisting in accordance with Rule 12d2–2 under the Act.[15]

Second, notice will be given to the company (and the Commission) after the issuance of the delisting determination, and the notice shall inform the company of the opportunity to appeal. The appeals procedures proposed in new Section 2(c)(3) of Chapter XXVII, which are identical to the appeals procedures currently set forth in Section 2(b)(2) of Chapter XXVII, provide for notice to the issuer of the Exchange's decision to delist its securities; an opportunity for appeal to the Exchange's board of directors, or to a designee of the board, with a $3000 fee; and public notice, no fewer than 10 days before the delisting becomes effective, of the Exchange's final determination to delist the security. The Commission believes that the proposed rule requiring notice to the issuer of the Exchange's delisting decision and establishing appeal procedures provides issuers with adequate notice and opportunity to appeal the delisting as required by Rule 12d2–2 under the Act.[16] The Commission notes that the appeal procedures being adopted by the Exchange set forth an adequate structure to meet the requirements of Section 6(b)(7) of the Act[17] and for BSE to review on appeal any involuntary delistings commenced under the new rule being adopted herein.[18]

[6] The Commission notes that the appeals procedures proposed in new Section 2(c)(3) of Chapter XXVII are identical to the appeals procedures set forth in the current BSE Rules. *See* Chapter XXVII, Section 2(b)(2) of the BSE Rules.

[7] Any future proposal to resume trading on a BSE market and amend listing standards would be required to be submitted as a proposed rule change to the Commission under Section 19(b) of the Act and Rule 19b–4 thereunder. *See* 15 U.S.C. 78s(b), 17 CFR 240.19b–4.

[8] Any company that seeks listing on the Exchange would be required to apply and meet the Exchange's initial listing standards. Delisted companies may also apply to list on another national securities exchange if they meet that exchange's initial listing standards.

[9] In approving this proposed rule change the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78f(b)(7).

[13] 17 CFR 240.12d2–2.

[14] 15 U.S.C. 78f(b)(5).

[15] 17 CFR 240.12d2–2.

[16] 17 CFR 240.12d2–2.

[17] 15 U.S.C. 78f(b)(7).

[18] The Commission has made similar findings in approving the original delisting appeal procedures of the BSE. *See* Securities Exchange Act Release No.

Continued

Finally, the proposed rule change requires that public notice of the final delisting determination by the Exchange be provided no fewer than 10 days before the delisting becomes effective, in accordance with Rule 12d2–2 under the Act.[19] The Commission believes that public notice of the Exchange's final determination should ensure that investors have adequate notice of an exchange delisting and is consistent with the protection of investors under Section 6(b)(5) of the Act.[20]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 6 of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–BSE–2008–36) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–1673 Filed 1–26–09; 8:45 am]

BILLING CODE 8011–01–P

53700 (April 21, 2006), 71 FR 25257 (April 28, 2006) (SR–BSE–2005–46).

[19] 17 CFR 240.12d2–2.

[20] 15 U.S.C. 78f(b)(5).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59253; File No. SR–FINRA–2008–052]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to the Adoption of FINRA Rule 2140 (Interfering With the Transfer of Customer Accounts in the Context of Employment Disputes) in the Consolidated FINRA Rulebook

January 15, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 29, 2008, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. [''NASD'']) filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared by FINRA. The Commission is publishing this notice to solicit comments from interested persons.

[1] 15 U.S.C. 78s(b)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to adopt without material change NASD Interpretive Material 2110–7 (IM–2110–7) (''Interfering With the Transfer of Customer Accounts in the Context of Employment Disputes'') as a FINRA rule in the consolidated FINRA rulebook. The proposed rule change would renumber NASD IM–2110–7 as FINRA Rule 2140 in the consolidated FINRA rulebook.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As part of the process of developing the new consolidated rulebook (''Consolidated FINRA Rulebook''),[2] FINRA is proposing to adopt without material change NASD Interpretive Material 2110–7 (IM–2110–7) (''Interfering With the Transfer of Customer Accounts in the Context of Employment Disputes'') as a FINRA rule in the Consolidated FINRA Rulebook. The proposed rule change would renumber NASD IM–2110–7 as FINRA Rule 2140 in the Consolidated FINRA Rulebook.

(A) Background

NASD IM–2110–7 provides that it shall be inconsistent with just and equitable principles of trade for a member or person associated with a member[3] to interfere with a customer's request to transfer his or her account in connection with the change in employment of the customer's registered representative provided that the account is not subject to any lien for monies owed by the customer or other *bona fide* claim. Prohibited interference includes, but is not limited to, seeking a judicial order or decree that would bar or restrict the submission, delivery, or acceptance of a written request from a customer to transfer his or her account.[4]

FINRA adopted IM–2110–7 to address the practice of delaying customer account transfers.[5] In adopting IM–2110–7, FINRA noted that, when a registered representative leaves his or her firm for a position at a different firm, clients serviced by the registered representative may decide to continue their relationship with the registered representative by transferring their accounts to the registered representative's new firm. FINRA expressed concern that the registered representative's former firm, concerned that its former employee may have breached his or her employment contract by sharing client information with the new firm or by soliciting clients to transfer their accounts to the new firm, sometimes would seek a court order to prevent the transfer of accounts. FINRA noted that in a prior *Notice to Members* it had already alerted members that unnecessary delays in transferring customer accounts, including delays accompanied by attempts to persuade customers not to transfer their accounts, are inconsistent with just and equitable principles of trade.[6] FINRA stated that

[2] The current FINRA rulebook includes, in addition to FINRA Rules, (1) NASD Rules and (2) rules incorporated from NYSE (''Incorporated NYSE Rules'') (together, the NASD Rules and Incorporated NYSE Rules are referred to as the ''Transitional Rulebook''). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''). For more information about the rulebook consolidation process, *see* FINRA *Information Notice*, March 12, 2008 (Rulebook Consolidation Process).

[3] The term ''person associated with a member'' includes, among others, registered representatives. *See* FINRA By-Laws, Article I, Paragraph (rr).

[4] IM–2110–7 further states that nothing in the Interpretation shall affect the operation of NASD Rule 11870 (Customer Account Transfer Contracts). Generally, Rule 11870 addresses the transfer of securities account assets from one member to another member in connection with a customer request. (FINRA intends to review NASD Rule 11870 and related interpretive materials as part of a later phase in the rulebook consolidation process. Note that the Commission has approved FINRA's proposed rule change to rescind, as duplicative of Rule 11870, Incorporated NYSE Rule 412 and its Interpretation. *See* Securities Exchange Act Release No. 58533 (September 12, 2008), 73 FR 54652 (September 22, 2008) [File No. SR–FINRA–2008–036].

[5] *See* NASD *Notice to Members* 02–07 (January 2002) (Interfering With Customer Account Transfers); *see also* Securities Exchange Act Release No. 45239 (January 4, 2002), 67 FR 1790 (January 14, 2002) [File No. SR–NASD–2001–95].

[6] NASD *Notice to Members* 79–7 (February 1979) (Fair Treatment of Customer Accounts); *see also* Securities Exchange Act Release No. 15194 (September 28, 1978) (Notice to Broker-Dealers Concerning Fair Treatment of Customer Accounts).

obtaining court orders to prevent customers from following a registered representative to a different firm is similar to the unfair practice of delaying transfers that the earlier *Notice* had warned about.

In adopting IM–2110–7, FINRA further stated that the Interpretive Material does not affect the ability of member firms to use employment agreements to prevent former representatives from soliciting firm customers. Members are not prevented from pursuing other remedies they may have arising from employment disputes with former registered representatives. Rather, IM–2110–7 is limited to restricting a member from interfering with a customer's right to transfer his or her account once the customer has asked the firm to move the account.

(B) Proposal

FINRA believes that NASD IM–2110–7 is consistent with the goal of investor protection and serves the public interest. FINRA proposes to transfer NASD IM–2110–7 with only minor changes into the Consolidated FINRA Rulebook. Specifically, IM–2110–7 would be recodified with conforming revisions as a stand-alone FINRA rule rather than as interpretive material to NASD Rule 2110 (Standards of Commercial Honor and Principles of Trade).[7]

FINRA will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than ninety days following Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[8] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change would further the purposes of the Act because as part of the Consolidated FINRA Rulebook the proposed rule change will protect investors and the public interest by addressing interference with the transfer of customer accounts in the context of employment disputes.

(B) Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2008–052 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2008–052. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA and on FINRA's Web site at *http://www.finra.org/Industry/Regulation/RuleFilings/2008/P117330.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2008–052 and should be submitted on or before February 17, 2009.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–1656 Filed 1–26–09; 8:45 am]

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[7] The exact revised text of IM–2100–8 is attached as Exhibit 5 to the proposed rule change and is available at *http://www.finra.org/Industry/Regulation/RuleFilings/2008/P117330.* Similarly, FINRA has transferred NASD Rule 2110 to the Consolidated FINRA Rulebook without change as FINRA Rule 2010. Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) [File No. SR–FINRA–2008–028].

[8] 15 U.S.C. 78o–3(b)(6).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59267; File No. SR–FINRA–2009–003]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Implement Technical Changes to the Code of Arbitration Procedure for Customer Disputes and Industry Disputes

January 16, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD''))

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') on January 8, 2009, the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA Dispute Resolution. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend the Code of Arbitration Procedure for Customer Disputes (''Customer Code'') and the Code of Arbitration Procedure for Industry Disputes (''Industry Code'') to insert rule language from the Code of Arbitration Procedure (''old Code'') that was inadvertently omitted when the Customer Code and Industry Code were adopted, to correct inaccurate cross-references, and typographical errors. The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 24, 2007, the SEC approved a proposal to amend the old Code by simplifying the language, codifying current dispute resolution practices, and implementing several substantive changes to dispute resolution rules.[4] The proposal reorganized the old Code into three separate procedural codes: the Customer Code, the Industry Code, and the NASD Code of Mediation Procedure (''Mediation Code'').[5] The Customer, Industry and Mediation Codes (the ''new Codes'') replace the old Code in its entirety.[6]

Since the new Codes became effective, FINRA has found some inaccurate cross-references, typographical errors, inadvertent omissions, and rule language that could be improved to better convey FINRA's intent or to clarify current practice regarding those rules. FINRA is, therefore, proposing several technical, non-substantive amendments to the Customer and Industry Codes that would correct inaccurate cross-references and typographical errors, insert rule language that was inadvertently omitted, codify current practice concerning the administration of existing rules, and make certain clarifying changes. FINRA will discuss the proposed changes in the order that they appear in the new Codes, beginning with the proposed amendments to the Customer Code.

Proposed Non-Substantive Amendments to the Customer Code

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FINRA proposes to amend the title that introduces Part IV of the Table of Contents, by adding a comma after the word ''Disqualification,'' so that the title in the Table of Contents to the Customer Code is the same as the title in the Customer Code.

Rule 12102—National Arbitration and Mediation Committee

Rule 10102(a) of the old Code authorized the then—NASD Dispute Resolution Board of Directors to appoint a National Arbitration and Mediation Committee (the ''Committee''); and, under this rule, the Committee was authorized to establish and maintain rosters of neutrals.

When the old Code was reorganized into the Customer Code, the Committee's authorization to establish and maintain neutral rosters was inadvertently omitted from Rule 12102. Thus, FINRA proposes to amend Rule 12102(b) to insert language similar to that in old Rule 10102(a), which will authorize the Committee to establish and maintain rosters of neutrals composed of persons from within and outside of the securities industry. As the Committee currently works to establish and maintain FINRA's arbitrator rosters, the amendment would not be a change to current practice.

Rule 12206—Time Limits

FINRA proposes to amend Rule 12206(d) to correct a proofreading oversight by removing the word ''matter'' from the end of the sentence. Under the new Codes, the term ''claim,'' not ''matter,'' is used when referring to an allegation or request for relief.

Rule 12307—Deficient Claims

In the Customer Code, FINRA codified its practice regarding deficient claims, which had not been codified in the old Code. Under Rule 12307, the deficient claims rule, FINRA lists the reasons that a claim may be deficient, explains the process if a deficiency is not corrected, and sets forth procedures for handling other pleadings that may be deficient. Specifically, Rule 12307(b) provides that the Director will not refund any filing fees paid by claimants when staff closes a deficient case. FINRA proposes to amend Rule 12307(b) because it does not reflect accurately its practice concerning refunding certain fees paid by claimants when FINRA closes a deficient claim.

When claimants filed a claim under the old Code, they submitted their Statement of Claim along with two separate fees: A non-refundable filing fee and a hearing session deposit.[7] When FINRA staff closed a deficient case, FINRA would retain the non-refundable filing fee and refund the hearing session deposit to the claimants. Under the Customer Code, FINRA combined the old Code filing fee and hearing session deposit into one ''filing fee.''[8] However, FINRA did not change its practice regarding refunds of a portion of the filing fee when it closes a deficient case—FINRA continues to refund the refundable part of the filing fee to claimants, while retaining the remaining portion. Thus, FINRA believes the language in Rule 12307(b) does not reflect accurately its practice and could be confusing to users of the forum. Therefore, FINRA proposes to amend Rule 12307(b) to state that the Director will close the case without

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* Securities Exchange Act Release No. 55158 (January 24, 2007); 72 FR 4574 (January 31, 2007) (File Nos. SR–NASD–2003–158 and SR–NASD–2004–011).

[5] The SEC approved the Mediation Code on October 31, 2005. *See* Securities Exchange Act Release No. 52705 (Oct. 31, 2005); 70 FR 67525 (November 7, 2005) (File No. SR–NASD–2004–013). It became effective on January 30, 2006. *See Notice to Members* 05–85 (December 2005).

[6] The Customer and Industry Codes became effective on April 16, 2007. *See Notice to Members* 07–07 (February 2007).

[7] *See* Rule 10332(c) of the Code of Arbitration Procedure.

[8] *See* Rule 12900. A portion of the filing fee is refundable under certain circumstances, Rule 12900(c).

serving the claim, and will refund part of the filing fee in the amount indicated in the schedule of fees. FINRA believes the amendment will reflect accurately its practice concerning refunds when it closes a deficient case and will minimize confusion concerning its fees.

Rule 12410—Removal of Arbitrator by Director

Rule 12410 addresses removal of an arbitrator by the Director of Arbitration. Specifically, Rule 12410(a)(1) states, in relevant part, that ''the Director will grant a party's request to remove an arbitrator if it is reasonable to infer, based on information known at the time of the request, that the arbitrator is biased, lacks impartiality, or has a direct or indirect interest in the outcome of the arbitration. The interest or bias must be direct, definite, and capable of reasonable demonstration, rather than remote or speculative.'' [9] FINRA believes the word ''direct'' in the second sentence of the rule conflicts with the meaning of the first sentence, in which an arbitrator may be challenged for having ''a direct or indirect interest in the outcome of the arbitration.'' Thus, FINRA proposes to remove ''direct'' from the second sentence of Rule 12410(a)(1) to eliminate the conflict in the rule language.

Proposed Non-Substantive Amendments to the Industry Code [10]

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For an explanation of the proposed amendment, see the relevant section under ''Proposed Non-Substantive Amendments to the Customer Code'' above.

Rule 13102—National Arbitration and Mediation Committee

For an explanation of the proposed amendment, see the relevant section under ''Proposed Non-Substantive Amendments to the Customer Code'' above.

Rule 13206—Time Limits

For an explanation of the proposed amendment, see the relevant section under ''Proposed Non-Substantive Amendments to the Customer Code'' above.

Rule 13307—Deficient Claims

For an explanation of the proposed amendment, see the relevant section under ''Proposed Non-Substantive Amendments to the Customer Code'' above.

Rule 13314—Combining Claims

FINRA proposes to amend the erroneous cross-reference to Rule 13404(c) in Rule 13314. Rule 13314 states, in relevant part, that before ranked arbitrator lists are due to the Director under Rule 13404(c), the Director may combine separate but related claims into one arbitration. Rule 13404(c) instructs parties on the ranking procedures in the forum. Rule 13404(d) governs when ranked lists must be returned to the Director. Thus, the reference to Rule 13404(c) in Rule 13314 is inaccurate and should be changed to Rule 13404(d).

Rule 13403—Generating and Sending Lists to the Parties

FINRA proposes to amend the erroneous cross-reference to Rule 13404(c) in Rule 13403(c)(2). The relevant provision of Rule 13403(c)(2) states that when a party requests additional information, the Director may, but is not required to, toll the time for parties to return the ranked lists under Rule 13404(c). For the reason discussed pertaining to the proposed amendment to Rule 13314, the reference to Rule 13404(c) is inaccurate and should be changed to Rule 13404(d).

Rule 13410—Removal of Arbitrator by Director

For an explanation of the proposed amendment, see the relevant section under ''Proposed Non-Substantive Amendments to the Customer Code'' above.

Rule 13804—Temporary Injunctive Orders; Requests for Permanent Injunctive Relief

FINRA proposes to correct a typographical error in Rule 13804(b)(3)(A)(ii). The relevant sentence of the rule states that ''the Direct shall consolidate the parties'' rankings, and shall appoint arbitrators based on the order of rankings on the consolidated list, subject to the arbitrators' availability and disqualification.'' FINRA proposes to change the word ''Direct'' to ''Director.''

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

FINRA believes that the proposed rule change will assist in the efficient administration of arbitrations by clarifying current practices and by correcting inaccurate cross-references and typographical errors. FINRA believes these technical, non-substantive amendments will enhance the new Codes by making them easier to understand and apply.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received by FINRA.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

FINRA has represented that the proposed rule change qualifies for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6) thereunder [12] because it: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.[13]

FINRA has requested that the Commission waive the 30-day operative delay, so that the proposed rule change may become operative upon filing. The Commission hereby grants FINRA's request.[14] The Commission believes that

[9] *See* Rule 12410(a)(1).

[10] Most rules of the Customer and Industry Codes are identical, except for panel composition, references to document production lists that apply only in customer cases, and rules relating to employment discrimination and injunctive relief that apply only to industry claims. Wherever possible, the last three digits of the rule numbers in the Customer and Industry Codes are the same. Thus, the explanation for the proposed amendments in the Customer Code also apply to the proposed amendments in the Industry Code, except where indicated.

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. FINRA has satisfied this requirement.

[14] For the purposes only of waiving the 30-day operative delay, the Commission has considered the

Continued

waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it makes only technical changes to FINRA's rules which should help to avoid confusion among FINRA members and other market participants.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2009–003 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2009–003. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of FINRA.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to the File Number SR–FINRA–2009–003 and should be submitted on or before February 17, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–1675 Filed 1–26–09; 8:45 am]

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proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59261; File No. SR–BX–2009–001]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Deferring Operation of Its Listing Standards for Primary Listings and Consolidating Into a Single Rule Certain Requirements for Products Traded on the Exchange Pursuant to Unlisted Trading Privileges

January 15, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 8, 2009, NASDAQ OMX BX, Inc. (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a non-controversial rule change under Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.SC. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes (i) to suspend the operation of the Exchange's newly adopted listing standards with respect to primary listings on the Exchange until such time as the Exchange adopts listing fees, and (ii) to adopt rules reflecting the requirements for trading products on the Exchange pursuant to unlisted trading privileges (''UTP'') that have been established in various new product proposals previously approved by the Commission. The Exchange proposes to make the change operative on January 12, 2009.

The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Web site at *http://nasdaqtrader.com/Trader.aspx?id=Boston_Stock_Exchange*.

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

On August 29, 2008, the Exchange was acquired by The NASDAQ OMX Group, Inc. At the time of this acquisition, the Exchange was not operating a venue for listing or trading cash equities. Pursuant to SR–BSE–2008–48, the Exchange has adopted a new rulebook with rules governing membership, the regulatory obligations of members, listing, and equity trading.[5] The new rules, which are designated as the ''Equity Rules,'' include rules that permit issuers of various types of securities to establish primary listings on the Exchange. However, the Exchange has determined that market conditions do not currently warrant offering the Exchange as a listing venue.

[5] Securities Exchange Act Release No. 59154 (December 23, 2008) (SR–BSE–2008–48).

Accordingly, although the listing standards will remain in the Exchange's rulebook, the Exchange is proposing new Equity Rule 4401, which provides that the provisions of the Equity Rule 4000 Series that permit the listing of securities will not be operative until the Exchange files a proposed rule change under Section 19(b)(2) under the Act to adopt listing fees for the Exchange and such proposed rule change is approved by the Commission. The rule is similar in effect to Rule 14.1(a) of the BATS Exchange.

In addition, the Exchange also proposes to amend its rules to reflect certain requirements for trading products on the Exchange pursuant to UTP that have been established in various new product proposals previously approved by the Commission. The Exchange is amending Equity Rule 4420 to provide that it may extend UTP to any security that is an NMS Stock (as defined in Rule 600 of Regulation NMS) that is listed on another national securities exchange. Any such security will be subject to all of the Exchange's trading rules applicable to NMS Stocks, unless otherwise noted, including the provisions of Equity Rules 4120, 4420, 4630, and new Rule 4421 described below. The Exchange will file with the Commission a Form 19b–4(e) with respect to any such security that is a ''new derivative securities product'' as defined in Rule 19b–4(e) under the Act [6] (defined as a ''UTP Derivative Security''). In addition, any new derivative securities product traded on the Exchange will be subject to the criteria described below.

Proposed Equity Rule 4421(a)(2) provides that the Exchange will distribute an information circular prior to the commencement of trading in a UTP Derivative Security, which generally will include the same information as the information circular provided by the listing exchange, including: (1) The special risks of trading the UTP Derivative Security; (2) the Rules of the Exchange that will apply to the UTP Derivative Security, including Equity Rule 2310, the Exchange's suitability rule; (3) information about the dissemination of the value of the underlying assets or indexes; and (4) the applicable trading hours for the UTP Derivative Security and risks of trading during the Exchange's pre-market session (8 a.m. to 9:30 a.m.) and post-market session (4 p.m. to 7 p.m.) due to the lack of calculation or dissemination of the underlying index value, the intraday indicative value, or a similar value.

Proposed Equity Rule 4421(a)(3)(A) reminds Members [7] that they are subject to the prospectus delivery requirements under the Securities Act of 1933, as amended (the ''Securities Act''), unless a UTP Derivative Security is the subject of an order by the Commission exempting the product from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940 (the ''1940 Act'') and the product is not otherwise subject to prospectus delivery requirements under the Securities Act. The Exchange will inform its Members of the application of these provisions to a particular UTP Derivative Security governed by the 1940 Act by means of an information circular.

The Exchange is amending Equity Rule 4120(b) to more fully address trading halts in UTP Derivative Securities traded on the Exchange pursuant to UTP. As currently in effect, Rule 4120(b) provides for trading halts of ''Derivative Securities Products,'' which are defined as a series of Portfolio Depository Receipts, Index Fund Shares, Managed Fund Shares, Trust Issued Receipts, Commodity-Related Securities, or securities representing interests in unit investment trusts or investment companies. Although this definition covers a wide range of products that would be considered UTP Derivative Securities, for the avoidance of doubt, the Exchange is explicitly amending the definition to include all UTP Derivative Securities. The current rule also contains a definition of ''Required Value'' and provides for trading halts in certain circumstances where a Required Value is not being disseminated. Currently, ''Required Value'' is defined to mean ''(i) the value of any index or any commodity-related value underlying a Derivative Security Product and (ii) the indicative optimized portfolio value, intraday indicative value, or other comparable estimate of the value of a share of a Derivative Securities Product updated regularly during the trading day.'' The Exchange proposes to amend the definition to also include ''(iii) a net asset value in the case of a Derivative Securities Product for which a net asset value is disseminated, and (iv) a 'disclosed portfolio' in the case of a Derivative Securities Product that is a series of managed fund shares or actively managed exchange-traded funds for which a disclosed portfolio is disseminated.''

Thus, as amended, the rule provides that the Exchange, upon notification by the listing market of a halt due to a temporary interruption in the calculation or wide dissemination of a Required Value for a Derivative Securities Product, will immediately halt trading in that product on the Exchange. If the Required Value continues not to be calculated or widely disseminated at the commencement of trading on the Exchange on the next business day, the Exchange shall not commence trading of the product on that day. If an interruption in the calculation or wide dissemination of the Required Value continues, the Exchange may resume trading in the Derivative Securities Product only if calculation and wide dissemination of the Required Value resumes or trading in such product resumes on the listing market.

The Exchange is also amending Equity Rule 4630, which governs the activities of registered market makers in Commodity-Related Securities. A ''Commodity-Related Security'' is defined to mean a security that is issued by a trust, partnership, commodity pool or similar entity that invests, directly or through another entity, in any combination of commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives, or the value of which is determined by the value of commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives. A ''commodity'' is defined in Section 1(a)(4) of the Commodity Exchange Act, a definition that includes currencies. As amended, the rule provides that a registered market maker in a Commodity-Related Security is prohibited from acting or registering as a market maker in any commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives underlying such Commodity-Related Security. The rule further provides that a member acting as a registered market maker in a Commodity-Related Security must file with the Exchange's Regulation Department in a manner prescribed by such Department and keep current a list identifying all accounts for trading in commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives underlying such Commodity-Related Security, in which the market maker holds an interest, over which it may exercise investment discretion, or in which it shares in the profits and losses. No market maker shall trade in, or

[6] 17 CFR 240.19b–4(e).

[7] A Member is any registered broker-dealer that has been admitted to membership in the Exchange.

exercise investment discretion with respect to, such underlying commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives, in an account in which a market maker, directly or indirectly, controls trading activities, or has an interest in the profits or losses thereof, that has not been reported as required by the Rule.

In addition, a member acting as a registered market maker in a Commodity-Related Security is obligated to establish adequate information barriers when such market maker engages in communications to other departments within the same firm or the firm's affiliates that involve trading in commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives underlying such Commodity-Related Security. The member acting as a registered market maker in a Commodity-Related Security shall make available to the Exchange's Regulation Department such books, records or other information pertaining to transactions by such entity or registered or non-registered employee affiliated with such entity for its or their own accounts for trading commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives underlying such Commodity-Related Security, as may be requested by the Regulation Department. Finally, in connection with trading a Commodity-Related Security or commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives underlying a Commodity-Related Security, the member acting as a market maker in a Commodity-Related Security shall not use any material nonpublic information received from any person associated with the member or employee of such person regarding trading by such person or employee in the commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives underlying such Commodity-Related Security.

The Exchange represents that its surveillance procedures for UTP Derivative Securities traded on the Exchange will be similar to the procedures used for equity securities traded on the Exchange and will incorporate and rely upon existing Exchange surveillance procedures. The Exchange will closely monitor activity in UTP Derivative Securities traded on the Exchange pursuant to UTP to deter any potential improper trading activity. The proposed rule change also provides that the Exchange will enter into a comprehensive surveillance sharing agreement (''CSSA'') with a market trading components of the index or portfolio on which the UTP Derivative Security is based to the same extent as the listing exchange's rules require the listing market to enter into a CSSA with such market.

Finally, the Exchange is amending provisions of Equity Rule 4120 and 4630 that stipulate that the Exchange will file separate proposals under Section 19(b)(2) of the Act for each issue of Managed Fund Shares or Commodity-Based Securities that it trades on a UTP basis. Because the new rules being adopted by the Exchange consolidate the requirements for trading such securities that have been established in new product proposals previously approved by the Commission, separate proposals under Section 19(b)(2) of the Act are no longer required for trading these securities.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[8] in general and with Section 6(b)(5) of the Act,[9] in particular, in that it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest by providing for the trading of securities, including UTP Derivative Securities, on the Exchange pursuant to UTP, subject to consistent and reasonable standards.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11]

The Exchange has asked the Commission to waive the 30-day operative delay. The Commission believes that such waiver is consistent with the protection of investors and the public interest because such waiver should benefit investors by creating, without undue delay, additional competition in the trading of UTP Derivative Securities, subject to consistent and reasonable standards. Waiver of the waiting period will also allow prompt clarification of the status of the Exchange as a listing venue by specifying that the Exchange's listing standards shall not be operative for primary listings until the Exchange adopts listing fees. The proposed rule change is modeled closely after similar rules of other national securities exchanges[12] and does not raise any novel or significant regulatory issues. Therefore, the Commission designates the proposed rule change as operative upon filing.[13]

At any time within 60 days of the filing of the proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, is consistent with the Act. Comments may be submitted by any of the following methods:

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, as required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five days prior to the filing of the proposed rule change.

[12] *See, e.g.*, NSX Rule 15.9 and Securities Exchange Act Release No. 57448 (March 6, 2008), 73 FR 13597 (March 13, 2008) (SR–NSX–2008–05); ISE Rule 2101 and Securities Exchange Act Release No. 57387 (February 27, 2008), 73 FR 11965 (March 5, 2008) (SR–ISE–2007–99); BATS Rule 14.1 and Securities Exchange Act Release No. 58623 (September 23, 2008), 73 FR 57169 (October 1, 2008) (SR–BATS–2008–004).

[13] For purposes only of waiving the operative date of this proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–BX–2009–001 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2009–001. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–BX–2009–001 and should be submitted on or before February 17, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–1671 Filed 1–26–09; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59266; File No. SR–NASDAQ–2008–016]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving Proposed Rule Change To Create the Nasdaq Market Pathfinders Service and Establish Fees for the Service

January 16, 2009.

I. Introduction and Description of the Proposal

On June 27, 2008, The NASDAQ Stock Market LLC (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change that would establish the Nasdaq Market Pathfinders Service (''Service'') and establish fees for the Service. The Service will allow subscribers to view a real time data product that tracks the aggregated market activity of certain market participants who are aggressively buying and/or selling. Nasdaq proposes to offer new subscribers a 30-day waiver of the user fees for the Service. After the conclusion of the waiver period, subscribers may avail themselves of three different subscription options at varying prices.

The proposed rule change was published in the **Federal Register** on July 17, 2008.[3] The Commission received one comment on the proposal.[4] Nasdaq responded to the comment letter on September 18, 2008.[5] The Commission is approving the proposed rule change.

II. Summary of Comment Letter

The commenter suggests that the Commission cannot approve the proposed rule change for the following reasons:

—Nasdaq is proposing to make commercial use of data supplied to it in Nasdaq's capacity as a regulatory body, despite the Commission's previous statement that, with regard to OATS information, it does not believe such data should be used for non-regulatory purposes unless the data is made available to other market participants on the same terms under which it is provided to Nasdaq.[6]

—Nasdaq has failed to provide a detailed discussion of the data or analytics to be included in the Service. SIFMA stated that several firms have expressed concern with the proposal's potential to compromise the confidentiality of the transacting party's trading strategies or provide misinformation as to a transacting party.

—SIFMA questions whether the Service will provide a means to reverse engineer the algorithms and strategies Nasdaq members have created, or whether the impact on such algorithms and strategies will be such as to render them useless.

—SIFMA also raised a procedural concern, stating that Nasdaq is proposing to create a proprietary product that uses data its members are required to submit without compensation; no other exchange or market data vendor can replicate this product because necessary elements are not available to anyone but Nasdaq; and no cost data is provided to allow an opportunity to determine if the fees are fair and reasonable.

III. Nasdaq's Response to the Comment Letter

In response to the SIFMA Letter, Nasdaq made the following points:

—SIFMA inaccurately claims that Nasdaq is collecting data in its capacity as a regulatory body and using it for commercial purposes, stating that the Service does not use OATS information, but instead relies on trade information sent directly and only from the Nasdaq Matching Engine.

—The Service will not operate in a manner that permits users to distinguish between short and long sales; the Service will not compromise the confidentiality of the transacting party's trading strategies, nor provide misinformation as to a transacting party because there are filters in place to prevent this from occurring.

—The Service will not provide a means to reverse engineer the algorithms and strategies Nasdaq members have created, nor will it affect those

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 58145 (July 11, 2008), 73 FR 41143.

[4] *See* August 7, 2008 letter from Ira D. Hammerman, Senior Managing Director and General Counsel, Securities Industry and Financial Markets Association (''SIFMA''), to Florence Harmon, Acting Secretary, Commission (''SIFMA Letter'').

[5] *See* September 18, 2008 letter from Jeffrey S. Davis, Deputy General Counsel and Vice President, Nasdaq, to Florence Harmon, Acting Secretary, Commission (''Nasdaq Letter'').

[6] SIFMA Letter at 2, quoting the Commission's order approving Nasdaq's exchange application. *See* Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10–131), in text following footnote 136.

algorithms and strategies in such a way as to render them useless.

—The Service is a sentiment indicator that would provide users with an indication of how a specific type of market participant feels about certain securities, making available to the public information that is sometimes referred to as ''the word on the street'' as compiled from order flow on the trading desks of large broker-dealers.

—Nasdaq believes that it has provided adequate justification for the fees.

IV. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule change, the comment letter, and Nasdaq's response to the comment letter, and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange [7] and, in particular, Section 6(b)(4) of the Act,[8] which requires, among other things, that Nasdaq's rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which Nasdaq operates or controls, and that it not unfairly discriminate between customers, issuers, brokers or dealers. The Commission believes that the proposed rule change is consistent with these statutory standards.

Nasdaq has represented that the Service is a voluntary one, and that the information provided to subscribers is not comprised of data that broker-dealers are obligated to provide to Nasdaq for regulatory purposes because of Nasdaq's status as a self-regulatory organization. Additionally, broker-dealers do not need the Service to perform their duties, so the decision to purchase the Service is truly voluntary and dependent upon each broker-dealer's business model. Finally, because the Service is voluntary, Nasdaq has met the statutory standard by pricing the Service according to free market principles; indeed, if Nasdaq priced the Service too high, broker-dealers could simply opt not to purchase the Service. The Commission believes that Nasdaq's fees for the Service are both reasonable and equitably allocated.[9] Additionally, the Commission does not believe that the Pathfinder Service will allow reverse engineering of the algorithms and strategies created by Nasdaq members; Nasdaq has explained the various ways the information is filtered, and has stated that such filtering will prevent this from occurring.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act [10], that the proposed rule change (SR–NASDAQ–2008–016) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–1674 Filed 1–26–09; 8:45 am]

BILLING CODE 8011–01–P

[7] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(4).

[9] The proposal meets the criteria, formulated by the Commission in connection with the petition filed by NetCoalition, for approval of proposed rule changes concerning the distribution of non-core market data. *See* Securities Exchange Act Release Nos. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR–NYSEArca–2006–21) and 55011 (December 27, 2006) (order granting petition for review of SR–NYSEArca–2006–21). In its order issued in connection with the NetCoalition petition, the Commission stated that ''reliance on competitive forces is the most appropriate and effective means to assess whether the terms for the distribution of non-core data are equitable, fair and reasonable, and not unreasonably discriminatory.'' 73 FR at 74781–82. As such, the ''existence of significant competition provides a substantial basis for finding that the terms of an exchange's fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory.'' *Id.* at 74782. If an exchange ''was subject to significant competitive forces in setting the terms of a proposal,'' a proposal will be approved unless the Commission determines that ''there is a substantial countervailing basis to find that the terms nevertheless fail to meet an applicable requirement of the Exchange Act or the rules thereunder.'' *Id.* at 74781.

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59264; File No. SR–NYSEArca–2009–02]

Self-Regulatory Organizations; Notice of Filing of and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc. To Amend or Eliminate Unnecessary Rule Text

January 16, 2009.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on January 8, 2009, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend or eliminate several of its rules in order to remove unnecessary rule text related to terms or systems that are now obsolete. The text of the proposed rule change is attached to the proposed rule change as Exhibit 5. A copy of this filing is available on the Exchange's Web site at *http://www.nyse.com*, at the Exchange's principal office and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing by NYSE Arca is to correct certain NYSE Arca cross-references and remove obsolete and unnecessary rule text. By abolishing these out-dated references and correcting cross-references, the Exchange is not changing or altering any obligation, rights, policies or practices enumerated within its rules.

The specific proposed changes are discussed in further detail below.

• Rule 5.3(g). Criteria for Underlying Securities: The Exchange is changing the numbering within the rule because two separate rule filings were approved at different times which affected the numbering within the rule.[4]

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* SR–NYSEArca–2008–108, Securities Exchange Act Release No. 34–59004 [sic] (November 24, 2008) 73 FR 207 [sic] (October 24, 2008) [sic] (filing seeking approval for listing and trading of options on Managed Fund Shares) and SR–NYSEArca–2008–66, Securities [sic] Act Release No. 34–59055 [sic] (December 4, 2008) 73 FR 238 [sic] (December 10, 2008) (filing seeking approval for Listing and Trading Options on Shares of the iShares COMEX Gold Trust and the iShares Silver Trust).

• Rule 6.20(a). Time Synchronization: The Exchange is changing the rule reference from Rule 4.25 to Rule 11.18.

• Rule 6.34. Trading by OTP Holders and OTP Firms on the Floor: The Exchange is eliminating the references to Rule 6.38 and Rule 6.52(a) in Commentary .01 as those rules are obsolete and no longer exist.

• Rule 6.48(c). Discretionary Transaction: The Exchange is changing the rule reference from Rule 6.39 to Rule 6.84.

• Rule 6.75(f)(1). Priority and Order Allocation Procedures—Open Outcry: The Exchange is eliminating the phrase related to ''Exchange officer'' as this now obsolete.

• Rule 6.78(e)(1)(E). Transactions Off the Exchange: The Exchange is changing the rule reference from Rule 8.103 to Rule 5.33.

• Rule 6.78. Transaction Off the Exchange. Commentary: The Exchange is removing the Rule 7.9 Meaning of Premium Bids and Offers, Index Options reference as this rule is now obsolete and no longer exists.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[5] in general, and furthers the objectives of Section 6(b)(5) of the Act,[6] in particular, because 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, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change will clarify the rule cross-references and eliminate unnecessary confusion in its rule structure.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6)(iii) thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6)[11] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[12] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange believes the waiver of this period will allow it to immediately remove outdated and obsolete references and terms contained in Exchange rules without delay. The Commission has determined that waiving the 30-day operative delay of the Exchange's proposal is consistent with the protection of investors and the public interest because such waiver will allow the Exchange to promptly remove obsolete references and terms contained in its rules, thereby avoiding further potential confusion and ensuring that the rule text of the Exchange is accurate.[13] Therefore, the Commission designates the proposal as operative upon filing. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2009–02 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2009–02. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2009–02 and should be submitted on or before February 17, 2009.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–1672 Filed 1–26–09; 8:45 am]

BILLING CODE 8011–01–P

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of period during which individuals may apply to be appointed to the voting membership of the Practitioners Advisory Group; request for applications.

SUMMARY: The Practitioners Advisory Group of the United States Sentencing Commission is a standing advisory group of the United States Sentencing Commission pursuant to 28 U.S.C. 995 and Rule 5.4 of the Commission's Rules of Practice and Procedure. Having decided to adopt a formal charter for the Practitioners Advisory Group, the United States Sentencing Commission is reconstituting the voting membership of the advisory group under that charter. The purpose of the advisory group is (1) To assist the Commission in carrying out its statutory responsibilities under 28 U.S.C. 994(o); (2) to provide to the Commission its views on the Commission's activities and work, including proposed priorities and amendments; (3) to disseminate to defense attorneys, and to other professionals in the defense community, information regarding federal sentencing issues; and (4) to perform other related functions as the Commission requests. Under the charter, the advisory group will consist of not more than 17 voting members, each of whom may serve not more than two consecutive three-year terms. Of those 17 voting members, one shall be Chair, one shall be Vice Chair, 12 shall be circuit members (one for each federal judicial circuit other than the Federal Circuit), and three shall be at-large members. To be eligible to serve as a voting member, an individual must be an attorney who (1) Devotes a substantial portion of his or her professional work to advocating the interests of privately represented individuals, or of individuals represented by private practitioners through appointment under the Criminal Justice Act of 1964, within the federal criminal justice system; (2) has significant experience with federal sentencing or post-conviction issues related to criminal sentences; and (3) is in good standing of the highest court of the jurisdiction or jurisdictions in which he or she is admitted to practice. Additionally, to be eligible to serve as a circuit member, the individual's primary place of business or a substantial portion of his or her practice must be in the circuit concerned. Each voting member is appointed by the Commission. The Commission hereby invites any individual who is eligible to be appointed to the initial voting membership of the Practitioners Advisory Group to apply. Applications should be received by the Commission not later than March 30, 2009. Applications may be sent to Michael Courlander at the address listed below.

DATES: Applications for the initial voting membership of the Practitioners Advisory Group should be received not later than March 30, 2009.

ADDRESSES: *Send applications to:* United States Sentencing Commission, One Columbus Circle, NE., Suite 2–500, South Lobby, Washington, DC 20002–8002, *Attention:* Public Affairs.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, *Telephone:* (202) 502–4597.

SUPPLEMENTARY INFORMATION: Section 995(a)(1) of title 28, United States Code, authorizes the Commission to establish general policies and promulgate rules and regulations as necessary for the Commission to carry out the purposes of the Sentencing Reform Act of 1984. Having adopted a formal charter for the Practitioners Advisory Group, the United States Sentencing Commission is reconstituting the voting membership of the Practitioners Advisory Group under that charter. The Commission invites any individual who is eligible to be appointed to the initial voting membership of the Practitioners Advisory Group to apply.

Authority: 28 U.S.C. 994(a), (o), (p), 995; USSC Rules of Practice and Procedure 5.2, 5.4.

Ricardo H. Hinojosa,

Acting Chair.

[FR Doc. E9–1636 Filed 1–26–09; 8:45 am]

BILLING CODE 2210–40–P

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of proposed amendments to sentencing guidelines, policy statements, and commentary. Request for public comment, including public comment regarding retroactive application of any of the proposed amendments. Notice of public hearing.

SUMMARY: Pursuant to section 994(a), (o), and (p) of title 28, United States Code, the United States Sentencing Commission is considering promulgating certain amendments to the sentencing guidelines, policy statements, and commentary. This notice sets forth the proposed amendments and, for each proposed amendment, a synopsis of the issues addressed by that amendment. This notice also sets forth a number of issues for comment, some of which are set forth together with the proposed amendments; some of which are set forth independent of any proposed amendment; and one of which (regarding retroactive application of proposed amendments) is set forth in the **SUPPLEMENTARY INFORMATION** portion of this notice.

The proposed amendments and issues for comment in this notice are as follows: (1) A proposed amendment in response to the Identity Theft Restitution and Enforcement Act of 2008, title II of Public Law 110–326, including proposed changes to § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft; Offenses Involving Stolen Property; Property Damage or Destruction; Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States), § 2H3.1 (Interception of Communications; Eavesdropping; Disclosure of Certain Private or Protected Information), and § 3B1.3 (Abuse of Position of Trust or Use of Special Skill), and issues for comment regarding the guidelines' treatment of offenses involving fraud, identity theft, computers, and communications; (2) a proposed amendment in response to the Ryan Haight Online Pharmacy Consumer Protection Act of 2008, Public Law 110–465, including proposed changes to § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy) and § 2D3.1

[14] 17 CFR 200.30–3(a)(12).

(Regulatory Offenses Involving Registration Numbers; Unlawful Advertising Relating to Schedule I Substances; Attempt or Conspiracy), and issues for comment regarding the guidelines' treatment of Schedule III, IV, and V controlled substance offenses; (3) a proposed amendment in response to the Drug Trafficking Vessel Interdiction Act of 2008, Public Law 110–407, including a proposed change to § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy) and a proposed new guideline for offenses involving operating a submersible vessel or semi-submersible vessel without nationality, and issues for comment regarding the guidelines' treatment of such offenses; (4) an issue for comment in response to the Court Security Improvement Act of 2007, Public Law 110–177, regarding the guidelines' treatment of homicide, assault, and threat offenses; (5) an issue for comment in response to the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Public Law 110–457, regarding the guidelines' treatment of alien harboring and human trafficking offenses; (6) a proposed amendment in response to miscellaneous issues arising from legislation recently enacted and other miscellaneous guideline application issues, including proposed changes to the guidelines' treatment of offenses involving contempt, consumer product safety, interest rate limitations, domestic violence, child soldiers, veterans' grave markers, child pornography, firearms, threats, and copyright infringement and the guidelines' treatment of probation and supervised release, and related issues for comment; (7) a proposed amendment to § 2A3.2 (Criminal Sexual Abuse of a Minor Under the Age of Sixteen Years (Statutory Rape) or Attempt to Commit Such Acts) and § 2G1.3 (Promoting a Commercial Sex Act or Prohibited Sexual Conduct with a Minor; Transportation of Minors to Engage in a Commercial Sex Act or Prohibited Sexual Conduct; Travel to Engage in Commercial Sex Act or Prohibited Sexual Conduct with a Minor; Sex Trafficking of Children; Use of Interstate Facilities to Transport Information about a Minor) in response to a circuit conflict regarding application of the undue influence enhancement in those guidelines, and a related issue for comment; (8) a proposed amendment to § 3C1.3 (Commission of Offense While on Release) in response to an application issue regarding that guideline; (9) a proposed amendment in response to a circuit conflict regarding the guidelines' treatment of counterfeiting offenses involving ''bleached notes'', including a proposed change to § 2B5.1 (Offenses Involving Counterfeit Bearer Obligations of the United States); and (10) a proposed amendment in response to certain technical issues that have arisen in the guidelines.

DATES: (1) Written Public Comment.—Written public comment regarding the proposed amendments and issues for comment set forth in this notice, including public comment regarding retroactive application of any of the proposed amendments, should be received by the Commission not later than March 30, 2009.

(2) Public Hearing.—The Commission plans to hold a public hearing regarding the proposed amendments and issues for comment set forth in this notice. Further information regarding the public hearing, including requirements for testifying and providing written testimony, as well as the location, time, and scope of the hearing, will be provided by the Commission on its Web site at *http://www.ussc.gov.*

ADDRESSES: Public comment should be sent to: United States Sentencing Commission, One Columbus Circle, NE., Suite 2–500, Washington, DC 20002–8002, *Attention:* Public Affairs.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, *Telephone:* (202) 502–4590.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and submits guideline amendments to the Congress not later than the first day of May each year pursuant to 28 U.S.C. 994(p).

The proposed amendments in this notice are presented in one of two formats. First, some of the amendments are proposed as specific revisions to a guideline or commentary. Bracketed text within a proposed amendment indicates a heightened interest on the Commission's part in comment and suggestions regarding alternative policy choices; for example, a proposed enhancement of [2][4][6] levels indicates that the Commission is considering, and invites comment on, alternative policy choices regarding the appropriate level of enhancement. Similarly, bracketed text within a specific offense characteristic or application note means that the Commission specifically invites comment on whether the proposed provision is appropriate. Second, the Commission has highlighted certain issues for comment and invites suggestions on how the Commission should respond to those issues.

The Commission also requests public comment regarding whether the Commission should specify for retroactive application to previously sentenced defendants any of the proposed amendments published in this notice. The Commission requests comment regarding which, if any, of the proposed amendments that may result in a lower guideline range should be made retroactive to previously sentenced defendants pursuant to § 1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range).

Additional information pertaining to the proposed amendments described in this notice may be accessed through the Commission's Web site at *http://www.ussc.gov.*

Authority: 28 U.S.C. 994(a), (o), (p), (x); USSC Rules of Practice and Procedure, Rule 4.4.

Ricardo H. Hinojosa,
Acting Chair.

1. Identity Theft

Synopsis of Proposed Amendment: This proposed amendment addresses the Identity Theft Restitution and Enforcement Act of 2008 (the ''Act''), Title II of Public Law 110–326, and other related issues arising from case law. The Act contains a directive to the Commission at section 209. Section 209(a) of the Act directs the Commission to—review its guidelines and policy statements applicable to persons convicted of offenses under sections 1028, 1028A, 1030, 2511, and 2701 of title 18, United States Code, and any other relevant provisions of law, in order to reflect the intent of Congress that such penalties be increased in comparison to those currently provided by such guidelines and policy statements.

The offenses that are the subject of the directive in section 209 of the Act, and the guidelines to which they are referenced, are as follows:

(1) 18 U.S.C. 1028 (fraud and related activity in connection with identification documents, authentication features, and information) makes it unlawful to engage in fraud and related activity in connection with ''identification documents'' (*e.g.*, government-issued

documents such as drivers' licenses) or ''authentication features'' (*i.e.*, features used on such documents to determine whether such documents are authentic, such as watermarks or holograms). A violator is subject to a fine under title 18, United States Code, and imprisonment. The statutory maximum term of imprisonment varies from 1 year to 30 years, depending on the circumstances of the offense. For example, the statute provides imprisonment up to 30 years (if terrorism is involved); 20 years (if a drug trafficking crime or a crime of violence is involved, or if the violator is a repeat offender); and 15 years, 5 years, and 1 year, in other specified circumstances.

Offenses under 18 U.S.C. 1028 are referenced in Appendix A of the *Guidelines Manual* (Statutory Index) to §§ 2B1.1 (Theft, Property Destruction, and Fraud), 2L2.1 (Trafficking in a Document Relating to Naturalization), and 2L2.2 (Fraudulently Acquiring Documents Relating to Naturalization).

(2) 18 U.S.C. 1028A (aggravated identity theft) makes it unlawful to transfer, possess, or use a ''means of identification'' (*i.e.*, a name or number used to identify a specific individual, such as a social security number) of another person during and in relation to another felony (such as a fraud or an immigration violation). A violator is subject to a mandatory consecutive term of imprisonment of 2 years or, if the other felony was a terrorism offense, 5 years.

Offenses under 18 U.S.C. 1028A are referenced in Appendix A (Statutory Index) to § 2B1.6 (Aggravated Identity Theft).

(3) 18 U.S.C. 1030 (fraud and related activity in connection with computers) provides for several offenses as follows:

(A) 18 U.S.C. 1030(a)(1) makes it unlawful to retain national security information after having obtained it by computer without authority, or to disclose such information to a person not entitled to receive it. A violator is subject to a fine under title 18, United States Code, and imprisonment up to 10 years (for a first offense) or 20 years (for a repeat offender).

Offenses under 18 U.S.C. 1030(a)(1) are referenced in the Statutory Index to § 2M3.2 (Gathering National Defense Information).

(B) 18 U.S.C. 1030(a)(2) makes it unlawful to obtain by computer, without authority, information of a financial institution or of a federal agency. A violator is subject to a fine under title 18, United States Code, and imprisonment of up to 1 year (for a first offense), 5 years (for an offense involving valuable information, an offense for purposes of commercial advantage or financial gain, or an offense in furtherance of another crime or tort), or 10 years (for a repeat offender).

Offenses under 18 U.S.C. 1030(a)(2) are referenced in the Statutory Index to § 2B1.1 (Theft, Property Destruction, and Fraud).

(C) 18 U.S.C. 1030(a)(3) makes it unlawful to access, without authority, a nonpublic computer of a federal agency. A violator is subject to a fine under title 18, United States Code, and imprisonment of up to 1 year (for a first offense) or 10 years (for a repeat offender).

Offenses under 18 U.S.C. 1030(a)(3) are referenced in the Statutory Index to § 2B2.3 (Trespass).

(D) 18 U.S.C. 1030(a)(4) makes it unlawful to access a ''protected computer'' (*i.e.*, a computer of a financial institution or a federal agency) without authority and, by means of doing so, further an intended fraud and obtain a thing of value. A violator is subject to a fine under title 18, United States Code, and imprisonment of up to 5 years (for a first offense) or 10 years (for a repeat offender).

Offenses under 18 U.S.C. 1030(a)(4) are referenced in the Statutory Index to § 2B1.1 (Theft, Property Destruction, and Fraud).

(E) 18 U.S.C. 1030(a)(5) makes it unlawful to use a computer to cause damage to a ''protected computer'' (*i.e.*, a computer of a financial institution or a federal agency). A violator is subject to a fine under title 18, United States Code, and imprisonment of up to 1 year, 5 years, 10 years, 20 years, or life, depending on the circumstances.

Offenses under 18 U.S.C. 1030(a)(5) are referenced in the Statutory Index to § 2B1.1 (Theft, Property Destruction, and Fraud).

(F) 18 U.S.C. 1030(a)(6) makes it unlawful to traffic in any password or similar information through which a computer may be accessed without authorization, if the trafficking affects interstate or foreign commerce or if the computer is used by or for a federal agency. A violator is subject to a fine under title 18, United States Code, and imprisonment of up to 1 year (for a first offense) or 10 years (for a repeat offender).

Offenses under 18 U.S.C. 1030(a)(6) are referenced in the Statutory Index to § 2B1.1 (Theft, Property Destruction, and Fraud).

(G) 18 U.S.C. 1030(a)(7) makes it unlawful to threaten to cause damage to, or obtain information from, a ''protected computer'' (*i.e.*, a computer of a financial institution or a federal agency), without authority and with intent to extort. A violator is subject to a fine under title 18, United States Code, and imprisonment of up to 5 years (for a first offense) or 10 years (for a repeat offender).

Offenses under 18 U.S.C. 1030(a)(7) are referenced in the Statutory Index to § 2B3.2 (Extortion by Force or Threat of Injury or Serious Damage).

(H) 18 U.S.C. 1030(b) makes it unlawful to conspire to commit, or attempt to commit, a section 1030(a) offense. A violator is subject to the same penalty as for the section 1030(a) offense.

Offenses under 18 U.S.C. 1030(b) are referenced in the Statutory Index to § 2X1.1 (Attempt, Solicitation, or Conspiracy).

(4) 18 U.S.C. 2511 (interception and disclosure of wire, oral, or electronic communications prohibited) makes it unlawful to intercept or disclose any wire, oral, or electronic communication. A violator is subject to a fine under title 18, United States Code, and imprisonment of up to 5 years.

Offenses under 18 U.S.C. 2511 are referenced in the Statutory Index to §§ 2B5.3 (Criminal Infringement of Copyright or Trademark) and 2H3.1 (Interception of Communications; Eavesdropping; Disclosure of Certain Private or Protected Information).

(5) 18 U.S.C. 2701 (unlawful access to stored communications) makes it unlawful to access, without authority, a facility through which an electronic communication service is provided and obtain, alter, or prevent authorized access to a wire or electronic communication stored in that facility. A violator is subject to a fine under title 18, United States Code, and imprisonment. If the offense is committed for commercial advantage, malicious damage, or commercial gain, or in furtherance of a crime or tort, the maximum term of imprisonment is 5 years (for a first offender) or 10 years (for a repeat offender); otherwise, the maximum term of imprisonment is 1 year (for a first offender) or 5 years (for a repeat offender).

Offenses under 18 U.S.C. 2701 are referenced in the Statutory Index to § 2B1.1 (Theft, Property Destruction, and Fraud).

Section 209(b) of the Act requires that, in determining the appropriate sentence for the above referenced crimes, the Commission ''shall consider the extent to which the current guidelines and policy statements may or may not adequately account for the following factors in order to create an effective deterrent to computer crime

and the theft or misuse of personally identifiable data'':

(1) The level of sophistication and planning involved in such offense.

(2) Whether such offense was committed for purpose of commercial advantage or private financial benefit.

(3) The potential and actual loss resulting from the offense including—

(A) The value of information obtained from a protected computer, regardless of whether the owner was deprived of use of the information; and

(B) Where the information obtained constitutes a trade secret or other proprietary information, the cost the victim incurred developing or compiling the information.

(4) Whether the defendant acted with intent to cause either physical or property harm in committing the offense.

(5) The extent to which the offense violated the privacy rights of individuals.

(6) The effect of the offense upon the operations of an agency of the United States Government, or of a State or local government.

(7) Whether the offense involved a computer used by the United States Government, a State, or a local government in furtherance of national defense, national security, or the administration of justice.

(8) Whether the offense was intended to, or had the effect of, significantly interfering with or disrupting a critical infrastructure.

(9) Whether the offense was intended to, or had the effect of, creating a threat to public health or safety, causing injury to any person, or causing death.

(10) Whether the defendant purposefully involved a juvenile in the commission of the offense.

(11) Whether the defendant's intent to cause damage or intent to obtain personal information should be disaggregated and considered separately from the other factors set forth in USSG 2B1.1(b)(14) [currently § 2B1.1(b)(15)].

(12) Whether the term ''victim'' as used in USSG 2B1.1, should include individuals whose privacy was violated as a result of the offense in addition to individuals who suffered monetary harm as a result of the offense.

(13) Whether the defendant disclosed personal information obtained during the commission of the offense.

Section 209(c) of the Act requires that in responding to the directive, the Commission:

(1) Assure reasonable consistency with other relevant directives and with other sentencing guidelines;

(2) Account for any additional aggravating or mitigating circumstances that might justify exceptions to the generally applicable sentencing ranges;

(3) Make any conforming changes to the sentencing guidelines; and

(4) Assure that the guidelines adequately meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code.

The proposed amendment and issues for comment address the factors set forth in section 209(b) of the Act, and other related issues arising under the Act and under case law, in the following manner:

(A) Level of Sophistication and Planning Involved in the Offense

Synopsis of Proposed Amendment: The proposed amendment responds to subsection (b)(1) of the directive, which concerns the level of sophistication involved in the offense, by amending the commentary in § 2B1.1 relating to fraud offenses that involve sophisticated means. Specifically, the proposed amendment responds to a concern about whether, in a case involving computers, the defendant's use of any technology or software to conceal the identity or geographic location of the perpetrator qualifies as ''especially complex or especially intricate offense conduct pertaining to the execution or concealment of an offense'' within the meaning of the sophisticated means enhancement in § 2B1.1(b)(9) and Application Note 8(B) of that guideline. The proposed amendment adds this conduct to the list in Application Note 8(B) of examples of conduct that ordinarily indicates sophisticated means.

Two issues for comment are also included.

Proposed Amendment:

The Commentary to § 2B1.1 captioned ''Application Notes'' is amended in Note 8(B) by adding at the end the following:

''In a scheme involving computers, using any technology or software to conceal the identity or geographic location of the perpetrator ordinarily indicates sophisticated means.''.

Issues for Comment:

1. The Commission requests comment regarding the factor described in section 209(b)(1) of the Act (the level of sophistication and planning involved in the offense). The guidelines currently address this factor as follows:

(1) Section 2B1.1(b)(9) contains a 2-level enhancement, and a minimum offense level of 12, if the offense involved sophisticated means.

(2) Section 2B1.1(b)(4) contains a 2-level enhancement if the offense involved receiving stolen property and the defendant was in the business of receiving and selling stolen property, which Application Note 5 provides is to be determined in part on the regularity and sophistication of the defendant's activities.

Is the factor adequately addressed by these provisions? Should the Commission increase the amount, or the scope, of these enhancements, or of the minimum offense level, or any combination of those? Should the Commission amend other guidelines to which these offenses are referenced to address this factor, such as by adding comparable enhancements, minimum offense levels, or both?

2. The Commission requests comment regarding whether § 3B1.3 (Abuse of Position of Trust or Use of Special Skill) should apply to a person who has self-trained computer skills. Does the guideline adequately address such a person? Should the guideline include language that unequivocally includes such a person, or should it include language that unequivocally excludes such a person?

(B) Whether the Offense Was Committed for Purpose of Commercial Advantage or Private Financial Benefit

Issue for Comment:

1. The Commission requests comment regarding the factor described in section 209(b)(2) of the Act (whether the offense was committed for purpose of commercial advantage or private financial benefit). The guidelines currently address this factor as follows:

(1) Section 2H3.1 provides a 3-level enhancement at subsection (b)(1)(B) if the purpose of an offense under 18 U.S.C. 2511 was to obtain direct or indirect commercial advantage or economic gain, and a cross reference at subsection (c)(1) that applies if the purpose of the offense was to facilitate another offense.

(2) Section 2B1.5(b)(4) provides a 2-level enhancement if the offense was committed for pecuniary gain or otherwise involved a commercial purpose.

(3) Sections 2B1.1(b)(1), 2B2.3(b)(3), and 2B5.3(b)(1) provide enhancements based on the monetary amounts involved in the offense.

Is the factor adequately addressed by these provisions? Should the Commission increase the amount, or the scope, of these enhancements, or the scope of the cross reference? Should the Commission amend other guidelines to which these offenses are referenced to address this factor, such as by adding comparable enhancements or cross references?

(C) The Potential and Actual Loss Resulting From the Offense Including (A) the Value of Information Obtained From a Protected Computer, Regardless of Whether the Owner Was Deprived of Use of the Information; and (B) Where the Information Obtained Constitutes a Trade Secret or Other Proprietary Information, the Cost the Victim Incurred Developing or Compiling the Information

Synopsis of Proposed Amendment: The proposed amendment responds to subsection (b)(3) of the directive by revising § 2B1.1 (Theft, Property Destruction, and Fraud). Specifically, it addresses two types of information: information that the victim retains but that is copied by the defendant, and information that constitutes a trade secret or other proprietary information of the victim. Two options are presented. Option 1 adds to the rule of construction for cases under 18 U.S.C.1030 (Fraud and related activity in connection with computers) regarding pecuniary harm in Application Note 3(A)(v)(III), specifying that any reduction in the value of proprietary information that resulted from the offense should be included in the loss calculation. Option 2 adds a provision in Application Note 3(C), specifying that, if the fair market value of copied information is unavailable or insufficient, the court may consider the cost the victim incurred in originally developing the information or the reduction in the value of the information that resulted from the offense.

Four issues for comment are also included.

Proposed Amendment:

[Option 1:

The Commentary to § 2B1.1 captioned ''Application Notes'' is amended in Note 3(A)(v)(III) by striking '', and'' after ''prior to the offense'' and inserting a semicolon; and by inserting after ''service'' the following:

''; and any reduction in the value of proprietary information (*e.g.*, trade secrets) that resulted from the offense''.]

[Option 2:

The Commentary to § 2B1.1 captioned ''Application Notes'' is amended in Note 3(C)(i) by inserting ''copied,'' after ''taken,''.

The Commentary to § 2B1.1 captioned ''Application Notes'' is amended in Note 3(C) by redesignating clauses (ii) through (v) as (iii) through (vi); and by inserting after clause (i) the following new clause:

''(ii) In the case of proprietary information (*e.g.*, trade secrets), the cost of developing that information or the reduction that resulted from the offense in the value of that information.''.]

Issues for Comment:

1. The Commission requests comment regarding the factor described in section 209(b)(3) of the Act (the potential and actual loss resulting from the offense including (A) the value of information obtained from a protected computer, regardless of whether the owner was deprived of use of the information; and (B) where the information obtained constitutes a trade secret or other proprietary information, the cost the victim incurred developing or compiling the information). The guidelines currently address this factor as follows:

(1) Sections 2B1.1(b)(1), 2B2.3(b)(3), and 2B5.3(b)(1) provide enhancements based on the monetary amounts involved in the offense.

(2) Section 2B1.1, Application Note 19(A)(iv), provides an upward departure if the offense created a risk of substantial loss beyond the loss determined for purposes of § 2B1.1(b)(1).

(3) Section 2B1.1, Application Note 19(A)(v), provides an upward departure if, in a case involving stolen information from a ''protected computer,'' the defendant sought the stolen information to further a broader criminal purpose.

Is the factor adequately addressed by these provisions? Should the Commission increase the amount, or the scope, of these enhancements? Should the Commission amend other guidelines to which these offenses are referenced to address this factor, such as by adding comparable enhancements? Should these upward departure provisions be incorporated as enhancements in the guidelines to which these offenses are referenced?

2. Should the definition of ''loss'' in § 2B1.1 be amended to provide greater guidance to the court on how to estimate loss in cases involving information obtained from a protected computer without depriving the owner of the use of the information, or information obtained that constitutes a trade secret or other proprietary information? For such cases, should § 2B1.1 include a special rule for including and quantifying (or providing a stipulated amount for) the loss, such as the special rule in Application Note 3(F)(i) relating to credit cards?

3. The Commission requests comment regarding whether § 2B1.1 adequately accounts for a case in which an individual suffers pecuniary harm, but the pecuniary harm is immediately reimbursed by a third party. In such a case, the pecuniary harm may not be treated as ''loss,'' and the individual may not be treated as a ''victim,'' for purposes of § 2B1.1.

Five circuit courts have addressed the issue of whether an individual who is fully reimbursed for his or her temporary financial loss by a third party is a ''victim'' for purposes of § 2B1.1(b)(2). The Fifth Circuit in *United States* v. *Conner*, 537 F.3d 480, 489 (5th Cir. 2008), and the Sixth Circuit in *United States* v. *Yagar*, 404 F.3d 967, 971 (6th Cir. 2005), have held that individuals who have been fully reimbursed for temporary financial losses by a third party are not ''victims'' within the meaning of § 2B1.1(b)(2). Although the Second Circuit in *United States* v. *Abiodun*, 536 F.3d 162, 168 (2d Cir.), *cert. denied, __S. Ct. __*, 2008 WL 4619522 (2008), and the Ninth Circuit in *United States* v. *Pham*, 545 F.3d 712, 721 (9th Cir. 2008), have agreed with the reasoning of these courts, they have further held that individuals who were fully reimbursed for their financial losses by third parties may be deemed victims for purposes of § 2B1.1(b)(2) so long as they suffered an adverse effect, measurable in monetary terms, as a result of the defendant's conduct (*e.g.*, the costs associated with obtaining reimbursements from banks or credit card companies). The Eleventh Circuit in *United States* v. *Lee*, 427 F.3d 881, 895 (11th Cir. 2005), did not agree. While acknowledging that the facts of its case were significantly different in that the monetary losses were neither short-lived nor immediately reimbursed by third parties, the Lee court held that the operative time for determining whether someone is a victim is the time of the offense, irrespective of any subsequent remedial action.

Should the Commission amend the guidelines to address this circumstance and, if so, how?

4. The Commission requests comment regarding whether § 3B1.3 (Abuse of Position of Trust or Use of Special Skill) should apply to a person who is an officer, employee, or insider of a business who participates in an offense involving proprietary information (*e.g.*, trade secrets) of that business. Does the guideline adequately address such a person? Should the guideline include language that unequivocally includes such a person, or should it include language that unequivocally excludes such a person?

(D) Whether the Defendant Acted With Intent To Cause Either Physical or Property Harm in Committing the Offense

Issue for Comment

1. The Commission requests comment regarding the factor described in section 209(b)(4) of the Act (whether the defendant acted with intent to cause either physical or property harm in committing the offense). The guidelines currently address this factor as follows:

(1) Section 2B1.1(b)(13) provides a 2-level enhancement if the offense involved the conscious or reckless risk of death or serious bodily injury, or possession of a dangerous weapon in connection with the offense.

(2) Section 2B1.1(c) provides a cross reference under which the court applies a firearms or explosives guideline if firearms or explosives are involved.

(3) Section 2H3.1(c) provides a cross reference under which the court applies another offense guideline if the purpose was to facilitate another offense.

(4) Section 2B1.1, Application Note 19, provides an upward departure if the offense caused or risked substantial non-monetary harm, such as physical harm or property harm.

(5) Section 2H3.1, Application Note 5, provides an upward departure if the offense caused or risked substantial non-monetary harm, such as physical harm or property harm.

(6) Section 5K2.5 (Property Damage or Loss) provides an upward departure if the offense caused property damage or loss not taken into account by the guidelines.

Is the factor adequately addressed by these provisions? If not, should the Commission increase the amount, or the scope, of these enhancements, or the scope of the cross reference or departure provisions? Should the Commission amend other guidelines to which these offenses are referenced to address this factor, such as by adding comparable enhancements or cross references? Alternatively, should these upward departure provisions be incorporated as enhancements in the guidelines to which these offenses are referenced?

(E) The Extent to Which the Offense Violated the Privacy Rights of Individuals

Synopsis of Proposed Amendment: The proposed amendment responds to subsection (b)(5) of the directive (the extent to which the offense violated the privacy rights of individuals) by revising § 2H3.1 (Interception of Communications; Eavesdropping; Disclosure of Certain Private or Protected Information). Two options are presented. Option 1 creates a new specific offense characteristic in § 2H3.1 with three alternative enhancements if the offense involved the personal information or means of identification of specified numbers of individuals. Specifically, it provides an enhancement of [2] levels for offenses involving the personal information or means of identification of [10]–[50] or more individuals; an enhancement of [4] levels for [50]–[250] or more individuals; and an enhancement of [6] levels for [250]–[1,000] or more individuals. The graduated levels ensure incremental punishment for increasingly serious conduct. Option 2 amends Application Note 5 to § 2H3.1, suggesting that an upward departure may be warranted not only in a case in which the offense involved confidential phone records information or tax return information of a substantial number of individuals (as the application note currently provides), but also in a case in which the offense involved personal information or means of identification of a substantial number of individuals.

The proposed amendment defines the term ''personal information'', for purposes of § 2H3.1, in the same manner as the term ''personal information'' is defined for purposes of § 2B1.1(b)(15). The proposed amendment clarifies, for purposes of both guidelines, that information is ''personal information'' only if it involves an identifiable individual.

An issue for comment is also included.

Proposed Amendment:

[Option 1:

Section 2H3.1(b) is amended by adding at the end the following:

''(3) (Apply the greatest) If the defendant is convicted under 18 U.S.C. § 2511 and the offense involved personal information or means of identification of—

(A) [10]–[50] or more individuals, increase by [2] levels;

(B) [50]–[250] or more individuals, increase by [4] levels; or

(C) [250]–[1,000] or more individuals, increase by [6] levels.''.]

The Commentary to § 2H3.1 captioned ''Application Notes'' is amended in Note 4 by striking ''subsection (b)(2)(B)'' and inserting ''this guideline''; and by adding after the paragraph that begins '' 'Interactive computer service' '' the following:

'' 'Means of identification' has the meaning given that term in 18 U.S.C. 1028(d)(7), except that such means of identification shall be of an actual (*i.e.*, not fictitious) individual, other than the defendant or a person for whose conduct the defendant is accountable under § 1B1.3 (Relevant Conduct).

'Personal information' means sensitive or private information involving an identifiable individual (including such information in the possession of a third party), including (i) medical records; (ii) wills; (iii) diaries; (iv) private correspondence, including e-mail; (v) financial records; (vi) photographs of a sensitive or private nature; or (vii) similar information.''.

[Option 2:

The Commentary to § 2H3.1 captioned ''Application Notes'' is amended in Note 5(i) by inserting ''personal information, means of identification,'' after ''involved''; and by inserting a comma before ''or tax''.]

The Commentary to § 2B1.1 captioned ''Application Notes'' is amended in Note 13(A) in the paragraph that begins '' 'Personal information' '' by inserting ''involving an identifiable individual'' after ''private information''.

Issue for Comment:

1. The Commission requests comment regarding the factor described in section 209(b)(5) of the Act (the extent to which the offense violated the privacy rights of individuals). In many cases, non-monetary harm (such as a violation of privacy rights) may be difficult or impossible to quantify. *See, e.g.,* § 2B1.1, comment. (backg'd.). For that reason, non-monetary harm is typically accounted for by the guidelines through a minimum offense level or an upward departure. The guidelines currently address this factor as follows:

(1) Section 2B1.1, Application Note 19, provides an upward departure if the offense resulted in a substantial invasion of a privacy interest. It also provides an upward departure if, in a case involving access devices or unlawfully produced or unlawfully obtained means of identification, (i) the offense caused substantial harm to the victim's reputation or credit record, or the victim suffered a substantial inconvenience related to repairing the victim's reputation or a damaged credit record; (ii) an individual whose means of identification the defendant used to obtain unlawful means of identification is erroneously arrested or denied a job because an arrest record has been made in that individual's name; or (iii) the defendant produced or obtained numerous means of identification with respect to one individual and essentially assumed that individual's identity.

(2) Section 2H3.1, Application Note 5, provides an upward departure if the offense involved private information or resulted in a substantial invasion of a privacy interest.

(3) Section 2B1.1(b)(15)(A) provides a 2-level enhancement if an offense under 18 U.S.C. 1030 involved an intent to obtain personal information, and § 2H3.1(b)(2)(B) provides a 10-level enhancement if an offense under 18 U.S.C. 119 involved the use of a computer to make restricted personal information about a covered person publicly available.

Is the factor adequately addressed through these provisions? If not, should the Commission increase the amount, or the scope, of these enhancements? Should the Commission amend other guidelines to which these offenses are referenced to address this factor, such as by adding comparable enhancements? Should these upward departure provisions be incorporated as enhancements in the guidelines to which these offenses are referenced?

(F) The Effect of the Offense Upon the Operations of an Agency of the United States Government, or of a State or Local Government

Issue for Comment:

1. The Commission requests comment regarding the factor described in section 209(b)(6) of the Act (the effect of the offense upon the operations of an agency of the United States Government, or of a State or local government). The guidelines currently address this factor as follows:

(1) Section 5K2.7 (Disruption of Government Function) provides an upward departure if the defendant's conduct resulted in a significant disruption of a governmental function.

(2) Section 5K2.14 (Public Welfare) provides an upward departure if national security, public health, or safety was significantly endangered.

Is the factor adequately addressed through these upward departure provisions? Alternatively, should these upward departure provisions be incorporated as enhancements in the guidelines to which these offenses are referenced?

(G) Whether the Offense Involved a Computer Used by the United States Government, a State, or a Local Government in Furtherance of National Defense, National Security, or the Administration of Justice

Issue for Comment:

1. The Commission requests comment regarding the factor described in section 209(b)(7) of the Act (whether the offense involved a computer used by the United States Government, a State, or a local government in furtherance of national defense, national security, or the administration of justice). The guidelines currently address this factor as follows:

(1) Section 2B1.1 provides a 2-level enhancement at subsection (b)(15)(A)(i) if an offense under 18 U.S.C. 1030 involved a computer system used by or for a government entity in furtherance of the administration of justice, national defense, or national security.

(2) Section 2B2.3(b)(1) provides a 2-level enhancement if a trespass occurred on a computer system used by or for a government entity in furtherance of the administration of justice, national defense, or national security.

(3) Section 2B3.2(b)(3)(B) provides a 3-level enhancement if the offense involved preparation to carry out a threat of damage to a computer system used by or for a government entity in furtherance of the administration of justice, national defense, or national security.

(4) Section 2B1.1, Application Note 19, provides an upward departure in a case in which subsection (b)(15)(A)(iii) applies and the disruption to the critical infrastructure is so substantial as to have a debilitating impact on national security, national economic security, or national public health or safety.

(5) Section 5K2.7 (Disruption of Government Function) provides an upward departure if the defendant's conduct resulted in a significant disruption of a governmental function.

(6) Section 5K2.14 (Public Welfare) provides an upward departure if national security, public health, or safety was significantly endangered.

Is the factor adequately addressed through these provisions? Should the Commission increase the amount, or the scope, of these enhancements? Should the Commission amend other guidelines to which these offenses are referenced to address this factor, such as by adding comparable enhancements? Should these upward departure provisions be incorporated as enhancements in the guidelines to which these offenses are referenced?

(H) Whether the Offense Was Intended to, or Had the Effect of, Significantly Interfering With or Disrupting a Critical Infrastructure

Issue for Comment:

1. The Commission requests comment regarding the factor described in section 209(b)(8) of the Act (whether the offense was intended to, or had the effect of, significantly interfering with or disrupting a critical infrastructure). The guidelines currently address this factor as follows:

(1) Section 2B1.1 provides a 2-level enhancement at subsection (b)(15)(A)(i) if an offense under 18 U.S.C. 1030 involved a computer system used to maintain or operate a critical infrastructure, and a 6-level enhancement (and a minimum offense level of 24) at subsection (b)(15)(A)(iii) if an offense under section 1030 caused a substantial disruption of a critical infrastructure.

(2) Section 2B2.3(b)(1) provides a 2-level enhancement if a trespass occurred on a computer system used to maintain or operate a critical infrastructure.

(3) Section 2B3.2(b)(3)(B) provides a 3-level enhancement if the offense involved preparation to carry out a threat of damage to such a computer system.

(4) Section 2B1.1, Application Note 19, provides an upward departure in a case in which subsection (b)(15)(A)(iii) applies and the disruption to the critical infrastructure is so substantial as to have a debilitating impact on national security, national economic security, or national public health or safety.

(5) Section 5K2.14 (Public Welfare) provides an upward departure if national security, public health, or safety was significantly endangered.

Is the factor adequately addressed through these provisions? Should the Commission increase the amount, or the scope, of these enhancements (or of the minimum offense level)? Should the Commission amend other guidelines to which these offenses are referenced to address this factor, such as by adding comparable enhancements (or minimum offense levels)? Should these upward departure provisions be incorporated as enhancements in the guidelines to which these offenses are referenced?

(I) Whether the Offense Was Intended to, or Had the Effect of, Creating a Threat to Public Health or Safety, Causing Injury to any Person, or Causing Death

Issue for Comment:

1. The Commission requests comment regarding the factor described in section 209(b)(9) of the Act (whether the offense was intended to, or had the effect of, creating a threat to public health or safety, causing injury to any person, or causing death). The guidelines currently address this factor as follows:

(1) Section 2B1.1(b)(13) provides a 2-level enhancement, and a minimum offense level of 14, if the offense involved the conscious or reckless risk of death or serious bodily injury.

(2) Section 2B3.2(b)(3)(B) provides a 3-level enhancement if the offense involved preparation to carry out a threat of serious bodily injury, and § 2B3.2(b)(4) provides an enhancement if the victim sustained bodily injury, with the amount of the enhancement

ranging from 2 to 6 levels according to the seriousness of the injury.

(3) Section 2B5.3(b)(5) provides a 2-level enhancement, and a minimum offense level of 13, if the offense involved the conscious or reckless risk of serious bodily injury.

(4) Section 2B1.1, Application Note 19, provides an upward departure if the offense caused or risked substantial non-monetary harm, or in a case in which subsection (b)(15)(A)(iii) applies and the disruption to the critical infrastructure is so substantial as to have a debilitating impact on national security, national economic security, or national public health or safety.

(5) Section 5K2.14 (Public Welfare) provides an upward departure if national security, public health, or safety was significantly endangered.

Is the factor adequately addressed through these provisions? If not, should the Commission increase the amount, or the scope, of these enhancements (or minimum offense levels)? Should the Commission amend other guidelines to address this factor, such as by adding comparable enhancements (or minimum offense levels)? Should these upward departure provisions be incorporated as enhancements in the guidelines to which these offenses are referenced?

(J) Whether the Defendant Purposefully Involved a Juvenile in the Commission of the Offense

Issue for Comment:

1. The Commission requests comment regarding the factor described in section 209(b)(10) of the Act (whether the defendant purposefully involved a juvenile in the commission of the offense). The guidelines currently address this factor in § 3B1.4 (Using a Minor to Commit a Crime), which provides a 2-level adjustment if the defendant used or attempted to use a minor to commit the offense or assist in avoiding detection of, or apprehension for, the offense.

Is the factor adequately addressed by this adjustment? Should the Commission increase the amount, or the scope, of this adjustment? Should the Commission amend other guidelines to address this factor, such as by adding enhancements comparable to this adjustment?

(K) Whether the Defendant's Intent To Cause Damage or Intent To Obtain Personal Information Should Be Disaggregated and Considered Separately From the Other Factors Set Forth in § 2B1.1(b)(15)

Issue for Comment:

1. The Commission requests comment regarding the factor described in section 209(b)(11) of the Act (whether the defendant's intent to cause damage or intent to obtain personal information should be disaggregated and considered separately from the other factors set forth in § 2B1.1(b)(15)).

For example, subsection (b)(15) currently applies only to offenses under 18 U.S.C. 1030. Should the intent to cause damage or intent to obtain personal information be disaggregated only within the context of 18 U.S.C. 1030 cases? Should the defendant's intent to cause damage or intent to obtain personal information be a factor that applies to other offenses as well?

(L) Whether the Term ''Victim'' as Used in § 2B1.1 Should Include Individuals Whose Privacy Was Violated as a Result of the Offense in Addition to Individuals Who Suffered Monetary Harm as a Result of the Offense

Issue for Comment:

1. The Commission requests comment regarding the factor described in section 209(b)(12) of the Act (whether the term ''victim'' as used in § 2B1.1 should include individuals whose privacy was violated as a result of the offense in addition to individuals who suffered monetary harm as a result of the offense). In many cases, non-monetary harm (such as a violation of privacy rights) may be difficult or impossible to quantify. *See, e.g.*, § 2B1.1, comment. (backg'd.). For that reason, non-monetary harm is typically accounted for by the guidelines through a minimum offense level or an upward departure.

The guidelines currently address this factor as follows:

(1) Section 2B1.1, Application Note 19, provides an upward departure if the offense resulted in a substantial invasion of a privacy interest. It also provides an upward departure if, in a case involving access devices or unlawfully produced or unlawfully obtained means of identification, (i) the offense caused substantial harm to the victim's reputation or credit record, or the victim suffered a substantial inconvenience related to repairing the victim's reputation or a damaged credit record; (ii) an individual whose means of identification the defendant used to obtain unlawful means of identification is erroneously arrested or denied a job because an arrest record has been made in that individual's name; or (iii) the defendant produced or obtained numerous means of identification with respect to one individual and essentially assumed that individual's identity.

(2) Section 2H3.1, Application Note 5, provides an upward departure if the offense involved private information, or resulted in a substantial invasion of privacy interest.

Is the factor adequately addressed through these upward departure provisions? Alternatively, should these upward departure provisions be incorporated as enhancements in the guidelines to which these offenses are referenced?

The definition of ''victim'' in § 2B1.1, Application Note 1, currently applies only to a person who sustained any part of the ''actual loss'' or to an individual who sustained bodily injury. Should the Commission modify that definition to also apply to an individual whose privacy was violated? If so, what standard should be used to determine whether an individual's privacy was violated? Should the guidelines seek to quantify the loss of such an individual, for purposes of the loss table in subsection (b)(1)? If so, what standard would be used to quantify the loss? For example, in a case in which a computer-related invasion of privacy occurs, should the guidelines include a special rule for including and quantifying (or providing a stipulated amount for) the loss, such as the special rule in Application Note 3(F)(i) relating to credit cards? If the Commission were to revise the applicability of § 2B1.1 to individuals whose privacy was violated, should the Commission do so for all offenses under § 2B1.1, or only for certain categories of cases, such as cases involving identity theft, cases involving computers, or cases involving violations of certain specified statutes?

Should the definition of ''reasonably foreseeable pecuniary harm'' in § 2B1.1 be amended to expressly include such harm as the reasonably foreseeable costs to the victim of correcting business, financial, and government records that erroneously indicate the victim's responsibility for particular transactions or applications; the reasonably foreseeable costs of repairing any computer data, program, system, or information that was altered or impaired in connection with the offense; and the value of the time reasonably spent by the victim in an attempt to remediate the intended or actual harm incurred by the victim from the offense? Should the Commission make such a change only for identity theft cases, such as by amending § 2B1.1, Application Note 3(A)(v), to provide a special rule for identity theft cases? Alternatively, should the Commission make such a change for all cases under § 2B1.1, such as by amending Application Note 3(A)(iv), or for some other category of cases?

(M) Whether the Defendant Disclosed Personal Information Obtained During the Commission of the Offense

Issue for Comment:

1. The Commission requests comment regarding the factor described in section 209(b)(13) of the Act (whether the defendant disclosed personal information obtained during the commission of the offense). The guidelines currently address this factor as follows:

(1) Section 2B1.1, Application Note 19, provides an upward departure if the offense resulted in a substantial invasion of a privacy interest.

(2) Section 2H3.1, Application Note 5, provides an upward departure if the offense involved private information or resulted in a substantial invasion of a privacy interest.

(3) Section 2B1.1(b)(15)(A) provides a 2-level enhancement if an offense under 18 U.S.C.1030 involved an intent to obtain personal information.

(4) Section 2H3.1(b)(2)(B) provides a 10-level enhancement if an offense under 18 U.S.C.119 (protection of individuals performing certain official duties) involved the use of a computer to make restricted personal information about a covered person publicly available.

Is the factor adequately addressed through these provisions? Should the Commission increase the amount, or the scope, of these enhancements? Should the Commission amend other guidelines to which these offenses are referenced to address this factor, such as by adding comparable enhancements? Should these upward departure provisions be incorporated as enhancements in the guidelines to which these offenses are referenced?

If the Commission were to amend the guidelines to more adequately address this factor, what should constitute a ''disclosure'', and what should constitute ''personal information''?

(N) Other Issues Relating to the Directive Not Otherwise Addressed Above

Issues for Comment:

1. The Commission requests comment regarding section 209(a) of the Act, which directs the Commission to review its guidelines and policy statements applicable to persons convicted of offenses under 18 U.S.C. 1028 (fraud and related activity in connection with identification documents, authentication features, and information), 1028A (aggravated identity theft), 1030 (fraud and related activity in connection with computers), 2511 (interception and disclosure of wire, oral, or electronic communications prohibited), and 2701 (unlawful access to stored communications), and any other relevant provisions of law, in order to reflect the intent of Congress that such penalties be increased in comparison to those currently provided by such guidelines and policy statements. Section 209(b) of the Act directed the Commission, in determining the appropriate sentence for those offenses, to ''consider the extent to which the current guidelines and policy statements may or may not adequately account for the following factors in order to create an effective deterrent to computer crime and the theft or misuse of personally identifiable data'', and provided a list of factors. Other than the specific factors set forth in section 209(b), which are addressed more specifically in the issues for comment set forth above, are there aggravating or mitigating circumstances existing in cases involving those offenses that might justify additional amendments to the guidelines?

2. Should the Commission create a new guideline specifically for identity theft cases? If so, what should the new guideline provide?

(O) Technical Amendments

Synopsis of Proposed Amendment: The proposed amendment makes two technical changes. First, it corrects several places in the *Guidelines Manual* that erroneously refer to subsection ''(b)(15)(iii)'' of § 2B1.1; the reference should be to subsection (b)(15)(A)(iii).

Second, it clarifies Application Note 2(B) of § 3B1.3 (Abuse of Position of Trust or Use of Special Skill). There is a concern that Application Note 2(B) is internally inconsistent in a case in which the defendant, as discussed in the example in Application Note 2(B)(i), is an employee of a state motor vehicle department who knowingly issues without proper authority a driver's license based on false, incomplete, or misleading information. Arguably, to ''obtain'' or ''use'' a means of identification (the terms used in the first sentence of Application Note 2(B)) does not necessarily include to ''issue'' a means of identification (the term used in the example in Application Note 2(B)(i)). The proposed amendment clarifies the first sentence of Application Note 2(B) so that it expressly covers not only obtaining or using, but also issuing or transferring, a means of identification.

Proposed Amendment:

The Commentary to § 2B1.1 captioned ''Application Notes'' is amended in Note 13(B) by inserting ''(A)'' after ''(15)'' each place it appears.

The Commentary to § 2B1.1 captioned ''Application Notes'' is amended in Note 19(B) by inserting ''(A)'' after (15)''.

The Commentary to § 3B1.3 captioned ''Application Notes'' is amended in Note 2(B) by inserting '', transfer, or issue'' after ''obtain''.

2. Online Pharmacy

Synopsis of Proposed Amendment: This proposed amendment addresses changes made by the Ryan Haight Online Pharmacy Consumer Protection Act of 2008, Public Law 110–465 (the ''Act''). The Act amends the Controlled Substances Act (21 U.S.C. 801 *et seq.*) to create two new offenses involving controlled substances. The first is 21 U.S.C. 841(h) (Offenses Involving Dispensing of Controlled Substances by Means of the Internet), which prohibits the delivery, distribution, or dispensing of controlled substances over the Internet without a valid prescription. The applicable statutory maximum term of imprisonment is determined based upon the controlled substance being distributed. The second new offense is 21 U.S.C. 843(c)(2)(A) (Prohibiting the Use of the Internet to Advertise for Sale a Controlled Substance), which prohibits the use of the Internet to advertise for sale a controlled substance. This offense has a statutory maximum term of imprisonment of four years.

In addition to the new offenses, the Act increased the statutory maximum terms of imprisonment for all Schedule III controlled substance offenses (from 5 years to 10 years), for all Schedule IV controlled substance offenses (from 3 years to 5 years), and for Schedule V controlled substance offenses if the offense is committed after a prior drug conviction (from 2 years to 5 years). The Act added a sentencing enhancement for Schedule III controlled substance offenses where ''death or serious bodily injury results from the use of such substance.'' The Act also includes a directive to the Commission that states:

The United States Sentencing Commission, in determining whether to amend, or establish new, guidelines or policy statements, to conform the Federal sentencing guidelines and policy statements to this Act and the amendments made by this Act, should not construe any change in the maximum penalty for a violation involving a controlled substance in a particular schedule as being the sole reason to amend, or establish a new, guideline or policy statement.

First, the proposed amendment provides three options for incorporating the new sentencing enhancement for cases involving Schedule III controlled substances where ''death or serious

bodily injury results from the use of such substance.'' The enhancement carries a statutory maximum term of imprisonment of 15 years. Option 1 proposes a new alternative base offense level at § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy) of [12]–[34]. Option 2 proposes a new specific offense characteristic at § 2D1.1 that provides an enhancement of [4]–[11] levels; Option 2 also includes, as a sub-option, a minimum offense level of [12]–[34]. Option 3 proposes a new invited upward departure provision for § 2D1.1.

Second, the proposed amendment revises the title of § 2D3.1 (Regulatory Offenses Involving Registration Numbers; Unlawful Advertising Relating to Schedule I Substances; Attempt or Conspiracy) to reflect the new offense at 21 U.S.C.843(c)(2)(A) (Prohibiting the Use of the Internet to Advertise for Sale a Controlled Substance). The new offense is already referenced in Appendix A (Statutory Index) to § 2D3.1.

Third, the proposed amendment amends Appendix A (Statutory Index) to refer the new offense at 21 U.S.C. 841(h) (Offenses Involving Dispensing of Controlled Substances by Means of the Internet) to § 2D1.1.

Several issues for comment are also included.

Proposed Amendment:

[Option 1:

Section 2D1.1(a) is amended by redesignating subdivision (3) as subdivision (4); and by inserting after subdivision (2) the following new subdivision:

''(3)[12]–[34], if the defendant is convicted under 21 U.S.C. 841(b)(1)(E) or 21 U.S.C. 960(b)(5), and the offense of conviction establishes that death or serious bodily injury resulted from the use of the substance; or''.]

[Option 2:

Section 2D1.1(b) is amended by redesignating subdivision (11) as subdivision (12); and by inserting after subdivision (10) the following new subdivision:

''(11) If the defendant is convicted under 21 U.S.C. 841(b)(1)(E) or 21 U.S.C. 960(b)(5), and the offense of conviction establishes that death or serious bodily injury resulted from the use of the substance, increase by [4]–[11] levels. [If the resulting offense level is less than level [12]–[34], increase to level [12]–[34].]''.

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended in Note 21 by striking ''(11)'' and inserting ''(12)'' each place it appears.]

[Option 3:

The Commentary to § 2D1.1 captioned ''Application Notes is amended by adding at the end the following:

''27. Upward Departure Provision.—If the defendant is convicted under 21 U.S.C.841(b)(1)(E) or 21 U.S.C.960(b)(5), and the offense of conviction establishes that death or serious bodily injury resulted from the use of the substance, an upward departure may be warranted.''.]

Section 2D3.1 is amended in the heading by striking ''Schedule I'' and inserting ''Scheduled''.

Appendix A (Statutory Index) is amended by inserting after the line referenced to 21 U.S.C. 841(g) the following:

''21 U.S.C. 841(h) 2D1.1''.

Issues for Comment:

1. The Commission requests comment regarding whether offenses involving Schedule III substances are adequately addressed by the guidelines. The Ryan Haight Online Pharmacy Consumer Protection Act of 2008, Public Law 110–465 (the ''Act''), increased the statutory maximum term of imprisonment for those offenses from 5 years to 10 years. Should the Commission revise the guidelines to more adequately address these offenses and, if so, how? If the Commission should revise the guidelines as they relate to Schedule III substances, what justifies doing so?

For example, under the Drug Quantity Table in § 2D1.1, the maximum base offense level for an offense involving Schedule III substances (except Ketamine) is 20, which applies to 40,000 or more units of the substance concerned. Should the maximum base offense level be increased (or eliminated entirely) so that in a case in which the number of units involved is more than 40,000, a higher base offense level applies? If so, what higher base offense levels are appropriate, and what number of units should correspond to those higher base offense levels?

Under the Drug Equivalency Tables in § 2D1.1, 1 unit of a Schedule III substance is equivalent to 1 gm of marihuana. Should a different equivalency apply? If so, what should that different equivalency be?

2. The Commission requests comment regarding whether offenses involving Schedule IV substances are adequately addressed by the guidelines. The Act increased the statutory maximum term of imprisonment for those offenses from 3 years to 5 years. Should the Commission revise the guidelines to more adequately address these offenses and, if so, how? If the Commission should revise the guidelines as they relate to Schedule IV substances, what justifies doing so?

For example, under the Drug Quantity Table in § 2D1.1, the maximum base offense level for an offense involving Schedule IV substances (except Flunitrazepam) is 12, which applies to 40,000 or more units of the substance concerned. Should the maximum base offense level be increased (or eliminated entirely) so that in a case in which the number of units involved is more than 40,000, a higher base offense level applies? If so, what higher base offense levels are appropriate, and what number of units should correspond to those higher base offense levels?

Under the Drug Equivalency Tables in § 2D1.1, 1 unit of a Schedule IV substance (except Flunitrazepam) is equivalent to 0.0625 gm of marihuana. Should a different equivalency apply? If so, what should that different equivalency be? For example, should the Commission amend the Drug Equivalency Tables to provide that 1 unit of a Schedule IV substance (except Flunitrazepam) is equivalent to 0.125 gm of marihuana?

3. The Commission requests comment regarding whether offenses involving Schedule V substances are adequately addressed by the guidelines. For those offenses, the Act did not increase the statutory maximum term of imprisonment for a first offense (which is 1 year), but did increase the statutory maximum term of imprisonment if the offense is committed after a prior drug conviction (from 2 years to 5 years). Should the Commission revise the guidelines to more adequately address these offenses and, if so, how? If the Commission should revise the guidelines as they relate to Schedule V substances, what justifies doing so?

For example, under the Drug Quantity Table in § 2D1.1, the maximum base offense level for an offense involving Schedule V substances is 8, which applies to 40,000 or more units of the substance concerned. Should the maximum base offense level be increased (or eliminated entirely) so that in a case in which the number of units involved is more than 40,000, a higher base offense level applies? If so, what higher base offense levels are appropriate, and what number of units should correspond to those higher base offense levels?

Under the Drug Equivalency Tables in § 2D1.1, 1 unit of a Schedule V substance is equivalent to 0.00625 gm of marihuana. Should a different equivalency apply? If so, what should that different equivalency be?

4. The Commission requests comment regarding whether offenses involving hydrocodone substances are adequately addressed by the guidelines. Currently, the guidelines do not distinguish between hydrocodone substances and other Schedule III substances (except Ketamine). The Act increased the statutory maximum term of imprisonment for all Schedule III offenses, including hydrocodone offenses, from 5 years to 10 years. Should hydrocodone be treated differently than other Schedule III substances and, if so, how? If the Commission should revise the guidelines as they relate to hydrocodone, what justifies doing so?

For example, under the Drug Quantity Table in § 2D1.1, the maximum base offense level for an offense involving Schedule III substances (except Ketamine) is 20, which corresponds to 40,000 or more units of the substance concerned. Should the maximum base offense level be increased (or eliminated entirely) so that in a case in which the number of units involved is more than 40,000, a higher base offense level applies? If so, what higher base offense levels are appropriate, and what number of units should correspond to those higher base offense levels?

Under the Drug Equivalency Tables in § 2D1.1, 1 unit of a Schedule III substance, including hydrocodone, is equivalent to 1 gm of marihuana. Should a different equivalency apply to hydrocodone? If so, what should that different equivalency be? Should the guidelines take into account (as is done for oxycodone) the weight of the hydrocodone itself (*i.e.* , the ''hydrocodone *actual*''), rather than the number of units of hydrocodone? If so, what base offense levels should apply, and to what weights of hydrocodone *actual* should those base offense levels correspond? For example, should the Commission amend the Drug Equivalency Tables to provide that 1 gm of hydrocodone actual is equivalent to 1,675 gm of marihuana?

3. Submersible Vessels

Synopsis of Proposed Amendment: This proposed amendment implements the Drug Trafficking Vessel Interdiction Act of 2008, Public Law 110–407 (the ''Act''). The Act creates a new offense at 18 U.S.C. 2285 (Operation of Submersible Vessel or Semi-Submersible Vessel Without Nationality), which provides: ''Whoever knowingly operates, or attempts or conspires to operate, by any means, or embarks in any submersible vessel or semi-submersible vessel that is without nationality and that is navigating or has navigated into, through, or from waters beyond the outer limit of the territorial sea of a single country or a lateral limit of that country's territorial sea with an adjacent country, with the intent to evade detection, shall be fined under this title, imprisoned not more than 15 years, or both.''

Section 103 of the Act also directs the Commission to promulgate or amend the guidelines to provide for increased penalties for persons convicted of offenses under 18 U.S.C. 2285. In carrying out this directive, the Commission shall—

(1) Ensure that the sentencing guidelines and policy statements reflect the serious nature of the offense described in section 2285 of title 18, United States Code, and the need for deterrence to prevent such offenses;

(2) Account for any aggravating or mitigating circumstances that might justify exceptions, including—

(A) The use of a submersible vessel or semi-submersible vessel described in section 2285 of title 18, United States Code, to facilitate other felonies;

(B) The repeated use of a submersible vessel or semi-submersible vessel described in section 2285 of title 18, United States Code, to facilitate other felonies, including whether such use is part of an ongoing criminal organization or enterprise;

(C) Whether the use of such a vessel involves a pattern of continued and flagrant violations of section 2285 of title 18, United States Code;

(D) Whether the persons operating or embarking in a submersible vessel or semi-submersible vessel willfully caused, attempted to cause, or permitted the destruction or damage of such vessel or failed to heave to when directed by law enforcement officers; and

(E) Circumstances for which the sentencing guidelines (and policy statements) provide sentencing enhancements;

(3) Ensure reasonable consistency with other relevant directives, other sentencing guidelines and policy statements, and statutory provisions;

(4) Make any necessary and conforming changes to the sentencing guidelines and policy statements; and

(5) Ensure that the sentencing guidelines and policy statements adequately meet the purposes of sentencing set forth in section 3553(a)(2) of title 18, United States Code.

The proposed amendment amends § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit these Offenses); Attempt or Conspiracy) by expanding the scope of the specific offense characteristic at subsection (b)(2) to apply if the defendant used a submersible vessel or semi-submersible vessel as described in 18 U.S.C. 2285.

The proposed amendment also provides a new guideline at § 2X7.2 (Submersible and Semi-Submersible Vessels) for the new offense at 18 U.S.C. 2285, with a base offense level of [12]–[34]. The proposed amendment also provides upward departure provisions to account for certain aggravating factors listed in the directive.

Finally, the proposed amendment provides a reference in Appendix A (Statutory Index) to index the new offense to the new guideline.

Three issues for comment are also included.

Proposed Amendment:

Section 2D1.1(b)(2) is amended by striking ''or'' after ''substance,'' and inserting ''a submersible vessel or semi-submersible vessel as described in 18 U.S.C. 2285 was used, or (C)'' after ''(B)''.

Chapter Two, Part X, Subpart 7 is amended in the heading by adding at the end ''AND SUBMERSIBLE AND SEMI-SUBMERSIBLE VESSELS''.

Chapter Two, Part X, Subpart 7 is amended by adding at the end the following new guideline and accompanying commentary:

''§ 2X7.2 Submersible and Semi-Submersible Vessels

(a) Base Offense Level: [12]–[34]

Commentary

Statutory Provision: 18 U.S.C. 2285.

Application Note:

1. Upward Departure Provisions.—An upward departure may be warranted in any of the following cases:

(A) The offense involved a failure to heave to when directed by a law enforcement officer.

(B) The offense involved an attempt to sink the vessel or the sinking of the vessel.

(C) The defendant engaged in a pattern of activity involving use of a submersible vessel or semi-submersible vessel described in 18 U.S.C. 2285 to facilitate other felonies.

(D) The offense involved use of the vessel as part of an ongoing criminal organization or enterprise.

Background: This guideline implements the directive to the Commission in section 103 of Public Law 110–407.''.

Appendix A (Statutory Index) is amended by inserting after the line referenced to 18 U.S.C. 2284 the following:

''18 U.S.C. 2285 2X7.2''.

Issues for Comment:

1. The Commission requests comment regarding whether it should reference the new offense at 18 U.S.C. 2285 (Operation of Submersible Vessel or Semi-submersible Vessel Without Nationality) to § 2X5.1 (Other Felony Offenses), instead of promulgating a new guideline at § 2X7.2 (Submersible and Semi-Submersible Vessels) for the new offense, as provided for by the proposed amendment. Section 2X5.1 instructs the court to ''apply the most analogous offense guideline'' when an ''offense is a felony for which no guideline expressly has been promulgated.'' In a case where ''there is not a sufficiently analogous guideline'', § 2X5.1 provides that:

The provisions of 18 U.S.C. 3553 shall control, except that any guidelines and policy statements that can be applied meaningfully in the absence of a Chapter Two offense guideline shall remain applicable.

If the Commission references section 2285 to § 2X5.1, is there further action the Commission should take to clarify how the guidelines apply in such cases? If so, what action?

2. Section 103 of the Drug Trafficking Vessel Interdiction Act of 2008, Public Law 110–407, directs the Commission to consider aggravating circumstances such as the use of such vessels as part of an ongoing criminal organization or enterprise. Accordingly, the Commission requests comment regarding how the proposed amendment's new guideline at § 2X7.2 (Submersible and Semi-Submersible Vessels), or any other guideline to which offenses under 18 U.S.C. 2285 (Operation of Submersible Vessel or Semi-submersible Vessel Without Nationality) would be referenced, should account for cases in which the vessel is used as part of an ongoing criminal organization or enterprise. The Commission was informed at its public briefing in November 2008 that the construction of such a vessel costs one million dollars or more and takes one year or more to complete, and that such a vessel is intended to be used for a single trip before being purposely sunk. If so, this may indicate that the use of the submersible or semi-submersible vessel typically is part of an ongoing criminal organization or enterprise. Should the Commission account for this factor in setting the base offense level? If so, should the Commission provide a specific offense characteristic or a downward departure to account for a case in which an ongoing criminal organization or enterprise is not involved? Alternatively, should the Commission provide a specific offense characteristic or an upward departure to account for this factor? Are there any other amendments to the guidelines that should be made to account for cases in which the vessel is used as part of an ongoing criminal organization or enterprise?

3. The Commission requests comment regarding whether, in a case sentenced under the proposed guideline, § 2X7.2 (Submersible and Semi-Submersible Vessels), and in which § 3B1.2 (Mitigating Role) applies, it should provide an alternative base offense level, downward adjustment, or downward departure to reflect the lesser culpability of the defendant?

4. Court Security

Issues for Comment:

1. The Court Security Improvement Act of 2007, Public Law 110–177 (the ''Act''), creates two new federal offenses, increases the statutory maximum penalty for a number of existing federal offenses, and contains a directive to the Commission relating to threats made in violation of 18 U.S.C. 115 that occur over the Internet. The Commission responded to the two new offenses created by the Act during the amendment cycle ending May 1, 2008 (*see* Amendment 718). The Commission requests comment regarding what additional amendments may be appropriate in light of the Act. The increases in the statutory maximum penalties provided by the Act raise issues concerning a number of guidelines in Chapter Two, Part A, generally, and it may be necessary to continue work on any or all of the remaining issues raised by the Act beyond the amendment cycle ending May 1, 2009.

A. Increases in Statutory Maximum Penalties

The existing federal offenses with statutory maximum penalties increased by the Act and the guidelines to which those offenses are referenced are as follows:

(1) 18 U.S.C. 115 (Influencing, impeding, or retaliating against a Federal official by threatening or injuring a family member) makes it unlawful to, among other things, assault an individual who is a current or former federal official, or a family member of such an individual, with intent to impede the individual in, or retaliate against the individual for, the performance of the individual's official duties. Such an assault is punished under 18 U.S.C. 115(b)(1). The Act modified the penalty structure of these offenses. In doing so, the Act eliminated the reference to 18 U.S.C. 111 (Assaulting, resisting, or impeding certain officers or employees), and increased the statutory maximum terms of imprisonment for assaults involving physical contact or intent to commit another felony (from 8 years to 10 years), and for assaults resulting in serious bodily injury or assaults involving the use of a dangerous weapon (from 20 years to 30 years). Other statutory maximum terms of imprisonment include 20 years (for assaults resulting in bodily injury) and 1 year (for simple assaults).

Offenses involving assaults punished under 18 U.S.C.115(b)(1) are referenced in Appendix A (Statutory Index) to §§ 2A2.1 (Assault with Intent to Commit Murder; Attempted Murder); 2A2.2 (Aggravated Assault), and 2A2.3 (Minor Assault).

(2) 18 U.S.C. 1112 (manslaughter) makes it unlawful to kill a human being without malice, either upon a sudden quarrel or heat of passion (''voluntary manslaughter'') or in the commission of an unlawful act not amounting to a felony or in the commission, in an unlawful manner or without due caution and circumspection, of a lawful act which might produce death (''involuntary manslaughter''). The Act increased the statutory maximum terms of imprisonment for voluntary manslaughter (from 10 years to 15 years) and for involuntary manslaughter (from 6 years to 8 years).

Offenses under 18 U.S.C. 1112 are referenced in Appendix A (Statutory Index) to §§ 2A1.3 (Voluntary Manslaughter) and 2A1.4 (Involuntary Manslaughter).

(3) Subsection (a) of 18 U.S.C. 1512 (Tampering with a witness, victim, or an informant), makes it unlawful to kill or attempt to kill another person with intent to interfere in an official proceeding. It also makes it unlawful to use or threaten physical force, or attempt to do so, with intent to interfere with an official proceeding. The Act increased the statutory maximum terms of imprisonment for the killing of another under circumstances constituting manslaughter (by reference to 18 U.S.C.1112, from 10 years to 15 years); for attempted murder or attempted use of physical force (from 20 years to 30 years); and for threat of use of physical force to prevent the attendance or testimony in an official proceeding (from 10 years to 20 years). Offenses under section 1512(a) are referenced in Appendix A (Statutory Index) to §§ 2A1.1 (First Degree Murder), 2A1.2 (Second Degree Murder), 2A1.3 (Voluntary Manslaughter), 2A2.1 (Assault with Intent to Commit Murder; Attempted Murder), 2A2.2 (Aggravated Assault),

2A2.3 (Minor Assault), and 2J1.2 (Obstruction of Justice).

(4) Section 1512(b) makes it unlawful to intimidate, threaten, or corruptly persuade another person, or to engage in misleading conduct toward another person, with intent to interfere with an official proceeding. The Act increased the statutory maximum term of imprisonment for these offenses from 10 years to 20 years.

Offenses under section 1512(b) are referenced in Appendix A (Statutory Index) to § 2J1.2 (Obstruction of Justice).

(5) Section 1512(d) makes it unlawful to harass another person and thereby hinder, delay, prevent, or dissuade an arrest or prosecution, or the participation of a person in an official proceeding. The Act increased the statutory maximum term of imprisonment for these offenses from 1 year to 3 years.

Offenses under section 1512(d) are referenced in Appendix A (Statutory Index) to § 2J1.2 (Obstruction of Justice).

(6) Subsection (a) of 18 U.S.C. 1513 (Retaliating against a witness, victim, or an informant) makes it unlawful to kill or attempt to kill another person with intent to retaliate against a person for attending or testifying at an official proceeding or for providing information to a law enforcement officer. The Act increased the statutory maximum terms of imprisonment for the killing of another under circumstances constituting manslaughter (by reference to 18 18 U.S.C. 1112, from 10 years to 15 years) and for an attempt (from 20 years to 30 years). Other statutory penalties include death, or imprisonment for life, if the offense involved the killing of another under circumstances constituting murder.

Offenses under section 1513(a) are referenced in Appendix A (Statutory Index) to § 2J1.2 (Obstruction of Justice).

(7) Section 1513(b) makes it unlawful to cause bodily injury to another person or damage the tangible property of another person (or threaten to do so) with intent to retaliate against a person for attending or testifying at an official proceeding or for providing information to a law enforcement officer. The Act increased the statutory maximum terms of imprisonment for such offenses from 10 years to 20 years.

Offenses under section 1513(b) are referenced in Appendix A (Statutory Index) to § 2J1.2 (Obstruction of Justice).

(8) Other offenses under section 1513 include subsection (e) (which makes it unlawful to knowingly, with intent to retaliate, take any action harmful to any person for providing to a law enforcement officer any truthful information relating to the commission or possible commission of any federal offense) and subsection (f) (which makes it unlawful to conspire to commit any offense under section 1513).

These other offenses under section 1513 are also referenced in Appendix A (Statutory Index) to § 2J1.2 (Obstruction of Justice).

Are the guidelines adequate as they apply to such offenses? If not, what amendments to the guidelines should be made to address the increases in statutory maximum penalties?

As described in paragraph (7), above, Appendix A (Statutory Index) currently refers all offenses under section 1513 to § 2J1.2 (Obstruction of Justice) only. An offense under section 1513 can involve conduct such as killing, causing bodily injury, or threatening. Should the Commission amend Appendix A (Statutory Index) to refer offenses under section 1513 to other guidelines, either in addition to or in lieu of referencing them to § 2J1.2? If so, to which other guidelines? Alternatively, should the Commission provide cross references in § 2J1.2 that allow for an offense under section 1513 to be sentenced under a guideline other than § 2J1.2?

B. Official Victims

The Commission requests comment regarding cases in which an official is the victim of an offense described above. The circumstance of an official victim is addressed in the guidelines as follows:

(1) Section 3A1.2 contains an adjustment if the victim was an individual who is a current or former government officer or employee (or a member of the immediate family of such an individual), and the offense was motivated by such status. If the applicable guideline is from Chapter Two, Part A (as is the case with §§ 2A1.1, 2A1.2, 2A2.1, 2A2.2, 2A2.3), the adjustment is 6 levels; otherwise (as with § 2J1.2), the adjustment is 3 levels.

(2) Section 3A1.2, Application Note 5, invites an upward departure if the official victim is an exceptionally high-level official.

Do these provisions adequately address the circumstance of an official victim? If not, what amendments to the guidelines should be made? Should the Commission increase the amount, or the scope, of these provisions? Should the upward departure provision be incorporated as an enhancement in one or more of the applicable guidelines (*e.g.*, §§ 2A1.1, 2A1.2, 2A2.1, 2A2.2, 2A2.3, 2J1.2)?

The Commission also requests comment on cases in which a non-official is the victim of an offense described above. Are the guidelines adequate as they apply to such offenses? If not, what amendments to the guidelines should be made?

C. Directive to the Commission

Section 209 of the Act directs the Commission to review the guidelines as they apply to threats made in violation of 18 U.S.C. 115 (Influencing, impeding, or retaliating against a Federal official by threatening or injuring a family member). Section 115 makes it unlawful to assault, kidnap, or murder an individual who is a current or former federal official, or a family member of such an individual, with intent to impede the individual in, or retaliate against the individual for, the performance of the individual's official duties; section 115 also makes it unlawful to threaten such an assault, kidnapping, or murder. Such a threat is punished under 18 U.S.C. 115(b)(4), which provides that a violator is subject to a fine under title 18, United States Code, and imprisonment of up to 6 years (if an assault was threatened) or up to 10 years (if a kidnapping or murder was threatened). Offenses involving threats made in violation of 18 U.S.C. 115 are referenced in Appendix A of the *Guidelines Manual* (Statutory Index) to § 2A6.1 (Threatening or Harassing Communications; Hoaxes; False Liens).

Section 209 specified that the Commission should review those threats made in violation of section 115 ''that occur over the Internet,'' and ''determine whether and by how much that circumstance should aggravate the punishment pursuant to section 994 of title 28, United States Code.'' Section 209 further directed the Commission to ''take into consideration the number of such threats made, the intended number of recipients of such threats, and whether the initial senders of such threats were acting in an individual capacity or as part of a larger group.''

With regard to threats made in violation of section 115 that occur over the Internet, the guidelines do not currently provide for the use of the Internet to be an aggravating circumstance. Should that circumstance aggravate the punishment and, if so, by how much?

Other factors specified in the directive (*i.e.*, (i) the number of threats made in violation of section 115, (ii) the intended number of recipients of such threats, and (iii) whether the initial senders of such threats were acting in an individual capacity or as part of a larger group), are currently addressed in the guidelines as follows:

(1) Section 2A6.1(b)(2)(A) contains a 2-level enhancement if the offense

involved more than two threats. Section 2A6.1, Application Note 1, provides that, in determining whether this enhancement applies, conduct that occurred prior to the offense must be ''substantially and directly connected to the offense, under the facts of the case taken as a whole''.

(2) Section 2A6.1, Application Note 4, invites an upward departure if the offense involved substantially more than two threatening communications to the same victim, or if the offense involved multiple victims.

Are the factors in the directive relating to number of threats made and intended number of recipients adequately addressed through these upward departures? If not, what amendments to the guidelines should be made? Should these upward departure provisions be incorporated as enhancements in § 2A6.1?

In considering whether to amend the guidelines as they apply to offenses involving threats made in violation of section 115, should the Commission focus on whether to amend the guidelines with regard to offenses that occur over the Internet (*i.e.*, the category of offenses covered by the directive), or should the Commission also consider whether to amend the guidelines with regard to offenses that do not occur over the Internet? If the latter, what amendments to the guidelines should be made?

5. Trafficking

Issues for Comment:

1. The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Public Law 110–457 (the ''Act''), was signed into law on December 23, 2008. The Act creates two new federal offenses, amends a number of federal statutes, and contains a directive to the Commission relating to certain alien harboring offenses. The Commission requests comment regarding what amendments to the guidelines may be appropriate in light of the Act. Given the recency of enactment of the Act, it may be necessary to continue work on any or all of the issues raised by the Act beyond the amendment cycle ending May 1, 2009.

A. Directive to the Commission

Section 222(g) of the Act directs the Commission to—review and, if appropriate, amend the sentencing guidelines and policy statements applicable to persons convicted of alien harboring to ensure conformity with the sentencing guidelines applicable to persons convicted of promoting a commercial sex act if—

(1) The harboring was committed in furtherance of prostitution; and

(2) The defendant to be sentenced is an organizer, leader, manager, or supervisor of the criminal activity.

Alien harboring is an offense under 8 U.S.C.1324(a) (bringing in and harboring certain aliens), which makes it unlawful to (among other things) harbor an illegal alien. Offenses under section 1324(a) are referenced to § 2L1.1 (Smuggling, Transporting, or Harboring an Unlawful Alien). In some circumstances, a person who harbors an alien could also commit an offense under 8 U.S.C. 1328 (importation of alien for immoral purpose), which makes it unlawful to (among other things) harbor an illegal alien for purposes of prostitution or any other immoral purpose. Offenses under section 1328, however, are referenced not to § 2L1.1 but to the guidelines applicable to promoting a commercial sex act, § 2G1.1 (Promoting a Commercial Sex Act or Prohibited Sexual Conduct with an Individual Other than a Minor) and § 2G1.3 (Promoting a Commercial Sex Act or Prohibited Sexual Conduct with a Minor; Transportation of Minors to Engage in a Commercial Sex Act or Prohibited Sexual Conduct; Travel to Engage in Commercial Sex Act or Prohibited Sexual Conduct with a Minor; Sex Trafficking of Children; Use of Interstate Facilities to Transport Information about a Minor). It is to those guidelines, §§ 2G1.1 and 2G1.3, that sex trafficking offenses, such as 18 U.S.C. 1591 and the offenses under chapter 117 of title 18, United States Code (18 U.S.C. 2421 *et seq.*) are referenced.

The Commission requests comment regarding whether (and, if so, how) the guidelines should be amended to ensure conformity between the guidelines applicable to persons convicted of alien harboring (*i.e.*, § 2L1.1) and the guidelines applicable to persons convicted of promoting a commercial sex act (*i.e.*, §§ 2G1.1 and 2G1.3) if the alien harboring offense involves the circumstances specified in the directive (*i.e.*, the harboring was committed in furtherance of prostitution and the defendant is an organizer, leader, manager, or supervisor of the criminal activity).

In a case in which no aggravating or mitigating factors otherwise apply, a person convicted of alien harboring under 8 U.S.C. 1324(a)(1)(A)(iii) under the circumstances specified in the directive receives a base offense level of 12 under § 2L1.1(a)(3) and an upward adjustment of two, three, or four levels under § 3B1.1 (Aggravating Role) for being an organizer, leader, manager, or supervisor of the criminal activity, for a resulting offense level of 14 to 16. (Section 2L1.1 does not provide an enhancement for committing the harboring in furtherance of prostitution.) In comparison, a person convicted of promoting a commercial sex act receives a base offense level of 14 under § 2G1.1(a)(2) (if the offense did not involve a minor) or a base offense level of 24 under § 2G1.3(a)(4) (if the offense did involve a minor). In cases in which aggravating or mitigating circumstances are present, the guideline applicable to alien harboring, § 2L1.1, may conform with the guidelines applicable to promoting a commercial sex act, §§ 2G1.1 and 2G1.3, to a greater or lesser degree.

Are amendments needed to § 2L1.1, as it applies to a person convicted of alien harboring under the circumstances specified in the directive, to ensure conformity with §§ 2G1.1 and 2G1.3? For example, should the Commission provide a cross reference in § 2L1.1 to §§ 2G1.1 and 2G1.3 when the offense involves the circumstances specified in the directive? Alternatively, should the Commission provide one or more specific offense characteristics in § 2L1.1 to account for the circumstances specified in the directive, such as a specific offense characteristic for harboring committed in furtherance of prostitution? Should the Commission provide a specific offense characteristic in § 2L1.1 to account for harboring in furtherance of prostitution when the offense involves a minor? Should the Commission provide a specific offense characteristic in § 2L1.1 that incorporates the adjustment in § 3B1.1 (Aggravating Role)? If the Commission were to provide one or more such specific offense characteristics, what should the offense levels be? Are there any other amendments that should be made to the guidelines as they apply to a person convicted of alien harboring under the circumstances specified in the directive?

B. New Offenses

The Act created two new offenses. The first new offense, 18 U.S.C. 1593A (benefiting financially from peonage, slavery, and trafficking in persons), makes it unlawful to knowingly benefit, financially or by receiving anything of value, from participation in a venture that has engaged in any act in violation of section 1581(a), 1592, or 1595(a) of title 18, United States Code, knowing or in reckless disregard of the fact that the venture has engaged in such violation. A violator is subject to a fine under title 18, United States Code, and imprisonment in the same manner as a completed violation of such section.

The second new offense, 18 U.S.C. 1351 (fraud in foreign labor contracting), makes it unlawful to knowingly and with intent to defraud recruit, solicit or hire a person outside the United States for purposes of employment in the United States by means of materially false or fraudulent pretenses, representations or promises regarding that employment. A violator is subject to a fine under title 18, United States Code, and imprisonment of up to 5 years.

Should the Commission amend Appendix A (Statutory Index) to refer these new offenses to one or more guidelines and, if so, which ones? Should offenses under section 1593A be referred to § 2H4.1 (Peonage, Involuntary Servitude, and Slave Trade)? Should offenses under section 1351 be referred to § 2B1.1 (Theft, Property Destruction, and Fraud), or to § 2H4.1 (Peonage, Involuntary Servitude, and Slave Trade)? Are there aggravating or mitigating circumstances existing in cases involving those offenses that might justify additional amendments to the guidelines? If so, what amendments to the guidelines should be made to address those circumstances?

C. Other Modifications to Chapter 77

Subtitle C of title II of the Act amended various provisions in Chapter 77 (Peonage, Slavery, and Trafficking in Persons) of title 18, United States Code, in particular the following offenses:

(A) 18 U.S.C. 1583 (enticement into slavery), which is referenced in Appendix A (Statutory Index) to § 2H4.1 (Peonage, Involuntary Servitude, and Slave Trade).

(B) 18 U.S.C. 1584 (sale into involuntary servitude), which is referenced in Appendix A (Statutory Index) to § 2H4.1 (Peonage, Involuntary Servitude, and Slave Trade).

(C) 18 U.S.C. 1589 (forced labor), which is referenced in Appendix A (Statutory Index) to § 2H4.1 (Peonage, Involuntary Servitude, and Slave Trade).

(D) 18 U.S.C. 1590 (trafficking with respect to peonage, slavery, involuntary servitude, or forced labor), which is referenced in Appendix A (Statutory Index) to § 2H4.1 (Peonage, Involuntary Servitude, and Slave Trade).

(E) 18 U.S.C. 1591 (sex trafficking of children or by force, fraud, or coercion), which is referenced in Appendix A (Statutory Index) to §§ 2G1.1 (Promoting a Commercial Sex Act or Prohibited Sexual Conduct with an Individual Other than a Minor), 2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production), and § 2G1.3 (Promoting a Commercial Sex Act or Prohibited Sexual Conduct with a Minor; Transportation of Minors to Engage in a Commercial Sex Act or Prohibited Sexual Conduct; Travel to Engage in Commercial Sex Act or Prohibited Sexual Conduct with a Minor; Sex Trafficking of Children; Use of Interstate Facilities to Transport Information about a Minor).

(F) 18 U.S.C. 1592 (unlawful conduct with respect to documents in furtherance of trafficking, peonage, slavery, involuntary servitude, or forced labor), which is referenced in Appendix A (Statutory Index) to § 2H4.1 (Peonage, Involuntary Servitude, and Slave Trade).

Are the guidelines adequate as they apply to such offenses? Are there aggravating or mitigating circumstances existing in cases involving such offenses that might justify additional amendments to the guidelines? If so, what amendments to the guidelines should be made to address those circumstances?

Among other things, the Act amended these offenses by extending to these offenses the obstruction provision of 18 U.S.C. 1581 (peonage; obstructing enforcement), under which a person who obstructs, interferes with, or prevents the enforcement of the section is subject to the same punishment as a person who commits the substantive offense. Are the guidelines adequate as they apply to these offenses in a case involving obstruction?

The Act also amended 18 U.S.C. 1589 and 1591 to provide that a person who benefits financially from participating in a venture involving trafficked labor is subject to the same punishment as a person who commits the substantive offense. Are the guidelines adequate as they apply to these offenses in a case involving these circumstances?

The Act also amended 18 U.S.C. 1594 (general provisions) to provide for conspiracy liability under these offenses. Are the guidelines adequate as they apply to these offenses in a case involving conspiracy?

Are there any other amendments to the guidelines that should be made to address the amendments made by the Act?

6. Miscellaneous

Synopsis of Proposed Amendment: This proposed amendment is a multi-part amendment responding to miscellaneous issues arising from legislation recently enacted and other miscellaneous guideline application issues.

Part A of the proposed amendment amends Appendix A (Statutory Index) to include offenses created or amended by the Housing and Economic Recovery Act of 2008 (Pub. L. 110–289). The new offense at 12 U.S.C. 4636b is referenced to § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft; Offenses Involving Stolen Property; Property Damage or Destruction; Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States); as a conforming change, the similar existing offense at 12 U.S.C. 1818(j) is also referenced to § 2B1.1. The new offense at 12 U.S.C. 4641 is referenced to § 2J1.1 (Contempt) and § 2J1.5 (Failure to Appear by Material Witness); as conforming changes, similar existing offenses (*see* 2 U.S.C. 192, 390; 7 U.S.C. 87f(e); 12 U.S.C. 1818(j), 1844(f), 2273, 3108(b)(6); 15 U.S.C. 78u(c), 80a–41(c), 80b–9(c), 717m(d); 16 U.S.C. 825f(c); 26 U.S.C. 7210; 33 U.S.C. 506, 1227(b); 42 U.S.C. 3611; 47 U.S.C. 409(m); 49 U.S.C. 14909, 16104) are also referenced to § 2J1.1 and § 2J1.5.

Part B of the proposed amendment amends Appendix A (Statutory Index) to include offenses created or amended by the Consumer Product Safety Improvement Act of 2008 (Pub. L. 110–314). These offenses (*see* 15 U.S.C. 1192, 1197(b), 1202(c), 1263, 2068) are referenced to § 2N2.1 (Violations of Statutes and Regulations Dealing With Any Food, Drug, Biological Product, Device, Cosmetic, or Agricultural Product). Technical and conforming changes are also made.

Part C of the proposed amendment amends Appendix A (Statutory Index) to include an offense created by the Veterans' Benefits Improvement Act of 2008 (Pub. L. 110–389). The new offense at 50 U.S.C. App. § 527(e) is referenced to § 2X5.2 (Class A Misdemeanors (Not Covered by Another Specific Guideline)); as a conforming change, the similar existing offense at 10 U.S.C. 987(f) is also referenced to § 2X5.2.

Part D of the proposed amendment amends Appendix A (Statutory Index) to include an offense created by the Violence Against Women and Department of Justice Reauthorization Act of 2005 (Pub. L. 109–162). The new offense at 18 U.S.C. 117 is referenced to § 2A6.2 (Stalking or Domestic Violence).

Part E of the proposed amendment amends Appendix A (Statutory Index) to include an offense created by the Child Soldiers Accountability Act of 2008 (Pub. L. 110–340). The new offense at 18 U.S.C. 2442 is referenced to

§ 2H4.1 (Peonage, Involuntary Servitude, and Slave Trade). Technical and conforming changes are also made. An issue for comment is also provided.

Part F of the proposed amendment makes changes throughout the *Guidelines Manual* so that it accurately reflects the amendments made by the Judicial Administration and Technical Amendments Act of 2008 (Pub. L. 110–406) to the probation and supervised release statutes (18 U.S.C. 3563, 3583). The changes include the addition of a new guideline for intermittent confinement that parallels the statutory language, as well as technical and conforming changes.

Part G of the proposed amendment amends the enhancement relating to property from a national cemetery or veterans' memorial in subsection (b)(6) of § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft; Offenses Involving Stolen Property; Property Damage or Destruction; Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States) so that it also covers trafficking in such property, and makes a conforming change to the commentary. This part responds to the directive to the Commission in the Let Our Veterans Rest in Peace Act of 2008 (Pub. L. 110–384).

Part H of the proposed amendment makes changes to the child pornography guidelines, § 2G2.1 and § 2G2.2, so that they accurately reflect the amendments made to the child pornography statutes (18 U.S.C. 2251 *et seq.*) by the Effective Child Pornography Prosecution Act of 2007 (Pub. L. 110–358) and the PROTECT Our Children Act of 2008 (Pub. L. 110–401). The changes relate primarily to cases where child pornography is transmitted over the Internet. Under the proposed amendment, where the guidelines refer to the purpose of producing a visual depiction, they will also refer to the purpose of transmitting a live visual depiction; where the guidelines refer to possessing material, they will also refer to accessing with intent to view the material. As a conforming change, this part also amends the child pornography guidelines so that the term ''distribution'' includes ''transmission'', and the term ''material'' includes any visual depiction, as now defined by 18 U.S.C. 2256 (*i.e.*, to include data which is capable of conversion into a visual image that has been transmitted by any means, whether or not stored in a permanent format).

Part I of the proposed amendment makes a technical change to the terms ''another felony offense'' and ''another offense'', as defined in Application Note 14(C) of the firearms guideline, § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition). Those definitions were slightly revised when they were placed into Application Note 14(C) by Amendment 691 (effective November 1, 2006), and some confusion has arisen regarding whether the revisions were intended to have a substantive effect. The technical change amends the terms to clarify that Amendment 691 was not intended to have a substantive effect on those terms.

Part J of the proposed amendment revises Appendix A (Statutory Index) so that the threat guideline, § 2A6.1 (Threatening or Harassing Communications; Hoaxes; False Liens), is included on the list of guidelines to which 18 U.S.C. 2280 and 2332a are referenced. The proposed amendment ensures that in a case in which an offense under one of those statutes is committed by threat, the court has the option of determining that § 2A6.1 is the most analogous offense guideline.

Part K of the proposed amendment amends the enhancement relating to serious bodily injury in subsection (b)(5) of § 2B5.3 (Criminal Infringement of Copyright or Trademark) so that it parallels the corresponding enhancement for serious bodily injury in § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft; Offenses Involving Stolen Property; Property Damage or Destruction; Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States). This part responds to statutory amendments made by the Prioritizing Resources and Organization for Intellectual Property Act of 2008 (Pub. L. 110–403).

An issue for comment is also included regarding whether the guidelines are adequate as they apply to subsection (a)(7) of 18 U.S.C. 2252A, a new offense created by the PROTECT Our Children Act of 2008 (Pub. L. 110–401).

Proposed Amendment:

Part A (Housing and Economic Recovery Act of 2008):

Appendix A (Statutory Index) is amended by inserting before the line referenced to 2 U.S.C. 437g(d) the following:

''2 U.S.C. 192 2J1.1, 2J1.5
2 U.S.C. 390 2J1.1, 2J1.5'';

by inserting after the line referenced to 7 U.S.C. 87b the following:

''7 U.S.C. 87f(e) 2J1.1, 2J1.5'';

by inserting after the line referenced to 12 U.S.C. 631 the following:

''12 U.S.C. 1818(j) 2B1.1
12 U.S.C. 1844(f) 2J1.1, 2J1.5
12 U.S.C. 2273 2J1.1, 2J1.5
12 U.S.C. 3108(b)(6) 2J1.1, 2J1.5
12 U.S.C. 4636b 2B1.1
12 U.S.C. 4641 2J1.1, 2J1.5'';

by inserting after the line referenced to 15 U.S.C. 78ff the following:

''15 U.S.C. 78u(c) 2J1.1, 2J1.5
15 U.S.C. 80a–41(c) 2J1.1, 2J1.5'';

by inserting after the line referenced to 15 U.S.C. 80b–6 the following:

''15 U.S.C. 80b–9(c) 2J1.1, 2J1.5'';

by inserting after the line referenced to 15 U.S.C. 714m(c) the following:

''15 U.S.C. 717m(d) 2J1.1, 2J1.5'';

by inserting after the line referenced to 16 U.S.C. 773g the following:

''16 U.S.C. 825f(c) 2J1.1, 2J1.5'';

in the line referenced to 26 U.S.C. 7210 by inserting '', 2J1.5'' after ''2J1.1'';

in the line referenced to 33 U.S.C. 506 by inserting '', 2J1.5'' after ''2J1.1'';

in the line referenced to 33 U.S.C. 1227(b) by inserting '', 2J1.5'' after ''2J1.1'';

in the line referenced to 42 U.S.C. 3611(f) by inserting '', 2J1.5'' after ''2J1.1'';

by inserting after the line referenced to 47 U.S.C. 223(b)(1)(A) the following:

''47 U.S.C. 409(m) 2J1.1, 2J1.5'';

in the line referenced to 49 U.S.C. 14909 by inserting '', 2J1.5'' after ''2J1.1'';

and in the line referenced to 49 U.S.C. 16104 by inserting '', 2J1.5'' after ''2J1.1''.

Part B (Consumer Product Safety Improvement Act of 2008):

Chapter Two, Part N is amended in the heading by inserting ''CONSUMER PRODUCTS,'' after ''PRODUCTS,''.

Chapter Two, Part N, Subpart 2 is amended in the heading by striking ''AND''; and by inserting '', AND CONSUMER PRODUCTS'' after ''PRODUCTS''.

Section 2N2.1 is amended in the heading by striking ''or'' after ''Cosmetic,'' and by inserting '', or Consumer Product'' at the end.

Appendix A (Statutory Index) is amended by inserting after the line referenced to ''15 U.S.C. 1176'' the following:

''15 U.S.C. 1192 2N2.1
15 U.S.C. 1197(b) 2N2.1
15 U.S.C. 1202(c) 2N2.1
15 U.S.C. 1263 2N2.1'';

and by inserting after the line referenced to 15 U.S.C. § 1990(c) the following:

''15 U.S.C. 2068 2N2.1''

Part C (Veterans' Benefits Improvement Act of 2008):

Appendix A (Statutory Index) is amended by inserting after the line referenced to 8 U.S.C. 1375a(d)(3)(C),(d)(5)(B) the following:

''10 U.S.C. 987(f) 2X5.2'';

and by inserting after the line referenced to 50 U.S.C. 783(c) the following:

''50 U.S.C. App. § 527(e)2X5.2''.

Part D (Violence Against Women and Department of Justice Reauthorization Act of 2005):

Appendix A (Statutory Index) is amended by inserting after the line referenced to 18 U.S.C. 115(b)(3) the following:

''18 U.S.C. 117 2A6.2''.

Part E (Child Soldiers Accountability Act of 2008):

Chapter Two, Part H, Subpart 4 is amended in the heading by striking ''AND'' after ''SERVITUDE,'' and by inserting '', AND CHILD SOLDIERS'' at the end.

Section 2H4.1 is amended in the heading by striking ''and'' after ''Servitude,'' and by inserting '', and Child Soldiers'' at the end.

The Commentary to § 2H4.1 captioned ''Statutory Provisions'' is amended by inserting '', 2442'' after ''1592''.

The Commentary to § 2H4.1 captioned ''Application Notes'' is amended in Note 1 by inserting as the last paragraph the following:

'' 'Involuntary servitude' includes forced labor, slavery, and service as a child soldier.''.

Appendix A (Statutory Index) is amended by inserting after the line referenced to 18 U.S.C. 2425 the following:

''18 U.S.C. 2442 2H4.1''.

Issue for Comment:

1. The Commission requests comment regarding whether it should amend Appendix A (Statutory Index) to reference the new offense at 18 U.S.C. 2242 to 2H4.1 (Peonage, Involuntary Servitude, and Slave Trade) or to one or more other guidelines. Does § 2H4.1, or one or more other guidelines, adequately address offenses under 18 U.S.C. 2242 and, if not, what aggravating or mitigating circumstances existing in those cases might justify additional amendments to the guidelines? Alternatively, should the Commission defer action in response to the new offense at 18 U.S.C. 2242 this amendment cycle, undertake a broader review of the guidelines pertaining to human rights offenses generally, and include responding to the new offense as part of that broader review?

Part F (Judicial Administration and Technical Amendments Act of 2008):

Section 5B1.3 is amended in subsection (a)(2) by striking '', (B) give notice'' and all that follows through ''or area,'' and inserting ''or (B) work in community service, unless the court has imposed a fine, or''; and by striking the paragraph that begins ''Note: Section 3563(a)(2)''.

Section 5B1.3(e)(1) is amended by adding at the end ''See § 5F1.1 (Community Confinement).''.

Section 5B1.3(e)(6) is amended by adding at the end ''See § 5F1.8 (Intermittent Confinement).''.

Section 5C1.1 is amended by striking the asterisk each place it appears.

The Commentary to § 5C1.1 captioned ''Application Notes'' is amended by striking the asterisk each place it appears; and by striking the paragraph that begins ''Note: Section 3583(d)'' and the paragraph that begins ''However,''.

Section 5D1.3(e)(1) is amended by striking the asterisk; and by striking the paragraph that begins ''Note: Section 3583(d)'' and the paragraph that begins ''However,''.

Section 5D1.3(e) is amended by adding at the end the following paragraph:

''(6) Intermittent Confinement

Intermittent confinement (custody for intervals of time) may be ordered as a condition of supervised release during the first year of supervised release. See § 5F1.8 (Intermittent Confinement).''.

Section 5F1.1 is amended by striking the asterisk; and by striking the paragraph that begins ''Note: Section 3583(d)'' and the paragraph that begins ''However,''.

Chapter Five, Part F is amending by adding at the end the following new guideline and accompanying commentary:

''§ 5F1.8. Intermittent Confinement

Intermittent confinement may be imposed as a condition of probation or supervised release.

Commentary

Application Notes:

1. 'Intermittent confinement' means remaining in the custody of the Bureau of Prisons during nights, weekends, or other intervals of time, totaling no more than the lesser of one year or the term of imprisonment authorized for the offense, during the first year of the term of probation or supervised release. See 18 U.S.C. 3563(b)(10).

2. Intermittent confinement shall be imposed as a condition of supervised release only for a violation of a condition of supervised release in accordance with 18 U.S.C. 3583(e)(2) and only when facilities are available. See 18 U.S.C. 3583(d).''.

Chapter Seven, Part A is amended in Subpart 2(b) in the second paragraph by striking ''With the exception'' and all that follows through ''probation, the'' and inserting ''The''; and by striking the paragraph that begins ''Note: Section 3583(d)'' and the paragraph that begins ''However,''.

The Commentary to § 7B1.3 captioned ''Application Notes'' is amended by striking Note 5 and inserting the following:

''5. Intermittent confinement is authorized as a condition of probation only during the first year of the term of probation, see 18 U.S.C. 3563(b)(10), and as a condition of supervised release only during the first year of supervised release, see 18 U.S.C. 3583(d). See § 5F1.8 (Intermittent Confinement).''.

Section 8D1.3 is amended by striking subsection (b) and inserting the following:

''(b) Pursuant to 18 U.S.C. 3563(a)(2), if a sentence of probation is imposed for a felony, the court shall impose as a condition of probation at least one of the following: (1) Restitution or (2) community service, unless the court has imposed a fine, or unless the court finds on the record that extraordinary circumstances exist that would make such condition plainly unreasonable, in which event the court shall impose one or more other conditions set forth in 18 U.S.C. 3563(b).''.

Part G (Let Our Veterans Rest in Peace Act of 2008):

Section 2B1.1(b)(6) is amended by striking ''or'' after ''damage to,''; and by inserting ''or trafficking in,'' after ''destruction of,''.

The Commentary to § 2B1.1 captioned ''Background'' is amended in the paragraph that begins ''Subsection (b)(6)'' by inserting at the end before the period the following: ''and the directive to the Commission in section 3 of Public Law 110–384''.

Part H (PROTECT Our Children Act of 2008 and Effective Child Pornography Prosecution Act of 2007):

Section 2G2.1(b)(6) is amended by inserting ''or for the purpose of transmitting such material live'' after ''explicit material''.

The Commentary to § 2G2.1 captioned ''Application Notes'' is amended in Note 1 in the paragraph that begins '' 'Distribution' '' by inserting ''transmission,'' after ''production,''; and by inserting after the paragraph that begins '' 'Interactive computer service' '' the following paragraph:

'' 'Material' includes a visual depiction, as defined in 18 U.S.C. § 2256.''.

The Commentary to § 2G2.1 captioned ''Application Notes'' is amended in Note 4 by inserting ''or for the purpose of transmitting such material live'' after ''explicit material'' each place it appears; and in Note 4(B) by striking ''purpose'' after ''for such'' and inserting ''purposes''.

Section 2G2.2(b)(6) is amended by inserting ''or for accessing with intent to view the material,'' after ''material,''.

Section 2G2.2(c)(1) is amended by inserting ''or for the purpose of transmitting a live visual depiction of such conduct'' after ''such conduct''.

The Commentary to § 2G2.2 captioned ''Application Notes'' is amended in Note 1 in the paragraph that begins '''Distribution''' by inserting ''transmission,'' after ''production,''; by inserting after the paragraph that begins '''Interactive computer service''' the following:

'''Material' includes a visual depiction, as defined in 18 U.S.C. 2256.'' and

in the paragraph that begins ''Sexual abuse or exploitation'' by inserting ''accessing with intent to view,'' after ''possession,''.

The Commentary to § 2G2.2 captioned ''Application Notes'' is amended in Note 2 by inserting ''access with intent to view,'' after ''possess,''.

The Commentary to § 2G2.2 captioned ''Application Notes'' is amended in Note 4(B)(ii) by striking ''recording'' and inserting ''visual depiction'' each place it appears.

The Commentary to § 2G2.2 captioned ''Application Notes'' is amended in Note 5(A) by inserting ''or for the purpose of transmitting live any visual depiction of such conduct'' after ''such conduct''.

Part I (Clarification of § 2K2.1, Application Note 14(C)):

The Commentary to § 2K2.1 captioned ''Application Notes'' is amended in Note 14(C) by striking ''the'' before ''explosive'' and inserting ''an'' each place it appears.

Part J (Treatment of 18 U.S.C. 2280, 2332a in Statutory Index):

Appendix A (Statutory Index) is amended in the line referenced to 18 U.S.C. § 2280 by inserting ''2A6.1,'' after ''2A4.1,''; and

in the line referenced to 18 U.S.C. 2332a by inserting ''2A6.1,'' before ''2K1.4''.

Part K (Prioritizing Resources and Organization for Intellectual Property Act of 2008):

Section 2B5.3(b)(5) is amended by inserting ''death or'' after ''risk of''; and by striking ''13'' and inserting ''14'' each place it appears.

Issue for Comment:

1. The Commission requests comment regarding whether the guidelines are adequate as they apply to subsection (a)(7) of 18 U.S.C. 2252A, a new offense created by the PROTECT Our Children Act of 2008 (Pub. L. 110–401). The new offense at subsection (a)(7) makes it unlawful to knowingly produce with intent to distribute, or to knowingly distribute, ''child pornography that is an adapted or modified depiction of an identifiable minor.'' A violator is subject to a fine under title 18, United States Code, and imprisonment up to 15 years.

Under Appendix A (Statutory Index), all offenses under 18 U.S.C. 2252A are referenced to the child pornography trafficking, receipt, and possession guideline, § 2G2.2 (Trafficking in Material Involving the Sexual Exploitation of a Minor; Receiving, Transporting, Shipping, Soliciting, or Advertising Material Involving the Sexual Exploitation of a Minor; Possessing Material Involving the Sexual Exploitation of a Minor with Intent to Traffic; Possessing Material Involving the Sexual Exploitation of a Minor).

Is § 2G2.2 the guideline to which offenses under subsection (a)(7) should be referenced? Alternatively, should the Commission amend Appendix A (Statutory Index) to refer offenses under subsection (a)(7) to a guideline or guidelines other than § 2G2.2 and, if so, which ones? Should the Commission amend the guidelines (such as by amending Appendix A or by providing cross references) so that an offense under subsection (a)(7) that involves distribution is referred to one guideline (*e.g.*, § 2G2.2), and an offense under subsection (a)(7) that involves production is referred to another guideline (*e.g.*, the child pornography production guideline, § 2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production))? Whether offenses under subsection (a)(7) are referenced to § 2G2.2 or to one or more other guidelines, are there aggravating or mitigating circumstances existing in cases involving those offenses that might justify additional amendments to the guidelines? If so, how should the guidelines be amended to address those circumstances? For example, if an offense under subsection (a)(7) that involves production is referred to § 2G2.1, should the Commission provide a downward adjustment in § 2G2.1 to reflect the less serious nature of an offense involving the production of child pornography that is an adapted or modified depiction of an identifiable minor compared to other offenses involving the production of child pornography covered by that guideline? Alternatively, should the Commission create a new guideline for offenses under subsection (a)(7)?

7. Influencing a Minor

Synopsis of Proposed Amendment: This proposed amendment addresses a circuit conflict regarding the undue influence enhancement at § 2A3.2(b)(2)(B)(ii) (Criminal Sexual Abuse of a Minor Under the Age of Sixteen Year (Statutory Rape) or Attempt to Commit Such Acts) and at § 2G1.3(b)(2)(B) (Promoting a Commercial Sex Act or Prohibited Sexual Conduct with a Minor; Transportation of Minors to Engage in a Commercial Sex Act or Prohibited Sexual Conduct; Travel to Engage in Commercial Sex Act or Prohibited Sexual Conduct with a Minor; Sex Trafficking of Children; Use of Interstate Facilities to Transport Information about a Minor). The undue influence enhancement provides for an increase in the defendant's offense level (four levels in § 2A3.2 and two levels in § 2G1.3) if ''a participant otherwise unduly influenced the minor to engage in prohibited sexual conduct.'' In both guidelines, commentary states that in determining whether the undue influence enhancement applies, ''the court should closely consider the facts of the case to determine whether a participant's influence over the minor compromised the voluntariness of the minor's behavior.'' The commentary also provides for a rebuttable presumption of undue influence ''[i]n a case in which a participant is at least 10 years older than the minor.''

In both guideline provisions, the term ''minor'' includes ''an individual, whether fictitious or not, who a law enforcement officer represented to a participant * * * could be provided for the purposes of engaging in sexually explicit conduct'' or ''an undercover law enforcement officer who represented to a participant that the officer had not attained'' the age of majority.

Three circuits have three different approaches regarding the application of the undue influence enhancement in cases in which the ''minor'' is actually an undercover law enforcement officer. The Eleventh Circuit, in *United States* v. *Root,* 296 F.3d 1222 (11th Cir. 2002), held that, according to the terms of § 2A3.2, the undue influence enhancement can apply even when the

victim is an undercover law enforcement officer. In such a case, the Eleventh Circuit held, the focus is on the defendant's conduct, not on the fact that the victim's will was not actually overborne. The Eleventh Circuit is also the only circuit that has addressed this issue in the context of § 2G1.3. *See United States* v. *Vance,* 494 F.3d 985 (11th Cir. 2007) (holding that § 2G1.3(b)(2)(B) applies where the minor is fictitious, and stating that ''the focus is on the defendant's intent, not whether the victim is real or fictitious'').

The Seventh Circuit reached a different result in *United States* v. *Mitchell,* 353 F.3d 552 (7th Cir. 2003), holding that ''the plain language of [§ 2A3.2] cannot apply in the case of an attempt where the victim is an undercover police officer.'' The Seventh Circuit also stated that its reading of the guideline concluded that ''the enhancement cannot apply [in any case] where the offender and victim have not engaged in illicit sexual conduct.'' *Id.* at 559.

The Sixth Circuit, in *United States* v. *Chriswell,* 401 F.3d 459 (6th Cir. 2005), took a third approach. The Sixth Circuit agreed in part with the Seventh Circuit, holding that ''§ 2A3.2(b)(2)(B) is not applicable in cases where the victim is an undercover agent representing himself to be a child under the age of sixteen.'' *Id.* at 469. Unlike the Seventh Circuit, however, the Sixth Circuit concluded that the enhancement can apply in other instances of attempted sexual conduct.

The three proposed options reflect the three different interpretations of the enhancement by the Eleventh, Sixth, and Seventh Circuits. Option One reflects the Eleventh Circuit's approach by amending the commentary regarding the undue influence enhancement in §§ 2A3.2 and 2G1.3 to provide that the enhancement can apply in a case of attempted sexual conduct. Option One further amends the commentary to provide that the undue influence enhancement can apply in a case involving only an undercover law enforcement officer.

Option Two reflects the Sixth Circuit's approach. It amends the commentary regarding the undue influence enhancement in §§ 2A3.2 and 2G1.3 to provide that the enhancement can apply in a case of attempted sexual conduct. Option Two further amends the commentary to provide that the undue influence enhancement does not apply in a case involving only an undercover law enforcement officer.

Option Three reflects the Seventh Circuit's approach. Contrary to Options One and Two, Option Three amends the commentary regarding the undue influence enhancement in §§ 2A3.2 and 2G1.3 to provide that the enhancement does not apply in a case of attempted sexual conduct. Like Option Two, Option Three amends the commentary regarding the undue influence enhancement in §§ 2A3.2 and 2G1.3 to provide that the enhancement does not apply in a case involving only an undercover law enforcement officer.

All three options include a technical amendment to the background of § 2A3.2.

One issue for comment is also included.

Proposed Amendment:

[Option 1:

The Commentary to § 2A3.2 captioned ''Application Notes'' is amended in Note 3(B) in the paragraph that begins ''Undue Influence'' by adding at the end the following:

''Subsection (b)(2)(B)(ii) does not require that the participant engage in prohibited sexual conduct with the minor.'';

in the paragraph that begins ''In a case'' by striking '', for purposes of'' and all that follows through ''sexual conduct'' and inserting ''that subsection (b)(2)(B)(ii) applies'';

and by adding at the end as the last paragraph the following:

''Subsection (b)(2)(B)(ii) can apply in a case in which the only 'minor' (as defined in Application Note 1) involved in the offense is an undercover law enforcement officer.''.]

[Option 2:

The Commentary to § 2A3.2 captioned ''Application Notes'' is amended in Note 3(B) in the paragraph that begins ''Undue Influence'' by adding at the end the following:

''Subsection (b)(2)(B)(ii) does not require that the participant engage in prohibited sexual conduct with the minor.'';

in the paragraph that begins ''In a case'' by striking '', for purposes of'' and all that follows through ''sexual conduct'' and inserting ''that subsection (b)(2)(B)(ii) applies'';

and by adding at the end as the last paragraph the following:

''Subsection (b)(2)(B)(ii) does not apply in a case in which the only 'minor' (as defined in Application Note 1) involved in the offense is an undercover law enforcement officer.''.]

[Option 3:

The Commentary to § 2A3.2 captioned ''Application Notes'' is amended in Note 3(B) in the paragraph that begins ''Undue Influence'' by adding at the end the following:

''Subsection (b)(2)(B)(ii) requires that the participant engage in prohibited sexual conduct with the minor.'';

in the paragraph that begins ''In a case'' by striking '', for purposes of'' and all that follows through ''sexual conduct'' and inserting ''that subsection (b)(2)(B)(ii) applies'';

and by adding at the end as the last paragraph the following:

''Subsection (b)(2)(B)(ii) does not apply in a case in which the only 'minor' (as defined in Application Note 1) involved in the offense is an undercover law enforcement officer.''.]

The Commentary to § 2A3.2 captioned ''Background'' is amended by striking ''two-level'' and inserting ''four-level'' each place it appears.

[Option 1:

The Commentary to § 2G1.3 captioned ''Application Notes'' is amended in Note 3(B) in the paragraph that begins ''Undue Influence'' by adding at the end the following:

''Subsection (b)(2)(B) does not require that the participant engage in prohibited sexual conduct with the minor.'';

in the paragraph that begins ''In a case'' by striking '', for purposes of'' and all that follows through ''sexual conduct'' and inserting ''that subsection (b)(2)(B) applies'';

and by adding at the end as the last paragraph the following:

''Subsection (b)(2)(B) can apply in a case in which the only 'minor' (as defined in Application Note 1) involved in the offense is an undercover law enforcement officer.''.]

[Option 2:

The Commentary to § 2G1.3 captioned ''Application Notes'' is amended in Note 3(B) in the paragraph that begins ''Undue Influence'' by adding at the end the following:

''Subsection (b)(2)(B) does not require that the participant engage in prohibited sexual conduct with the minor.'';

in the paragraph that begins ''In a case'' by striking '', for purposes of'' and all that follows through ''sexual conduct'' and inserting ''that subsection (b)(2)(B) applies'';

and by adding at the end as the last paragraph the following:

''Subsection (b)(2)(B) does not apply in a case in which the only 'minor' (as defined in Application Note 1) involved in the offense is an undercover law enforcement officer.''.]

[Option 3:

The Commentary to § 2G1.3 captioned ''Application Notes'' is amended in Note 3(B) in the paragraph that begins ''Undue Influence'' by adding at the end the following:

''Subsection (b)(2)(B) requires that the participant engage in prohibited sexual conduct with the minor.'';

in the paragraph that begins ''In a case'' by striking '', for purposes of'' and

all that follows through ''sexual conduct'' and inserting ''that subsection (b)(2)(B) applies'';

and by adding at the end as the last paragraph the following:

''Subsection (b)(2)(B) does not apply in a case in which the only 'minor' (as defined in Application Note 1) involved in the offense is an undercover law enforcement officer.''.]

Issue for Comment:

1. The Commission seeks comment regarding the current application of the undue influence enhancements in both § 2A3.2 and § 2G1.3. In 2004, the Commission created § 2G1.3 specifically to address offenses under chapter 117 of title 18, United States Code, that involve minors. *See* USSG App. C, Amendment 664 (Nov. 2004). Prior to the creation of § 2G1.3, chapter 117 offenses, primarily 18 U.S.C. 2422 (Coercion and Enticement) and 2423 (Transportation of Minors), were sentenced under § 2A3.2 either by direct reference from Appendix A, or through a cross reference from § 2G1.1. The creation of a new guideline for chapter 117 cases was ''intended to address more appropriately the issues specific to these offenses. In addition, the removal of these cases from § 2A3.2 permit[ted] the Commission to more appropriately tailor [§ 2A3.2] to actual statutory rape cases.'' USSG App. C, Amendment 664 (Nov. 2004).

The Commission requests comment regarding the application of the undue influence enhancements in the two guidelines at issue. Should the Commission amend the enhancement in either guideline in any way? If so, what changes should the Commission make? Should, for example, the Commission more narrowly tailor the enhancement in § 2A3.2 to reflect the offense conduct typical in cases now being sentenced under § 2A3.2? If so, how?

8. Commission of Offense While on Release

Synopsis of Proposed Amendment: This proposed amendment clarifies Application Note 1 in § 3C1.3 (Commission of Offense While on Release). Section 3C1.3 (formerly § 2J1.7, (*see* Appendix C to the *Guidelines Manual,* Amendment 684) provides for a three-level adjustment if the defendant is subject to the statutory enhancement found at 18 U.S.C. 3147—that is, if the defendant has committed the underlying offense while on release. Application Note 1 to § 3C1.3 states that, in order to comply with the statute's requirement that a consecutive sentence be imposed, the sentencing court must ''divide the sentence on the judgment form between the sentence attributable to the underlying offense and the sentence attributable to the enhancement.''

The Second and Seventh Circuits have held that, according to the terms of Application Note 2 to § 2J1.7 (now Application Note 1 to § 3C1.3), a sentencing court cannot apportion to the underlying offense more than the maximum of the guideline range absent the three-level enhancement. *See United States* v. *Confredo,* 528 F.3d 143 (2d Cir. 2008); *United States* v. *Stevens,* 66 F.3d 431 (2d Cir. 1995); *United States* v. *Wilson,* 966 F.2d 243 (7th Cir. 1992). The Second Circuit has stated that the example the Commission provides in the Application Note does not abide by their interpretation of the rule: ''The commentary example begins with a total range of 30–37 months. In all criminal history categories, if the § 2J1.7 three-level enhancement is deleted from the guideline level at which a 30–37 month sentence is imposed, the permissible range provided for the reduced sentence would be 21–27 months.'' *Stevens,* at 435–36. The example states that a properly ''apportioned'' sentence for the underlying offense would be 30 months. This is outside the guideline range for that offense.

Under ordinary guideline application principles, however, only one guideline range applies to a defendant who committed an offense while on release and is subject to the enhancement at 18 U.S.C. 3147. *See* § 1B1.1 (instructing the sentencing court to, in this order: (1) Determine the offense guideline applicable to the offense of conviction (the underlying offense); (2) determine the base offense level, specific offense characteristics, and follow other instructions in Chapter Two; (3) apply adjustments from Chapter Three; and, ultimately, (4) ''[d]etermine the guideline range in Part A of Chapter Five that corresponds to the offense level and criminal history category determined above'').

The proposed amendment clarifies that the court determines the applicable guideline range as in any other case. At that point, the court determines an appropriate ''total punishment'' from within that applicable guideline range, and then divides the total sentence between the underlying offense and the § 3147 enhancement as the court considers appropriate.

Proposed Amendment:

The Commentary to § 3C1.3 captioned ''Application Notes'' is amended in Note 1 by striking ''as adjusted'' and inserting ''including, as in any other case in which a Chapter Three adjustment applies (*see* § 1B1.1 (Application Instructions)), the adjustment provided''; and by adding at the end as the last sentence the following:

''Similarly, if the applicable adjusted guideline range is 30–37 months and the court determines a 'total punishment' of 30 months is appropriate, a sentence of 24 months for the underlying offense plus 6 months under 18 U.S.C. 3147 would satisfy this requirement.''.

9. Counterfeiting and ''Bleached Notes''

Synopsis of Proposed Amendment: The proposed amendment clarifies guideline application issues regarding the sentencing of counterfeiting offenses involving ''bleached notes.'' Bleached notes are genuine United States currency stripped of its original image through the use of solvents or other chemicals and then reprinted to appear to be notes of higher denomination than intended by the Treasury. Circuit courts have resolved differently the question of whether offenses involving bleached notes should be sentenced under § 2B5.1 (Offenses Involving Counterfeit Bearer Obligations of the United States) or § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft; Offenses Involving Stolen Property; Property Damage or Destruction; Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States). *Compare, United States* v. *Schreckengost,* 384 F.3d 922 (7th Cir. 2004) (holding that bleached notes should be sentenced under § 2B1.1); *United States* v. *Inclema,* 363 F.3d 1177 (11th Cir. 2004) (same); with *United States* v. *Dison,* 2008 WL 351935 (W.D. La. Feb 8, 2008) (applying § 2B5.1 in a case involving bleached notes); *United States* v. *Vice,* 2008 WL 113970 (W. D. La. Jan. 3, 2008) (same). The proposed amendment resolves this circuit conflict and responds to concerns expressed by federal judges and members of Congress concerning the guidelines pertaining to offenses involving bleached notes.

The definition of the term ''counterfeit'' in Application Note 3 of § 2B5.1 has been cited by courts as the basis for declining to apply § 2B5.1 to offenses involving bleached notes. ''Counterfeit'' is defined to mean ''an instrument that purports to be genuine but is not, because it has been falsely made or manufactured in its entirety.'' Application Note 3 further provides that ''[o]ffenses involving genuine instruments that have been altered are covered under § 2B1.1 (Theft, Property Destruction, and Fraud).'' Under this definition, courts have had to consider whether a bleached note should be considered falsely made or

manufactured in its entirety (and therefore sentenced under § 2B5.1) or an altered note (and therefore sentenced under § 2B1.1).

The proposed amendment resolves this issue to provide that offenses involving bleached notes are to be sentenced under § 2B5.1. Specifically, the proposed amendment deletes Application Note 3 and revises the definition of ''counterfeit'' to more closely parallel relevant counterfeiting statutes, for example 18 U.S.C. 471 (Obligations or securities of the United States) and 472 (Uttering counterfeit obligations or securities). As a clerical change, the definition is moved from Application Note 3 to Application Note 1.

The proposed amendment also amends the enhancement at subsection (b)(2)(B) to cover a case in which the defendant controlled or possessed genuine United States currency paper from which the ink or other distinctive counterfeit deterrent has been completely or partially removed.

In addition, the proposed amendment amends Appendix A (Statutory Index) by striking the alternative reference to § 2B1.1 for two offenses that do not involve elements of fraud.

Specifically, the amendment deletes alternative reference to § 2B1.1 for offenses under 18 U.S.C. 474A (Deterrents to counterfeiting of obligations and securities) and 476 (Taking impressions of tools used for obligations or securities). As a result, these offenses would be referenced solely to § 2B5.1. A conforming change is made to delete these offenses from the list of statutory provisions in § 2B1.1.

Proposed Amendment:

Section 2B5.1(b)(2)(B) is amended by inserting ''(ii) genuine United States currency paper from which the ink or other distinctive counterfeit deterrent has been completely or partially removed;'' after ''paper;'' and by striking ''or (ii)'' and inserting ''or (iii)''.

The Commentary to § 2B5.1 captioned ''Application Notes'' is amended in Note 1 by inserting after the paragraph that begins ''Definitions.—'' the following:

'' 'Counterfeit' refers to an instrument that has been falsely made, manufactured, or altered. For example, an instrument that has been falsely made or manufactured in its entirety is 'counterfeit', as is a genuine instrument that has been falsely altered (such as a genuine $5 bill that has been altered to appear to be a genuine $100 bill).''.

The Commentary to § 2B5.1 captioned ''Application Notes'' is amended by striking Note 3 in its entirety and by redesignating Note 4 as Note 3.

Appendix A (Statutory Index) is amended in the line referenced to 18 U.S.C. 474A by striking ''2B1.1,''; and in the line referenced to 18 U.S.C. § 476 by striking ''2B1.1,''.

10. Technical

Synopsis of Proposed Amendment: This proposed amendment is a multi-part amendment that makes various technical and conforming changes to the guidelines.

Part A of the proposed amendment addresses several cases in which the guidelines refer to another guideline, or to a statute or rule, but the reference has become incorrect or obsolete. First, the proposed amendment makes technical changes in § 1B1.8 (Use of Certain Information) to address the fact that provisions that had been contained in subsection (e)(6) of Rule 11 of the Federal Rules of Criminal Procedure are now contained in subsection (f) of that rule. Second, it makes a technical change in § 2J1.1 (Contempt), Application Note 3, to address the fact that the provision that had been contained in subsection (b)(7)(C) of § 2B1.1 (Theft, Property Destruction, and Fraud) is now contained in subsection (b)(8)(C) of that guideline. Third, it makes a technical change in § 4B1.2 (Definitions of Terms used in Section 4B1.1), Application Note 1, fourth paragraph, to address the fact that the offense that had been contained in subsection (d)(1) of 21 U.S.C. 841 is now contained in subsection (c)(1) of that section. Fourth, it makes technical changes in § 5C1.2 (Limitation on Applicability of Statutory Minimum Sentences in Certain Cases), Application Note 8, to address the fact that subsections (c)(1) and (c)(3) of Rule 32 of the Federal Rules of Criminal Procedure are now contained in subsections (f) and (i) of that rule. Fifth, it makes a technical change in § 5D1.2 (Term of Supervised Release), Commentary, to address the fact that the provision that had been contained in subsection (b) of § 5D1.2 is now contained in subsection (c) of that guideline. Sixth, it makes a technical change in Appendix A (Statutory Index) to address the fact that the offense that had been contained at subsection (f) of 42 U.S.C. 3611 is now contained in subsection (c) of that section.

Part B of the proposed amendment resolves certain technical issues that have arisen in the *Guidelines Manual* with respect to child pornography offenses. First, the proposed amendment makes technical changes in § 2G2.1, Statutory Provisions, to address the fact that only some, not all, offenses under 18 U.S.C. 2251 are referenced to § 2G2.1. Second, it makes technical changes in § 2G2.2, Statutory Provisions, to address the fact that offenses under section 2252A(g) are now covered by § 2G2.6, while offenses under section 2252A(a) and (b) continue to be covered by § 2G2.2. Third, it makes similar technical changes in § 2G2.2, Application Note 1, to address this fact. Fourth, it makes a technical change in § 2G2.3, Commentary, to address the fact that the statutory minimum sentence for a defendant convicted under 18 U.S.C. 2251A is now 30 years imprisonment. Fifth, it makes technical changes in § 2G3.1, subsection (c)(1), to address the fact that § 2G2.4 no longer exists, having been consolidated into § 2G2.2 effective November 1, 2004. Sixth, it makes a technical change in Appendix A (Statutory Index) to address the fact that the offenses that had been contained in subsections (c)(1)(A) and (c)(1)(B) of 18 U.S.C. 2251 are now contained in subsections (d)(1)(A) and (d)(1)(B) of that section. As a conforming change, it also provides the appropriate reference for the offense that is now contained in subsection (c) of that section. Seventh, it makes a technical change in Appendix A (Statutory Index) to address the fact that offenses under section 2252A(g) are now covered by § 2G2.6, while offenses under section 2252A(a) and (b) continue to be covered by § 2G2.2.

Proposed Amendment:

Part A (Technical Issues With Respect to References to Guidelines, Statutes, and Rules):

The Commentary to § 1B1.8 captioned ''Application Notes'' is amended in Note 3 by striking ''(e)(6) (Inadmissibility of Pleas,'' and inserting ''(f) (Admissibility or Inadmissibility of a Plea,''.

The Commentary to § 2J1.1 captioned ''Application Notes'' is amended in Note 3 by striking ''(7)'' and inserting ''(8)''.

The Commentary to § 4B1.2 captioned ''Application Notes'' is amended in Note 1 in the paragraph that begins ''Unlawfully possessing a listed'' by striking ''(d)'' and inserting ''(c)''.

The Commentary to § 5C1.2 captioned ''Application Notes'' is amended in Note 8 by striking ''(c)(1), (3)'' and inserting ''(f), (i)''.

The Commentary to § 5D1.2 captioned ''Background'' is amended by striking ''(b)'' and inserting ''(c)''.

Appendix A (Statutory Index) is amended in the line referenced to 42 U.S.C. 3611(f) by striking ''(f)'' and inserting ''(c)''.

Part B (Technical Issues With Respect to Child Pornography Offenses):

The Commentary to § 2G2.1 captioned ''Statutory Provisions'' is amended by inserting ''(a)–(c), 2251(d)(1)(B)'' after ''2251''.

The Commentary to § 2G2.2 captioned ''Statutory Provisions'' is amended by inserting ''(a)–(b)'' after ''2252A''.

The Commentary to § 2G2.2 captioned ''Application Notes'' is amended in Note 1 in the last paragraph by inserting ''(a)–(c), § 2251(d)(1)(B)'' after ''2251''.

The Commentary to § 2G2.3 captioned ''Background'' is amended by striking ''twenty'' and inserting ''thirty''.

Section 2G3.1(c)(1) is amended by inserting ''Soliciting,'' after ''Shipping,''; by striking ''Traffic) or § 2G2.4 (Possession of Materials Depicting a Minor Engaged in Sexually Explicit Conduct), as appropriate.'' and inserting ''Traffic; Possessing Material Involving the Sexual Exploitation of a Minor).''.

Appendix A (Statutory Index) is amended by inserting after the line referenced to 18 U.S.C. 2251(a),(b) the following:

''18 U.S.C. 2251(c) 2G2.2'';

in the line referenced to 18 U.S.C. 2251(c)(1)(A) by striking ''(c)'' and inserting ''(d)'';

in the line referenced to 18 U.S.C. 2251(c)(1)(B) by striking ''(c)'' and inserting ''(d)'';

in the line referenced to 18 U.S.C. 2252A by inserting ''(a), (b)'' after ''2252A'';

and by inserting before the line referenced to 18 U.S.C.2252B the following:

''18 U.S.C. 2252A(g) 2G2.6''.

[FR Doc. E9–1642 Filed 1–26–09; 8:45 am]

BILLING CODE 2210–40–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11638]

Ohio Disaster # OH–00019 Declaration of Economic Injury

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of Ohio, dated 01/16/2009.

Incident: Category One Hurricane Force Winds.

Incident Period: 09/14/2008.

Effective Date: 01/16/2009.

EIDL Loan Application Deadline Date: 10/16/2009.

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 EIDL declaration, applications for economic injury 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: Franklin, Greene, Hamilton, Montgomery.

Contiguous Counties:

Ohio: Butler, Clark, Clermont, Clinton, Darke, Delaware, Fairfield, Fayette, Licking, Madison, Miami, Pickaway, Preble, Union, Warren.

Indiana: Dearborn, Franklin.

Kentucky: Boone, Campbell, Kenton.

The Interest Rate is: 4.000.

The number assigned to this disaster for economic injury is 116380.

The States which received an EIDL Declaration # are Ohio, Indiana, Kentucky.

(Catalog of Federal Domestic Assistance Number 59002)

Dated: January 16, 2009.

Sandy K. Baruah,

Acting Administrator.

[FR Doc. E9–1710 Filed 1–26–09; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11634 and # 11635]

Vermont Disaster # VT–00012

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Vermont (FEMA—1816—DR), dated 01/14/2009.

Incident: Severe Winter Storm.

Incident Period: 12/11/2008 through 12/18/2008.

DATES: *Effective Date:* 01/14/2009.

Physical Loan Application Deadline Date: 03/16/2009

Economic Injury (EIDL) Loan Application Deadline Date: 10/14/2009

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 President's major disaster declaration on 01/14/2009, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications 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:

Bennington, Windham.

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) with Credit Available Elsewhere	4.500
Businesses and Non-Profit Organizations without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 11634B and for economic injury is 11635B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: January 16, 2009.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E9–1708 Filed 1–26–09; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2009–0001]

Occupational Information Development Advisory Panel Meeting

AGENCY: Social Security Administration.

ACTION: Notice of Inaugural Meeting; Correction notice.

SUMMARY: The Social Security Administration published in the **Federal Register** of January 21, 2009, a document announcing the dates and times of the Notice of Inaugural Meeting of the Occupational Information Development Advisory Panel Meeting. This notice serves to correct the beginning time for the meeting on February 23, 2009. The meeting will begin at 9 a.m.

DATES: Effective on January 27, 2009.

FOR FURTHER INFORMATION CONTACT: Debra Tidwell Peters, 410–965–9617.

SUPPLEMENTARY INFORMATION: The Social Security Administration published a document in the **Federal Register** of January 21, 2009, (74 FR 3666), announcing the Inaugural Meeting of the Occupational Information Development Advisory Panel Meeting. On February 23, 2009, the correct beginning time is 9 a.m.

Debra Tidwell-Peters,

Designated Federal Officer, Occupational Information Development Advisory Panel.

[FR Doc. E9–1733 Filed 1–26–09; 8:45 am]

BILLING CODE 4191–02–P

SUSQUEHANNA RIVER BASIN COMMISSION

Notice of Actions Taken at December 4, 2008, Meeting

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice of Commission actions.

SUMMARY: At its regular business meeting on December 4, 2008, in Bel Air, Maryland, the Commission held a public hearing as part of its regular business meeting. At the public hearing, the Commission: (1) Approved and tabled certain water resources projects; (2) denied a request for extension of an emergency certificate issued on October 30, 2008; and (3) adopted a revised fee schedule to take effect on January 1, 2009. Details concerning these and other matters addressed at the public hearing and business meeting are contained in the Supplementary Information section of this notice.

DATES: December 4, 2008.

ADDRESSES: Susquehanna River Basin Commission, 1721 N. Front Street, Harrisburg, PA 17102–2391.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, *telephone:* (717) 238–0423, ext. 306; *fax:* (717) 238–2436; *e-mail: rcairo@srbc.net*; or Stephanie L. Richardson, Secretary to the Commission, *telephone:* (717) 238–0423, ext. 304; *fax:* (717) 238–2436; *e-mail: srichardson@srbc.net.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: In addition to the public hearing and its related action items identified below, the following items were also presented or acted on at the business meeting: (1) A special presentation titled ''Water for Maryland's Future: What We Must Do Today'' by Maryland Member Dr. Robert Summers; (2) a report on the present hydrologic conditions of the basin indicating below normal levels of precipitation and stream flow across the basin; (3) adoption of a revised Comprehensive Plan for management of the Susquehanna Basin's water resources; (4) adoption of a final rulemaking action regarding gas well development in the Marcellus and Utica shale formations; (5) adoption of a resolution emphasizing the importance of the basin's stream gaging network and urging federal funding for the Susquehanna Flood Forecast and Warning System in the amount of $2.4 million; (6) approval/ratification of several grants and contracts related to water resources management; (7) acceptance of the Fiscal Year 2008 Annual Independent Audit Report; (8) approval of an expenditure of $500,000 from the Commission's Water Management Fund for the completion of the Whitney Point Lake Section 1135 Project Modification; and (9) approval of an expenditure of $65,000 for the replacement of the Commission's three main computer servers. The Commission also heard counsel's report on legal matters affecting the Commission.

The Commission also convened a public hearing and took the following actions:

Public Hearing—Projects Approved

1. *Project Sponsor and Facility:* Chesapeake Appalachia, LLC (for operations in Chemung and Tioga Counties, N.Y., and Bradford, Sullivan, Susquehanna, Tioga, Wayne, and Wyoming Counties, Pa.). Consumptive water use of up to 7.500 mgd from various surface water sources and the following previously approved public water suppliers: Towanda Municipal Authority, Aqua Pennsylvania, Inc.—Susquehanna Division, Canton Borough Authority, and Borough of Troy.

2. *Project Sponsor and Facility:* Chief Oil & Gas LLC (for operations in Clearfield County, Pa.). Consumptive water use of up to 5.000 mgd from various surface water sources and the following public water suppliers: BCI Municipal Authority and Jersey Shore Joint Water Authority.

3. *Project Sponsor and Facility:* Chief Oil & Gas LLC (Clearfield Creek), Boggs Township, Clearfield County, Pa. Surface water withdrawal of up to 2.000 mgd.

4. *Project Sponsor and Facility:* Chief Oil & Gas LLC (Pine Creek), Cummings Township, Lycoming County, Pa. Surface water withdrawal of up to 0.099 mgd.

5. *Project Sponsor and Facility:* Citrus Energy (for operations in Wyoming County, Pa.). Consumptive water use of up to 5.000 mgd from various surface water sources.

6. *Project Sponsor and Facility:* Citrus Energy (North Branch Susquehanna River), Washington Township, Wyoming County, Pa. Surface water withdrawal of up to 0.499 mgd.

7. *Project Sponsor and Facility:* Dillsburg Area Authority, Franklin Township, York County, Pa. Groundwater withdrawal of 0.022 mgd from Well 1.

8. *Project Sponsor and Facility:* Dillsburg Area Authority, Franklin Township, York County, Pa. Groundwater withdrawal of 0.101 mgd from Well 3.

9. *Project Sponsor and Facility:* EXCO-North Coast Energy, Inc. (unnamed tributary to Sandy Run), Burnside Township, Centre County, Pa. Surface water withdrawal of up to 0.300 mgd.

10. *Project Sponsor and Facility:* Fortuna Energy Inc. (Towanda Creek), Franklin Township, Bradford County, Pa. Surface water withdrawal of up to 0.250 mgd.

11. *Project Sponsor and Facility:* J–W Operating Company (for operations in Cameron, Clearfield, and Elk Counties, Pa.). Consumptive water use of up to 4.500 mgd from various surface water sources and the following public water supplier: Emporium Water Company.

12. *Project Sponsor:* J–W Operating Company (Driftwood Branch—Sinnemahoning Creek), Lumber Township, Cameron County, Pa. Surface water withdrawal of up to 0.245 mgd.

13. *Project Sponsor:* KBK–HR Associates LLC. Project Facility: Honey Run Golf Club, Dover Township, York County, Pa. Consumptive water use of up to 0.382 mgd.

14. *Project Sponsor:* KBK–HR Associates LLC. Project Facility: Honey Run Golf Club, Dover Township, York County, Pa. Surface water withdrawal of up to 0.382 mgd from Honey Run.

15. *Project Sponsor:* KBK–HR Associates LLC. Project Facility: Honey Run Golf Club, Dover Township, York County, Pa. Surface water withdrawal of up to 1.440 mgd from Little Conewago Creek.

16. *Project Sponsor and Facility:* New Oxford Foods, LLC, New Oxford Borough, Adams County, Pa. Consumptive water use of up to 0.380 mgd and groundwater withdrawal of 0.035 mgd from Well 1.

17. *Project Sponsor and Facility:* Rex Energy Corporation (Upper Little Surveyor Run), Girard Township, Clearfield County, Pa. Surface water withdrawal of up to 0.400 mgd.

18. *Project Sponsor and Facility:* Rex Energy Corporation (Lower Little Surveyor Run), Girard Township,

Clearfield County, Pa. Surface water withdrawal of up to 0.400 mgd.

19. *Project Sponsor:* Sunbury Generation LP. Project Facility: Sunbury Generation Facility, Monroe Township and Shamokin Dam Borough, Snyder County, Pa. Consumptive water use of up to 8.000 mgd and surface water withdrawal of up to 354.000 mgd.

20. *Project Sponsor and Facility:* Turm Oil, Inc. (for operations in Susquehanna County, Pa.). Consumptive water use of up to 5.000 mgd from various surface water sources and the following public water suppliers: Dushore Water Authority and Towanda Municipal Authority.

21. *Project Sponsor and Facility:* Turm Oil, Inc. (Deer Lick Creek), Rush Township, Susquehanna County, Pa. Surface water withdrawal of up to 0.216 mgd.

22. *Project Sponsor and Facility:* Turm Oil, Inc. (East Branch Wyalusing Creek), Rush Township, Susquehanna County, Pa. Surface water withdrawal of up to 0.216 mgd.

23. *Project Sponsor and Facility:* Turm Oil, Inc. (Elk Lake Stream), Rush Township, Susquehanna County, Pa. Surface water withdrawal of up to 0.216 mgd.

24. *Project Sponsor and Facility:* Turm Oil, Inc. (Main Branch Wyalusing Creek), Rush Township, Susquehanna County, Pa. Surface water withdrawal of up to 0.216 mgd.

25. *Project Sponsor and Facility:* Ultra Resources (for operations in Tioga and Potter Counties, Pa.). Consumptive water use of up to 4.990 mgd from a various surface water source.

26. *Project Sponsor and Facility:* Ultra Resources (Cowanesque River), Deerfield Township, Tioga County, Pa. Surface water withdrawal of up to 0.217 mgd.

Public Hearing—Projects Tabled

1. *Project Sponsor and Facility:* J–W Operating Company (Abandoned Mine Pool), Shippen Township, Cameron County, Pa. Application for surface water withdrawal of up to 0.090 mgd.

2. *Project Sponsor and Facility:* J–W Operating Company (Sterling Run), Lumber Township, Cameron County, Pa. Application for surface water withdrawal of up to 0.026 mgd.

3. *Project Sponsor:* PPL Holtwood, LLC. Project Facility: Holtwood Hydroelectric Station, Martic and Conestoga Townships, Lancaster County, and Chanceford and Lower Chanceford Townships, York County, Pa. Applications for amendment to existing FERC license (FERC Project No. 1881) and for redevelopment of the project with modification of its operations on the lower Susquehanna River, including the addition of a second power station and associated infrastructure.

4. *Project Sponsor and Facility:* Ultra Resources (Elk Run), Gaines Township, Tioga County, Pa. Application for surface water withdrawal of up to 0.020 mgd.

5. *Project Sponsor and Facility:* Ultra Resources (Pine Creek), Pike Township, Potter County, Pa. Application for surface water withdrawal of up to 0.430 mgd.

Public Hearing—Project Withdrawn

1. *Project Sponsor and Facility:* EXCO-North Coast Energy, Inc. (for operations in Centre County, Pa.). Application for consumptive water use of up to 5.000 mgd from various water sources.

Public Hearing—Extension of Emergency Certificate

The Commission denied a request for an extension of an Emergency Certificate previously issued to the following project:

CAN DO, Inc., Hazle Township, Luzerne County, Pa.—Use of Site 14 Test Well to serve Humbolt Industrial Park.

Public Hearing—Project Fee Schedule

The Commission adopted a revised fee schedule to take effect on January 1, 2009. As mandated by the Commission in 2005, the revised schedule incorporates 10 percent categorical fee increases and a Consumer Price Index Adjustment. It also contains new provisions for project fees applying to large scale hydroelectric facilities, ''Approvals by Rule'' issued to gas well development projects, and aquatic surveys performed by SRBC staff in connection with project approvals.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.*, 18 CFR Parts 806, 807, and 808.

Dated: January 9, 2009.

Thomas W. Beauduy,

Deputy Director.

[FR Doc. E9–1637 Filed 1–26–09; 8:45 am]

BILLING CODE 7040–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Notice of Actions Taken at September 11, 2008, Meeting; Correction

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice of Commission Actions; correction.

SUMMARY: The Susquehanna River Basin Commission published a document in the **Federal Register** of October 1, 2008, concerning notice of project review actions taken at its September 11, 2008, meeting. The document contained certain discrepancies in the originally published list.

ADDRESSES: Susquehanna River Basin Commission, 1721 N. Front Street, Harrisburg, PA 17102–2391.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, *telephone:* (717) 238–0423, ext. 306; *fax:* (717) 238–2436; *e-mail: rcairo@srbc.net*; or Stephanie L. Richardson, Secretary to the Commission, *telephone:* (717) 238–0423, ext. 304; *fax:* (717) 238–2436; *e-mail: srichardson@srbc.net*. Regular mail inquiries may be sent to the above address.

Correction

In the **Federal Register** of October 1, 2008, in FR Doc. 73–191, on page 57191, in the first column, under **SUPPLEMENTARY INFORMATION**, correct the ''Public Hearing—Projects Approved'' caption, and on page 57192, in the third column, correct the ''Public Hearing—Projects Tabled'' caption to read:

Public Hearing—Projects Approved

1. Project Sponsor and Facility: East Resources, Inc. (Seeley Creek), Town of Southport, Chemung County, N.Y. Surface water withdrawal of up to 0.036 mgd.

2. Project Sponsor and Facility: Chesapeake Appalachia, LLC (for operations in Chemung and Tioga Counties, N.Y., and Bradford, Susquehanna, and Wyoming Counties, Pa.). Consumptive water use of up to 2.075 mgd from various surface water sources and the following public water suppliers: Towanda Municipal Authority, Aqua Pennsylvania, Inc.—Susquehanna Division, Canton Borough Authority, Borough of Troy, and Village of Horseheads, N.Y.

3. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Susquehanna River), Town of Tioga, Tioga County, N.Y. Surface water withdrawal of up to 0.999 mgd.

4. Project Sponsor and Facility: Cabot Oil & Gas Corporation (for operations in Susquehanna and Wyoming Counties, Pa.). Consumptive water use of up to 3.575 mgd from various surface water sources and the following public water suppliers: Tunkhannock Borough Municipal Authority, Pennsylvania American Water Company—Montrose System, and Meshoppen Borough Council.

5. Project Sponsor and Facility: Cabot Oil & Gas Corporation (Susquehanna

River), Great Bend Borough, Susquehanna County, Pa. Surface water withdrawal of up to 0.720 mgd.

6. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Susquehanna River), Athens Township, Bradford County, Pa. Surface water withdrawal of up to 0.999 mgd.

7. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Susquehanna River), Oakland Township, Susquehanna County, Pa. Surface water withdrawal of up to 0.999 mgd.

8. Project Sponsor and Facility: Cabot Oil & Gas Corporation (Susquehanna River), Susquehanna Depot Borough, Susquehanna County, Pa. Surface water withdrawal of up to 0.720 mgd.

9. Project Sponsor and Facility: Fortuna Energy Inc. (Susquehanna River), Sheshequin Township, Bradford County, Pa. Surface water withdrawal of up to 0.250 mgd.

10. Project Sponsor and Facility: East Resources, Inc. (Crooked Creek), Middlebury Township, Tioga County, Pa. Surface water withdrawal of up to 0.036 mgd.

11. Project Sponsor and Facility: Chief Oil & Gas, LLC (for operations in Bradford County, Pa.). Consumptive use of water of up to 5.000 mgd.

12. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Susquehanna River), Wysox Township, Bradford County, Pa. Surface water withdrawal of up to 0.999 mgd.

13. Project Sponsor and Facility: Cabot Oil & Gas Corporation (Martins Creek), Lathrop Township, Susquehanna County, Pa. Surface water withdrawal of up to 0.074 mgd.

14. Project Sponsor and Facility: Cabot Oil & Gas Corporation (Tunkhannock Creek), Lenox Township, Susquehanna County, Pa. Surface water withdrawal of up to 0.250 mgd.

15. Project Sponsor and Facility: Cabot Oil & Gas Corporation (Meshoppen Creek-2), Lemon Township, Wyoming County, Pa. Surface water withdrawal of up to 0.054 mgd.

16. Project Sponsor and Facility: Cabot Oil & Gas Corporation (Meshoppen Creek-1), Lemon Township, Wyoming County, Pa. Surface water withdrawal of up to 0.054 mgd.

17. Project Sponsor and Facility: Pennsylvania General Energy Company, LLC (operations in Potter and McKean Counties, Pa.). Consumptive water use of up to 4.900 mgd from various surface water sources and the following public water suppliers: Galeton Borough Authority and Austin Borough Water.

18. Project Sponsor and Facility: Pennsylvania General Energy Company, LLC (East Fork of Sinnemahoning Creek—Horton), East Fork Township, Potter County, Pa. Surface water withdrawal of up to 0.008 mgd.

19. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Susquehanna River), Mehoopany Township, Wyoming County, Pa. Surface water withdrawal of up to 0.999 mgd.

20. Project Sponsor and Facility: Pennsylvania General Energy Company, LLC (First Fork of Sinnemahoning Creek—Costello), Sylvania Township, Potter County, Pa. Surface water withdrawal of up to 0.107 mgd.

21. Project Sponsor and Facility: Pennsylvania General Energy Company, LLC (East Fork of Sinnemahoning Creek—East Fork), East Fork Township, Potter County, Pa. Surface water withdrawal of up to 0.025 mgd.

22. Project Sponsor and Facility: Pennsylvania General Energy Company, LLC (East Fork of Sinnemahoning Creek—Purdy), Wharton Township, Potter County, Pa. Surface water withdrawal of up to 0.027 mgd.

23. Project Sponsor and Facility: Cabot Oil & Gas Corporation (Susquehanna River), Tunkhannock Township, Wyoming County, Pa. Surface water withdrawal of up to 0.720 mgd.

24. Project Sponsor and Facility: Pennsylvania General Energy Company, LLC (First Fork of Sinnemahoning Creek—Mahon), Wharton Township, Potter County, Pa. Surface water withdrawal of up to 0.231 mgd.

25. Project Sponsor and Facility: Cabot Oil & Gas Corporation (Bowmans Creek), Eaton Township, Wyoming County, Pa. Surface water withdrawal of up to 0.290 mgd.

26. Project Sponsor and Facility: PEI Power Corporation, Borough of Archbald, Lackawanna County, Pa. Consumptive water use and surface water withdrawal approval (Docket No. 20010406) for addition of up to 0.530 mgd from a public water supplier as a secondary supply source, and settlement of an outstanding compliance matter.

27. Project Sponsor and Facility: Neptune Industries, Inc. (Lackawanna River), Borough of Archbald, Lackawanna County, Pa. Surface water withdrawal of up to 0.499 mgd.

28. Project Sponsor and Facility: Range Resources—Appalachia, LLC (for operations in Bradford, Centre, Clinton, Lycoming, Sullivan, and Tioga Counties, Pa.). Consumptive water use of up to 5.000 mgd from various surface water sources and the following public water suppliers: Jersey Shore Joint Water Authority, Williamsport Municipal Water Authority, City of Lock Haven Water Department, Borough of Bellefonte, Borough of Montoursville, Milesburg Water System, and Towanda Municipal Authority.

29. Project Sponsor and Facility: Range Resources—Appalachia, LLC (Lycoming Creek-2), Lewis Township, Lycoming County, Pa. Surface water withdrawal of up to 0.200 mgd.

30. Project Sponsor and Facility: Range Resources—Appalachia, LLC (Lycoming Creek-1), Hepburn Township, Lycoming County, Pa. Surface water withdrawal of up to 0.200 mgd.

31. Project Sponsor and Facility: Chief Oil & Gas, LLC (for operations in Lycoming County, Pa.). Consumptive water use of up to 5.000 mgd from various surface water sources and the following public water suppliers: Jersey Shore Joint Water Authority, Williamsport Municipal Water Authority, Borough of Montoursville, and Towanda Municipal Authority.

32. Project Sponsor and Facility: Chief Oil & Gas, LLC (Muncy Creek-2), Penn Township, Lycoming County, Pa. Surface water withdrawal of up to 0.099 mgd.

33. Project Sponsor and Facility: Chief Oil & Gas, LLC (Larrys Creek), Mifflin Township, Lycoming County, Pa. Surface water withdrawal of up to 0.086 mgd.

34. Project Sponsor and Facility: Chief Oil & Gas, LLC (Muncy Creek-1), Picture Rocks Borough, Lycoming County, Pa. Surface water withdrawal of up to 0.099 mgd.

35. Project Sponsor and Facility: Chief Oil & Gas, LLC (Loyalsock Creek), Montoursville Borough, Lycoming County, Pa. Surface water withdrawal of up to 0.099 mgd.

36. Project Sponsor and Facility: Range Resources—Appalachia, LLC (West Branch Susquehanna River), Colebrook Township, Lycoming County, Pa. Surface water withdrawal of up to 0.200 mgd.

37. Project Sponsor and Facility: Rex Energy Corporation (for operations in Centre and Clearfield Counties, Pa.). Consumptive water use of up to 5.000 mgd from various surface water sources and the following public water supplier: Clearfield Municipal Authority.

38. Project Sponsor and Facility: Rex Energy Corporation (West Branch Susquehanna River), Goshen Township, Clearfield County, Pa. Surface water withdrawal of up to 2.160 mgd.

39. Project Sponsor and Facility: Range Resources—Appalachia, LLC (Beech Creek), Snow Shoe Township,

Centre County, Pa. Surface water withdrawal of up to 0.200 mgd.

40. Project Sponsor and Facility: Rex Energy Corporation (Moshannon Creek), Snow Shoe Township, Centre County, Pa. Surface water withdrawal of up to 2.000 mgd.

41. Project Sponsor and Facility: Rex Energy Corporation (Moshannon Creek Outfall), Rush Township, Centre County, Pa. Surface water withdrawal of up to 1.584 mgd.

42. Project Sponsor and Facility: Rex Energy Corporation (Moshannon Creek—Peale), Rush Township, Centre County, Pa. Surface water withdrawal of up to 1.440 mgd.

43. Project Sponsor: Suez Energy North America, Inc. Project Facility: Viking Energy of Northumberland, Point Township, Northumberland County, Pa. Groundwater withdrawal of 0.391 mgd and consumptive water use of up to 0.387 mgd.

44. Project Sponsor: New Enterprise Stone & Lime Co., Inc. Project Facility: Tyrone Quarry, Warriors Mark Township, Huntingdon County, and Snyder Township, Blair County, Pa. Consumptive water use of up to 0.294 mgd; groundwater withdrawals of 0.095 mgd from Well 1, 0.006 mgd from Well 2, 0.050 mgd from Well 3, 0.010 mgd from Well 4, and 0.0003 mgd from Well 5; and surface water withdrawals of up to 0.200 mgd from Logan Spring Run and up to 0.216 mgd from the Little Juanita River.

45. Project Sponsor and Facility: Papetti's Hygrade Egg Products, Inc., d.b.a. Michael Foods Egg Products Co., Upper Mahantango Township, Schuylkill County, Pa. Consumptive water use of up to 0.225 mgd; groundwater withdrawals of 0.266 mgd from Well 1, 0.079 mgd from Well 2, and 0.350 mgd from Well 3; and a total system withdrawal limit of 0.350 mgd.

46. Project Sponsor: Old Castle Materials, Inc. Project Facility: Pennsy Supply, Inc.—Hummelstown Quarry, South Hanover Township, Dauphin County, Pa. Surface water withdrawal of up to 29.000 mgd.

47. Project Sponsor and Facility: Dart Container Corporation of Pennsylvania, Upper Leacock Township, Lancaster County, Pa. Groundwater withdrawals of 0.144 mgd from Well 4 and 0.058 mgd from Well 12; and a total system withdrawal limit of 0.367 mgd.

48. Project Sponsor: East Berlin Area Joint Authority. Project Facility: Buttercup Farms, Hamilton Township, Adams County, Pa. Groundwater withdrawals (30-day averages) of 0.130 mgd from Well TW–1 and 0.029 mgd from Well TW–2.

Public Hearing—Projects Tabled

1. Project Sponsor and Facility: Chief Oil & Gas, LLC (Sugar Creek), West Burlington Township, Bradford County, Pa. Application for surface water withdrawal of up to 0.053 mgd.

2. Project Sponsor and Facility: Fortuna Energy Inc. (Sugar Creek), West Burlington Township, Bradford County, Pa. Application for surface water withdrawal of up to 0.033 mgd.

3. Project Sponsor and Facility: Fortuna Energy Inc. (Towanda Creek), Franklin Township, Bradford County, Pa. Application for surface water withdrawal of up to 0.093 mgd.

4. Project Sponsor and Facility: Chief Oil & Gas, LLC (Pine Creek), Cummings Township, Lycoming County, Pa. Application for surface water withdrawal of up to 0.099 mgd.

5. Project Sponsor and Facility: Rex Energy Corporation (Upper Little Surveyor Run), Girard Township, Clearfield County, Pa. Application for surface water withdrawal of up to 0.400 mgd.

6. Project Sponsor and Facility: Rex Energy Corporation (Lower Little Surveyor Run), Girard Township, Clearfield County, Pa. Application for surface water withdrawal of up to 0.400 mgd.

Authority: Public Law 91–575, 84 Stat. 1509 et seq., 18 CFR Parts 806, 807, and 808.

Dated: January 9, 2009.

Thomas W. Beauduy,

Deputy Director.

[FR Doc. E9–1630 Filed 1–26–09; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review; Destin-Ft. Walton Beach Airport Destin, FL

AGENCY: Federal Aviation Administration, DOT.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the Noise Exposure Maps submitted by Okaloosa County for Destin-Ft. Walton Beach Airport under the provisions of 49 U.S.C. 47501 *et seq.* (Aviation Safety and Noise Abatement Act) and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed Noise Compatibility Program that was submitted for Destin-Ft. Walton Beach under Part 150 in conjunction with the Noise Exposure Map, and that this program will be approved or disapproved on or before July 13, 2009.

DATES: *Effective Date:*

The effective date of the FAAs determination on the Noise Exposure Maps and of the start of its review of the associated Noise Compatibility Program is January 14, 2009. The public comment period ends March 15, 2009.

FOR FURTHER INFORMATION CONTACT: Ms. Lindy McDowell, Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822, 407–812–6331. Comments on the proposed Noise Compatibility Program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This Notice announces that the FAA finds that the Noise Exposure Maps submitted for Destin-Ft. Walton Beach Airport are in compliance with applicable requirements of Part 150, effective January 14, 2009. Further, FAA is reviewing a proposed Noise Compatibility Program for that Airport which will be approved or disapproved on or before July 13, 2009. This notice also announces the availability of this Program for public review and comment.

Under 49 U.S.C., Section 47503 (the Aviation Safety and Noise Abatement Act, (the Act), an airport operator may submit to the FAA Noise Exposure Maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted Noise Exposure Maps that are found by FAA to be in compliance with the requirements of Part 150, promulgated pursuant to the Act, may submit a Noise Compatibility Program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

Okaloosa County submitted to the FAA on September 5, 2008, Noise Exposure Maps, descriptions and other documentation that were produced during the Destin-Ft. Walton Beach Airport Destin/Ft. Walton Beach Airport, FAR Part 150 Noise Compatibility Study conducted between June 2004 and July 2008. It was

requested that the FAA review this material as the Noise Exposure Maps, as described in Section 47503 of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a Noise Compatibility Program under Section 47504 of the Act.

The FAA has completed its review of the Noise Exposure Maps and related descriptions submitted by Okaloosa County. The specific documentation determined to constitute the Noise Exposure Maps includes: Table 3–4, 2008 FAR Part 150 Forecasts; Table 4–3, Operational Fleet Mix; Table 4–4, 2008 Average Daily Operations; Table 4–5, 2013 Average Daily Operations; Table 4–6, Flight Track Utilization; Figure 4–2, 2008/2013 Flight Tracks Runway 14; 2008/2013 Flight Tracks Runway 32; 2008/2013 Flight Tracks Touch-and-Go; Figure 4–5, 2008 Official Noise Exposure Map; Figure 4–6, 2013 Official Noise Exposure Map; Table 4–9, 2008 Noise Exposure in the Airport Environs; Figure 4–7, 2008 Incompatible Land Uses; Table 4–10, 2013 Noise Exposure in the Airport Environs; and, Figure 4–8, 2013 Incompatible Land Uses. The FAA has determined that these maps for Destin-Ft. Walton Beach Airport are in compliance with applicable requirements. This determination is effective on January 14, 2009. FAA's determination on the airport operator's Noise Exposure Maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of 14 CFR Part 150. Such determination does not constitute approval of the airport operator's data, information or plans, or a commitment to approve a Noise Compatibility Program or to fund the implementation of that Program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a Noise Exposure Map submitted under Section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise exposure contours, or in interpreting the Noise Exposure Maps to resolve questions concerning, for example, which properties should be covered by the provisions of Section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of Noise Exposure Maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under Section 47503 of the Act. The FAA has relied on the certification by the airport operator, under Section 150.21 of Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the Noise Compatibility Program for Destin-Ft. Walton Beach Airport, also effective on January 14, 2009. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of Noise Compatibility Programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before July 13, 2009.

The FAA's detailed evaluation will be conducted under the provisions of Part 150, Section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing non-compatible land uses and preventing the introduction of additional non-compatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the Noise Exposure Maps, the FAA's evaluation of the maps, and the proposed Noise Compatibility Program are available for examination at the following locations: Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in Orlando, Florida, January 14, 2009.

W. Dean Stringer,

Manager, Orlando Airports District Office.

[FR Doc. E9–1531 Filed 1–26–09; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Los Angeles County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA, on behalf of the California Department of Transportation (Caltrans), is issuing this notice to advise the public that a draft Environmental Impact Statement (EIS) will be prepared for the proposed New State Route 138 project in Los Angeles County, California.

FOR FURTHER INFORMATION CONTACT: Ronald Kosinski, Deputy District Director, California Department of Transportation District 7 Division of Environmental Planning, 100 South Main Street, Mail Stop 16A, Los Angeles, CA 90012.

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the FHWA assigned, and Caltrans assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Caltrans as the delegated National Policy Act (NEPA) lead agency will prepare a draft Environmental Impact Statement on a proposal to construct a new freeway/expressway within the City of Palmdale, Los Angeles County, California. The proposed alignment follows the existing Avenue P–8 corridor from State Route 14 to 100th Street for a distance of approximately 10 miles. This is part of a larger overall plan to construct a new freeway/expressway between SR–14 in Los Angeles County and I–15 in San Bernardino County.

Improvements to this corridor are considered necessary to provide for the existing and projected traffic demand attributed to large-scale growth and increasing developments in the northern portion of Los Angeles County, especially in the cities of Palmdale and Lancaster. In addition, insufficient regional access both to and from the Palmdale Airport constrains the likelihood of future airport expansion. The Southern California Association of Governments (SCAG) has identified the Palmdale Airport as the key component in the regional airport system and states that by 2025, the airport will play an important role in servicing the Northern Los Angeles Region as this area continues to experience growth.

Alternatives under consideration include (1) ''No-Build''; (2) Constructing a new 4-lane east-west State Route 138 (SR–138) from State Route 14 (SR–14) to 50th Street, and then transitioning to a

4-lane expressway up to 100th Street; and (3) Constructing a freeway/expressway similar in scope to Alternative 2 except for the portion between 15th Street and 70th Street where the alignment shifts south by approximately 2190 feet. For this segment the centerline alignment would follow the original easement granted by Los Angeles World Airport (LAWA). Incorporated into and studied with the various build alternatives will be design variations of grade and alignment.

It is anticipated that this new freeway/expressway would be constructed on six to eight feet of fill material. In areas prone to flooding, the fill material (vertical profiles) would increase to avoid flooding problems. Culverts, ditches, and viaducts would also be constructed when necessary to avoid floodwaters and washes. For alternatives 2 and 3, viaducts are proposed from approximately Division Street to 10th Street and at Little Rock Wash. Alternatives 2 and 3 also include a proposal to close the existing partial interchange at SR–14 and Rancho Vista Blvd. and modifying the existing partial interchange at SR–14 and 10th Street West to a full interchange.

It is anticipated that the proposed project may require the following federal approvals and permits: a Biological Opinion from the United States Fish and Wildlife Service, approval of a PM10 and PM2.5 Hot Spot Analysis by the Conformity Working Group for transportation conformity determination under the Clean Air Act, Section 401, 402 and 404 permits under the Clean Water Act, and a Farmland Conversion Impact Rating under the Farmland Protection Policy Act.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, Participating Agencies, Tribal governments, and to private organizations and citizens who have previously expressed or are known to have an interest in this proposal. NEPA requires the lead agency to conduct an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. In compliance with NEPA, a formal scoping meeting will be held in the City of Palmdale on February 10, 2009 at the Palmdale Cultural Center, located at 38350 N. Sierra Highway, Palmdale, CA 93550. Public notice will be given of the time and place of the meeting.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the draft EIS should be directed to Caltrans 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: January 21, 2009.

Cindy Vigue,

Director, State Programs, Federal Highway Administration, Sacramento, California.

[FR Doc. E9–1685 Filed 1–26–09; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 16, 2009.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for emergency review, and it has been approved under the Paperwork Reduction Act of 1995, Public Law 104–13. To allow interested persons to comment on this information collection, the Department is publishing this notice and plans to submit a request for a three-year extension of OMB's approval. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11020, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before March 30, 2009 to be assured of consideration.

Office of Financial Stability

OMB Number: 1505–0210.

Type of Review: Extension.

Title: Troubled Assets Relief Program (TARP) Capital Purchase Program (CPP) Monthly Survey.

Description: Authorized under the Emergency Economic Stabilization Act (EESA) of 2008 (Pub. L. 110–343), the Department of the Treasury has implemented several aspects of the Troubled Asset Relief Program. Among these components is a voluntary Capital Purchase Program (CPP) under which the Department may purchase qualifying capital in U.S. banking organizations. The Treasury invested capital through this program in over 250 financial institutions. As part of this program, Treasury would like to track how the capital is being used, and whether these capital injections are having the desired effect of ensuring liquidity within the banking system and thereby increasing lending activity. The Treasury will be conducting evaluations using quarterly Call Report data supplied by these financial institutions to their primary regulator. However, in order to have a more frequent and timely snapshot of the current lending environment, Treasury is requesting the ability to conduct a monthly survey of the 20 largest institutions by loans outstanding in order to supplement the quarterly analysis.

Respondents: Businesses and other for-profit institutions.

Estimated Total Reporting Burden: 12,000 hours.

Clearance Officer: Suzanne Tosini, Treasury Office of Financial Stability, 1801 L Street, NW., Washington, DC 20220, (202) 927–9627.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. E9–1628 Filed 1–26–09; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 16, 2009.

The Department of the Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before February 26, 2009 to be assured of consideration.

Alcohol and Tobacco Tax and Trade Bureau (TTB)

OMB Number: 1513–0026.

Type of Review: Revision.

Form: TTB F 5620.7.

Title: Claim for Drawback of Tax on Tobacco Products, Cigarette Papers, and Cigarette Tubes.

Description: TTB F 5620.7 documents taxpaid tobacco products, cigarette

papers, and cigarette tubes that were exported to a foreign country, Puerto Rico, or Virgin Islands. This form is used by taxpayers to claim drawback for tax paid on exported products.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 144 hours.

OMB Number: 1513–0042.

Type of Review: Revision.

Form: TTB F 5110.30.

Title: Drawback on Distilled Spirits Exported.

Description: TTB F 5110.30 is used by persons who export distilled spirits and wish to claim a drawback of taxes already paid in the United States (U.S.). The form describes the claimant, spirits for tax purposes, amount of tax to be refunded, and a certification by the U.S. Government agent attesting to exportation.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 10,000 hours.

OMB Number: 1513–0035.

Type of Review: Extension.

Form: TTB F 5220.3.

Title: Inventory—Export Warehouse Proprietor.

Description: TTB F 5220.3 is used by export warehouse proprietors to record inventories that are required by law and regulations.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 50 hours.

OMB Number: 1513–0020.

Type of Review: Revision.

Form: TTB F 5100.31.

Title: Application for and Certification/Exemption of Label/Bottle Approval.

Description: The Federal Alcohol Administration Act requires the labeling of alcohol beverages and designates the Treasury Department to oversee compliance with regulations. This form is completed by the regulated industry members and submitted to TTB as an application to label their products. TTB oversees label applications to prevent consumer deception and to deter falsification of unfair advertising practices on alcohol beverages.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 67,265 hours.

OMB Number: 1513–0002.

Type of Review: Extension.

Form: TTB F 5000.9.

Title: Personnel Questionnaire—Alcohol and Tobacco Products

Description: The information listed on TTB F 5000.9, Personnel Questionnaire—Alcohol and Tobacco Products, enables TTB to determine whether or not an applicant for an alcohol or tobacco permit meets the minimum qualifications. The form identifies the individual, residence, business background, financial sources for the business and criminal record.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 10,000 hours.

Clearance Officer: Frank Foote (202) 927–9347, Alcohol and Tobacco Tax and Trade Bureau, Room 200 East, 1310 G. Street, NW., Washington, DC 20005.

OMB Reviewer: Alexander T. Hunt (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Celina Elphage,

Treasury PRA Clearance Officer.

[FR Doc. E9–1632 Filed 1–26–09; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

United States Mint

Notification of United States Mint Silver Eagle Bullion Coin Premium Increase

ACTION: Notification of United States Mint Silver Eagle Bullion Coin Premium Increase.

SUMMARY: The United States Mint is increasing the premium charged to Authorized Purchasers for American Eagle Silver Bullion Coins, a program authorized under 31 U.S.C. 5112(e).

Because of the recent price increase for the premium for raw materials silver, the United States Mint will increase the premium charged to Authorized Purchasers for American Eagle Silver Bullion Coins, from $1.40 to $1.50 per coin, for all orders accepted on or after February 9, 2009.

FOR FURTHER INFORMATION CONTACT: B.B. Craig, Associate Director for Sales and Marketing; United States Mint; 801 Ninth Street, NW.; Washington, DC 20220; or call 202–354–7500.

Authority: 31 U.S.C. 5112(e)–(f) & 9701.

Dated: January 22, 2009.

Edmund C. Moy,

Director, United States Mint

[FR Doc. E9–1684 Filed 1–26–09; 8:45 am]

BILLING CODE 4810–37–P

Federal Register

Tuesday,
January 27, 2009

Part II

Department of Housing and Urban Development

24 CFR Parts 5, 92, and 908

Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5, 92, and 908

[Docket No. FR–4998–F–02]

RIN 2501–AD16

Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs; Final Rule

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule revises HUD's public and assisted housing program regulations to implement the upfront income verification (UIV) process and to require the use of HUD's Enterprise Income Verification (EIV) system by public housing agencies (PHAs), and multifamily housing owners and management agents (O/As), when verifying the employment and income of program participants at the time of all reexaminations or recertifications. This final rule will ensure that deficiencies in public and assisted housing rental determinations are identified and cured. This final rule is consistent with HUD's comprehensive strategy under the Rental Housing Integrity Improvement Project (RHIIP) initiative to reduce the number and dollar amount of errors in HUD's rental assistance programs. This final rule follows publication of a June 19, 2007, proposed rule, and makes certain changes at this final rule stage in response to public comment and further consideration of certain issues by HUD.

DATES: *Effective Date:* March 30, 2009.

FOR FURTHER INFORMATION CONTACT: For Office of Public and Indian Housing programs, contact Nicole Faison, Director of the Office of Public Housing Programs, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4226, Washington, DC 20410, telephone number 202–708–0744. For Office of Housing Programs, contact Gail Williamson, Director of the Housing Assistance Policy Division, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6138, Washington, DC 20410, telephone number 202–402–2473. (These are not toll-free numbers.) Persons with hearing or speech impairments may access these numbers through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 6 and 8 of the United States Housing Act of 1937 (42 U.S.C. 1437d and 1437f), section 202 of the Housing Act of 1959 (12 U.S.C. 1701q), sections 221(d)(3), 221(d)(5), and 236 of the National Housing Act (12 U.S.C. 1715l(d) and 1715z–1), section 811 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013), and section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s) authorize HUD to provide financial assistance in the form of rent subsidies for participants in HUD's public and assisted housing programs. The regulations implementing this authority are located in parts 5, 236, and 891 of Title 24 of the Code of Federal Regulations.

As part of the procedures for determining proper rent subsidies, PHAs and O/As must conduct income verifications for applicants and participants in covered HUD programs. As a condition for obtaining financial assistance, HUD requires the disclosure and verification of Social Security Numbers, Employer Identification Numbers, and citizenship or eligible immigration status. With few exceptions, HUD cannot make financial assistance available to applicants and participants who do not have eligible status with respect to citizenship or who have noncitizen immigration status. However, temporary deferrals of financial assistance termination may be allowable in limited circumstances.

In addition to these eligibility requirements, HUD requires the determination of annual and adjusted income of applicants and participants who apply for or receive assistance in the public and assisted housing programs. In part, ''annual income'' means all income amounts that a family anticipates to receive in the 12-month period following admission or a participant's reexamination or recertification effective date. Furthermore, PHAs and O/As are required to electronically submit family characteristics data to HUD through certain forms.

II. The June 19, 2007, Proposed Rule

On June 19, 2007, at 72 FR 33844, HUD published for public comment a proposed rule to revise HUD's public and assisted housing program regulations, by requiring PHAs and O/As to conduct UIV of participants in assistance programs through the use of HUD's EIV system. The purpose of the proposed regulatory amendments was to address HUD's priority of reducing errors, including overpayment of subsidy to PHAs and O/As, caused by incorrect income determinations and rent calculations in HUD's public housing program, and in tenant-based and project-based rental assistance programs.

For more detail on the proposed revisions to HUD's public and assisted housing program regulations, please see the preamble of the June 19, 2007, proposed rule.

III. This Final Rule; Changes to the June 19, 2007, Proposed Rule

In response to public comments, discussed in section IV of this preamble, and following further consideration of several aspects of the proposed rule, HUD has made certain changes at this final rule stage. This section of the preamble highlights some of the more significant changes.

1. *Social Security Numbers of participants.* The final rule provides that each participant whose initial determination of eligibility was before the effective date of the final rule must submit their Social Security Number at the next interim or regularly scheduled reexamination or recertification.

2. *Social Security Numbers of new household members.* The final rule provides that if the participant's household adds a new member, including a child or children, the participant must submit the new member's Social Security Number at the time of the request for assistance or at the time of processing the interim reexamination/recertification of family composition.

3. *Waiting list position retained despite failure to provide Social Security Number.* The final rule has been revised to allow applicants who cannot provide Social Security Numbers for all family members to retain their place on the waiting list for the program; however, all members of the household must provide appropriate documentation of his or her Social Security Number before the household is admitted into the program. The final rule removes the proposed rule language permitting the applicant to participate in the program, provided it submits to the processing entity appropriate documentation within 60 days from the date of admission into the program. HUD recognizes, however, that homeless persons face additional challenges in obtaining appropriate documentation of their Social Security Number. Thus, in this final rule, HUD has created an exception for applicants receiving assistance under the section 8 Moderate Rehabilitation Single Room Occupancy Program for Homeless Individuals. Such applicants have 90 days after admission into the program to provide appropriate documentation, with discretion given to the processing

entity to extend this period for an additional 90 days.

4. *Removal of pro-rata rental assistance provisions*. The proposal to prorate rental assistance for family members who do not have Social Security Numbers was not adopted by the final rule.

5. *Required use of HUD's EIV system*. The final rule requires PHAs and O/As to implement and use HUD's EIV system for verifying income of current participants only. For multifamily housing O/As, implementation of the use of EIV will commence 6 months after the effective date of this final rule to allow them additional time to become as familiar with using the EIV system as their PHA counterparts and to prepare for the full implementation of EIV. The public may view the System of Records notice and Privacy Impact Assessment for the EIV system at *http://www.hud.gov/offices/cio/privacy/documents/fed_reg_sornotice_eiv.pdf* and *http://www.hud.gov/offices/cio/privacy/pia/eiv.pdf*, respectively.

6. *Required verification of U.S. citizenship or nationality*. The final rule requires that the responsible entity obtain verification of the signed declaration of U.S. Citizenship or U.S. nationality.

7. *Discretion to use either actual past income or projected future income*. The final rule gives PHAs and O/As discretion to use either actual past income or projected future income for purposes of calculating annual income.

8. *Calculation of annual income under the HOME program*. The final rule requires participating jurisdictions in the HOME Investment Partnerships Act Program (HOME Program) to determine the time period for calculating a family's annual income in accordance with § 5.609. However, participating jurisdictions may continue to use one of the three definitions of ''annual income'' permitted by § 92.203(b).

9. *Other technical changes*. In addition to the changes described above, HUD has taken the opportunity afforded by the final rule to make other nonsubstantive, technical, changes to the regulatory language for purposes of clarity and organization.

IV. Discussion of Public Comments Received on the June 19, 2007, Proposed Rule

The public comment period for the June 19, 2007, proposed rule closed on August 20, 2007. HUD received 34 public comments. HUD received public comments from a variety of sources, including: Individuals; PHAs; national PHA and redevelopment organizations; affordable housing advocacy associations; and immigration policy groups.

The following provides a summary of the significant issues raised by the public commenters on the June 19, 2007, proposed rule, and HUD's response to those issues.

A. General Comments

Comment: Three commenters, although generally in support of HUD's goal of reducing errors in the calculation of rental subsidy, wrote that the proposed rule would result in increased administrative burdens and requirements on PHAs and O/As. Examples of increased administrative burdens include: Changes in software, model leases, and training; increases in document collection responsibilities by PHAs, individuals, and households; and extensive revisions to current operating procedures.

HUD Response: HUD is sympathetic to concerns regarding the administrative burdens imposed by its regulations, and strives to minimize such burdens in the development of new regulatory policy. HUD does not agree with the commenters that the regulatory changes will increase administrative burden. Rather, the final rule will, in many instances, reduce the administrative requirements for PHAs and O/As. For example, the income verification processes will be reduced with the use of the EIV system. PHAs and O/As in many instances will not be required to obtain written verification of employment, wages, unemployment compensation, and Social Security benefits from third-party income sources, so long as the PHA or O/A obtains and maintains documentation of EIV system consultation/usage. PHAs and O/As may accept tenant-provided documentation, and this documentation will meet HUD's requirement for obtaining third-party verification when supplemented by the EIV income report and/or, for PHAs, the EIV individual control number, in the tenant file.

Comment: Two commenters urged HUD to delay development of the final rule until the future of the section 8 Voucher Reform Act (SEVRA, H.R. 1851) in Congress is clear. SEVRA would make several major policy and procedural changes to HUD's housing assistance programs. The commenters suggested that HUD consider holding off on rulemaking until it is clear what will happen legislatively, or that HUD limit the changes in the regulation to the bare minimum of what it believes is necessary, in order to minimize the disruption and costs that would otherwise result from having to implement two sets of potentially conflicting changes within a short time frame.

HUD Response: The purpose of this rulemaking is to strengthen income and rent integrity, thereby reducing overpayments. To delay issuance of the final rule would delay significant reductions in the level of improper payments within HUD's rental assistance programs.

B. Comments Specific to Proposed Amendments to § 5.216

Comment: Two commenters questioned HUD's authority under section 165 of the Housing and Community Development Act of 1987 (42 U.S.C. 3543) to deny housing assistance to an otherwise eligible individual or household because the individual has not been assigned a Social Security Number. The commenters also wrote that the changes to § 5.216 in the proposed rule contradict HUD's previous interpretation of 42 U.S.C. 3543, in which HUD required the disclosure only of assigned Social Security Numbers.

HUD Response: HUD has not revised the rule in response to these comments. HUD has determined that the legal authority exists to deny housing assistance to individuals and households who have failed to disclose his or her Social Security Number. HUD believes this regulatory change is essential to assuring the financial integrity of its rental assistance programs.

Typically, individuals who are U.S. citizens or who are in this country legally possess a Social Security Number. Based on HUD's analysis of participant data in its public and Indian housing (PIH) programs, there are 290,043 individuals who have invalid Social Security Numbers [1] and 54,612 individuals who have not disclosed a Social Security Number. Thus, 344,655 individuals out of a total of 7,570,271 individuals (nationwide), or 5 percent of individuals, may not have disclosed an accurate and complete Social Security Number. To prevent fraud and abuse within HUD rental assistance programs, HUD is seeking to terminate assistance to those individuals who have not disclosed a valid Social Security Number.

[1] The Social Security Administration (SSA) has determined that 38,269 of these individuals have an invalid Social Security Number (SSN). Some of these errors may be attributed to PHA data entry errors. Through its internal HUD pre-screening process, HUD has determined that the PHA-reported SSN for the remaining 251,774 individuals is invalid because the reported number does not meet SSA standards as a valid SSN.

Based on HUD's analysis of participant data in its Office of Housing programs, there are 29,074 individuals out of a total 2,186,268 individuals nationwide who have invalid Social Security Numbers (the Social Security Number for 1,542 of these individuals is invalid because the reported number does not meet the standards of the Social Security Administration (SSA) as a valid Social Security Number, and the remaining 27,532 are individuals who have not disclosed a Social Security Number). Thus, 1.3 percent of individuals may not have an accurate and complete Social Security Number. To prevent fraud and abuse within HUD's multifamily rental assistance programs, HUD is seeking to terminate assistance to those individuals who have not disclosed a valid Social Security Number. It should be noted that HUD's use of Social Security Numbers is for the purpose of ensuring that limited federal resources serve as many eligible individuals and families as possible. As previously publicized in its **Federal Register** notices, HUD has implemented appropriate privacy safeguards to protect each Social Security Number collected and utilized for identity and income-matching purposes. The public should be assured of HUD's commitment to safeguarding individuals' private information.

Comment: One commenter wrote that HUD's proposal to prorate assistance for households in which one or more members do not have an assigned Social Security Number is at cross-purposes with current statutory (42 U.S.C. 1436a) and regulatory (24 CFR 5.518(b)) authorities that permit a temporary deferral of full assistance to households who have a refugee or asylum application pending final adjudication.

HUD Response: As noted above in this preamble, HUD has, upon reconsideration, decided not to make final the provisions of the proposed rule regarding the proration of assistance based upon failure to submit a Social Security Number.

HUD must comply with the provisions of 42 U.S.C. 1436a, which provide restrictions on use of assisted housing by non-resident aliens. Eligible for financial assistance under this statute are U.S. residents who are refugees (or aliens who are lawfully present in this country pursuant to admission under section 207 of the Immigration and Nationality Act (8 U.S.C. 1157)), and aliens who are granted asylum under section 208 of this statute (8 U.S.C. 1158). Aliens in these groups are covered under 24 CFR 5.500. These individuals would have Social Security Numbers.

Until the family members have been determined to have eligible status (*i.e.*, their applications are no longer pending), they are not authorized under the regulations to receive rental assistance. Such individuals may be eligible for a temporary deferral of termination of assistance—*i.e.*, temporary deferral of eviction. Proration of rental assistance, however, is not an option if the family member(s) do/does not have eligible status, since there would be no assistance to prorate.

Comment: Three commenters urged HUD to permit a phase-in period for the required disclosure and verification of Social Security Numbers, especially for children under 6 years of age who do not have Social Security Numbers or cards. One commenter suggested a 2-year implementation period, in order to provide for adequate notification of participants.

HUD Response: Based on HUD's analysis of participant data, there are a small number of children under the age of 6 without a Social Security Number. The proposed rule provided for a phase-in period of not more than one year. Upon the effective date of the final rule, PHAs and O/As must notify the affected households of this policy. As of August 21, 2008, there are approximately 62,246 individuals under the age of 6 who would be impacted by the final rule. In the Office of Housing's programs, as of September 9, 2008, there are 21,083 individuals under the age of 6 who will now be required to have a Social Security Number as a result of the final rule. Based on the minimal amount of time it takes to apply for and receive a Social Security Number and card, it is in the best interest of HUD to limit the phase-in period to no more than one year.

Comment: One commenter suggested that, if applicants for housing assistance must disclose their Social Security Number at the time of application, the same procedure should apply to new household members seeking to become participants, rather than forcing them to wait until the next interim or regularly scheduled examination.

HUD Response: HUD agrees with this comment, and has incorporated this suggestion into the final rule.

C. Comments Specific to Proposed Amendments to § 5.218

Comment: Four commenters raised the issue about the effect of proposed revisions to § 5.218 on ''mixed families,'' defined as those households that have a member who is unable to obtain documentation of a Social Security Number. Because proposed § 5.218 does not allow for proration of housing assistance to applicants, the commenters expressed concern that the final rule would exclude such mixed families from housing assistance programs, even using a prorated assistance structure.

HUD Response: The final rule has been revised to allow applicants who cannot provide Social Security Numbers for all family members to be admitted to the waiting list; however, the head of household must disclose his or her Social Security Number. In addition, all members of the household must disclose his or her Social Security Number before the household is admitted to assisted housing.

Comment: Four commenters wrote that the language concerning proration of assistance in § 5.218 and the interplay between the assistance provisions in § 5.216 and § 5.218 was confusing. For example, proposed § 5.216 would require the disclosure of Social Security Numbers and verification and documentation for all household members. However, proposed § 5.218 would permit ''mixed participant households'' to receive prorated housing assistance when the ineligible person is residing in the unit.

HUD Response: HUD agrees with this comment, and has revised § 5.218 to remove references to proration of assistance, and references to mixed families.

Comment: One commenter agreed that proration of assistance can be appropriate where some, but not all, household members provide Social Security Numbers with appropriate documentation and verification. However, the commenter also suggested that PHAs and owners should inquire into whether there may be extenuating circumstances that warrant other, more appropriate, relief.

HUD Response: The final rule provides ample time for affected parties to disclose and submit adequate documentation of his or her SSN, and references to proration have been removed.

Comment: One commenter suggested that the final rule should more clearly give PHAs the right to deny participation in the assisted housing programs unless and until all Social Security Numbers have been submitted and documented for each household member.

HUD Response: HUD has not revised the rule in response to these comments. The change suggested by the commenter might have the unintended consequence of creating vacancies or homelessness as a result of current participants not having a Social Security Number. The intent of the final rule is to notify

affected families and require a specified time frame to submit the Social Security Numbers.

D. Comments Specific to Proposed Amendments to § 5.233

Comment: Many commenters expressed concerns over the proposed mandated use of upfront income verification techniques, either through use of HUD systems (such as the EIV system) or by implementing direct computer matching agreements with a federal, state, or local government agency or a private agency. The commenters specifically noted current problems with the EIV system, such as: The significant lag time in the provision of income data, especially for new applicants; a restriction on the use of income data older than 12 months; and the inability to verify certain types of income through EIV, including asset information, self-employment income, and other government assistance. The commenters wrote that HUD should perfect the EIV system, including addressing the aforementioned problems, before mandating its use.

HUD Response: HUD has taken steps to enhance the performance of its EIV system. Improvement of the EIV system is an ongoing process, and HUD welcomes comments and suggestions from PHAs and O/As on possible future changes to the system. As noted above in this preamble, the final rule requires use of the EIV system for verifying income sources maintained in the EIV system of current participants only. The use of the EIV system will be required to ensure that participants have disclosed all income sources that are verifiable through HUD computer-matching programs.

Comment: Two commenters wrote that mandating UIV use would be cost-prohibitive. One commenter wrote that small PHAs will not have the administrative funds necessary to pay for computer-matching agreements with other agencies. One commenter requested that § 5.233 not be applied to programs administered or sponsored by nonprofit housing agencies. By requiring the use of a particular vendor or software, HUD would be increasing costs for small nonprofit housing providers, and rents are not sufficient to support these additional costs.

HUD Response: HUD is sympathetic to the cost concerns raised by the commenters and has revised the rule to address this issue. Specifically, the final rule requires PHAs and O/As to use HUD's EIV system, which HUD provides to program administrators at no cost.

Comment: One commenter suggested that there is no statutory authority for portions of the data available in the EIV system to be made readily accessible to multifamily property owners and contract agents who administer HUD's multifamily housing programs. The commenter noted that, although HUD and PHA representatives may have direct access to wage, employment, and Social Security income data, such access by multifamily owners or agents should be granted only after notice-and-comment rulemaking.

HUD Response: HUD has not revised the rule in response to this comment. Sections 453(j)(7)(E)(iv)(I) and (II) of the Social Security Act (42 U.S.C. chapter 7) authorize HUD to disclose information from the computer-matching program to a private owner, a management agent, and a contract administrator after appropriate safeguards have been put in place.

Comment: One commenter expressed concern about the ability to share tenant or participant EIV data with affected tenants or participants, even when an adverse action is being taken against the tenant or participant based on the EIV data. The commenter suggests that HUD add the following language to § 5.233, which is currently found in HUD Handbook 4350.3, REV–1, CHG–2: ''The applicant's or tenant's file should be available for review by the applicant or tenant upon request or by a third party who provides signed authorization for access from the applicant or tenant.''

HUD Response: HUD has not revised the rule in response to this comment. In accordance with the Federal Privacy Act (5 U.S.C. 552a), including HUD's regulations implementing the Federal Privacy Act at 24 CFR part 16, and 24 CFR 5.236(b)(3)(ii), the PHA and O/A are authorized to: (1) Provide the tenant with information obtained from a computer-matching program; and (2) verify such information with the tenant.

Comment: Three commenters discussed the proposed language in § 5.233(b) involving penalties, including sanctions, for noncompliance with the mandated use of UIV techniques. The commenters expressed concern about what the commenters perceived to be open-ended or undefined penalties for noncompliance. The commenters wrote that safe harbor provisions, including a reasonable implementation period, should be included in the final rule.

HUD Response: HUD has not revised the rule in response to these comments. Ninety-eight percent of all active PHAs already have access to EIV. The final rule provides for a 6-month transition period before use of the EIV system becomes mandatory for multifamily housing. This transition period will allow for O/As to become more familiar with using the National Directory of New Hires (NDNH) data, which has been available to O/As only since January 2008.

E. Comments Specific to Proposed Amendments to § 5.508

Comment: One commenter suggested that section 8 housing assistance be available only to U.S. citizens and legal immigrants. The commenter also suggested that if applicants for housing assistance cannot provide the required documentation, they should be denied assistance immediately whether or not they have legal family residing in this country.

HUD Response: The regulations at 24 CFR part 5, subpart E, implement the requirements of section 214 of the Housing and Community Development Act of 1980 (42 U.S.C. 1436a(a)). Section 214(a) provides that notwithstanding any other applicable provision of law, the Secretary may not make financial assistance available for any alien unless that alien is a resident of the United States and one of seven categories of eligible aliens. Pursuant to section 214(b)(1), ''financial assistance'' includes ''assistance made available pursuant to the United States Housing Act of 1937.'' Section 214(b)(2) provides that:

> If the eligibility for financial assistance of at least one member of a family has been affirmatively established under the program of financial assistance and under this section, and the eligibility of one or more family members has not been affirmatively established under this section, any financial assistance made available to that family by the applicable Secretary shall be prorated, based on the number of individuals in the family for whom eligibility has been affirmatively established under the program of financial assistance and under this section, as compared with the total number of individuals who are members of the family.

A ''mixed family'' is defined under the regulations (24 CFR 5.504), to mean a family whose members include those with citizenship or eligible immigration status, and those without citizenship or eligible immigration status.

Comment: Three commenters wrote that the requirements for proof of citizenship are extremely burdensome to residents already participating in the program (particularly those who may be elderly or disabled, have limited English proficiency, or who are victims of domestic violence, dating violence, stalking, or sexual assault) and to PHAs and owners who must verify such citizenship status. Two commenters suggested that, by requiring proof of citizenship, HUD is taking away the PHAs' discretion in establishing program standards.

HUD Response: Verification of citizenship status is statutorily required. Further, the majority of participants and applicants already have the necessary proof of citizenship or eligible noncitizen status. HUD also provides program administrators use of the Systemic Alien Verification for Entitlements (SAVE) system to assist in the verification of non-U.S. citizens' immigration status.

Comment: Three commenters raised questions regarding the meaning of ''eligible immigration status'' and the type of documentation, including submission of documentation electronically, that would be acceptable in meeting the requirements of § 5.508. The commenters requested that HUD clarify ''eligible immigration status'' to ensure that immigrant victims of domestic violence and Cuban/Haitian immigrants are eligible for federal housing assistance. Moreover, the commenters urged HUD to clarify that the list of documents in § 5.508(b) is an illustrative, rather than exhaustive, list, since many types of documents serve to establish eligible, non-citizen status.

HUD Response: Any immigrant who is lawfully in this country and meets other program eligibility requirements is eligible to participate in HUD's rental assistance programs. HUD's list of acceptable documents for eligible immigration status will reflect those documents referenced by the Department of Homeland Security (Bureau of Immigration and Customs Enforcement), as prescribed in HUD administrative instruction and guidance.

Comment: Two commenters suggested that HUD establish time frames for the tenant to obtain and provide the necessary citizenship documentation, and for PHAs to implement the documentation requirement.

HUD Response: HUD has not revised the rule in response to these comments. However, HUD may issue administrative guidance as questions arise regarding implementation of this final rule, or as HUD may otherwise determine is necessary, to assist affected parties in complying with the new regulatory requirements.

Comment: One commenter stated that the current regulations governing assistance to non-citizens are very difficult to interpret, and that the proposed revisions at § 5.508 do not improve the clarity. The commenter suggests that HUD rewrite the regulations at 24 CFR part 5, subpart E, Restrictions on Assistance to Noncitizens, to make them easier to understand and follow.

HUD Response: HUD has not revised the rule in response to these comments. As noted in the response to the preceding comments, HUD may issue administrative guidance at a later date to assist affected parties in complying with the new regulatory requirements.

F. Comments Specific to Proposed Amendments to § 5.518

Comment: One commenter suggested that, instead of eliminating temporary deferrals of termination of assistance for families with noncitizen members, such temporary deferrals should be expanded. Because obtaining the necessary documentation for all family members can be time-consuming and expensive, the commenter wrote that the proposed revisions would be a further constraint on noncitizens and cause temporary homelessness.

HUD Response: HUD must ensure that all individuals in the program are eligible. Only those individuals who need to be verified would incur the cost of obtaining documentation. In addition, the PHA or O/A may at its discretion extend the time period to obtain documentation, which may enhance the individuals' ability to afford the expense. The 18-month deferral period was a sufficient length of time and has long since elapsed. With the exception of refugees and persons seeking asylum, families with temporary deferral of termination of assistance with noncitizen members should no longer be receiving housing assistance.

G. Comments Specific to Proposed Amendments to § 5.609

Comment: Several commenters wrote that, because HUD's EIV system does not capture ''actual time'' data, the proposal in § 5.609 to amend the current definition of annual income, from anticipated ''future income'' to ''actual income,'' is not compatible with the method of collecting individuals' actual income. The commenters suggested that until such time as the EIV system can be used to verify current income, the definition of annual income should not be changed. One commenter suggested that HUD permit PHAs to rely on EIV data for the purpose of determining annual income, unless it possesses credible information that such data are not accurate.

HUD Response: The final rule gives the PHA or O/A the discretion to use either actual past income or projected future income to minimize possible errors in the reexamination/recertification system (for example, where a tenant quits a job before reexamination/recertification and assistance is calculated at a higher level). PHAs and O/As may use actual past annual income from EIV, so long as the tenant does not dispute the income information and current tenant-provided documentation or third-party verification does not suggest higher income in the next 12 months.

Comment: Several commenters wrote that although the rationale for using past income is that it is a known amount, anticipated future income more accurately reflects what applicants and participants are receiving when they are seeking housing assistance. One commenter suggested that PHAs or owners look at the previous year's tax return to determine ''annual income.''

HUD Response: As noted in the preceding response, the final rule gives the PHA or O/A the discretion to use either actual past income or projected future income to minimize errors in the reexamination/recertification system. The use of information from the previous year's tax returns is not an effective method of determining annual income because tenants may not file tax returns.

Comment: Four commenters wrote that the change in the ''annual income'' definition would increase the administrative workload and the complexity of verifying actual income received, and that PHAs would lose money and would need increased operating subsidy while complying with the new requirements. One commenter suggested that HUD provide grants to PHAs that are earmarked for implementing investigative and paralegal staffing to combat program fraud and abuse.

HUD Response: The final rule gives the PHA or O/A the discretion to use either actual past income or projected future income. PHAs and O/As may use actual past annual income from EIV, so long as the tenant does not dispute the income information and current tenant-provided documentation, or third-party verification does not suggest higher income in the next 12 months.

Comment: Two commenters focused on the new requirement in § 5.609(b) for PHAs to ''annualize the income data to determine the family's income for the 12-month period.'' One commenter asked HUD to clarify what it meant by ''annualize the income data.'' One commenter urged HUD to strike this new requirement and consider issuing guidance that encourages sponsors to use newer information if it reflects substantial changes in household income.

HUD Response: ''Annualize the income data'' means to convert periodic income to an annual amount. For example, if the PHA or O/A determines

that the tenant's monthly income is $500, this amount should be multiplied by 12 to compute an annual amount of $6,000. Again, the final rule provides the PHA or O/A with the discretion to use either actual past income or projected future income to minimize errors in the reexamination/recertification system. PHAs and O/As may use actual past annual income from EIV, so long as the tenant does not dispute the income information and current tenant-provided documentation, or third-party verification does not suggest higher income in the next 12 months.

Comment: One commenter asked HUD to clarify whether income generated from assets should be considered as income from the previous 12 months or as ''anticipated future income.''

HUD Response: The regulation for determination of income from assets is not being changed, and references the 12-month period in § 5.609(a)(2), which is the 12-month period following admission or recertification effective date. Accordingly, income from assets is ''anticipated future income.''

Comment: One commenter requested that HUD provide guidance and standards for PHAs and owners to follow when dealing with ''atypical income situations,'' such as: A loss of employment, waiting periods for Social Security income, welfare payments, zero income, and self-employment.

HUD Response: The PHA's interim policy and multifamily housing's interim policy defines how the PHA or O/A will deal with atypical income situations. HUD encourages PHAs and O/As to implement policies that will minimize unwarranted zero or minimum rents.

Comment: One commenter wrote that HUD should ensure that proposed § 5.609(a) properly follows the statutory definition of ''income'' at 42 U.S.C. 1437a(b)(4) and thus exclude ''any amounts not actually received by the family.'' The commenter also requested that HUD make all necessary technical changes in the regulation to account for incorrect cross-references.

HUD Response: The current regulatory definition makes reference to the term of income ''anticipated to be received.'' The proposed rule removes the term anticipated, which results in counting only income, received by the family. This change is consistent with the statutory definition of the term ''income,'' and HUD has not revised the rule in response to this comment.

Comment: One commenter wrote that some PHAs and owners may misinterpret the language in § 5.609(b) to mandate interim reporting or adjustment of rent for increases in income that occur in between annual re-certifications. The commenter urged HUD to clarify that the proposal is not intended as a substantive change to interim reporting and rent adjustment requirements, and that PHAs and owners should follow their existing policies or HUD guidance regarding when interim reporting or rent adjustment is required for increases in income.

HUD Response: The final rule does not mandate interim reexaminations, but gives the PHA the discretion to determine annual income using actual past annual income or projected future income based on current income. The PHA has discretion in developing interim increase reexamination policies; however, O/As do not. While these types of policies are helpful in reducing income reporting errors, HUD does not require PHAs to adopt interim increase reexamination policies. O/As must continue to follow existing policies for conducting interim recertifications.

Comment: One commenter suggested that HUD allow PHAs to accept recertifications of income performed by other federal, state, or local government entities for purposes of determining the annual income of applicant households and recertifications of participant households.

HUD Response: HUD has not revised the rule in response to this comment. Third-party recertifications for other benefits from other federal, state or local entities may not be effective due to the different program requirements in determining eligibility.

Comment: One commenter suggested that HUD give PHAs the discretion to rely on (or to reject) evidence of recent income changes when determining annual income. The commenter wrote that some program participants have been known to manipulate their income temporarily before annual recertifications, in order to reduce their rent obligation.

HUD Response: HUD does support PHA and O/A discretion in accepting or rejecting changes in family income. PIH published guidance in 2004, PIH Notice 2004–01 (located at *http://www.hud.gov/offices/pih/*), which requires the tenant to provide acceptable documentation to the PHA. Multifamily housing has guidance in Chapter 7 of Handbook 4350.3 REV–1. Furthermore, this final rule allows the PHA and O/A the flexibility and discretion to use either actual past annual income or projected future income based on current income. This flexibility will enable PHAs and O/As to minimize the occurrence of tenant income manipulation and ensure that participants pay their fair share of rent. It should be noted that the EIV system, as well as income information derived from the Social Security earnings statement (use SSA form–7004 available at *http://www.ssa.gov* to obtain this information) can provide the PHA and O/A with historical annual earned income of a participant. HUD recognizes that there are atypical situations in which an individual's income may fluctuate as a result of seasonal and sporadic employment, or in which a participant intentionally discontinues employment prior to an interim or annual reexamination or recertification, in order to minimize his or her contribution to rent, thus avoiding the imposition of a higher rental subsidy on the individual's family. PHAs and O/As are encouraged to utilize income information provided by HUD and available from other federal, state, and local agencies, as well as from private sector entities (such as The Work Number) to improve the integrity of income, or lack of income, reported by families.

H. Comments Specific to Proposed Amendments to § 92.203

Comment: One commenter wrote that the income determination under the HOME program should be based on the prior 12-month period, because ''anything else is too confusing and the HOME Program is confusing enough as it is.''

HUD Response: HUD has changed the proposed rule to require participating jurisdictions to calculate a family's annual income based on the actual income being received at the time the participating jurisdiction determines the family is income eligible, projected forward for a 12-month period. However, if the participating jurisdiction is unable to determine annual income using current information because the family reports little to no income or because income fluctuates, the participating jurisdiction may average past actual income received or earned within the last 12 months before the determination date to calculate annual income. This provides the participating jurisdiction with the discretion needed to respond to a variety of family situations.

Comment: One commenter wrote that the proposed requirements in § 92.203 are a duplication of effort because, absent an accessible and constantly updated source of income data for the previous 12 months, participating jurisdictions must contact employers or review paycheck stubs to verify such

income, which must then be verified to determine if the income is different from the previous 12 months. The commenter also recommended that HUD amend the HOME regulations to permit subrecipients and developers using HOME funds to perform income determinations on behalf of the HOME participating jurisdiction.

HUD Response: HUD has changed the rule to require participating jurisdictions to calculate a family's annual income based on the actual income being received at the time the participating jurisdiction determines the family is income eligible, projected forward for a 12-month period. However, the final rule also gives program administrators the discretion to use a family's past actual income when the program administrator is unable to project the family's annual income based on current verified income information. This is most useful in situations where it is difficult for the participating jurisdiction to accurately determine a family's projected annual income due to fluctuations in the family's income or because the family reports little or no income.

Subrecipients are nonprofit organizations and public agencies that are under contract with the participating jurisdiction to administer HOME programs on the participating jurisdiction's behalf. The HOME regulations already permit subrecipients to perform income determinations for the participating jurisdiction. However, developers are not under contract to perform the functions of the participating jurisdiction and are not permitted to perform those functions independent of the participating jurisdiction. While these entities cannot perform income determinations, they can collect income documentation for the participating jurisdiction to review. As such, no further changes to 24 CFR part 92 are required at this time.

I. Comments Specific to Proposed Amendments to § 908.101

Comment: One commenter suggested that HUD strike the proposed language in § 908.101 requiring sponsors to retain form HUD–50058 during the term of each assisted lease and for at least 3 years thereafter. The commenter argued that PHAs should not be required to maintain such form in the files, and that compliance with standards in state law and imposed by audit requirements are sufficient to protect HUD's interests.

HUD Response: HUD is requiring the PHA to maintain the form HUD–50058 in its tenant's files (either electronically or paper) to ensure that information transmitted to HUD is consistent with what is on file at the PHA. Previous PHA audits have in some instances revealed significant disparities between the actual PHA transaction and the transaction transmitted to HUD via the Public and Indian Housing Information Center (PIC) system.

Comment: Two commenters opposed the change to require paper copies of each Form HUD–50058 in the tenant's file. The commenters wrote that such a requirement would impose administrative burden and additional expense for PHAs and staff. Moreover, the commenters wrote that the information is readily available electronically. One commenter suggested that PHAs be required to keep only the most recent 2 years of form HUD–50058, and to maintain the file for 3 years after move-out.

HUD Response: The rule does not require paper copies of the form HUD–50058. The PHA has discretion to determine how they will maintain the form HUD–50058. PHAs are encouraged to retain electronic copies of the form.

V. Findings and Certifications

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (''entitled Regulatory Planning and Review''). This rule was determined to be economically significant under E.O. 12866, and a regulatory impact analysis has been prepared for this rule.

At both the proposed rule and this final rule stage, HUD determined that implementation of the regulations proposed and now promulgated through this final rule could result in transfers of funding to and among stakeholders of more than $100 million per year. Findings from an ongoing HUD study indicate that the gross transfer resulting from eliminating all the under- and over-payments of rents is approximately $925 million ($584 million in rent subsidy overpayment and $341 million in rent subsidy underpayment). Of these amounts, about $138 million in rent subsidy overpayment and $17 million in rent subsidy underpayment are attributable to errors in earned income reported to, or recorded by, program administrators, as determined by the study interviewers. In addition, income matches with the National Directory of New Hires (NDNH) reports an additional $359 million in rent underpayment due to tenants' failure to report income to program administrators and the study interviewers. If the rule succeeds in reducing gross errors found in the study by at least 20 percent, the gross transfers among HUD-assisted tenants would be above the $100 million annual threshold. The majority of the financial and economic impact of the final rule would result from the implementation and use of upfront verification of income to ensure truthful and correct reporting and recording of tenants' income. The anticipated impacts of this rule are discussed more fully in the regulatory impact analysis that accompanies this rule.

It should be noted that the implementation of this final rule would improve the integrity of HUD's rental assistance programs and would result in some transfer. However, it may not necessarily lead to a reduction in subsidy needs and could in fact lead to a needed increase in the program funding to maintain the number of households served by the programs. The EIV system is already available and being used by program administrators. Therefore, this final rule would not impose significant additional costs.

Assuming the rule is 100 percent effective in eliminating earned income-based rent errors, if no over-subsidized tenants left the program in response to rent increases based on correct determination of earned income, then the net transfer to new tenants would be about $480 million per year, resulting in approximately 92,284 new tenants served (assuming an average total subsidy per tenant of $5,091 per year). At the other extreme, if all households who were over-subsidized due to earned-income error left HUD-assisted housing in response to rent corrections under the rule, the transfer to new tenants would amount to approximately $1,715,667,000 per year, resulting in about 337,000 new tenants served, assuming the same average subsidy costs.

Notwithstanding, it is not realistic to expect the rule to be 100 percent effective, since there is no realistic basis for assessing a range of effectiveness away from a range of $0 to $480 million. There is also no basis for assessing the primary estimate. For all of these reasons, $1.715 million would represent the high estimate (assuming 100 percent effectiveness and 100 percent of existing tenants leave replaced by 337,000 new tenants) and $0 would represent the low estimate, assuming 0 percent effectiveness.

The docket file, which includes the regulatory impact analysis, is available for public inspection in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the

HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339. Additionally, the Economic Analysis prepared for this rule is also available for public inspection at the same location and on HUD's Web site at *http://www.hud.gov*.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This final rule is concerned with those entities that are responsible for making eligibility determinations and conducting income reexaminations or recertifications under sections 3 and 5 of the United States Housing Act of 1937 and tenant-based and project-based housing assistance under section 8 of the United States Housing Act of 1937. Specifically, the final rule strengthens HUD's internal controls, refines regulations where unclear, and requires the use of HUD's EIV system to verify the employment and income of existing participants. The U.S. Housing Act of 1937 defines a small PHA as a PHA that administers 250 or fewer public housing units and irrespective of the number of vouchers that the PHA administers. HUD uses this number of units to also measure small multifamily housing developments. With fewer units to administer, there are fewer families for whom income verification is needed. Nonetheless, regardless of the number of units or families to administer, income verification processes are reduced with the use of the EIV system. Public housing and multifamily housing administrators are relieved of the burden of obtaining written verification of employment, wages, unemployment compensation, and Social Security benefits from third-party income sources, which is time consuming. Additionally, PHAs, large and small, are already familiar with and have begun using EIV. The final rule provides an additional 6 months for administrators of multifamily housing developments, large or small, to transition to EIV. Therefore, this final rule will not have a significant economic impact on a substantial number of small entities.

Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

This final rule involves external administrative requirements or procedures that are related to income limits and exclusions with regard to eligibility for or calculation of HUD housing assistance or rental assistance. Such requirements or procedures do not constitute a development decision that affects the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this final rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

Paperwork Reduction Act

The information collection requirements in this final rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control Numbers 2577–0220 and 2502–0204. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB Control Number.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This final rule would not impose any federal mandate on any state, local, or tribal government, or on the private sector, within the meaning of UMRA.

Congressional Review of Final Rules

This rule constitutes a ''major rule'' as defined in the Congressional Review Act (5 U.S.C. Chapter 8). This rule therefore has a 60-day delayed effective date and will be submitted to the Congress in accordance with the requirements of the Congressional Review Act.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers applicable to the programs affected by this rule are 14.103, 14.135, 14.149, 14.157, 14.181, 14.195, 14.850, and 14.871.

List of Subjects

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Crime, Government contracts, Grant programs—housing and community development, Individuals with disabilities, Intergovernmental relations, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social Security, Unemployment compensation, Wages.

24 CFR Part 92

Administrative practice and procedure, Grant programs—housing and community development, Low and moderate income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 908

Computer technology, Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

■ Accordingly, for the reasons described in the preamble, HUD amends 24 CFR parts 5, 92, and 908 to read as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

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

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, 3535(d), and Sec. 327, Pub. L. 109–115, 119 Stat. 2936.

■ 2. Revise § 5.216 to read as follows:

§ 5.216 Disclosure and verification of Social Security Number (SSN) and Employer Identification Numbers (EIN).

(a) *Disclosure required of assistance applicants.* Each assistance applicant must submit the following information

to the processing entity when the assistance applicant's eligibility under the program involved is being determined:

(1) The complete and accurate SSN assigned to the assistance applicant and to each member of the assistance applicant's household; and

(2) The documentation referred to in paragraph (f)(1) of this section to verify each such SSN.

(b) *Disclosure required of individual owner applicants*. Each individual owner applicant must submit the following information to the processing entity when the individual owner applicant's eligibility under the program involved is being determined:

(1) The complete and accurate SSN assigned to the individual owner applicant and to each member of the individual owner applicant's household who will be obligated to pay the debt evidenced by the mortgage or loan documents; and

(2) The documentation referred to in paragraph (f)(1) of this section to verify each such SSN.

(c) *Disclosure required of certain officials of entity applicants*. Each officer, director, principal stockholder, or other official of an entity applicant must submit the following information to the processing entity when the entity applicant's eligibility under the program involved is being determined:

(1) The complete and accurate SSN assigned to each such individual; and

(2) The documentation referred to in paragraph (f)(1) of this section to verify each SSN.

(d) *Disclosure required of participants*. (1) *Initial disclosure*. Each participant whose initial determination of eligibility under the program involved was begun before March 30, 2009 must submit the following information to the processing entity at the next interim or regularly scheduled reexamination of family composition or income, or other recertification for the program involved:

(i) The complete and accurate SSN assigned to the participant and to each member of the participant's household; and

(ii) The documentation referred to in paragraph (f)(1) of this section to verify each such SSN.

(2) *Subsequent disclosure*. Once a participant has disclosed and the processing entity has verified every SSN, the following rules apply:

(i) When a participant requests to add a new household member, the participant must submit that SSN to the processing entity at the time of the request or at the time of processing the interim reexamination or recertification of family composition that includes the new member(s):

(A) The complete and accurate SSN assigned to each new member; and

(B) The documentation referred to in paragraph (f)(1) of this section to verify the SSN for each new member.

(ii) If the participant or any member of the participant's household has a previously undisclosed SSN, or has been assigned a new SSN, the participant must submit the following to the processing entity at the next interim or regularly scheduled reexamination of family composition or income, or other recertification:

(A) The complete and accurate SSN assigned to the participant or household member involved; and

(B) The documentation referred to in paragraph (f)(1) of this section to verify the SSN of each such individual.

(iii) Additional SSN disclosure and verification requirements, including the nature of the disclosure, the verification required, and the time and manner for making the disclosure and verification, may be specified in administrative instructions by:

(A) HUD; and

(B) In the case of the public housing program or the programs under 24 CFR parts 882 and 982, the PHA.

(e) *Disclosure required of entity applicants*. Each entity applicant must submit the following information to the processing entity when the entity applicant's eligibility under the program involved is being determined:

(1) Any complete and accurate EIN assigned to the entity applicant; and

(2) The documentation referred to in paragraph (f)(2) of this section to verify the EIN.

(f) *Required documentation*. (1) *Social Security Numbers*. The documentation necessary to verify the SSN of an individual who is required to disclose his or her SSN under paragraphs (a) through (d) of this section is a valid SSN card issued by the Social Security Administration (SSA), or such other evidence of the SSN as HUD may prescribe in administrative instructions.

(2) *Employer Identification Numbers*. The documentation necessary to verify any EIN of an entity applicant that is required to disclose its EIN under paragraph (e) of this section is the official, written communication from the IRS assigning the EIN to the entity applicant, or such other evidence of the EIN as HUD may prescribe in administrative instructions.

(g) *Effect on assistance applicants*. (1) Except as provided in paragraph (g)(2) of this section, if the processing entity determines that the assistance applicant is otherwise eligible to participate in a program, the assistance applicant may retain its place on the waiting list for the program, but cannot become a participant until it can provide:

(i) The complete and accurate SSN assigned to each member of the household; and

(ii) The documentation referred to in paragraph (f)(1) of this section to verify the SSN of each such member.

(2) For applicants receiving assistance pursuant to the section 8 Moderate Rehabilitation Single Room Occupancy (SRO) Program for Homeless Individuals under subpart H of part 882 of this title, the documentation in paragraph (g)(1) of this section must be provided to the processing entity within 90 days from the date of admission into the program, except that the processing entity may, at its discretion, extend this period for an additional 90 days.

(h) *Rejection of documentation*. The processing entity may reject documentation referred to in paragraph (f) of this section only for such reasons as HUD may prescribe in applicable administrative instructions.

(i) *Information on SSNs and EINs*. (1) Information regarding SSNs and SSN cards may be obtained by visiting the *IRS.gov* Web site or calling the IRS toll-free Business and Specialty Tax Line at 800–829–4933.

(2) Information regarding EINs may be obtained by contacting the local office of the IRS or consulting the appropriate IRS publications.

■ 3. Amend § 5.218 by revising paragraph (a), the introductory text of paragraph (b), and paragraph (c) to read as follows:

§ 5.218 Penalties for failing to disclose and verify Social Security and Employer Identification Numbers.

(a) *Denial of eligibility of assistance applicants and individual owner applicants*. The processing entity must deny the eligibility of an assistance applicant or individual owner applicant in accordance with the provisions governing the program involved, if the assistance or individual owner applicant does not meet the applicable SSN disclosure, documentation, and verification requirements as specified in § 5.216.

(b) *Denial of eligibility of entity applicants*. The processing entity must deny the eligibility of an entity applicant in accordance with the provisions governing the program involved; if:

* * * * *

(c) *Termination of assistance or termination of tenancy of participants*. The processing entity must terminate the assistance or terminate the tenancy,

or both, of a participant, in accordance with the provisions governing the program involved, if the participant does not meet the applicable SSN disclosure, documentation, and verification requirements specified in § 5.216.

* * * * *

■ 4. Add a new § 5.233 to read as follows:

§ 5.233 Mandated use of HUD's Enterprise Income Verification (EIV) System.

(a) *Programs subject to this section and requirements.* (1) The requirements of this section apply to entities administering assistance under:

(i) Public housing;

(ii) Section 8 Housing Choice Voucher (HCV) program under 24 CFR part 982;

(iii) Moderate Rehabilitation under 24 CFR part 882;

(iv) Project-based voucher program under 24 CFR part 983;

(v) Project-based Section 8 programs under 24 CFR parts 880, 883, 884, 886, and 891;

(vi) Section 202 of the National Housing Act of 1959 (12 U.S.C. 1701q);

(vii) Section 811 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013);

(viii) Sections 221(d)(3) and 236 of the National Housing Act (12 U.S.C. 1715l(d)(3) and 1715z–1); and

(ix) Rent Supplement program under section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s).

(2) Processing entities must use HUD's EIV system as a third-party source to verify tenant employment and income information during mandatory reexaminations or recertifications of family composition and income, in accordance with § 5.236.

(b) *Penalties for noncompliance.* Failure to use the EIV system may result in the imposition of remedial actions as outlined in 24 CFR 84.62, except as provided in paragraph (b) of this section. For multifamily owners and management agents, failure to use the EIV system may result in the imposition of sanctions and/or the assessment of disallowed costs associated with any resulting incorrect subsidy or tenant rent calculations, or both.

(c) *Implementation Date for Multifamily Owners and Management Agents.* For entities administering assistance under paragraphs (a)(1)(v) through (a)(1)(ix) of this section, use of the EIV system is required commencing on September 30, 2009.

■ 5. Amend § 5.508 by revising paragraphs (b)(1), and (b)(2) to read as follows:

§ 5.508 Submission of evidence of citizenship or eligible immigration status.

* * * * *

(b) * * *

(1) For U.S. citizens or U.S. nationals, the evidence consists of a signed declaration of U.S. citizenship or U.S. nationality. The responsible entity must obtain verification of the declaration by requiring presentation of a U.S. passport, U.S. birth certificate, Employment Authorization card, Temporary Resident card, or other appropriate documentation, as provided by section 214.

(2) For noncitizens, adequate evidence consists of:

(i) A signed declaration of eligible immigration status; and

(ii) One of the Section 214 documents listed in § 5.508(b)(1) and referred to in § 5.510.

* * * * *

■ 6. Amend § 5.516 by revising paragraph (c) to read as follows:

§ 5.516 Availability of preservation assistance to mixed families and other families.

* * * * *

(c) *Assistance available to other families in occupancy.* In accordance with § 5.518, temporary deferral of termination of assistance may be available to families receiving assistance under a section 214-covered program on June 19, 1995, and who either include a refugee under section 207 of the Immigration and Nationality Act, or an individual seeking asylum under section 208 of the Immigration and Nationality Act.

* * * * *

■ 7. Amend § 5.518 by revising paragraph (b), removing paragraph (c), and redesignating existing paragraph (d) as paragraph (c) to read as follows:

§ 5.518 Types of preservation assistance available to mixed families and other families.

* * * * *

(b) *Temporary deferral of termination of assistance.* (1) *Eligibility of temporary deferral of termination of assistance:* If a family was receiving assistance under a section 214-covered program on June 19, 1995, and the family includes a refugee under section 207 of the Immigration and Nationality Act or an individual seeking asylum under section 208 of the Immigration and Nationality Act, the family may be eligible for temporary deferral of termination of assistance if necessary to permit the family additional time for the orderly transition of those family members with ineligible status, and any other family members involved, to other affordable housing. Other affordable housing is used in the context of transition of an ineligible family from a rent level that reflects HUD assistance to a rent level that is unassisted; the term ''affordable housing'' refers to housing that is not substandard; that is of appropriate size for the family; and that can be rented for an amount not exceeding the amount that the family pays for rent, including utilities, plus 25 percent.

(2) *Housing-covered programs: Conditions for granting temporary deferral of termination of assistance.* The responsible entity shall grant a temporary deferral of termination of assistance to a mixed family if the family is assisted under a Housing-covered program and the family was receiving assistance under a Section 214-covered program on June 19, 1995, and the family includes a refugee under section 207 of the Immigration and Nationality Act or an individual seeking asylum under section 208 of the Immigration and Nationality Act.

* * * * *

■ 8. Amend § 5.609 as follows:

■ a. Revise paragraph (a);

■ b. Remove existing paragraph (d);

■ c. Redesignate existing paragraphs (b) and (c) as paragraphs (d) and (e), respectively;

■ d. In newly designated paragraph (d)(3), revise the reference to ''paragraph (b)(2) of this section'' to read ''paragraph (d)(2) of this section'';

■ e. In newly designated paragraph (d)(4), revise the parenthetical reading ''(except as provided in paragraph (c)(14) of this section)'' to read ''(except as provided in paragraph (e)(14) of this section)'';

■ f. In newly designated paragraph (d)(5) revise the reference to ''paragraph (c)(3) of this section'' to read ''paragraph (e)(3) of this section'';

■ g. In newly designated paragraph (d)(6)(B), revise the reference to ''paragraph (c) of this section'' to read ''paragraph (e) of this section'';

■ h. In newly designated paragraph (d)(8), revise the reference to ''paragraph (c)(7) of this section'' to read ''paragraph (e)(7) of this section'';

■ i. In newly designated paragraph (e)(6), revise the reference to ''paragraph (b)(9) of this section'' to read ''paragraph (d)(9) of this section'';

■ j. In newly designated paragraph (e)(17), revise the reference to ''24 CFR 5.609(c)'' to read ''24 CFR 5.609(e)''; and

■ k. Add new paragraphs (b) and (c) to read as follows:

§ 5.609 Annual income.

(a) *Annual income* means all amounts, monetary or not, which:

(1) Go to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member; and

(2) Are based on, at the time of admission, reexamination, or recertification:

(i) Actual income being received (projected forward for a 12-month period); or

(ii) Past actual income received or earned within the last 12 months of the determination date, as HUD may prescribe in applicable administrative instructions when:

(A) The family reports little or no income; and

(B) The processing entity is unable to determine annual income due to fluctuations in income (e.g., seasonal or cyclical income);

(3) Which are not specifically excluded in paragraph (e) of this section.

(4) Annual income also means amounts derived (during the 12-month period) from assets to which any member of the family has access.

(b) *Historical amounts.* If the processing entity is unable to determine annual income using current information because the family reports little to no income or because income fluctuates, the processing entity may average past actual income received or earned within the last 12 months before the determination date to calculate annual income. The processing entity may also request the family to provide documentation of current income. If the family can provide acceptable documentation dated either within the 60-day period preceding the determination date or the 60-day period following the request date, the processing entity may use this documentation to determine annual income.

(c) *Rejection of documentation.* The processing entity may reject any income documentation for such reason as HUD may prescribe in applicable administrative instructions.

* * * * *

PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

■ 9. The authority citation for part 92 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12701–12839.

■ 10. Revise § 92.203(d)(1) to read as follows:

§ 92.203 Income determination.

* * * * *

(d)(1) The participating jurisdiction must calculate the annual income of the family based on the actual income being received at the time the participating jurisdiction determines the family is income eligible, projected forward for the 12-month period. If the participating jurisdiction is unable to determine annual income using current information because the family reports little to no income or because income fluctuates, the participating jurisdiction may average past actual income received or earned within the last 12 months before the determination date to calculate annual income. The participating jurisdiction may also request the family to provide documentation of the current income, and if the family can provide acceptable documentation dated either within the 60-day period preceding the determination date or the 60-day period following the request date, the processing entity may use this documentation to determine annual income. Annual income shall include income from all family members. Income or asset enhancement from the HOME-assisted project shall not be considered in calculating annual income.

* * * * *

PART 908—ELECTRONIC TRANSMISSION OF REQUIRED FAMILY DATA FOR PUBLIC HOUSING, INDIAN HOUSING, AND THE SECTION 8 RENTAL CERTIFICATE, RENTAL VOUCHER, AND MODERATE REHABILITATION PROGRAMS

■ 11. The authority citation for part 908 continues to read as follows:

Authority: 42 U.S.C. 1437f, 3535d, 3543, 3544, and 3608a.

■ 12. Revise § 908.101 to read as follows:

§ 908.101 Purpose.

The purpose of this part is to require Public Housing Agencies (PHAs) that operate public housing, Indian housing, or section 8 Rental Certificate, Housing Choice Voucher (HCV), Rental Voucher, and Moderate Rehabilitation programs to electronically submit certain data to HUD for those programs. These electronically submitted data are required for HUD forms HUD–50058, Family Report; and HUD–50058–FSS, Family Self-Sufficiency Addendum. Applicable program entities must retain form HUD–50058 during the term of each assisted lease, and for at least 3 years thereafter, to support billings to HUD and to permit an effective audit. Electronic retention of form HUD–50058 fulfills the retention requirement under this section.

Dated: January 13, 2009.

Roy A. Bernardi,

Deputy Secretary.

[FR Doc. E9–1248 Filed 1–26–09; 8:45 am]

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Federal Register

Tuesday,
January 27, 2009

Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 216

Taking and Importing Marine Mammals; U.S. Navy's Atlantic Fleet Active Sonar Training (AFAST); Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 080724897–81621–02]

RIN 0648–AW90

Taking and Importing Marine Mammals; U.S. Navy's Atlantic Fleet Active Sonar Training (AFAST)

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

ACTION: Final rule.

SUMMARY: NMFS, upon application from the U.S. Navy (Navy), is issuing regulations to govern the unintentional taking of marine mammals incidental to activities conducted off the U.S. Atlantic Coast and in the Gulf of Mexico for the period of January 2009 through January 2014. The Navy's activities are considered military readiness activities pursuant to the Marine Mammal Protection Act (MMPA), as amended by the National Defense Authorization Act for Fiscal Year 2004 (NDAA). These regulations, which allow for the issuance of ''Letters of Authorization'' (LOAs) for the incidental take of marine mammals during the described activities and specified timeframes, prescribe the permissible methods of taking and other means of affecting the least practicable adverse impact on marine mammal species and their habitat, as well as requirements pertaining to the monitoring and reporting of such taking.

DATES: Effective January 22, 2009 through January 22, 2014.

ADDRESSES: A copy of the Navy's application (which contains a list of the references used in this document), NMFS' Record of Decision (ROD), and other documents cited herein may be obtained by writing to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225 or by telephone via the contact listed here (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Jolie Harrison, Office of Protected Resources, NMFS, (301) 713–2289, ext. 166.

SUPPLEMENTARY INFORMATION: Extensive Supplementary Information was provided in the proposed rule for this activity, which was published in the **Federal Register** on Tuesday, October 14, 2008 (73 FR 60754). This information will not be reprinted here in its entirety; rather, all sections from the proposed rule will be represented herein and will contain either a summary of the material presented in the proposed rule or a note referencing the page(s) in the proposed rule where the information may be found. Any information that has changed since the proposed rule was published will be addressed herein. Additionally, this final rule contains a section that responds to the comments received during the public comment period.

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) during periods of not more than five consecutive years each if certain findings are made and regulations are issued or, if the taking is limited to harassment and of no more than 1 year, the Secretary shall issue a notice of proposed authorization for public review.

Authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as:

> An impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The NDAA (Pub. L. 108–136) removed the ''small numbers'' and ''specified geographical region'' limitations and amended the definition of ''harassment'' as it applies to a ''military readiness activity'' to read as follows (Section 3(18)(B) of the MMPA):

> (i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or
>
> (ii) Any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].

Summary of Request

On February 4, 2008, NMFS received an application from the Navy requesting authorization for the take of individuals of 40 species of marine mammals incidental to upcoming Navy training activities, maintenance, and research, development, testing, and evaluation (RDT&E) activities to be conducted within the Atlantic Fleet Active Sonar Training (AFAST) Study Area, which extends east from the Atlantic Coast of the U.S. to 45° W. long. and south from the Atlantic and Gulf of Mexico Coasts to approximately 23° N. lat., but not encompassing the Bahamas (see Figure 1–1 in the Navy's Application), over the course of 5 years. These activities are military readiness activities under the provisions of the NDAA. The Navy states, and NMFS concurs, that these military readiness activities may incidentally take marine mammals present within the AFAST Study Area by exposing them to sound from mid-frequency or high frequency active sonar (MFAS/HFAS) or to employment of the improved extended echo ranging (IEER) system. The IEER consists of an explosive source sonobuoy (AN/SSQ–110A) and an air deployable active receiver (ADAR) sonobuoy (AN/SSQ–101). The Navy requested authorization to take individuals of 40 species of marine mammals by Level B Harassment. Further, though they do not anticipate it to occur, the Navy requests authorization to take, by injury or mortality, up to 10 beaked whales over the course of the 5-yr regulations.

Background of Navy Request

The proposed rule contains a description of the Navy's mission, their responsibilities pursuant to Title 10 of the United States Code, and the specific purpose and need for the activities for which they requested incidental take authorization. The description contained in the proposed rule has not changed (73 FR 60754).

Description of the Specified Activities

The proposed rule contains a complete description of the Navy's specified activities that are covered by these final regulations, and for which the associated incidental take of marine mammals will be authorized in the related LOAs. The proposed rule describes the nature and number of both the anti-submarine warfare (ASW) and mine warfare training (MIW) exercises involving both mid- and high-frequency active sonar (MFAS and HFAS), as well as the IEER exercises involving small explosive detonations. It also describes the sound sources used (73 FR 60754,

pages 60755–60762). The narrative description of the action contained in the proposed rule has not changed, with the exception of the change from IEER to the Advanced Extended Echo Ranging (AEER) discussed below. Tables 1 and 2 summarize the sonar and IEER exercise types used in these training exercises and the hours of sonar.

Navy is developing the AEER system as a replacement to the IEER system. AEER would use a new active sonobuoy (AN/SSQ–125) that utilizes a tonal (or a ping) vice impulsive (or explosive) sound source as a replacement for the AN/SSQ–110A. AEER will still use the ADAR sonobuoy as the systems receiver and will be deployed by Maritime Patrol Aircraft. As AEER is introduced for Fleet use, IEER will be removed. The same total number of buoys will be deployed as were presented in the proposed rule, but a subset of them will be AEER instead of IEER. The small difference in the number of anticipated marine mammal takes that will result from this change is indicated in the take table (Table 6), along with other minor modifications. This small change in the take numbers did not affect NMFS' analysis of and conclusions regarding the proposed action.

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System	Center Frequency (kHz)	Source Level (re 1 μPa)	Associated Platform	System Description	Annual Quantity	Unit
AN/SQS-53	3.5	235	DDG and CG hull-mounted sonar (surface ship)	ASW search, detection, & localization; utilized 70% in search mode and 30% track mode	3214	Hours
AN/SQS-56	7.5	225	FFG hull-mounted sonar (surface ship)	ASW search, detection, & localization; Utilized 70% in search mode and 30% track mode	1684	Hours
AN/SQS-53 and AN/SQS-56 (Kingfisher)	MF	Classified	DDG, CG, and FFG hull-mounted sonar (object detection)	Only used when entering and leaving port	216	Hours
AN/BQQ-5 or 10****	MF	Classified	Submarine hull-mounted sonar	ASW search and attack (approximately one ping per two hours when in use)	9976	Pings
AN/AQS-13	10	215	Helicopter dipping sonar	ASW sonar lowered from hovering helicopter (approximately 10 pings/dip, 30 seconds between pings)	1476	Dips
AN/AQS-22*	4.1	217	Helicopter dipping sonar	ASW sonar lowered from hovering helicopter (approximately 10 pings/dip, 30 seconds between pings)	1476	Dips
MK-48 Torpedo	HF	Classified	Submarine fired exercise torpedo	ASW sonar lowered from hovering helicopter (approximately 10 pings/dip, 30 seconds between pings)	32	Torpedoes
MK-46 or 54 Torpedo	HF	Classified	Surface ship and aircraft fired exercise torpedo	Recoverable and non-explosive exercise torpedo; sonar is active approximately 15 min per torpedo run	24	Torpedoes
Tonal sonobuoy (DICASS) (AN/SSQ-62)	8	201	Helicopter and MPA deployed	Remotely commanded expendable sonar-equipped buoy (approximately 12 pings per use, 30 secs between pings)	5853	Buoys
IEER (AN/SSQ-110A)***	Impulsive - Broadband	Classified	MPA deployed	ASW system consists of explosive acoustic source buoy (contains two 4.1 lb charges) and expendable passive receiver sonobuoy	872***	Buoys
AN/SLQ-25 (NIXIE)	MF	Classified	DDG, CG, and FFG towed array (countermeasure)	Towed countermeasure to avert localization and torpedo attacks (approximately 20 mins per use)	332	Hours
AN/SQQ-32	HF	Classified	MCM over the side system (mine-hunting)	Used during MIW training events detect, classify, and localize bottom and moored mines	4474	Hours
AN/BQS-15	HF	Classified	Submarine navigational sonar	Only used when entering and leaving port	450	Hours
ADC MK-1, MK-2, MK-3, and MK-4 ADCs**	MF	Classified	Submarine deployed countermeasure	Expendable acoustic device countermeasure (approximately 20 mins per use)	225	ADCs
Noise Acoustic Emitters (NAE)	MF	Classified	Submarine deployed countermeasure	Expendable acoustic countermeasure (20 mins per use)	127	NAEs
AN/SSQ-125	MF	Classified	MPA deployed	ASW system consists of active sonobuoy and expendable passive receiver sonobuoy	872***	Buoys

Table 1. Acoustic sources used in AFAST exercises that were modeled for effects on marine mammals

*AN/AQS-22 modeling is representative of all helicopter dipping sonar

**MK-3 modeling is representative of all ADCs

ADC – Acoustic Device Countermeasure; CG – Guided Missile Cruiser; DDG – Guided Missile Destroyer; DICASS – Directional Command-Activated Sonobuoy System; DIFAR – Directional Frequency Analysis and Recording; FFG – Fast Frigate; HF – High-Frequency; IEER – Improved Extended Echo Ranging; kHz – Kilohertz; MCM – Mine Countermeasures; MF – Mid-Frequency; MIW – Mine Warfare; MPA – Maritime Patrol Aircraft

***The AN/SSQ-125 System (AEER) is replacing the AN/SSQ-110A (IEER) system, so a total of 872 buoys (IEER or AEER) will be deployed.

****The AN/BQQ-10 was used to model the AN/BQQ-5

Event Name	Training Event Scenarios	Events per Year*	Length of Overall Event	Possible Event Areas***	Typical Event Area Dimensions	Equipment or Action	Equipment Use or Action per Event	Annual Use per Event Type*
INDEPENDENT UNIT LEVEL TRAINING (INCLUDING RDT&E)								
Surface Ship ASW ULT	One or two surface ships (CG, DDG, and FFG) conducting ASW localization and tracking training.	457	2 to 6 hours	VACAPES, CHPT, JAX/CHASN, and GOMEX OPAREAs	5 NM x 10 NM to 30 NM x 40 NM	Surface ship MFA ASW sonar (AN/SQS-53 or AN/SQS-56)	1 to 2 ships (CG, DDG, or FFG) pinging 1 to 3 hours each	1071 hours AN/SQS-53 and 465 hours AN/SQS-56
						Acoustic countermeasures (AN/SLQ-25 NIXIE, MK-1, MK-2, MK-3, MK-4, or Noise Acoustic Emitter)	2 hours per NIXIE 20 minutes per MK-1, MK-2, MK-3, or MK-4 Noise Acoustic Emitter	158 NIXIE 225 MK-1, MK-2, MK-3, or MK-4 127 Noise Acoustic Emitter
						MK-46 or MK-54 Torpedo	Exercise torpedoes could be used for RDT&E	8 MK-46 or MK-54 exercise torpedoes
						MK-39 EMATT or MK-30 target	1 EMATT or MK-30 (recoverable) per exercise may be used as a target	up to 725 EMATTs expended (total annual use for all exercises)
						Vessel movement	1 to 2 ships maneuvering	Approximately 54 CG, DDG, and FFG surface ships conducting ULT throughout the year
Surface Ship Object Detection ULT	One ship (CG, DDG, and FFG) conducting object detection during transit in/out of port for training and safety during reduced visibility.	108	1 to 2 hours	Sea lanes and Entrance channels to Norfolk, Virginia and Mayport, Florida	5 NM x 10 NM	Surface ship MFA ASW sonar (AN/SQS-53 or AN/SQS-56 Kingfisher) operated in object detection mode	1 ship (CG, DDG, or FFG) pinging for 1 to 2 hours	148 hours AN/SQS-53 and 68 hours AN/SQS-56
						Vessel movement	1 ship maneuvering	Approximately 54 CG, DDG, and FFG surface ships on the East Coast conducting object avoidance twice a year
Helicopter ASW ULT	One helicopter conducting ASW training using dipping sonar or sonobuoys	165	2 to 4 hours	VACAPES, CHPT, and JAX/CHASN OPAREAs	20 NM x 30 NM	Helicopter dipping sonar (AN/AQS-13 or AN/AQS-22)	1 helicopter dipping up to two hours (10 pings per five-minute dip)	160 hours
						Tonal sonobuoy (DICASS) (AN/SSQ-62)	Up to 4 tonal sonobuoys (DICASS)	549 sonobuoys
						Passive sonobuoy (DIFAR) AN/SSQ-53D/E	Number of sonobuoys deployed can vary	up to 27,500 sonobuoys expended (total annual use for all exercises)
						MK-46 or MK-54 Torpedo	exercise torpedoes could be used for RDT&E	8 MK-46 or MK-54 exercise torpedoes
						MK-39 EMATT or MK-30 target	1 EMATT or MK-30 (recoverable) per exercise may be used as a target	up to 725 EMATTs expended (total annual use for all exercises)
Submarine ASW ULT	One submarine conducting ASW and SUW training using passive and active sonar.	100	2 to 3 days	Northeast, VACAPES, CHPT, JAX/CHASN, and GOMEX OPAREAs	30 NM x 40 NM	Submarine MFA sonar (AN/BQQ-10)	1 submarine pinging once per two hours (average 36 pings per event)	3600 pings
						MK-48 Torpedo	Number of exercise torpedoes could be used in a single RDT&E event could vary	32 MK-48 exercise torpedoes
						Vessel movement	1 submarine maneuvering	Approximately 25 submarines on the East Coast conducting ULT throughout the year
						MK-39 EMATT or MK-30 target	1 EMATT or MK-30 (recoverable) per exercise may be used as a target	up to 725 EMATTs expended (total annual use for all exercises)
Submarine ASW ULT						Tactical page buoy	1 tactical page buoy may be depoloyed	up to 60 buoys expended
Submarine Navigational	One submarine operating sonar for navigation and object detection during transit in/out of port during reduced visibility.	300	1 to 2 hours	Sea lanes and entrance channels to Norfolk, Virginia; Groton, Connecticut; and Kings Bay, Georgia	5 NM x 10 NM	Submarine MFA object detection sonar (AN/BQQ-10 or AN/BQS-15)	1 submarine pinging 1 to 2 hours	450 hours
						Vessel movement	1 submarine maneuvering	Approximately 30 submarines on the East Coast conducting ULT throughout the year

Event Name	Training Event Scenarios	Events per Year*	Length of Overall Event	Possible Event Areas***	Typical Event Area Dimensions	Equipment or Action	Equipment Use or Action per Event	Annual Use per Event Type*
MPA ASW ULT (tonal sonobuoy)	One MPA conducting ASW submarine localization and tracking training using tonal sonobuoys.	791	2 to 8 hours	Northeast, VACAPES, CHPT, JAX/CHASN, and GOMEX OPAREAs	30 NM x 30 NM to 60 NM x 60 NM	Tonal sonobuoy (DICASS) (AN/SSQ-62)	Up to 10 tonal sonobuoys (DICASS)	3594 sonobuoys
						Passive sonobuoy (DIFAR)_AN/SSQ-53D/E	Number of sonobuoys deployed can vary	up to 27,500 sonobuoys expended (total annual use for all exercises)
						MK-46 or MK-54 Torpedo	exercise torpedoes could be used for RDT&E	8 MK-46 or 54 exercise torpedoes
						MK-39 EMATT (repeater) and or MK-30 Target	1 EMATT or MK-30 (recoverable) per exercise may be used as a target	up to 725 EMATTs expended (total annual use for all exercises)
MPA ASW ULT (explosive source sonobuoy [AN/SSQ-110A])	One MPA conducting ASW submarine localization and tracking training using explosive source sonobuoy (AN/SSQ-110A).	169	2 to 8 hours	Northeast, VACAPES, CHPT, JAX/CHASN, and GOMEX OPAREAs	60 NM x 60 NM	explosive source sonobuoy (AN/SSQ 110A)	Up to 14 AN/SQ-110A sonobuoys	676 sonobuoys
						receiver (ADAR) sonobuoy (AN/SSQ-101)	Up to 5 AN/SSQ-101 sonobuoys	239 sonobuoys
Surface Ship MIW ULT	One ship (MCM) conducting mine localization training.	266	Less than 24 hours	GOMEX OPAREA	1 NM x 2 NM	Surface ship HFA MIW sonar (AN/SQQ-32)	1 ship (MCM) pinging for 1 to 15 hours	2074 hours of AN/SQQ-32
						Vessel movement	1 to 2 ships maneuvering	Approximately 19 MIW surface ships conducting ULT throughout the year
COORDINATED UNIT LEVEL TRAINING								
Southeastern Anti-Submarine Warfare Integrated Training Initiative (SEASWITI) and similar RDT&E	An exercise with two DDGs, one FFG with embarked helicopter, two submarines, and one MPA	4 training events and similar RDT&E	5 to 7 days	JAX/CHASN OPAREA	30 NM x 30 NM	Surface ship MFA ASW sonar (AN/SQS-53 or AN/SQS-56)	2 to 3 ships (CG, DDG, or FFG) pinging daily for several hours	440 hours AN/SQS-53 200 hours AN/SQS-56
						Helicopter ASW dipping sonar (AN/AQS-13 or AN/AQS-22)	1 helicopter dipping several times daily (10 pings per five-minute dip)	10 hours
						Submarine MFA sonar (AN/BQQ-5 or AN/BQQ-10)	1 submarine pinging up to four times daily	100 pings
						Acoustic countermeasures (AN/SLQ-25 NIXIE, MK-2, MK-3, or Noise Acoustic Emitter)	2 hours per NIXIE 20 minutes per MK-2, MK-3, and Noise Acoustic Emitter	ADCs may be used during the event; annual total ADC expenditure shown under ASW Surface ULT
						Tonal sonobuoy (DICASS) (AN/SSQ-62)	1 MPA dropping up to 8 sonobuoys in one day; 24 sonobuoys for entire	120 tonal sonobuoys (DICASS)
						Passive sonobuoy (DIFAR)_AN/SSQ-53D/E	Number of sonobuoys deployed can vary	up to 27,500 sonobuoys expended (total annual use for all exercises)
						Vessel movement	3 to 4 ships maneuvering	3 to 4 ships maneuvering over 5-7 days, up to four times a year
Integrated ASW Course (IAC)	An exercise with three DDGs, one CG, one FFG, two to three helicopters, one to two submarines, and one MPA	5	2 to 5 days	VACAPES, CHPT, and JAX/CHASN OPAREAs	120NM X 60NM	Surface ship MFA ASW sonar (AN/SQS-53 or AN/SQS-56)	5 ships pinging for up to 10 hours	285 hours AN/SQS-53 100 hours AN/SQS-56
						Helicopter ASW dipping sonar (AN/AQS-13 or AN/AQS-22)	1 helicopter dipping up to one hour (10 pings per five-minute dip)	5 hours AN/AQS-13 or AN/AQS-22
						Submarine MFA sonar (AN/BQQ-5 or AN/BQQ-10)	1-2 submarines pinging up to 6 times each	60 pings
						Acoustic countermeasures (AN/SLQ-25 NIXIE, MK-2, MK-3, or Noise Acoustic Emitter)	2 hours per NIXIE 20 minutes per MK-2, MK-3, and Noise Acoustic Emitter	ADCs may be used during the event; annual total ADCs used shown under ASW Surface ULT
						Tonal sonobuoy (DICASS) (AN/SSQ-62)	Helicopters and/or MPA dropping up to 36 sonobuoys	180 sonobuoys
						Passive sonobuoy (DIFAR)_AN/SSQ-53D/E	Number of sonobuoys deployed can vary	up to 27,500 sonobuoys expended (total annual use for all exercises)

Event Name	Training Event Scenarios	Events per Year*	Length of Overall Event	Possible Event Areas***	Typical Event Area Dimensions	Equipment or Action	Equipment Use or Action per Event	Annual Use per Event Type*
Group Sail	An exercise with two DDGs with embarked helicopters, and one submarine.	20	2 to 3 days	VACAPES, CHPT, and JAX/CHASN OPAREAs	30 NM x 30 NM	Surface ship MFA ASW sonar (AN/SQS-53 or AN/SQS-56)	2-3 ships pinging for several hours	240 hours AN/SQS-53 120 hours AN/SQS-56
						Helicopter ASW dipping sonar (AN/AQS-13 or AN/AQS-22)	1 helicopter dipping up to 6 hours (10 pings per five-minute dip)	60 hours AN/AQS-13 or AN/AQS-22
						Submarine MFA sonar (AN/BQQ-5 or AN/BQQ-10)	1 submarine pinging up to two times	40 pings
						Acoustic countermeasures (AN/SLQ-25 NIXIE, MK-2, MK-3, or Noise Acoustic Emitter)	2 hours per NIXIE 20 minutes per MK-2, MK-3, and Noise Acoustic Emitter	ADCs may be used during the event; annual total ADCs used shown under ASW Surface ULT
						Tonal sonobuoy (DICASS) (AN/SSQ-62)	1 helicopter dropping up to 4 sonobuoys	80 sonobuoys
						Passive sonobuoy (DIFAR)_AN/SSQ-53D/E	Number of sonobuoys deployed can vary	up to 27,500 sonobuoys expended (total annual use for all exercises)
						Vessel movement	3 ships maneuvering	3 ships maneuvering over 5-7 days, up to 20 times a year
Submarine Command Course (SCC) Operations	Two submarines operating against each other as part of the SCC for prospective submarine Commanding Officers.	2	3 to 5 days	NE and JAX/CHASN OPAREAs	30 NM x 50 NM	Submarine MFA sonar (AN/BQQ-5 or AN/BQQ-10)	2 submarines pinging up to 12 times each	48 pings
						Acoustic countermeasures (AN/SLQ-25 NIXIE, MK-2, MK-3, or Noise Acoustic Emitter)	2 hours per NIXIE 20 minutes per MK-2, MK-3, and Noise Acoustic Emitter	ADCs may be used during the event; annual total ADCs used shown under ASW Surface ULT
						Vessel movement	2 submarines maneuvering	Maneuvering twice a year for 3-5 days
RONEX and GOMEX MIW Exercises	One to five MCM ships conducting mine localization training.	8	10 to 15 days	GOMEX OPAREA	20 NM x 20 NM	Surface ship HFA MIW sonar (AN/SQQ-32 and AN/SLQ-48**)	1 to 5 ships (MCM) 60-90 hours each	2,400 hours AN/SQQ-32
						Vessel movement	1 to 5 ships (MCM) maneuvering	1 to 5 ships maneuvering up to 100 days a year
STRIKE GROUP TRAINING								
ESG COMPTUEX and CSG COMPTUEX and similar RDT&E	Intermediate level battle group exercise designed to create a cohesive CSG/ ESG prior to deployment or JTFEX. Three DDGs, one FFG, helicopters, one MPA, and two submarines.	5 training events and similar RDT&E	21 days	VACAPES, CHPT, JAX/CHASN, and GOMEX OPAREAs	60 NM x 120 NM	Surface ship MFA ASW sonar (AN/SQS-53 and AN/SQS-56)	4 ships (CG, DDG, or FFG) pinging approximately 60 hours each over 10 days	740 hours AN/SQS-53 250 hours AN/SQS-56
						Helicopter ASW dipping sonar (AN/AQS-13 or AN/AQS-22)	1 to 4 helicopters (10 pings per five-minute dip) during CSG COMPTUEX	9 hours
						Submarine MFA sonar (AN/BQQ-5 or AN/BQQ-10)	2 submarines pinging up to 16 times each	116 pings
						Acoustic countermeasures (AN/SLQ-25 NIXIE, MK-2, MK-3, or Noise Acoustic Emitter)	2 hours per NIXIE 20 minutes per MK-2, MK-3, and Noise Acoustic Emitter	ADCs may be used during the event; annual total ADCs used shown under ASW Surface ULT
						Tonal sonobuoy (DICASS) (AN/SSQ-62)	MPA and/or helicopter dropping 3 to 10 sonobuoys for a total of up to 218 sonobuoys over duration of event	982 sonobuoys
						Passive sonobuoy (DIFAR)_AN/SSQ-53D/E	Number of sonobuoys deployed can vary	up to 27,500 sonobuoys expended (total annual use for all exercises)
						explosive source sonobuoy (AN/SSQ-110A)	2 MPA dropping up to 14 AN/SQ-110A sonobuoys	140 sonobuoys
						receiver (ADAR) sonobuoy (AN/SSQ-101)	Up to 5 AN/SSQ-101 sonobuoys	49 sonobuoys
						Vessel movement	6 ships (CG, DDG, FFG, or submarine) maneuvering	6 ships maneuvering up to 147 days a year

Event Name	Training Event Scenarios	Events per Year*	Length of Overall Event	Possible Event Areas***	Typical Event Area Dimensions	Equipment or Action	Equipment Use or Action per Event	Annual Use per Event Type*
JTFEX	Final fleet exercise prior to deployment of the CSG and ESG. Serves as a ready-to-deploy certification for all units. Four DDGs, two FFGs, one helicopter, one MPA, and three submarines.	2	10 days	JAX/CHASN and GOMEX OPAREAs	60 NM x 80 NM up to 180 NM x 180 NM	Surface ship MFA ASW sonar (AN/SQS-53 or AN/SQS-56)	6 ships (CG, DDG, FFG) pinging up to 25 hours each	200 hours AN/SQS-53 100 hours AN/SQS-56
						Helicopter ASW dipping sonar (AN/AQS-13 or AN/AQS-22)	1 helicopters dipping for up to one hour (10 pings per five-minute dip)	2 hours
						Submarine MFA sonar (AN/BQQ-5 or AN/BQQ-10)	3 submarines pinging twice each	12 pings
						Acoustic countermeasures (AN/SLQ-25 NIXIE, MK-2, MK-3, or Noise Acoustic Emitter)	2 hours per NIXIE 20 minutes per MK-2, MK-3, and Noise Acoustic Emitter	ADCs may be used during the event; annual total ADCs used shown under ASW Surface ULT
						Tonal sonobuoy (DICASS) (AN/SSQ-62)	1 MPA and/or 1 helicopter dropping 3 to 10 sonobuoys for a total of up to 174 sonobuoys over duration of event	348 sonobuoys
						Passive sonobuoy (DIFAR)_AN/SSQ-53D/E	Number of sonobuoys deployed can vary	up to 27,500 sonobuoys expended (total annual use for all exercises)
						explosive source sonobuoy (AN/SSQ-110A)	2 MPA dropping up to 14 AN/SSQ-110A sonobuoys	56 sonobuoys
						receiver (ADAR) sonobuoy (AN/SSQ-101)	Up to 5 AN/SSQ-101 sonobuoys	20 sonobuoys
						Vessel movement	9 ships (CG, DDG, FFG, or submarine) maneuvering	Up to 9 ships maneuvering for up to 40 days a year
MAINTENANCE								
Surface Ship Sonar Maintenance	Pier side and at-sea maintenance to sonar system.	410	.2 to 4 hours	Northeast, VACAPES, CHPT, and JAX/CHASN, OPAREAs		Surface ship MFA ASW sonar (AN/SQS-53 OR AN/SQS-56)	1 ship (CG, DDG, or FFG) pinging	238 hours AN/SQS-53 449 hours AN/SQS-56
Submarine Sonar Maintenance	Pier side and at-sea maintenance to sonar system.	200	1 hour	Northeast, VACAPES, CHPT, and JAX/CHASN, OPAREAs		Submarine MFA sonar (AN/BQQ-5 or AN/BQQ-10)	1 submarine pinging for up to one hour (60 pings per hour)	6000 pings (100 total hours of active sonar)

* COMPTUEX distribution reflects the typical distribtion of COMPTUEX across OPAREA boundaries.
** All events are considered equally likely to occur at any time during the year, except strike group exercises, which would not occur in the GOMEX OPAREA during hurricane season (summer and fall)

ASW - Antisubmarine warfare; CHPT - Cherry Point; COMPTUEX - Composite Training Unit Exercise; CSG - Carrier Strike Group; ESG - Expeditionary Strike Group; GOMEX - Gulf of Mexico; IAC - Integrated ASW Course; Jax/CHASN - Jacksonville/Charleston; JTFEX - Joint Task Force Exercise; MIW - Mine Warfare; MPA - Maritime Patrol Aircraft; NE - Northeast; OPAREA - Operating Area; RONEX - Squadron Exercise; SCC OPS - Submarine Command Course Operations; SEASWITI - Southeastern Antisubmarine Warfare Integrated Training Initiative; TORPEX - torpedo Exercise; ULT - Unit Level Trianing; VACAPES - Virginia Capes

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AFAST Study Area

The AFAST proposed rule contains a description of the AFAST Study Area along with a description of the areas in which certain types of activities will occur. Table 3, included here, summarizes the areas in which certain exercise types will occur. This section also contains a description of the North Atlantic right whale (NARW) critical habitat and the National Marine Sanctuaries (NMS) within the AFAST Study Area. The description of the AFAST Study Area in the proposed rule has not changed, with the exception of the paragraph relating to the NMSs, below (73 FR 60754, pages 60762–60764).

The paragraph related to NMSs in the proposed rule should be replaced with the following paragraph:

The Navy will not conduct active sonar activities within the Stellwagen Bank, Monitor, Gray's Reef, Flower Garden Banks, and Florida Keys National Marine Sanctuaries and will avoid these sanctuaries by observing a 5-km (2.7-NM) buffer. At all times, the Navy will conduct AFAST activities in a manner that avoids to the maximum extent practicable any adverse impacts on sanctuary resources. In the event the Navy determines AFAST activities, due to operational requirements, are likely to destroy, cause the loss of, or injure any sanctuary resource (for Stellwagen Bank National Marine Sanctuary, the threshold is ''may'' destroy, cause the loss of, or injure), the Navy would first consult with the Director, Office of National Marine Sanctuaries in accordance with 16 U.S.C. 1434(d). Although activities in the Sanctuaries are not planned or anticipated, NMFS' analysis, for purposes of the MMPA considers the effects on marine mammals of the Navy's conducting activities in the biologically important areas that occur in or near Sanctuaries.

	OPAREA					
	NE	VACAPES	CHPT	JAX/CHASN	GOMEX	TOTAL
Independent ULT						
Surface Ship ASW		69	91	292	5	457
Surface Ship Object Detection/Navigational Sonar		68		40		108
Helicopter ASW		25	25	115		165
Submarine ASW	30	10	14	45	1	100
Submarine Object Detection/Navigational Sonar	165	78		57		300
MPA ASW (tonal sonobuoy)	238	79	111	356	7	791
MPA ASW (explosive source sonobuoy)	34	34	34	34	34	170
Surface Ship MIW					266	266
Coordinated ULT						
SEASWITI				4		4
IAC		0.2	1.4	2.4	1	5
Group Sail		3	4	13		20
SCC Operations	0.4			1.6		2
RONEX and GOMEX Exercises					8	8
Strike Group Training						
ESG and CSG COMPTUEX*		0.2	1.4	2.4	1**	5
JTFEX		0.2	0.6	1.2	0	2
Maintenance						
Surface Ship Sonar Maintenance		61	82	263	4	410
Submarine Sonar Maintenance	30	10	14	45	1	100

Table 3. Summary of Activities by Operating Area

Description of Marine Mammals in the Area of the Specified Activities

There are 43 marine mammal species with possible or confirmed occurrence in the AFAST Study Area. As indicated in Table 4, there are 36 cetacean species (7 mysticetes and 29 odontocetes), six pinnipeds, and one sirenian (manatee). Six marine mammal species listed as federally endangered under the Endangered Species Act (ESA) and under the jurisdiction of NMFS occur in the AFAST Study Area: The NARW, humpback whale, sei whale, fin whale, blue whale, and sperm whale. Manatees are managed by the U.S. Fish and Wildlife Service and will not be addressed further here. The proposed rule contains a discussion of two species that are not considered further in the analysis (beluga whales and ringed seals) because of their rarity in the AFAST Study Area. The proposed rule also contains a discussion of important areas, including NARW critical habitat, humpback whale feeding grounds in the northeast, and sperm whale calving and nursing grounds in the Mississippi Delta area. Last, the proposed rule includes a discussion of the methods used to estimate marine mammal density in the AFAST Study Area. The Description of Marine Mammals in the Area of the Specified Activities section has not changed from what was in the proposed rule (73 FR 60754, pages 60766–60767).

Common Name	Scientific Name	ESA Status	Possible Location
Suborder Mysticeti (baleen whales)			
Family Balaenidae (right whales)			
North Atlantic Right Whale	*Eubalaena glacialis*	Endangered	East Coast
Family Balaenopteridae (rorquals)			
Humpback whale	*Megaptera novaeangliae*	Endangered	East Coast
Minke whale	*Balaenoptera acutorostrata*		East Coast
Bryde's whale	*Balaenoptera edeni*		East Coast and Gulf of Mexico
Sei whale	*Balaenoptera borealis*	Endangered	East Coast
Fin whale	*Balaenoptera physalus*	Endangered	East Coast and Gulf of Mexico
Blue whale	*Balaenoptera musculus*	Endangered	East Coast
Suborder Odontoceti (toothed whales)			
Family Physeteridae (sperm whale)			
Sperm whale	*Physeter macrocephalus*	Endangered	East Coast and Gulf of Mexico
Family Kogiidae			
Pygmy sperm whale	*Kogia breviceps*		East Coast and Gulf of Mexico
Dwarf sperm whale	*Kogia sima*		East Coast and Gulf of Mexico
Family Monodontidae (beluga and narwhal whales)			
Beluga whale	*Delphinapterus leucas*		East Coast
Family Ziphiidae (beaked whales)			
Cuvier's beaked whale	*Ziphius cavirostris*		East Coast and Gulf of Mexico
True's beaked whale	*Mesoplodon mirus*		East Coast
Gervais' beaked whale	*Mesoplodon europaeus*		East Coast and Gulf of Mexico
Sowerby's beaked whale	*Mesoplodon bidens*		East Coast
Blainville's beaked whale	*Mesoplodon densirostris*		East Coast and Gulf of Mexico
Northern bottlenose whale	*Hyperoodon ampullatus*		East Coast
Family Delphinidae (dolphins)			
Rough-toothed dolphin	*Steno bredanensis*		East Coast and Gulf of Mexico
Common bottlenose dolphin	*Tursiops truncatus*		East Coast and Gulf of Mexico
Pantropical spotted dolphin	*Stenella attenuate*		East Coast and Gulf of Mexico
Atlantic spotted dolphin	*Stenella frontalis*		East Coast and Gulf of Mexico
Spinner dolphin	*Stenella longirostris*		East Coast and Gulf of Mexico
Clymene dolphin	*Stenella clymene*		East Coast and Gulf of Mexico
Striped dolphin	*Stenella coeruleoalba*		East Coast and Gulf of Mexico
Common dolphin	*Delphinus* spp.		East Coast
Fraser's dolphin	*Lagenodelphis hosei*		East Coast and Gulf of Mexico
Risso's dolphin	*Grampus griseus*		East Coast and Gulf of Mexico
Atlantic white-sided dolphin	*Lagenorhynchus acutus*		East Coast and Gulf of Mexico
White-beaked dolphin	*Lagenorhynchus albirostris*		East Coast and Gulf of Mexico
Melon-headed whale	*Peponocephala electra*		East Coast and Gulf of Mexico
Pygmy killer whale	*Feresa attenuate*		East Coast and Gulf of Mexico
False killer whale	*Pseudorca crassidens*		East Coast and Gulf of Mexico
Killer whale	*Orcinus orca*		East Coast and Gulf of Mexico
Long-finned pilot whale	*Globicephala melas*		East Coast and Gulf of Mexico
Short-finned pilot whale	*Globicephala macrorhynchus*		East Coast and Gulf of Mexico
Family Phocoenidae			
Harbor porpoise	*Phocoena phocoena*		East Coast
Order Carnivora			
Suborder Pinnipedia			
Family Phocidae (true seals)			
Hooded seal	*Cystophora cristata*		East Coast
Harp seal	*Pagophilus groenlandica*		East Coast
Gray seal	*Halichoerus grypus*		East Coast
Harbor seal	*Phoca vitulina*		East Coast
Ringed seal	*Pusa hispida*		East Coast
Walrus	*Odobenus rosmarus*		East Coast
Order Sirenia			
Family Trichechidae (manatees)			
West Indian manatee	*Trichechus manatus*	Endangered	East Coast and Gulf of Mexico

Table 4. Species with possible or confirmed occurrence in the AFAST Study Area

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A Brief Background on Sound

The proposed rule contains a section that provides a brief background on the principles of sound that are frequently referred to in this rulemaking (73 FR 60754, pages 60767–60769). This section also includes a discussion of the functional hearing ranges of the different groups of marine mammals (by frequency) as well as a discussion of the two main sound metrics used in NMFS analysis (sound pressure level (SPL) and sound energy level (SEL)). The information contained in the proposed rule has not changed.

Potential Effects of Specified Activities on Marine Mammals

With respect to the MMPA, NMFS' effects assessment serves four primary purposes: (1) To prescribe the permissible methods of taking (*i.e.*, Level B Harassment (behavioral harassment), Level A Harassment (injury), or mortality, including an identification of the number and types of take that could occur by Level A or B harassment or mortality) and to prescribe other means of affecting the least practicable adverse impact on such species or stock and its habitat (*i.e.*, mitigation); (2) to determine whether the specified activity will have a negligible impact on the affected species or stocks of marine mammals (based on the likelihood that the activity will adversely affect the species or stock through effects on annual rates of recruitment or survival); (3) to determine whether the specified activity will have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (however, there are no subsistence communities that would be affected in the AFAST Study Area, so this determination is inapplicable for this rulemaking); and (4) to prescribe requirements pertaining to monitoring and reporting.

In the Potential Effects of Specified Activities on Marine Mammals section of the proposed rule, NMFS included a qualitative discussion of the different ways that MFAS/HFAS and underwater explosive detonations (IEER) may potentially affect marine mammals (some of which NMFS would not classify as harassment). See 73 FR 60754, pages 60769–60781. Marine mammals may experience direct physiological effects (such as threshold shift), acoustic masking, impaired communications, stress responses, and behavioral disturbance. This section also included a discussion of some of the suggested explanations for the association between the use of MFAS and marine mammal strandings (such as behaviorally mediated bubble growth) that has been observed a limited number of times in certain circumstances (the specific events are also described). See 73 FR 60754, pages 60777–60781. The information contained in Potential Effects of Specified Activities on Marine Mammals section from the proposed rule has not changed, with the exception of the following sentence. On page 60779, NMFS said ''Other species (*Stenella coeruleoalba, Kogia breviceps* and *Balaenoptera acutorostrata*) have stranded, but in much lower numbers and less consistently than beaked whales.'' As a member of the public pointed out, and as NMFS has previously stated, there was no likely association between the minke whale and spotted dolphin strandings referred to here and the operation of MFAS. Therefore, the sentence should read ''Other species, such as *Kogia breviceps*, have stranded in association with the operation of MFAS, but in much lower numbers and less consistently than beaked whales.''

Later, in the Estimated Take of Marine Mammals section, NMFS relates and quantifies the potential effects to marine mammals from MFAS/HFAS and underwater detonation of explosives discussed here to the MMPA definitions of Level A and Level B Harassment. NMFS has also considered the effects of mortality on these species.

Mitigation

In order to issue an incidental take authorization (ITA) under Section 101(a)(5)(A) of the MMPA, NMFS must prescribe regulations setting forth the ''permissible methods of taking pursuant to such activity, and other means of affecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.'' The National Defense Authorization Act (NDAA) of 2004 amended the MMPA as it relates to military readiness activities and the incidental take authorization process such that ''least practicable adverse impact'' shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the ''military readiness activity''. The AFAST activities described in the proposed rule are considered military readiness activities.

NMFS reviewed the Navy's proposed AFAST activities and the proposed AFAST mitigation measures (which the Navy refers to as Protective Measures) presented in the Navy's application to determine whether the activities and mitigation measures were capable of achieving the least practicable adverse effect on marine mammals. NMFS determined that further discussion was necessary regarding: (1) General minimization of marine mammal impacts; (2) minimization of impacts within the southeastern NARW critical habitat; and (3) the potential relationship between the operation of MFAS/HFAS and marine mammal strandings.

Any mitigation measure prescribed by NMFS should be known to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed below:

(a) Avoidance or minimization of injury or death of marine mammals wherever possible (goals b, c, and d may contribute to this goal).

(b) A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to received levels of MFAS/HFAS, underwater detonations, or other activities expected to result in the take of marine mammals (this goal may contribute to a, above, or to reducing harassment takes only).

(c) A reduction in the number of times (total number or number at biologically important time or location) individuals would be exposed to received levels of MFAS/HFAS, underwater detonations, or other activities expected to result in the take of marine mammals (this goal may contribute to a, above, or to reducing harassment takes only).

(d) A reduction in the intensity of exposures (either total number or number at biologically important time or location) to received levels of MFAS/HFAS, underwater detonations, or other activities expected to result in the take of marine mammals (this goal may contribute to a, above, or to reducing the severity of harassment takes only).

(e) A reduction in adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.

(f) For monitoring directly related to mitigation—an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation (shut-down zone, etc.).

NMFS worked with the Navy to identify potential additional practicable and effective mitigation measures, which included a careful balancing of the likely benefit of any particular measure to the marine mammals with

the likely effect of that measure on personnel safety, practicality of implementation, and impact on the ''military-readiness activity.'' NMFS and the Navy developed additional mitigation measures that address the concerns mentioned above, including the development of Planning Awareness Areas (PAAs), additional minimization of impacts in the southeastern NARW critical habitat, and a Stranding Response Plan.

The Navy's proposed mitigation measures, as well as the Planning Awareness Areas (PAAs), additional minimization of impacts in the southeastern NARW critical habitat, and Stranding Response Plan, which are required under these regulations, were described in detail in the proposed rule (73 FR 60754, pages 60781–60789). The Navy's measures address personnel training, lookout and watchstander responsibilities, operating procedures for training activities using both MFAS/HFAS and IEER, additional measures for TORPEXs in the northeastern NARW critical habitat, and mitigation related to vessel traffic and the NARW. No changes have been made to the mitigation measures described in the proposed rule, with the exception of adding that night vision devices shall be available to all ship crews and air crews for use as appropriate and making the IEER mitigation applicable to the newly described AEER system as well. Additionally, the definition for ''Exhibiting Indicators of Distress'', which was originally included in the codified text of the proposed rule, has been removed in the final rule. The definition, which may be found in the AFAST Stranding Response Plan, was not included in the codified text because it could potentially be modified (pursuant to the adaptive management component of the rule) based on new data.

The final AFAST Stranding Response Plan, which includes a shutdown protocol, a stranding investigation plan, and a requirement for Navy and NMFS to implement a memorandum of agreement (MOA) that will establish a framework whereby the Navy can (and provide the Navy examples of how they can best) assist NMFS with stranding investigations in certain circumstances, may be viewed at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*. Additionally, the mitigation measures are included in full in the codified text of the regulations.

NMFS has determined that the Navy's proposed mitigation measures (which include a suite of measures that specifically address vessel transit and the NARW), along with the Planning Awareness Areas (PAAs), additional minimization of impacts in the southeastern NARW critical habitat, and the Stranding Response Plan (and when the Adaptive Management (see Adaptive Management below) component is taken into consideration) are adequate means of effecting the least practicable adverse impacts on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, while also considering personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity. The justification for this conclusion is discussed in the Mitigation Conclusion section of the proposed rule (73 FR 60836, pages 60789–60790). The Mitigation Conclusion Section of the proposed rule has not changed.

Research and Conservation Measures for Marine Mammals

The Navy provides a significant amount of funding and support for marine research. The Navy provided $26 million in Fiscal Year 2008 and plans for $22 million in Fiscal Year 2009 to universities, research institutions, Federal laboratories, private companies, and independent researchers around the world to study marine mammals. Over the past five years the Navy has funded over $100 million in marine mammal research. The Navy sponsors seventy percent of all U.S. research concerning the effects of human-generated sound on marine mammals and 50 percent of such research conducted worldwide. Major topics of Navy-supported research include the following:

- Better understanding of marine species distribution and important habitat areas,
- Developing methods to detect and monitor marine species before and during training,
- Understanding the effects of sound on marine mammals, sea turtles, fish, and birds, and
- Developing tools to model and estimate potential effects of sound.

The Navy's Office of Naval Research currently coordinates six programs that examine the marine environment and are devoted solely to studying the effects of noise and/or the implementation of technology tools that will assist the Navy in studying and tracking marine mammals. The six programs are as follows:

- Environmental Consequences of Underwater Sound,
- Non-Auditory Biological Effects of Sound on Marine Mammals,
- Effects of Sound on the Marine Environment,
- Sensors and Models for Marine Environmental Monitoring,
- Effects of Sound on Hearing of Marine Animals, and
- Passive Acoustic Detection, Classification, and Tracking of Marine Mammals.

The Navy has also developed the technical reports referenced within this document and the AFAST EIS, such as the Marine Resource Assessments. Furthermore, research cruises by NMFS and by academic institutions have received funding from the U.S. Navy.

The Navy has sponsored several workshops to evaluate the current state of knowledge and potential for future acoustic monitoring of marine mammals. The workshops brought together acoustic experts and marine biologists from the Navy and other research organizations to present data and information on current acoustic monitoring research efforts and to evaluate the potential for incorporating similar technology and methods on instrumented ranges. However, acoustic detection, identification, localization, and tracking of individual animals still requires a significant amount of research effort to be considered a reliable method for marine mammal monitoring. The Navy supports research efforts on acoustic monitoring and will continue to investigate the feasibility of passive acoustics as a potential mitigation and monitoring tool.

Overall, the Navy will continue to fund ongoing marine mammal research, and is planning to coordinate long term monitoring/studies of marine mammals on various established ranges and operating areas. The Navy will continue to research and contribute to university/external research to improve the state of the science regarding marine species biology and acoustic effects. These efforts include mitigation and monitoring programs; data sharing with NMFS and via the literature for research and development efforts; and future research as described previously.

Long-Term Prospective Study

Apart from this final rule, NMFS, with input and assistance from the Navy and several other agencies and entities, will perform a longitudinal observational study of marine mammal strandings to systematically observe and record the types of pathologies and diseases and investigate the relationship with potential causal factors (*e.g.*, sonar, seismic, weather). The proposed rule contained an outline of the proposed

study (73 FR 60754, pages 60790–60791). No changes have been made to the longitudinal study as described in the proposed rule.

Monitoring

In order to issue an ITA for an activity, Section 101(a)(5)(A) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking''. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for LOAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present.

Monitoring measures prescribed by NMFS should accomplish one or more of the following general goals:

(a) An increase in the probability of detecting marine mammals, both within the safety zone (thus allowing for more effective implementation of the mitigation) and in general to generate more data to contribute to the effects analyses.

(b) An increase in our understanding of how many marine mammals are likely to be exposed to levels of MFAS/HFAS (or explosives or other stimuli) that we associate with specific adverse effects, such as behavioral harassment, TTS, or PTS.

(c) An increase in our understanding of how marine mammals respond (behaviorally or physiologically) to MFAS/HFAS (at specific received levels), explosives, or other stimuli expected to result in take and how anticipated adverse effects on individuals (in different ways and to varying degrees) may impact the population, species, or stock (specifically through effects on annual rates of recruitment or survival).

(d) An increased knowledge of the affected species.

(e) An increase in our understanding of the effectiveness of certain mitigation and monitoring measures.

(f) A better understanding and record of the manner in which the authorized entity complies with the incidental take authorization.

Proposed Monitoring Plan for AFAST Study Area

As NMFS indicated in the proposed rule, the Navy has (with input from NMFS) fleshed out the details of and made improvements to the AFAST Monitoring Plan. Additionally, NMFS and the Navy have incorporated a recommendation from the public, which recommended the Navy hold a workshop to discuss the Navy's Monitoring Plan (*see* Monitoring Workshop section). The final AFAST Monitoring Plan, which is summarized below, may be viewed at *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*. The Navy plans to implement all of the components of the Monitoring Plan: however, only the marine mammal components (not the sea turtle components) will be required by the MMPA regulations and associated LOAs.

The Monitoring Plan for AFAST has been designed as a collection of focused ''studies'' (described fully in the AFAST Monitoring Plan) to gather data that will allow the Navy to address the following questions:

(a) Are marine mammals exposed to MFAS, especially at levels associated with adverse effects (*i.e.*, based on NMFS'criteria for behavioral harassment, TTS, or PTS)? If so, at what levels are they exposed?

(b) If marine mammals are exposed to MFAS in the AFAST Study Area, do they redistribute geographically as a result of continued exposure? If so, how long does the redistribution last?

(c) If marine mammals are exposed to MFAS, what are their behavioral responses to various received levels?

(d) Is the Navy's suite of mitigation measures for MFAS (*e.g.*, measures agreed to by the Navy through permitting) effective at avoiding TTS, injury, and mortality of marine mammals?

Data gathered in these studies will be collected by qualified, professional marine mammal biologists that are experts in their field. They will use a combination of the following methods to collect data:

- Contracted vessel and aerial surveys.
- Passive acoustics.
- Marine mammal observers on Navy ships.

In the four proposed study designs (all of which cover multiple years), the above methods will be used separately or in combination to monitor marine mammals in different combinations before, during, and after training activities utilizing MFAS/HFAS. Table 7 contains a summary of the Monitoring effort that is planned for each study in each year.

This monitoring plan has been designed to gather data on all species of marine mammals that are observed in the AFAST study area. The Plan recognizes that deep-diving and cryptic species of marine mammals such as beaked whales have a low probability of detection (Barlow and Gisiner, 2006). Therefore, methods will be utilized to attempt to address this issue (*e.g.*, passive acoustic monitoring).

North Atlantic right whales will also be given particular attention during monitoring in the AFAST study area, although monitoring methods will be the same for all species. Within the AFAST study area, the Northwestern Atlantic provides unique breeding and calving habitat for NARW, and as a result, critical habitat has been designated for one calving ground (off Georgia and northern Florida) and two feeding areas (Cape Cod Bay and the Great South Channel). Pursuant to the Monitoring Plan, NARWs will be given particular attention in the form of focal follows (*e.g.* collect behavioral data using the Big Eyes binoculars, and observe the behavior of any animals that are seen) when observed.

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STUDY 1 and 3 (exposures and behavioral responses)	FY08	FY09	FY10	FY11	FY12	FY13
Aerial surveys	Award monitoring contract, develop SOP, obtain permits	SEASWITI, shallow COMPTUEX, or ULT 30 hours of active sonar	SEASWITI, shallow COMPTUEX, or ULT 30 hours of active sonar	SEASWITI, shallow COMPTUEX, or ULT 30 hours of active sonar	SEASWITI, shallow COMPTUEX, or ULT 30 hours of active sonar	SEASWITI, shallow COMPTUEX, or ULT 30 hours of active sonar
Marine Mammal Observers	Opportunistic as staff and SOP developed	SEASWITI or ULT - 60 hours	SEASWITI or ULT - 60 hours	SEASWITI or ULT - 60 hours	SEASWITI or ULT - 60 hours	SEASWITI or ULT - 60 hours
Vessel surveys (study 3 only)	Award monitoring contract, develop SOP	SEASWITI, shallow COMPTUEX, or ULT-100 hours	SEASWITI, shallow COMPTUEX, or ULT-100 hours	SEASWITI, shallow COMPTUEX, or ULT-100 hours	SEASWITI, shallow COMPTUEX, or ULT-100 hours	SEASWITI, shallow COMPTUEX, or ULT 100 hours
STUDY 2 (geographic redistribution)	**FY08**	**FY09**	**FY10**	**FY11**	**FY12**	**FY13**
Aerial surveys before and after training events	SEASWITI, shallow COMPTUEX, or ULT-24 hours	SEASWITI, shallow COMPTUEX, or ULT-40 hours	SEASWITI, shallow COMPTUEX, or ULT-40 hours	SEASWITI, shallow COMPTUEX, or ULT-40 hours	SEASWITI, shallow COMPTUEX, or ULT-40 hours	SEASWITI, shallow COMPTUEX, or ULT-40 hours
Onslow Bay Aerial surveys	100 hours	100 hours	100 hours	100 hours	100 hours	100 hours
Onslow Bay Shipboard surveys	125 hours	125 hours	125 hours	125 hours	125 hours	125 hours
Jacksonville Aerial surveys		100 hours	100 hours	100 hours	100 hours	100 hours
Jacksonville Shipboard surveys		125 hours	125 hours	125 hours	125 hours	125 hours
Passive Acoustics	Award monitoring contract 1 HARP in place and use of pop-up buoys for exercise monitoring Begin recording	Installation of remaining 3 HARPS (4 total) and use of pop-up buoys for exercise monitoring Begin recording and data analysis	Continue recording and data analysis	Continue recording and data analysis	Continue recording and data analysis	Continue recording and data analysis
Study 4 (mitigation effectiveness)	**FY08**	**FY09**	**FY10**	**FY11**	**FY12**	**FY13**
Marine mammal observers/lookout comparison	SEASWITI or ULT-24 hours	SEASWITI or ULT-40 hours	SEASWITI or ULT-40 hours	SEASWITI or ULT-40 hours	SEASWITI or ULT-40 hours	SEASWITI or ULT-40 hours
Aerial surveys before and after training events	SEASWITI, shallow COMPTUEX, or ULT-40 hours	SEASWITI, shallow COMPTUEX, or ULT-40 hours	SEASWITI, shallow COMPTUEX, or ULT-40 hours	SEASWITI, shallow COMPTUEX, or ULT-40 hours	SEASWITI, shallow COMPTUEX, or ULT-40 hours	SEASWITI, shallow COMPTUEX, or ULT-40 hours

Table 5. Summary of planned monitoring effort

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Monitoring Workshop

During the public comment period on the AFAST proposed rule (as well as the Hawaii Range Complex and Southern California Range Complex proposed rules), NMFS received a comment which, in consultation with the Navy, we have chosen to incorporate into the final rule (in a modified form). One commenter recommended that a workshop or panel be convened to solicit input on the monitoring plan from researchers, experts, and other interested parties. The AFAST proposed rule included an adaptive management component and both NMFS and the Navy believe that a workshop would provide a means for Navy and NMFS to consider input from participants in determining whether or how to modify monitoring techniques to more effectively accomplish the goals of monitoring set forth earlier in the document. NMFS and the Navy believe that this workshop concept is valuable in relation to all of the Range Complexes and major training exercise rules and LOAs that NMFS is working on with the Navy at this time, and consequently this single Monitoring Workshop will be included as a component of all of the rules and LOAs that NMFS will be processing for the Navy in the next year or so.

The Navy, with guidance and support from NMFS, will convene a Monitoring Workshop, including marine mammal and acoustic experts as well as other interested parties, in 2011. The Monitoring Workshop participants will review the monitoring results from the previous two years of monitoring pursuant to the AFAST rule as well as monitoring results from other Navy rules and LOAs (*e.g.*, the Southern California Range Complex (SOCAL), Hawaii Range Complex (HRC), and other rules). The Monitoring Workshop participants would provide their individual recommendations to the Navy and NMFS on the monitoring plan(s) after also considering the current science (including Navy research and development) and working within the framework of available resources and feasibility of implementation. NMFS and the Navy would then analyze the input from the Monitoring Workshop participants and determine the best way forward from a national perspective. Subsequent to the Monitoring

Workshop, modifications would be applied to monitoring plans as appropriate.

Integrated Comprehensive Monitoring Program

In addition to the Monitoring Plan for AFAST, the Navy will complete the Integrated Comprehensive Monitoring Program (ICMP) Plan by the end of 2009. The ICMP will provide the overarching coordination that will support compilation of data from project-specific monitoring plans (*e.g.*, AFAST Monitoring Plan) as well as Navy funded research and development (R&D) studies. The ICMP will coordinate the monitoring programs progress towards meeting its goals and develop a data management plan. The ICMP will be evaluated annually to provide a matrix for progress and goals for the following year, and will make recommendations on adaptive management for refinement and analysis of the monitoring methods.

The primary objectives of the ICMP are to:

- Monitor and assess the effects of Navy activities on protected species;
- Ensure that data collected at multiple locations is collected in a manner that allows comparison between and among different geographic locations;
- Assess the efficacy and practicality of the monitoring and mitigation techniques;
- Add to the overall knowledge-base of marine species and the effects of Navy activities on marine species.

The ICMP will be used both as: (1) A planning tool to focus Navy monitoring priorities (pursuant to ESA/MMPA requirements) across Navy Range Complexes and Exercises; and (2) an adaptive management tool, through the consolidation and analysis of the Navy's monitoring and watchstander data, as well as new information from other Navy programs (*e.g.*, R&D), and other appropriate newly published information.

In combination with the 2011 Monitoring Workshop and the adaptive management component of the AFAST rule and the other planned Navy rules (*e.g.* SOCAL and HRC), the ICMP could potentially provide a framework for restructuring the monitoring plans and allocating monitoring effort based on the value of particular specific monitoring proposals (in terms of the degree to which results would likely contribute to stated monitoring goals, as well the likely technical success of the monitoring based on a review of past monitoring results) that have been developed through the ICMP framework, instead of allocating based on maintaining an equal (or commensurate to effects) distribution of monitoring effort across Range complexes. For example, if careful prioritization and planning through the ICMP (which would include a review of both past monitoring results and current scientific developments) were to show that a large, intense monitoring effort in Hawaii would likely provide extensive, robust and much-needed data that could be used to understand the effects of sonar throughout different geographical areas, it may be appropriate to have other Range Complexes dedicate money, resources, or staff to the specific monitoring proposal identified as ''high priority'' by the Navy and NMFS, in lieu of focusing on smaller, lower priority projects divided throughout their home Range Complexes.

The ICMP will identify:

- A means by which NMFS and the Navy would jointly consider prior years monitoring results and advancing science to determine if modifications are needed in mitigation or monitoring measures to better effect the goals laid out in the Mitigation and Monitoring sections of the AFAST rule.
- Guidelines for prioritizing monitoring projects.
- If, as a result of the workshop and similar to the example described in the paragraph above, the Navy and NMFS decide it is appropriate to restructure the monitoring plans for multiple ranges such that they are no longer evenly allocated (by rule), but rather focused on priority monitoring projects that are not necessarily tied to the geographic area addressed in the rule, the ICMP will be modified to include a very clear and unclassified recordkeeping system that will allow NMFS and the public to see how each Range Complex/project is contributing to all of the ongoing monitoring (resources, effort, money, etc.).

Past Monitoring in AFAST

The proposed rule contained a detailed review of the previous marine mammal monitoring conducted in the AFAST Study Area, which was conducted in compliance with the terms and conditions of multiple biological opinions issued for MFAS training activities (73 FR 60754, pages 60791–60798). No changes have been made to the discussion contained in the proposed rule.

Adaptive Management

The final regulations governing the take of marine mammals incidental to Navy's AFAST exercises contain an adaptive management component. Our understanding of the effects of MFAS/HFAS and explosives on marine mammals is still in its relative infancy, and yet the science in this field continues to improve. These circumstances make the inclusion of an adaptive management component both valuable and necessary within the context of 5-year regulations for activities that have been associated with marine mammal mortality in certain circumstances and locations (though not off the Atlantic Coast of the U.S.). The use of adaptive management will give NMFS the ability to consider new data from different sources to determine (in coordination with the Navy) on an annual basis if mitigation or monitoring measures should be modified or added (or deleted) if new data suggests that such modifications are appropriate (or are not appropriate) for subsequent annual LOAs.

Following are some of the possible sources of applicable data:

- Results from the Navy's monitoring from the previous year (either from AFAST or other locations).
- Findings of the Workshop that the Navy will convene in 2011 to analyze monitoring results to date, review current science, and recommend modifications, as appropriate to the monitoring protocols to increase monitoring effectiveness.
- Compiled results of Navy funded research and development (R&D) studies (presented pursuant to the ICMP, which is discussed elsewhere in this document).
- Results from specific stranding investigations (either from AFAST or other locations, and involving coincident MFAS/HFAS of explosives training or not involving coincident use).
- Results from the Long Term Prospective Study described above.
- Results from general marine mammal and sound research (funded by the Navy (described above) or otherwise).

Mitigation measures could be modified or added (or deleted) if new data suggest that such modifications would have (or do not have) a reasonable likelihood of accomplishing the goals of mitigation laid out in this final rule and if the measures are practicable. NMFS would also coordinate with the Navy to modify or add to (or delete) the existing monitoring requirements if the new data suggest that the addition of (or deletion of) a particular measure would more effectively accomplish the goals of monitoring laid out in this final rule. The reporting requirements associated with this rule are designed to provide

NMFS with monitoring data from the previous year to allow NMFS to consider the data and issue annual LOAs. NMFS and the Navy will meet annually, prior to LOA issuance, to discuss the monitoring reports, Navy R&D developments, and current science and whether mitigation or monitoring modifications are appropriate.

Reporting

In order to issue an ITA for an activity, Section 101(a)(5)(A) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking''. Effective reporting is critical to ensure compliance with the terms and conditions of a LOA, and to provide NMFS and the Navy with data of the highest quality based on the required monitoring.

As NMFS noted in its proposed rule, additional detail has been added to the reporting requirements since they were outlined in the proposed rule. The updated reporting requirements are all included below. A subset of the information provided in the monitoring reports may be classified and not releasable to the public.

NMFS will work with the Navy to develop tables that allow for efficient submission of the information required below.

General Notification of Injured or Dead Marine Mammals

Navy personnel will ensure that NMFS (regional stranding coordinator) is notified immediately (or as soon as operational security allows) if an injured or dead marine mammal is found during or shortly after, and in the vicinity of, any Navy training exercise utilizing MFAS, HFAS, or underwater explosive detonations. The Navy will provide NMFS with species or description of the animal(s), the condition of the animal(s) (including carcass condition if the animal is dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available). The Stranding Response Plan contains more specific reporting requirements for specific circumstances.

Annual AFAST Monitoring Plan Report

The Navy shall submit a report annually on October 1 describing the implementation and results (through August 1 of the same year) of the AFAST Monitoring Plan, described above. Data collection methods will be standardized across range complexes to allow for comparison in different geographic locations. Although additional information will also be gathered, the marine mammal observers (MMOs) collecting marine mammal data pursuant to the AFAST Monitoring Plan shall, at a minimum, provide the same marine mammal observation data required in the MFAS/HFAS major Training Exercises section of the Annual AFAST Exercise Report referenced below.

The AFAST Monitoring Plan Report may be provided to NMFS within a larger report that includes the required Monitoring Plan Reports from multiple Range Complexes.

Annual AFAST Exercise Report

The Navy will submit an Annual AFAST Exercise Report on October 1 of every year (covering data gathered through August 1). This report shall contain the subsections and information indicated below.

MFAS/HFAS Major Training Exercises

This section shall contain the following information for the following Coordinated and Strike Group exercises, which for simplicity will be referred to as major training exercises for reporting (MTERs): Southeastern ASW Integrated Training Initiative (SEASWITI), Integrated ASW Course (IAC), Composite Training Unit Exercises (COMPTUEX), and Joint Task Force Exercises (JTFEX) conducted in AFAST:

(a) Exercise Information (for each MTER):

(i) Exercise designator.

(ii) Date that exercise began and ended.

(iii) Location.

(iv) Number and types of active sources used in the exercise.

(v) Number and types of passive acoustic sources used in exercise.

(vi) Number and types of vessels, aircraft, etc., participating in exercise.

(vii) Total hours of observation by watchstanders.

(viii) Total hours of all active sonar source operation.

(ix) Total hours of each active sonar source (along with explanation of how hours are calculated for sources typically quantified in alternate way (buoys, torpedoes, etc.)).

(x) Wave height (high, low, and average during exercise).

(b) Individual marine mammal sighting info (for each sighting in each MTER):

(i) Location of sighting.

(ii) Species (if not possible—indication of whale/dolphin/pinniped).

(iii) Number of individuals.

(iv) Calves observed (y/n).

(v) Initial Detection Sensor.

(vi) Indication of specific type of platform observation made from (including, for example, what type of surface vessel, *i.e.*, FFG, DDG, or CG).

(vii) Length of time observers maintained visual contact with marine mammal(s).

(viii) Wave height (in feet).

(ix) Visibility.

(x) Sonar source in use (y/n).

(xi) Indication of whether animal is <200yd, 200–500yd, 500–1000yd, 1000–2000yd, or >2000yd from sonar source in (x) above.

(xiii) Mitigation Implementation—Whether operation of sonar sensor was delayed, or sonar was powered or shut down, and how long the delay was.

(xiv) If source in use (x) is hullmounted, true bearing of animal from ship, true direction of ship's travel, and estimation of animal's motion relative to ship (opening, closing, parallel)

(xv) Observed behavior—Watchstanders shall report, in plain language and without trying to categorize in any way, the observed behavior of the animals (such as animal closing to bow ride, paralleling course/speed, floating on surface and not swimming, etc.)

(c) An evaluation (based on data gathered during all of the MTERs) of the effectiveness of mitigation measures designed to avoid exposing marine mammals to MFAS. This evaluation shall identify the specific observations that support any conclusions the Navy reaches about the effectiveness of the mitigation.

ASW Summary

This section shall include the following information as summarized from both MTERs and non-major training exercises:

(i) Total annual hours of each type of sonar source (along with explanation of how hours are calculated for sources typically quantified in alternate way (buoys, torpedoes, etc.))

(iv) *Cumulative Impact Report*—To the extent practicable, the Navy, in coordination with NMFS, shall develop and implement a method of annually reporting non-major (*i.e.*, other than MTERs) training exercises utilizing hull-mounted sonar. The report shall present an annual (and seasonal, where practicable) depiction of non-major training exercises geographically across the AFAST Study Area. To the extent practicable, this report will also include the total number of sonar hours (from helicopter dipping sonar and object detection exercises) conducted within the southern NARW critical habitat plus 5 nm buffer area). The Navy shall include (in the AFAST annual report) a brief annual progress update on the

status of the development of an effective and unclassified method to report this information until an agreed-upon (with NMFS) method has been developed and implemented.

Improved Extended Echo-Ranging System (IEER)/Advanced Extended Echo-Ranging System (AEER) Summary

This section shall include an annual summary of the following IEER and AEER information:

(i) Total number of IEER and AEER events conducted in AFAST Study Area

(ii) Total expended/detonated rounds (buoys).

(iii) Total number of self-scuttled IEER rounds.

Sonar Exercise Notification

The Navy shall submit to the NMFS Office of Protected Resources (specific contact information to be provided in LOA) either an electronic (preferably) or verbal report within fifteen calendar days after the completion of any MTER indicating:

(1) Location of the exercise.

(2) Beginning and end dates of the exercise.

(3) Type of exercise.

AFAST 5-Yr Comprehensive Report

The Navy shall submit to NMFS a draft report that analyzes and summarizes all of the multi-year marine mammal information gathered during ASW and IEER exercises for which annual reports are required (Annual AFAST Exercise Reports and AFAST Monitoring Plan Reports). This report will be submitted at the end of the fourth year of the rule (November 2012), covering activities that have occurred through June 1, 2012.

Comprehensive National ASW Report

By June 2014, the Navy shall submit a draft National Report that analyzes, compares, and summarizes the active sonar data gathered (through January 1, 2014) from the watchstanders and pursuant to the implementation of the Monitoring Plans for AFAST, SOCAL, the HRC, the Mariana Islands Range Complex, the Northwest Training Range Complex, the Gulf of Alaska, and the East Coast Undersea Warfare Training Range.

The Navy shall respond to NMFS comments and requests for additional information or clarification on the AFAST Comprehensive Report, the Comprehensive National ASW report, the Annual AFAST Exercise Report, or the Annual AFAST Monitoring Plan Report (or the multi-Range Complex Annual Monitoring Plan Report, if that is how the Navy chooses to submit the information) if submitted within 3 months of receipt. These reports will be considered final after the Navy has addressed NMFS' comments or provided the requested information, or three months after the submittal of the draft if NMFS does not comment by then.

Comments and Responses

On October 14, 2008 (73 FR 60754), NMFS published a proposed rule in response to the Navy's request to take marine mammals incidental to military readiness training, maintenance, and RDT&E activities in the AFAST Study Area and requested comments, information and suggestions concerning the request. During the 30-day public comment period, NMFS received comments from 6 private citizens and Senator Benjamin Cardin, comments from the Marine Mammal Commission (MMC), comments from the Maine Department of Marine Resources and the Georgia Department of Natural Resources, and three sets of comments from non-governmental organizations, including, the Natural Resources Defense Council (NRDC) (which commented on behalf of The Humane Society of the United States, the International Fund for Animal Welfare, Whale and Dolphin Conservation Society, Cetacean Society International, Pamlico Tar River Foundation, North Carolinians for Responsible Use of Sonar, League for Coastal Protection, and Ocean Futures Society and its founder Jean-Michel Cousteau), the Cascadia Research Collective (CRC), and the Ocean Mammal and Animal Welfare Institutes. The comments are summarized and sorted into general topic areas and are addressed below. Full copies of the comment letters may be accessed at *http://www.regulations.gov*.

NMFS worked with the Navy to develop MMPA rules and LOAs for the AFAST activities, SOCAL Range Complex, and HRC Range Complex. Many of the issues raised in the public comments for this rule were also raised for SOCAL and the HRC and NMFS considered many of the broader issues in the context of all three of these Navy actions when determining how to address the comments. Responses to public comments on the HRC and SOCAL rules (addressing similar issues identified in the AFAST final rule) were also published in January 2009 and may provide the public with additional detail, if needed.

North Atlantic Right Whales

Comment 1: Several commenters had the following general comments/concerns regarding the way that NMFS' rule analyzed the potential impacts to right whales from sonar:

(a) As the only known calving ground, the southern critical habitat is very important to the survival of the species and commenters were concerned about the level of Navy activity in critical habitat and how it will affect right whales. Some suggested that NMFS should restrict Navy activity within critical habitat.

(b) The specific impacts to and responses of newborn right whale calves and their mothers are unknown and commenters are concerned about the effects of MFAS on this segment of the population. One commenter notes that NMFS has previously indicated that the ''loss of even a single individual right whale may contribute to the extinction of the species,'' and that ''preventing the mortality of one adult female alters the projected outcome.'' 69 FR 30858.

(c) *The waters off of Gulf of Maine:* Cape Cod Bay, Great South Channel, Bay of Fundy, and the Brown's Bank area are primary feeding grounds for the North Atlantic right whale (and other large whale species) and commenters are concerned about impacts. Some commenters recommended minimizing activities in that area.

(d) One commenter stated that although the Navy's DEIS and NMFS' Proposed Rule acknowledge that right whales are expected to occur in the AFAST area, the agencies arbitrarily conclude that no right whales will be injured by the thousands of hours of sonar training exercises per year spanning the entire East Coast and Gulf of Mexico. One commenter further asserts that right whales are hard to detect because they spend the majority of their time below the surface and are often found alone or in pairs, which, combined with rough weather reduces the probability of detection. Also, female right whales with young calves are less mobile than adult whales without young calves and may not be able to avoid sonar sources.

(e) The commenters requested clarification regarding why NMFS believes that ship strikes are unlikely. Commenters further state that the Navy has been involved in ship strikes in the past (specifically, a female NARW and her near-term calf in the mid-Atlantic in 2004.)

Response: Following is NMFS' response to the above comments:

(a) NMFS agrees that the southern critical habitat for the North Atlantic right is very important to the survival of the species. The Navy intends to limit sonar use to a relatively small amount in the southern NARW critical habitat

(see response to comment (1)(e) below). As described in the proposed rule, following are the details of the planned sonar usage in the vicinity of the southern critical habitat:

■ The Navy anticipates conducting approximately 30 helicopter dipping sonar maintenance events (< 1 hr) annually in the NARW critical habitat (and approximately 84 helicopter training exercises in the vicinity of the critical habitat but in deeper waters at least more than 5 nm seaward of the critical habitat boundaries). This means that only a subset of those 30 activities will occur in the critical habitat between Nov 15 and April 15 (approximately 13 if one assumes they are distributed equally throughout the year, for example) and only a subset of the 84 helicopter training exercises would occur near the critical habitat between Nov 15 and April 15 (approximately 34 if one assumes they are distributed equally throughout the year, for example). Note that the source level of a helicopter dipping sonar is approximately 18 dB less than that of a surface sonar source, which means that the ensonified area is on the order of 65 times less (if spherical spreading is assumed). Additionally, the mitigation measures require that the Navy minimize helicopter dipping activities in the critical habitat.

■ The Navy would conduct approximately 40 ship object detection exercises (1–2 hours each) and 57 submarine object detection exercises (1–2 hours each) annually while entering/exiting port (within approximately 1 mile of shore). This means that only a subset of those activities will occur between Nov 15 and April 15, approximately 41 if one assumes they are distributed equally throughout the year, for example. Additionally, mitigation measures indicate that the Navy shall reduce the time spent conducting object detection exercises in the critical habitat, contact FACSFACJAX to obtain latest whale sightings in vicinity of critical habitat, and (to the extent operationally feasible) avoid conducting training in vicinity of recently sighted whales. Ships are required to maneuver to maintain at least 500 yds of separation from any observed whale (consistent with safety of ship).

■ The Navy's model predicted that approximately 20 takes of right whales by behavioral harassment would occur within the southern NARW critical habitat (and no takes by injury or mortality).

Time and area restrictions are one of the most effective ways to reduce impacts to protected species. By planning the limited sonar exercises outlined above and implementing the specific mitigation measures listed, the Navy has minimized, to the extent practicable, the impacts to right whales in the southern critical habitat. NMFS discusses the practicability and benefits of time and area restrictions in the Mitigation EA.

(b) The potential impacts to mother-calf pairs from sonar are specifically discussed in Potential Effects of Specified Activities on Marine Mammals section of the proposed rule. However, as the commenter suggests, the specific effects of MFAS on right whales and their calves are not discussed because NMFS does not possess data to draw any specific conclusions regarding effects. As the commenter suggests, the loss of even one right whale would have serious effects on the population; however, as discussed in the proposed rule and above, 20 instances of right whale harassment are expected to occur within the southern right whale critical habitat (over the entire year, not just from November to April) and none of these are modeled to be at injurious levels. Additionally, this take estimate does not account for the mitigation measures discussed in (a) above, which include not approaching right whales within closer than 500 yds and not conducting training within the vicinity of recently sighted whales, when feasible. For these reasons and others (see Negligible Impact section of proposed rule), NMFS was able to determine that the Navy's AFAST activities would have a negligible impact on the species.

(c) The Navy does not plan to conduct any major ASW training exercises using hull-mounted sonar in the Northeast. All of the exercises in the Northeast will consist of smaller scale unit-level exercises predominantly utilizing submarine sonar, active sonobuoys, and torpedoes (see Table 3). In the Northeast, the submarine object detection exercises would occur primarily in the near-shore submarine transiting lanes exiting Groton, Connecticut and Norfolk, Virginia (neither of which are near the important feeding areas the comment refers to). As indicated in the rule, in the Northeast the Navy is largely avoiding conducting any training in the NARW critical habitat, with one exception: Torpedo exercises (a maximum of 32 MK–48 torpedo runs at 15 minutes each or up to 24 lightweight MK–46 or MK–54 torpedoes) would occur in August through December (when right whales are less likely to be present). However, the Navy included extensive TORPEX mitigation measures that were worked out in a previous section 7 consultation with NMFS (see 216.244(a)(1)(xxviii)). Approximately 2000 sonobuoys (with 12 pings, spaced 30 seconds apart) would be used annually. Time and area restrictions are one of the most effective ways to reduce impacts to protected species. Based on the limited sonar exercises outlined above and because of the specific mitigation measures listed, NMFS believes that impacts to right whales and other large whales feeding in important areas in the Northeast will be minimal. NMFS discusses the practicability and benefits of time and area restrictions in the Mitigation EA.

(d) NMFS' rationale for why right whales will not be injured is not arbitrary. Although the Navy is proposing to conduct thousands of hours (approximately 5,000 of hull-mounted) of MFAS operation (see Table 1), several factors need to be considered. For example, the AFAST Study Area comprises over 2,170,175 square nautical miles, the exercises are spread out over the course of a year, and there are only approximately 350 right whales in the population (the number of whales is germane because at the most basic level the potential for injury is directly based on the likelihood that the ensonified area (above threshold) around the MFAS sound sources will overlap with a right whale in space and time—the fewer right whales there are, the less likely this is to happen.) The model predicts 666 exposures to levels above NMFS' acoustic threshold for behavioral harassment, but less than the level associated with PTS (or injury). Acknowledging that right whales may be somewhat harder to detect than other large whales, the Navy's modeled takes, as discussed in the Negligible Impact Analysis section of the proposed rule, do not take any mitigation measures or any likely marine mammal avoidance into consideration. Navy lookouts are specifically trained to detect anomalies in the water around the ship and both the safety of Navy personnel and success in the training exercise depend on the lookout being able to detect objects (or marine mammals) effectively around the ship. The response to Comment 2, below, explains more specifically why injury is not expected.

(e) Regarding ship strikes, the Navy's EIS concluded that based on the implementation of Navy mitigation measures, especially during times of anticipated NARW occurrence, and the relatively low density of Navy ships in the Study Area, the likelihood that a vessel strike would occur is very low (as NMFS indicated in the above comment, the low abundance of NARWs also supports this prediction). In addition to

the standard operating procedures to reduce the likelihood of collisions, which include: (1) Use of lookouts trained to detect all objects on the surface of the water (including marine mammals); (2) reasonable and prudent actions to avoid the close interactions of Navy assets and marine mammals; and (3) maneuvering to keep away from any observed marine mammal, the Navy has issued extensive North Atlantic right whale protective measures for all Fleet Forces training activities (see 216.244(a)(3)). These measures, which were developed with input from NMFS, include additional training requirements, designated areas of caution (where caution includes speed or direction adjustments and avoidance of known groups of right whales when feasible) and additional reporting requirements. NMFS and the Navy believe that the required measures will allow the Navy to avoid colliding with large whales during their specified activities. The Navy neither requested, nor did NMFS grant, authorization for take of right whales from ship strikes incidental to the specified activities.

Regarding the right whale strike in 2004, the commenter is most likely referring to an event that took place on November 17, 2004. On November 17 at about 10:30 am a Navy amphibious assault ship struck a large whale off the Chesapeake Light House. A few hours later, around noon, a fisherman contacted the Virginia Aquarium stranding hotline and reported a live injured large whale with a fresh wound on the tail where the left fluke lobe was missing. On November 24, a dead right whale was necropsied at Ocean Sands, NC. The right whale was a pregnant female and the cause of death was determined to be blood loss owing to a traumatic wound to the left fluke lobe, which was missing, and damage to surrounding tissue and bone. The wound was consistent with that caused by a ship strike. Neither NMFS, nor the Navy can confirm or deny that the dead right whale necropsied on November 24 was the same whale struck by the Navy on November 17.

The USCG and Navy have standing orders to report sightings or collisions. Although the NMFS ship strike database reflects a disproportionately high number of ship strikes attributable to USCG and Navy vessels over the years, this is likely due to the high reporting rate by those agencies relative to other mariners and vessels, rather than a higher incidence of right whale ship strikes by Federal agency vessels. These two Federal agencies are actively involved in large whale protection programs and reporting struck or dead whales to NMFS is part of their standard operating procedures.

Comment 2: One commenter stated that they disagree with NMFS' conclusion that predicted Level B harassment to right whales will likely not occur because ''many animals will likely avoid sonar sources'' and ''Navy monitors would detect these animals prior to approach and implement sonar power-down or shut-down''

Response: NMFS did not predict that Level B harassment of right whales is not likely to occur. As indicated in the rule, NMFS' LOA may authorize up to 666 Level B harassment takes of right whales. NMFS indicates that Level A Harassment (injury) and TTS (one type of Level B Harassment) are unlikely to occur because of: The distance from the source that an animal would need to approach (approximately 10 m for injury and 275–500 m for TTS) to be exposed to levels associated with injury or TTS; the fact that lookouts would detect them at that close distance; the fact that the Navy model (which does not take mitigation or avoidance into consideration) predicted that 0 right whales would be exposed to injurious levels of sound and 7 right whales would be exposed to levels associated with TTS, and; the fact that many (not all) animals avoid sonar. Additionally, the Navy is capable of effectively monitoring a 1,000-meter safety zone using night vision goggles, infrared cameras, and passive acoustic monitoring.

Monitoring and Reporting

Comment 3: One commenter stated: ''The Navy should establish a long-term research program, perhaps conducted by NMFS or by an independent agent, on the distribution, abundance, and population structuring of protected species in the AFAST Study Area, with the goal of supporting adaptive geographic avoidance of high-value habitat.'' Another commenter suggests that the Navy should conduct research and development of technologies to reduce the impacts of active acoustic sources on marine mammals.

Response: The MMPA does not require that recipients of an incidental take authorization conduct research. However, NMFS has incorporated an adaptive management component into the AFAST rule which allows for yearly review of Navy monitoring and current science that could influence (allow for the potential modification of) monitoring and mitigation measures in subsequent LOAs, if appropriate. NMFS' Mitigation EA specifically addresses NMFS' and the Navy's consideration of geographic avoidance of high-value habitat. Separately, the Navy has voluntarily developed and funded a number of research plans that are designed to address technologies to reduce the impacts of active acoustic sources on marine mammals (see Research section).

Comment 4: One commenter states that the Navy should engage in timely and regular reporting to NOAA, state coastal management authorities, and the public to describe and verify use of mitigation measures during testing and training activities.

Response: The Navy will be required to submit annual reports and the unclassified portions of these reports will be made available to the public through a **Federal Register** document announcing the issuance of subsequent LOAs. The reports will include a description of the mitigation measures implemented during major exercises and will also include an evaluation of the effectiveness of any mitigation measure implemented.

Comment 5: One commenter stated that sighting information and other behavioral data (including records of breeding, feeding, interrupted or unusual behavior) obtained by the Navy should be provided to NMFS and other interested organizations.

Response: Both the watchstanders, who are engaged in the Navy activities and responsible for detecting marine mammals for mitigation implementation, and the marine mammal observers (MMOs) implementing the Monitoring Plan, are responsible for recording their behavioral observations (the MMOs in greater detail) and then submitting them to NMFS in the required annual and comprehensive reports. Upon finalization of the reports, NMFS will make them available to the public via the NMFS Web site and through the **Federal Register**.

Comment 6: Sightings of North Atlantic right whales should be reported regardless of the time of year or location to NMFS immediately.

Response: In the southeast Atlantic, the Navy requires that Ships, surfaced subs, and aircraft shall report any NARW sightings to Fleet Area Control and Surveillance Facility (FACSFACJAX), Jacksonville, by the quickest and most practicable means. The sighting report shall include the time, latitude/longitude, direction of movement and number and description of whale (*i.e.*, adult/calf). In the northeast Atlantic, the Navy requires that Ships, surfaced subs, and aircraft shall report any NARW sightings (if the whale is identifiable as a right whale) off the northeastern U.S. to Patrol and

Reconnaissance Wing (COMPATRECONWING). The report shall include the time of sighting, lat/long, direction of movement (if apparent) and number and description of the whale(s). Both FACSFACJAX and COMPATRECONWING then report the information to NMFS. Because there is no NARW critical habitat in the mid-Atlantic region (area is not quite as critical as northeast and southeast) and the whales are less concentrated when migrating through the mid-Atlantic, the Navy does not require NARW reporting in the mid-Atlantic.

Mitigation

Comment 7: One commenter asserts that NMFS' analysis ignores or improperly discounts an array of options that have been considered and imposed by other active sonar users, including avoidance of coastal waters, high-value habitat, and complex topography; the employment of a safety zone more protective than the 1000-yard power-down and 200-yard shutdown accepted by NMFS; general passive acoustic monitoring for whales; special rules for surface ducting and low-visibility conditions; monitoring and shutdown procedures for sea turtles and large schools of fish; and many others. The commenter further provides a detailed list of 31 additional measures that should be considered. Other commenters made additional recommendations of mitigation measures that should be considered, including, especially, time and area closures in right whale calving grounds, feeding grounds, and migration corridors.

Response: NMFS considered a wide range of mitigation options in our analysis, including those listed by the commenters. In order to issue an incidental take authorization (ITA) under Section 101(a)(5)(A) of the MMPA, NMFS must set forth the ''permissible methods of taking pursuant to such activity, and other means of affecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.'' The National Defense Authorization Act (NDAA) of 2004 amended the MMPA as it relates to military-readiness activities (which these Navy activities are) and the incidental take authorization process such that ''least practicable adverse impact'' shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the ''military readiness activity''. NMFS worked with the Navy to identify practicable and effective mitigation measures, which included a careful balancing of the likely benefit of any particular measure to the marine mammals with the likely effect of that measure on personnel safety, practicality of implementation, and impact on the ''military-readiness activity''. NMFS developed an Environmental Assessment (EA) that analyzes a suite of possible mitigation measures in regard to potential benefits for marine mammals (see goals of mitigation in the Mitigation section of this proposed rule) and practicability for the Navy. That EA, which considered all of the measures recommended by these public comments, is currently available on the NMFS Web site (*http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*) and has been relied upon to inform NMFS' MMPA decision.

Comment 8: NRDC recommends prescription of specific mitigation requirements for individual categories (or sub-categories) of testing and training activities, in order to maximize mitigation given varying sets of operational needs. Also, the Navy should require that other nations abide by U.S. mitigation measures when training in the AFAST Study Area, except where their own measures are more stringent.

Response: The Navy's standard protective measures include measures that are specific to certain categories of activities. For example, different exclusion zones are utilized for hull-mounted sonar and dipping sonar, and different range clearance procedures are used for IEER sonobuoy exercises. Pursuant to the Navy's 2000 Policy for Environmental Compliance at Sea, the commander or officer in charge of a major exercise shall provide participating foreign units with a description of the measures to protect the environment required of similar U.S. units as early as reasonable in the exercise planning process and shall encourage them to comply. However, foreign sovereign immune vessels may not be compelled to adopt such mitigation measures.

Comment 9: The Marine Mammal Commission recommends that NMFS modify the Navy's mitigation measures by requiring the Navy to delay resumption of full operational sonar use following a power-down or shutdown for 30 minutes if the sighted animal can be identified to the species level and the species is not deep diving and 60 minutes if it cannot be identified or is known to be a member of a deep-diving species such as sperm and beaked whales. They further recommend that NMFS allow resumption of full operations before the end of the 30-minute period (when the species can be identified and is not a deep diver) or 60-minute period (the species cannot be determined or can be determined but is a deep diver) only when the Navy has good evidence that the marine mammal seen outside the safety zone is the same animal originally sighted within the zone.

Response: NMFS does not concur with the MMC that we should expand the delay (until sonar can be restarted after a shutdown due to a marine mammal sighting) to 60 minutes for deep-diving species for the following reasons:

- The ability of an animal to dive longer than 30 minutes does not mean that it will always do so. Therefore, the 60-minute delay would only potentially add value in instances when animals had remained under water for more than 30 minutes.
- Navy vessels typically move at 10–12 knots (5–6 m/sec) when operating active sonar and potentially much faster when not. Fish *et al.* (2006) measured speeds of 7 species of odontocetes and found that they ranged from 1.4–7.30 m/sec. Even if a vessel was moving at the slower typical speed associated with active sonar use, an animal would need to be swimming near sustained maximum speed for an hour in the direction of the vessel's course to stay within the safety zone of the vessel. Increasing the typical speed associated with active sonar use would further narrow the circumstances in which the 60-minute delay would add value.
- Additionally, the times when marine mammals are deep-diving (*i.e.*, the times when they are under the water for longer periods of time) are the same times that a large portion of their motion is in the vertical direction, which means that they are far less likely to keep pace with a horizontally moving vessel.
- Given that, the animal would need to have stayed in the immediate vicinity of the sound source for an hour and considering the maximum area that both the vessel and the animal could cover in an hour, it is improbable that this would randomly occur. Moreover, considering that many animals have been shown to avoid both acoustic sources and ships without acoustic sources, it is improbable that a deep-diving cetacean (as opposed to a dolphin that might bow ride) would choose to remain in the immediate vicinity of the source. NMFS believes that it is unlikely that a single cetacean would remain in the safety zone of a Navy sound source for more than 30 minutes.

• Last, in many cases, the lookouts are not able to differentiate species to the degree that would be necessary to implement this measure. Plus, Navy operators have indicated that increasing the number of mitigation decisions that need to be made based on biological information is more difficult for the lookouts (because it is not their area of expertise).

Comment 10: The MMC recommends that NMFS work with the Navy to validate the performance of Navy lookouts, to conduct similar testing to validate passive acoustic monitoring methods, and to complete such tests before the Navy proceeds with its AFAST training operations.

Response: Navy lookouts are specifically trained to detect anomalies in the water around the ship and both the safety of Navy personnel and success in the training exercise depend on the lookout being able to detect objects (or marine mammals) effectively around the ship. NMFS has reviewed the Navy's After Action Reports from previous exercises and they show that lookouts are detecting marine mammals, and implementing sonar shutdowns as required. That said, the AFAST Monitoring Plan contains a study in which Navy lookouts will be on watch simultaneously with non-Navy marine mammal observers and their detection rates will be compared. NMFS and the Navy have developed (since the proposed rule) more rigorous reporting requirements that should allow for more meaningful comparisons between Navy lookouts, Navy MMOs, and peer-reviewed data, as well as meaningful comparisons between both occurrence and behavior of marine mammals in the presence and absence of sonar operation. NMFS agrees that the review of post-exercise reports is critical, and through the implementation of the more rigorous reporting requirements that have been laid out in the final rule (versus the proposed rule) we should be able to reach well-supported conclusions regarding the effects of MFAS on marine mammals. Additionally, the regulations and subsequent authorization would require the Navy to provide ''an evaluation (based on data gathered during all of the major training exercises) of the effectiveness of mitigation measures designed to minimize the exposure of marine mammals to mid-frequency sonar. This evaluation shall identify the specific observations that support any conclusions the Navy reaches about the effectiveness of the mitigation included in the authorization.'' Last, the rule contains an adaptive management component that specifies that NMFS and the Navy will meet on an annual basis to evaluate the Navy Reports (on both Navy lookout observations as well as Monitoring Plan reporting) and other new information (such as Navy R & D developments or new science) to ascertain whether mitigation or monitoring modifications are appropriate.

The MMOs conducting the Monitoring pursuant to the Monitoring Plan are professional marine mammal scientists and NMFS does not believe that it is necessary to validate the methods that they use for passive acoustic monitoring. Currently, passive acoustics are used by Navy operators to increase awareness of nearby marine mammals, but are not used to directly trigger mitigation measures. Therefore, NMFS does not believe that a validation of those methods is necessary. Additionally, any systems used in the detection of marine mammals are the same systems used for enemy detection and NMFS is confidant that they are fully operational. NMFS acknowledges the opportunity for improvement via the use of dedicated passive or active sonar to detect marine mammals for mitigation implementation. However, current technology does not allow the Navy to detect, identify, and localize marine mammals and transmit this information to operators real-time while also not substantially reducing the effectiveness of the fast-paced and complicated exercises that the Navy must conduct. The Navy is committed, however, to technological development in the area of marine mammal protection and is currently funding multiple research projects towards this goal (see Research section).

Comment 11: One commenter stated: The Navy's proposed mitigation methods are woefully inadequate. If a marine mammal is spotted and reported within 1,000 yards of the sonar dome the sonar will not be stopped but will be turned down by a mere 6 decibels (from the normal operating level of 235 db) to 229 decibels—still over 10 million times more intense than the Navy's human diver standard of 145 decibels and over a million times more than the noise level received by the animals in the Bahamas incident of 2000.

Response: In order to analyze potential effects to marine mammals from sound it is important to understand the difference between source level (the sound level about 1 meter from the sound source) and received level (the level that an animal hears, which is largely based on how far it is from the source). The commenter is comparing source levels (235 and 229 dB) to a diver standard that is based on received level (as are all of the levels that are referenced by scientists in relation to marine mammal responses). Of note, many odontocete species vocalizations have been recorded in the field and the source levels estimated at above 210 dB, including sperm whales (up to 236 dB), Blainville's and Cuvier's beaked whales, bottlenose dolphins and pantropical and Atlantic spotted dolphins. The ability of the Navy's mitigation measures to avoid injury is discussed in the response to comment #2.

Additionally, the reference to 145 dB is incorrect. The Naval Sea Systems Command Instruction (NAVSEAINST) 3150.2, ''Safe Diving Distances from Transmitting Sonar,'' is the Navy's governing document for human divers in relation to mid-frequency active sonar systems. That instruction provides procedures for calculating safe distances from active sonars. Such procedures are derived from experimental and theoretical research conducted at the Naval Submarine Medical Research Laboratory and the Naval Experimental Diving Unit. Inputs to those procedures include diver dress, type of sonar, and distance from the sonar. The output is represented as a permissible exposure limits (*i.e.*, how long the diver can safely stay at that exposure level). For example, a diver wearing a wetsuit without a hood has a permissible exposure limit of 71 minutes at a distance of 1000 yds from the AN/SQS–53 sonar. That same instruction advises that if the type of sonar is unknown, divers should start 1000 yds from the source and move closer (as needed) to the limits of diver comfort. If an interaction did occur, it is unlikely the active sonar activity would not be conducted close enough to a diver to trigger the permissible exposure limit. Assuming spherical spreading, the 1000 yd distance equates to a receive level of approximately 175 dB.

Of note, if spherical spreading is assumed, turning down the sonar by 6 dB reduces the radial distance to any particular received level by half, which means that the ensonified area is decreased by approximately 75 percent.

Comment 12: One commenter stated: ''According to the Navy's proposed mitigation measures, the sonar will only be shut down when an animal is spotted within 200 yards of the sonar dome. By the time the sonar has traveled that far, it will already have been ensonified for many minutes with noise equivalent to that which caused the Bahamas whales to strand and die. To shut off the sonar when an animal is observed and

reported at 200 yards will already be too late.''

Response: The required powerdown and shutdown zones, if properly implemented, will avoid exposing marine mammals to levels associated with injury and minimize the number of marine mammals exposed to levels associated with TTS (see Mitigation conclusion section of proposed rule). Sonar is not shutdown until or unless an animal approaches within 200 yds, However, if it is sighted at distances greater than 200 yds, the sound will already have been reduced as a result of either a 6-dB (1000 yds) or 10-dB (500 yds) powerdown, which will have notably reduced the levels an animal is exposed to prior to entering the 200-yd safety zone. Separately, as discussed in NMFS' response to comment #13, there is no way to know the levels that the whales in the Bahamas were exposed to that caused them to respond the way that they did.

Comment 13: Several commenters were concerned that visual observation by lookouts would not be effective to detect marine mammals (especially beaked whales, which are only at surface 8 percent of the time and for which the chance of sighting has been calculated at about 2 percent, and especially in anything but calm weather). They were further concerned that, therefore, mitigation would not be effectively implemented and the Navy would not be able to avoid injuring marine mammals, as asserted by NMFS.

Response: As explained in the proposed rule, injury of marine mammals is unlikely to occur because an animal would need to approach to within approximately 10 m of the source to be exposed to levels associated with injury (and animals are likely avoiding both vessels and sound sources at that close distance) combined with the fact that lookouts would likely detect most marine mammals at that close distance. NMFS acknowledges that beaked whales are notably more difficult to detect: however, the Navy model (which does not take mitigation or avoidance into consideration) predicted that 0 beaked whales would be exposed to injurious levels of sound.

Nonetheless, NMFS acknowledges the opportunity for improvement via the use of dedicated passive or active sonar to detect marine mammals for mitigation implementation. However, current technology does not allow the Navy to detect, identify, and localize marine mammals and transmit this information to operators real-time while also not substantially reducing the effectiveness of the fast-paced and complicated exercises that the Navy must conduct. The Navy is committed, however, to technological development in the area of marine mammal protection and is currently funding multiple research projects towards this goal (*see* Research section).

Acoustic Thresholds for TTS and PTS

Comment 14: One commenter asserts that NMFS disregards data gained from actual whale mortalities. The commenter cites to peer-reviewed literature that indicates that sound levels at the most likely locations of beaked whales beached in the Bahamas strandings run far lower than the Navy's threshold for injury here: approximately 150–160 dB re 1 μPa for 50–150 seconds, over the course of the transit. A further modeling effort, undertaken in part by the Office of Naval Research, the commenter states, suggests that the mean exposure level of beaked whales, given their likely distribution in the Bahamas' Providence Channels and averaging results from various assumptions, may have been lower than 140 dB re 1 μPa. Last the commenter suggests that when duration is factored in, evidence would support a maximum energy level (''EL'') threshold for serious injury on the order of 182 dB re 1 μPa2•s, at least for beaked whales.

Response: No one knows where the beaked whales were when they were first exposed to MFAS in the Bahamas or the duration of exposure for individuals (in regards to maximum EL) and, therefore, we cannot accurately estimate the received level that triggered the response that ultimately led to the stranding. Therefore, NMFS is unable to quantitatively utilize any data from this event in the mathematical model utilized to estimate the number of animals that will be ''taken'' incidental to the Navy's proposed action. However, NMFS does not disregard the data. The proposed rule includes a qualitative discussion of the Bahamas stranding and four other strandings that NMFS and the Navy agree were likely attributable to MFAS. These data illustrate a ''worst case scenario'' of the range of potential effects from sonar and the analysis of these strandings supports the Navy's request for authorization to take 10 individuals of several species by mortality over the 5-yr period.

Comment 15: One commenter notes that in the SOCAL proposed rule, NMFS sets its threshold for temporary hearing loss and behavioral effects, or ''temporary threshold shift'' (''TTS''), at 183 dB re 1 μPa^2•s for harbor seals, 204 dB re 1 μPa^2•s for northern elephant seals, and 206 dB re 1 FPa^2•s for California sea lions (73 FR. 60878). However, the commenter notes, in the proposed rule for AFAST, NMFS indicates that the TTS threshold for pinnipeds is 183 dB re 1 μPa^2•s for pinnipeds. NMFS does not explain the difference in thresholds. The commenter makes the same comment for the PTS thresholds (which are 20 dB higher than the TTS thresholds).

Response: As noted in the SOCAL proposed rule, the TTS thresholds are 183 dB re 1 FPa^2•s for harbor seals (and closely related species), 204 dB re 1 μPa2•s for northern elephant seals (and closely related species), and 206 dB re 1 μPa^2•s for California sea lions (and closely related species) (73 FR 60878). The commenter is correct, in the AFAST proposed rule, NMFS did not fully explain that all of the pinniped species that might be exposed to MFAS are ''closely related'' to harbor seals (the thresholds for northern elephant seals and California sea lions are not applicable because these species are not present in the AFAST Study Area). Therefore, the 183 dB SEL is the pinniped threshold applied in AFAST. Accordingly, the AFAST final rule has been amended to clarify this issue and be consistent with the SOCAL final rule. The same answer applies to the comment about PTS thresholds.

Comment 16: The Navy's exclusive reliance on energy flux density as its unit of analysis does not take other potentially relevant acoustic characteristics into account. Reflecting this uncertainty, the Navy should establish a dual threshold for marine mammal injury.

Response: NMFS currently uses the injury threshold recommended by Southall *et al.* (2007) for MFAS. Specifically, NMFS uses the 215-dB SEL sound exposure level threshold (the commenter refers to it as energy flux density level). Southall *et al.* (2007) presents a dual threshold for injury, which also includes a 230-dB peak pressure level threshold. NMFS discussed this issue with the Navy early in the MMPA process and determined that the 215-dB SEL injury threshold was the more conservative of the two thresholds (*i.e.*, the 230-dB peak pressure threshold occurs much closer to the source than the 215-dB SEL threshold) and therefore it was not necessary to consider the 230-dB peak pressure threshold further. For example, an animal will be within the 215-dB SEL threshold and counted as a take before it is exposed to the 230-dB threshold. NMFS concurs with Southall *et al.* (2007), which asserts that for an exposed individual, whichever criterion is exceeded first, the more precautionary of the two measures

should be used as the operative injury criterion.

Comment 17: One commenter states that the calculation of PTS (which is equated to the onset on injury) is based on studies of TTS that, as discussed below, are significantly limited.

Response: NMFS addressed this issue in response to comments 13 through 15.

Behavioral Harassment Threshold

Comment 18: The NRDC submitted a comprehensive critique of the risk function (authored by Dr. David Bain), which NMFS has posted on our Web site (*http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*). NRDC summarized some general limitations of the risk function and included a fairly detailed critique of the specific structure of and parameters chosen for use in the model. Following are some of the general topics addressed in the letter:

- Factors that Dr. Bain thinks should be addressed by the model, such as social interactions and multiple sources.
- Critique of the datasets that NMFS used to populate the risk function (described Level B Harasssment—Risk Function section of the proposed rule): (1) Controlled Laboratory Experiments with Odontocetes (SSC Dataset); (2) Mysticete Field Study (Nowacek *et al.*, 2004), and (3) Odontocet Field Data (Haro Strait—USS Shoup).
- Consideration of some datasets that were considered by NMFS, but not used in the risk function.
- A critique of the parameters (A, B, and K) used in the risk function.
- A sensitivity analysis of the parameters (*i.e.*, takes were modeled while applying variable values for the A, B, and K values).

Dr. Bain included a summary of his concerns and an abbreviated version is included below. Additionally (and not included in the summary), Dr. Bain suggested that the effect of multiple sources may be both different and greater than the effects of fewer sources and provided supporting examples. (comments that were in Dr. Bain's summary, but have been addressed elsewhere in this Comment Response section are not included below):

- In summary, development of a function that recognizes individual variation is a step in the right direction.
- The selected equation is likely to produce underestimates of takes due to asymmetries in the number of individuals affected if parameters are either underestimated or overestimated due to uncertainty. Thus it will be important to use the risk function in a precautionary manner.
- The sensitivity analysis reveals the importance of using as many datasets as possible. First, for historical reasons, there has been an emphasis on high energy noise sources and the species tolerant enough of noise to be observed near them. Exclusion of the rarer datasets demonstrating responses to low levels of noise biases the average parameter values, and hence underestimates effects on sensitive species.
- A similar mistake was made with the right whale data. The level at which 100 percent of individuals responded was used as the value at which 50 percent of individuals responded (B+K). Likewise, the level at which 100 percent of killer whales responded to mid-frequency sonar is less than the value derived for B+K in the HRC SDEIS (Dept. Navy 2008b).
- It is likely that biological B values should be in the range from just detectable above ambient noise to 120 dB re 1 μPa. The resulting mathematical B value could be tens of dB lower, not the 120 dB re 1 μPa proposed. For many species, risk may approach 100 percent in the range from 120–135 dB re 1 μPa, putting K in the 15–45 dB range.
- The A values do not seem well supported by the data, and in any case, are likely to be misleading in social species as the risk function is likely to be asymmetrical with a disproportionate number of individuals responding at low noise levels. Rather than one equation fitting all species well, parameters are likely to be species typical.
- As realistic parameter values are lower than those employed in the HRC SDEIS (Dept. Navy 2008b), AFAST DEIS (Dept. Navy 2008a) and related DEIS's, take numbers should be recalculated to reflect the larger numbers of individuals likely to be taken. The difference between the parameter values estimated here and those used in the SDEIS suggests takes were underestimated by two orders of magnitude.

Response: Many of the limitations outlined in Dr. Bain's document were raised by other commenters and are addressed elsewhere in this Comment and Response Section and will not be addressed again here. Below, NMFS responds to the specific points summarized above.

- *The effects of multiple sources:* Mathematically, the Navy's exposure model has already accounted for takes of animals exposed to multiple sources in the number of estimated takes. NMFS concurs with the commenter, however, in noting that the severity of responses of the small subset of animals that are actually exposed to multiple sources simultaneously could potentially be greater than animals exposed to a single source due to the fact that received level, both SPL and SEL, would be slightly higher and because contextually it could be perceived as more threatening to an animal to receive multiple stimuli coming from potentially multiple directions at once (for example, marine mammals have been shown to respond more severely to sources coming directly towards them, vs. obliquely (Wartzok, 2004)). However, it is also worth noting that according to information provided by the Navy, surface vessels do not typically operate closer than 10–20 miles from another surface vessel (and greater distance is ideal), and other sonar sources, such as dipping sonar and sonobuoys, are almost always used 20 or more miles away from the surface vessel. This means that if the two most powerful sources were operating at the closest distance they are likely to (10 miles), in the worst case scenario, animals that would have been exposed to 150 dB SPL or less (taken from table 16 of the proposed rule) may be exposed to slightly higher levels or to similar levels or less coming from multiple directions.
- *Underestimates of takes due to asymmetries in the number of individuals affected when parameters are underestimated and overestimated due to uncertainty:* The commenter's point is acknowledged. When a sensitivity analysis is conducted and parameters are varied (both higher and lower values used)—the degree of difference in take estimates is much greater when the parameter is adjusted in one direction than in the other, which suggests the way that this generalized model incorporates uncertainty may not be conservative. However, in all cases when the adjustment of the parameter in a certain direction results in a disproportionately (as compared to an adjustment in the other direction) large increase in the number of takes, it is because the model is now estimating that a larger percentage of animals will be taken at greater distances from the source. This risk function is based completely on the received level of sound. As discussed in the proposed rule, there are other contextual variables that are very important to the way that an animal responds to a sound, such as nearness of the source, relative movement (approaching or retreating), or the animals familiarity with the source. Southall *et al.* (2007) indicates that the presence of high-frequency components and a lack of reverberation (which are

indicative of nearness) may be more relevant acoustic cues of spatial relationship than simply exposure level alone. In the AFAST activities, an animal exposed to between 120 and 130 dB may be more than 75 nm from the sonar source. NMFS is not aware of any data that describe the response of any marine mammals to sounds at that distance, much less data that indicate that an animal responded in a way we would classify as harassment at that distance. Because of this, NMFS does not believe it is currently possible or appropriate to modify the model to further address uncertainty if doing so results in the model predicting that much larger numbers of animals will be taken at great distances from the source when we have no data to suggest that that would occur.

• *Using many datasets:* NMFS has explained both in the rule, and then again elsewhere in these comments, why we chose the three datasets we did to define the risk function. As Dr. Bain points out, there are datasets that report marine mammal responses to lower levels of received sound. However, because of the structure of the curve NMFS is using and what it predicts (Level B Harassment), we need datasets that show a response that we have determined qualifies as harassment (in addition to needing a source that is adequately representative of MFAS and reliable specific received level information), which many of the lower level examples do not.

• *50 percent vs. 100 percent response:* Dr. Bain asserts that two of the three datasets (Nowacek *et al.*, 2004 and Haro Strait—USS SHOUP) that NMFS uses to derive the 50 percent response probability in the risk function actually report a 100 percent response at the indicated received levels. For the Haro Strait dataset, a range of estimated received levels at the closest approach to the J Pod were estimated. Given that neither the number of individual exposures or responses were available, the mean of this range was used as a surrogate for the 50 percent response probability in the development of the risk function. For the Nowacek data, NMFS used 139.2 dB, which is the mean of the received levels at which 5 of 6 animals showed a significant response to the signal. However, viewed another way, of 6 animals, one animal did not respond to the signal and the other five responded at received levels of 133 dB, 135 dB, 137 dB, 143 dB, and 148 dB, which means that 3 of the 6 animals (50 percent) showed a significant response at 139.2 dB or less.

• *120 dB basement value:* When the broad array of data reported from exposures across taxa and to varied sources are reviewed, NMFS believes that 120 dB is an appropriate B value for a curve designed to predict responses that rise to the level of an MMPA harassment (not just any response). The available data do not support the commenter's assertion that risk may approach 100 percent in the range from 120–135 dB for many species. For example, the Southall *et al.* (2007) summary of behavioral response data clearly shows, in almost every table (for all sound types), reports of events in which animals showed no observable response, or low-level responses NMFS would not likely consider harassment, in the 120 to 135-dB range. For the species (the harbor porpoise) for which the data do support that assertion, which the Southall *et al.* (2007) paper considers ''particularly sensitive'', NMFS has implemented the use of a species-specific step function threshold of 120 dB SPL.

• *The A value:* Please see the second bullet of this response for the first part of the answer. NMFS concurs with the commenter that species-specific parameters would likely be ideal, however there are not currently enough applicable data to support separate curves for each species. We note, though, that even with species-specific parameters, the context of the exposure will still likely result in a substantive variability of behavioral responses to the same received level by the same species.

• *Recalculation:* For the reasons described in the bullets above in this response, NMFS disagrees with the commenter's assertion that the parameters used in the proposed rule and the EIS are unrealistic and that they result in take estimates that are too small by two orders of magnitude. We do not believe that a recalculation is necessary.

The science in the field of marine mammals and underwater sound is evolving relatively rapidly. NMFS is in the process of revisiting our acoustic criteria with the goal of developing a framework (Acoustic Guidelines) that allows for the regular and scientifically valid incorporation of new data into our acoustic criteria. We acknowledge that this model has limitations, however, the limitations are primarily based on the lack of applicable quantitative data. We believe that the best available science has been used in the development of the criteria used in this and other concurrent Navy rules and that this behavioral harassment threshold far more accurately represents the number of marine mammals that will be taken than the criteria used in the RIMPAC 2006 authorization. We appreciate the input from the public and intend to consider it further as we move forward and develop the Acoustic Guidelines.

Comment 19: One commenter expressed the concern that NMFS blindly relies on TTS studies conducted on 7 captive animals of two species (to the exclusion of copious data on animals in the wild) as a primary source of data for the behavioral harassment threshold. The commenter further asserts that these studies (on highly trained animals that do not represent a normal range of variation within their own species, as they have been housed in a noisy bay for most of their lives) have major deficiencies, which NMFS ignores by using the data.

Response: As mentioned in comment #18, the SSC Dataset (Controlled Laboratory Experiments with Odontocetes) is not the primary source of data for the behavioral harassment threshold; rather, it is one of three datasets (other two datasets are from wild species exposed to noise in the field) treated equally in the determination of the K value (equates to midpoint) of the behavioral risk function. NMFS recognizes that certain limitations may exist when one develops and applies a risk function to animals in the field based on captive animal behavioral data. However, we note that for the SSC Dataset: (1) Researchers had superior control over and ability to quantify noise exposure conditions; (2) behavioral patterns of exposed marine mammals were readily observable and definable; and, (3) fatiguing noise consisted of tonal noise exposures with frequencies contained in the tactical mid-frequency sonar bandwidth. NMFS does not ignore the deficiencies of these data, rather we weighed them against the value of the data and compared the dataset to the other available datasets and decided that the SSC dataset was one of the three appropriate datasets to use in the development of the risk function.

Comment 20: One commenter stated ''NMFS excludes a substantial body of research on wild animals (and some research on other experimental animals as well, within a behavioral experimental protocol). Perhaps most glaringly, while the related DEIS prepared for the Navy's AFAST activities appears to acknowledge the strong sensitivity of harbor porpoises by setting an absolute take threshold of 120 dB (SPL)—a sensitivity that, as NMFS has noted, is reflected in numerous wild and captive animal studies—the agencies improperly fail to include any of these studies in their data set. The result is clear bias, for even if one assumes (for argument's sake) that the

SPAWAR data has value, NMFS has included a relatively insensitive species in setting its general standard for marine mammals while excluding a relatively sensitive one.''

Response: As explained in the Level B Harassment (Risk Function) section of the proposed rule the risk function is based primarily on three datasets (SSC dataset, Nowacek *et al.* (2004), and Haro Strait—USS SHOUP) in which marine mammals exposed to mid-frequency sound sources were reported to respond in a manner that NMFS would classify as Level B Harassment. NMFS considered the ''substantial body of research'' that the commenter refers to but was unable to find other datasets that were suitable in terms of all of the following: The equivalency of the sound source to MFAS, a reported behavioral response that NMFS would definitively consider Level B Harassment, and a received level reported with high confidence. The SSC dataset is only one of three used and, in fact, the other 2 datasets (which are from wild animals—killer whales and North Atlantic right whales) both report behavioral responses at substantively lower levels (*i.e.*, the ''relatively insensitive'' species is not driving the values in the function).

Comment 21: The risk function must take into account the social ecology of some marine mammal species. For species that travel in tight-knit groups, an effect on certain individuals can adversely influence the behavior of the whole. Should those individuals fall on the more sensitive end of the spectrum, the entire group or pod can suffer significant harm at levels below what the Navy would use as the mean. In developing its ''K'' parameter, NMFS must take into account the potential for indirect effects.

Response: The risk function is intended to define the received level of MFAS at which exposed marine mammals will experience behavioral harassment. The issue the commenter raises is related to the Navy's exposure model—not the risk function. However, because of a lack of related data there is no way to numerically address this issue in the model. Although the point the commenter raises could potentially apply, one could also assert that if certain animals in a tight knit group were less sensitive it would have the opposite effect on the group. Additionally, the modeling is based on uniform marine mammal density (distributed evenly over the entire area of potential effect), which does not consider the fact that marine mammals appearing in pods will be easier to detect and therefore the Navy will be more likely to implement mitigation measures that avoid exposing the animals to the higher levels received within 1000 m of the source.

Comment 22: One commenter stated ''NMFS appears to have misused data garnered from the Haro Strait incident—one of only three data sets it considers—by including only those levels of sound received by the ''J'' pod of killer whales when the USS Shoup was at its closest approach. These numbers represent the maximum level at which the pod was harassed; in fact, the whales were reported to have broken off their foraging and to have engaged in significant avoidance behavior at far greater distances from the ship, where received levels would have been orders of magnitude lower. We must insist that NMFS provide the public with the Navy's propagation analysis for the Haro Strait event, which it used in preparing its 2005 Assessment of the incident.''

Response: For the specific application in the risk function for behavioral harassment, NMFS used the levels of sound received by the ''J'' pod when the USS Shoup was at its closest approach because a review of the videotapes and other materials by NMFS detailing the behavior of the animals in relation to the location of the Navy vessels showed that it was after the closest approach of the vessel that the whales were observed responding in a manner that NMFS would classify as ''harassed''. Though animals were observed potentially responding to the source at greater distances, NMFS scientists believed that the responses observed at greater distances were notably less severe and would not rise to the level of MMPA harassment. Though the received levels observed in relation to the lesser responses could be used in some types of analytical tools, the risk continuum specifically requires that we use received sound levels that are representative of when MMPA harassment likely occurred. The Navy's report may be viewed at: *http://www.acousticecology.org/docs/SHOUPNavyReport0204.pdf.*

Comment 23: One commenter asserts that NMFS' threshold is applied in such a way as to preclude any assessment of long-term behavioral impacts on marine mammals. It does not account, to any degree, for the problem of repetition: the way that apparently insignificant impacts, such as subtle changes in dive times or vocalization patterns, can become significant if experienced repeatedly or over time.

Response: NMFS' threshold does not preclude any assessment of long-term behavioral impacts on marine mammals. The threshold is a quantitative tool that NMFS uses to estimate individual behavioral harassment events. Quantitative data relating to long-term behavioral impacts are limited, and therefore NMFS' assessment of long-term behavioral impacts is qualitative in nature (*see* Diel Cycle section in Negligible Impact Analysis section). NMFS' analysis discusses the potential significance of impacts that continue more than 24 hours and/or are repeated on subsequent days and, though it does not quantify those impacts, further indicates that these types of impacts are not likely to occur because of the nature of the Navy's training activities and the large area over which they are conducted.

Effects Analysis

Comment 24: One commenter stated: ''NMFS does not properly account for reasonably foreseeable reverberation effects (as in the Haro Strait incident), giving no indication that its modeling sufficiently represents areas in which the risk of reverberation is greatest.''

Response: The model does indirectly incorporate surface-ducting (surface reverberation), as conditions in the model are based on nominal conditions calculated from a generalized digitalized monthly average. Though the model does not directly consider reverberations, these effects are generally at received levels many orders of magnitude below those of direct exposures (as demonstrated in the Haro Strait analysis associated with bottom reverberation) and thus contribute essentially nothing to the cumulative SEL exposure and would not result in the exposure of an animal to a higher SPL than the direct exposure, which is already considered by the model.

Comment 25: One commenter states that though the numbers of animals that the Navy predicts its proposal will impact are worryingly high, they believe them to be gross underestimates of the real numbers of animals potentially at risk because of the thresholds the Navy is using to predict behavioral disturbance and levels of deafness. The Navy is using 215 dB (re 1 μPa^2-s) as the threshold above which it says permanent deafness (PTS) will occur and 195 dB (re 1 μPa^2-s) as the threshold above which it says temporary deafness (TTS) will occur. Behavioral impacts are predicted based on a dose response function.

Response: Contrary to what the commenter states, in the Model Overestmation section of the proposed rule NMFS clearly explains why the authorized take numbers are likely notably higher than the takes that will actually occur.

To clarify, PTS is not permanent deafness, rather it is permanent threshold shift, which means that the hearing sensitivity has been permanently reduced by a certain amount, which could be a small amount or a larger amount (the longer and higher level the exposure to the sound, the more likely PTS will be of a larger amount). Of note, reduced hearing sensitivity as a simple function of development and aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.*, 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost. There is no empirical evidence that exposure to MFAS/HFAS can cause PTS in any marine mammals; instead the probability of PTS has been inferred from studies of TTS. Similarly, TTS is not temporary deafness, rather a temporary reduction in hearing sensitivity.

Comment 26: NMFS fails to include data from the July 2004 Hanalei Bay event, in which 150–200 melon-headed whales were embayed for more than 24 hours during the Navy's Rim of the Pacific exercise. According to the Navy's analysis, predicted mean received levels (from mid-frequency sonar) inside and at the mouth of Hanalei Bay ranged from 137.9 dB to 149.2 dB. NMFS' failure to incorporate these numbers into its methodology as another data set is not justifiable.

Response: NMFS' investigation of the Hanalei event concluded that there was insufficient evidence to determine causality. There are a number of uncertainties about sonar exposure and other potential contributing factors and assumptions inherent to a reconstruction of events in which sonar was the causative agent that simply preclude this determination. Because of this, NMFS did not use the numbers (137.9–149.2 dB) in our methodology. Additionally, even if NMFS had concluded that MFAS were the causative agent, insufficient evidence exists regarding the received level when the animals responded (there is no information regarding where they were when they would have first heard the sound).

Comment 27: Two commenters noted that little is known about most species of beaked whales and most of that knowledge has come from carcasses, as sightings of live animals are generally rare. With few exceptions, there is almost nothing known about beaked whale population structure, sizes, or trends in the waters off the east coast of the U.S, so determining the impact of the loss of a few individuals to the population is impossible. Since most species are pelagic, there is also no way to know the real number killed in a particular event: not all injured animals strand, and not all carcasses find their way to a beach. There is even less known about non-lethal impacts, such as disruption of mother-calf bonds.

Response: The commenter is correct that relatively little is known about beaked whale population structure, sizes, and trends off the east coast of the U.S. However, we do know that the Navy's ASW exercises are spread throughout the AFAST Study Area (as opposed to focused in an area of known particular importance) and that the Navy is utilizing Planning Awareness Areas (in both exercise planning and implementation, where practicable) to limit takes of marine mammals (including beaked whales) in designated areas of high productivity and steep bathymetric contours, which are frequented by deep diving marine mammals like beaked whales (see Planning Awareness Areas in proposed rule). Comment responses 12 and 36 discuss the likelihood of beaked whales being injured by MFAS. Though not all dead or injured animals are expected to end up on the shore (some may be eaten or float out to sea), we would expect that if marine mammals were being harmed by active sonar with any regularity, more evidence would have been detected over the 40-yr period that the Navy has been conducting sonar in the area (30 of which, people have actively been collecting stranding data). Of note also, the MFAS use covered by this rule is not an increase in the amount of sonar conducted off the east coast and in the Gulf of Mexico (*i.e.*, the amount of use is consistent with historic effort). Last, the potential impacts to cetacean mother-calf pairs from sonar are specifically discussed in Potential Effects of Specified Activities on Marine Mammals section of the proposed rule. However, as the commenter suggests, the specific effects of MFAS on beaked whales and their calves are not discussed because specific data do not exist. For the reasons listed here and described in the Negligible Impact Analysis section of the proposed rule, NMFS has determined that the Navy's action will have a negligible impact on beaked whales.

Comment 28: One commenter noted that the Navy states that it is helping to fund (with NMFS) a series of controlled exposure experiments on wild whales, the first of which took place in the Bahamas in 2007. Yet preliminary results from this experiment support a much lower threshold for behavioral impacts than the Navy is using. In the experiment, only one successful playback experiment on a beaked whale was achieved and in it a tagged Blainville's beaked whale displayed a probable behavioral response at a received level of MFA sonar of 145 dB re 1μPa [rms]. The precautionary principle should be applied and the Navy should, at a minimum, curb its activities around known areas of high marine mammal density and at times when marine animals are expected to be present.

Response: As the commenter notes, the results from the first in the series of behavioral response studies conducted by NMFS and other scientists did show one beaked whale (Mesoplodon densirostris) responding to an MFAS playback. The BRS–07 Cruise report indicates that the playback began when the tagged beaked whale was vocalizing at depth (at the deepest part of a typical feeding dive), following a previous control with no sound exposure. The whale appeared to stop clicking significantly earlier than usual, when exposed to mid-frequency signals in the 130–140 dB (rms) range. After a few more minutes of the playback, when the received level reached a maximum of 140–150 dB, the whale ascended on the slow side of normal ascent rates with a longer than normal ascent, at which point the exposure was terminated. As the commenter noted, the whale displayed a behavioral response: However, further consideration by NMFS is necessary to determine if this behavioral response qualifies as a behavioral harassment pursuant to the MMPA, and if so, how the information should be factored into NMFS' analysis.

The advanced modeling tool that the Navy uses to predict the take of marine mammals incidental to any particular activity takes weeks and sometimes months to produce the take estimates. NMFS worked at length, with input from the Navy and from a panel of marine mammal scientists, to develop and finalize the risk continuum for behavioral harassment. It took months for NMFS to finalize the risk continuum and months for the Navy to calculate the estimated takes based on the current continuum. NMFS and the Navy are working together to bring the Navy's AFAST activities into compliance under the MMPA in advance of the expiration of the MMPA National Defense Exemption, and it was necessary for NMFS to continue moving forward (not wait for new data) in the MMPA process in order to complete the final rule in the needed timeframe to accomplish this. This is not to definitively say that this new information will change the way that NMFS quantitatively analyzes

effects. The interpretation of data presented in the report notes that the results are from a single experiment and that a greater sample size is needed before robust conclusions can be drawn. Also, the results from this study fall under the curve that NMFS is using for behavioral effects (though the low end of the curve). That said, NMFS will carefully consider these results and subsequent BRS results in future analyses.

This final rule contains an adaptive management component that requires a yearly review of monitoring reports and new science and allows for the modification of mitigation and monitoring measures, when appropriate. As noted in the response to comment #30, the Navy currently uses the Planning Awareness Areas (designated based on high productivity and steep bathymetric contour areas) to limit marine mammal impacts during both exercise planning and implementation. Additional detail regarding the potential use of other specific mitigation measures can be found in the Mitigation EA.

Comment 29: NMFS' and the Navy's assessment glosses over stranding events associated with active sonar. Although NMFS briefly discusses stranding events (73 FR 60776–80), the Marine Mammal Protection Act requires NMFS to fully consider the impacts of sonar on marine mammals to determine there is no more than a negligible impact before issuing an incidental take authorization.

Response: NMFS disagrees. The proposed rule contains a detailed discussion of stranding events (those that were merely coincident with MFAS use, as well as those for which the evidence suggests that MFAS exposure was a contributing factor), a detailed discussion of the multiple hypotheses that describe how acoustically-mediated or behaviorally-mediated bubble growth can lead to marine mammal strandings, as well as a comprehensive discussion of the more general potential effects to marine mammals of MFAS exposure. NMFS analyses fully considered the impacts of MFAS use and other naval exercises on marine mammals, which allowed us to determine that the total taking during the five-year period from the specified activities will have a negligible impact on the affected species or stocks.

Comment 30: One commenter states: ''NMFS fails to take proper account of published research on bubble growth in marine mammals, which separately indicates the potential for injury and death at lower [received sound] levels. According to the best available scientific evidence, gas bubble growth is the causal mechanism most consistent with the observed injuries. NMFS' argument to the contrary simply misrepresents the available literature.''

Response: The proposed rule contained a detailed discussion of the many hypotheses involving both acoustically-mediated and behaviorally-mediated bubble growth. NMFS concluded that there is not sufficient evidence to definitively say that any of these hypotheses accurately describe the exact mechanism that leads from sonar exposure to a stranding. Despite the many theories involving bubble formation (both as a direct cause of injury and an indirect cause of stranding), Southall *et al.*, (2007) summarizes that scientific disagreement or complete lack of information exists regarding the following important points: (1) Received acoustical exposure conditions for animals involved in stranding events; (2) pathological interpretation of observed lesions in stranded marine mammals; (3) acoustic exposure conditions required to induce such physical trauma directly; (4) whether noise exposure may cause behavioral reactions (such as atypical diving behavior) that secondarily cause bubble formation and tissue damage; and (5) the extent the post mortem artifacts introduced by decomposition before sampling, handling, freezing, or necropsy procedures affect interpretation of observed lesions.

Comment 31: One commenter stated that NMFS' take estimates do not reflect other non-auditory physiological impacts, such as from chronic exposure during development, stress, and exposure to toxic chemicals.

Response: The commenter is correct that the NMFS' estimated take numbers do not reflect non-auditory physiological impacts because the quantitative data necessary to address those factors in the Navy's exposure model do not exist. However, NMFS acknowledges that a subset of the animals that are taken by harassment will also likely experience non-auditory physiological effects (stress, etc.) and these effects are addressed in the proposed rule (see Stress Responses section). Regarding toxins, the Navy did not expect AFAST activities to result in the production of any toxic chemicals that would affect marine mammals, although the EIS did analyze the potential impacts from torpedo guidance wires, torpedo flex hoses, and parachutes and find that no significant impacts to marine mammals were likely to result from those expended materials. Therefore, the Navy determined that marine mammals would not be taken via the ingestion of toxins or interaction with the aforementioned expended materials and they did not request (nor did NMFS grant) authorization for take of marine mammals via these methods.

Comment 32: The MMC recommends that the Service work with the Navy to prepare a more thorough analysis of potential cumulative effects, the measures that will be taken to avoid or minimize them, and the basis for concluding that those effects will be negligible. They further note that the DEIS, request for a letter of authorization, and proposed rule, do not describe how the effects of the Navy's operations and the effects of other human activities (*e.g.*, ship traffic, commercial fishing) will be assessed and minimized to the extent necessary to avoid an excessive cumulative impact on marine mammals.

Response: NMFS participated as a cooperating agency in the development of the Navy's AFAST EIS and has adopted it to support our issuance of incidental take regulations and LOAs. The FEIS contains a thorough analysis of potential cumulative effects. Throughout the FEIS, within the separate resource sections, the Navy addresses different ways that they will minimize adverse effects. As an agency, NMFS understands the importance of cumulative effects, and we continually look for ways to both better understand and more effectively reduce cumulative effects/impacts on marine mammals and other marine resources through statute implementation (ESA, NEPA, MSA, CZMA, etc.) and more directly through policy and other decisions, such as the implementation of the Right Whale Ship Strike Reduction rule or the convening of the Potential Application of Vessel-Quieting Technology on Large Commercial Vessels meeting in May 2007. However, the MMPA does not require that cumulative effects be factored into NMFS' determination whether to issue an incidental take authorization under the MMPA. Rather, the MMPA states that NMFS ''shall allow * * * the incidental taking * * * if the Secretary * * * finds that the total taking [meaning the taking NMFS authorizes] during each five-year (or less) period concerned will have a negligible impact.''

Comment 33: One commenter felt that the rule discounts the potential impacts on beaked whales from AFAST based on assumptions that are unfounded. The first is that strandings are unlikely to occur because events are not planned ''in a location having a constricted channel less than 35 miles wide or with limited egress similar to the Bahamas (because none exist in the AFAST Study

Area)''. The commenter notes that sonar-associated beaked whale mortalities have occurred in other areas (*e.g.* the Canary Islands in 2002 and 2004) where such bathymetry was not present, suggesting this as not a requisite characteristic for sonar-influenced strandings. The second is the observation that unusual strandings have not been recorded to date in the region is not an indication that mortalities have not occurred. Given that most species of cetaceans sink upon death, and that most beaked whales occur in very deep water which would prevent decomposing carcasses from eventually refloating, it is highly unlikely that whales suffering mortal injury at sea would have been detected. This is especially true in offshore/island regions, where there is limited shoreline throughout much of the operational area, and much of it is steep or rocky and not conducive to holding moribund individuals or carcasses.

Response: The rule does not discount the potential impacts on beaked whales from sonar. NMFS specifically addresses the potential impacts to beaked whales in the ''Acoustically Mediated Bubble Growth'', ''Behaviorally Mediated Responses to MFAS That May Lead to Stranding'', ''Stranding and Mortality'', and ''Association Between Mass Stranding Events and Exposure to MFAS'' sections of the proposed rule. Specifically, in recognition of potential impacts to beaked whales and the scientific uncertainty surrounding the exact mechanisms that lead to strandings, the Navy requested, and NMFS has authorized, the mortality of 10 beaked whales over the course of 5 years in the unlikely event that a stranding occurs as a result of Navy training exercises. Additionally, the commenter is misrepresenting a piece of text from the proposed rule—though NMFS points out that the five factors that contributed to the stranding in the Bahamas are not all present in the AFAST Study Area, we do not say that that alone means strandings are unlikely to occur. We also further suggest that caution is recommended when any of the three environmental factors are present (constricted channels, steep bathymetry, or surface ducts) in the presence of MFAS and beaked whales. Also, NMFS does not ever say that the fact that strandings have not been recorded to date in the region is an indication that mortalities have not occurred. Rather, we say that though not all dead or injured animals are expected to end up on the shore (some may be eaten or float out to sea), one might expect that if marine mammals were being harmed by active sonar with any regularity, more evidence would have been detected over the 40-yr period that the Navy has been conducting sonar in the area (30 of which, people have actively been collecting stranding data).

Comment 34: The MMC recommended that NMFS work with the Navy to provide in the final rule and EIS a side-by-side comparison of the methods each agency used to generate the sound exposure estimates so that reviewers can understand the process by which they were derived and the uncertainties associated with that process, and use that information to assess the risks to marine mammal species and the adequacy of mitigation measures. The MMC also requested an explanation of how NMFS ''revised take estimates and proposed take authorization'' ''depict a more realistic scenario than those adopted directly from the Navy's acoustic analysis.'' Last, MMC notes that they have requested in the past that the Navy submit its sonar exposure model for peer-review.

Response: As indicated in the Estimates of Potential Marine Mammal Exposures and Takes section of the proposed rule, Appendix F of the Navy's AFAST EIS clearly describes the analytical procedures and provides the data used to estimate the number of marine mammal exposures to NMFS acoustic threshold levels in sufficient detail that the reviewers can understand and verify the estimated risks. However, reviewers would not be able to reconstruct the process exactly because inherent to the overall exposure model is the CASS/GRAB submodel, the specific details of which cannot be included in the EIS because the model is a Navy owned, restricted distribution model available only to U.S. Government Agencies and their contractors. This high fidelity acoustic propagation model (CASS/GRAB) used for marine mammal effects analysis is the same model used for the operational use of tactical sonar, and it is included in the Navy's Oceanographic and Atmospheric Master Library (OAML), which has a rigorous acceptance process for all databases, models and algorithms prior to being accepted into OAML.

The Navy provides the numbers of estimated marine mammal exposures to NMFS. These numbers (presented in the ''Navy Modeled Exposure Estimates'' columns of Table 6) do not take into consideration any avoidance of vessels or sound sources by marine mammals or the implementation of mitigation measures. As described in the Mitigation Conclusion section of the proposed rule, when the distance from the sonar source within which an animal would need to approach to be exposed to injurious levels (10 m), the small number of modeled exposures to injurious levels to a few species (of relatively good detectibility: dolphins and pilot whales), the implementation of mitigation measures, and the likelihood that most marine mammals would avoid approaching the source at this distance are taken into consideration, NMFS and the Navy believe that marine mammals will not be injured by sonar exposure. Therefore, NMFS has not authorized any Level A Harassment, with the exception of the 10 beaked whales (by injury or mortality) over the course of the 5-yr regulations, the reasons for which are explained in the Mortality section of the proposed rule. These are the only quantitative adjustments NMFS has made to the authorized takes from the Navy's modeled exposure results. NMFS has directly adopted the Navy's Level B Harassment exposures as modeled, though we qualitatively explain in the proposed rule why we believe these numbers may be an overestimate (see Overestimation section). Additionally, although NMFS is not required to identify the number of animals that will be taken specifically by TTS versus behavioral harassment (Level B Harassment takes include both), we have attempted to make more realistic estimates by quantitatively refining the Navy's TTS estimates based on the same factors listed above for refining the injury estimates (see the Species-specific analysis section). The authorized number of Level B harassment takes remains the same as the number of exposures estimated by the Navy's model.

Last, NMFS' Office of Protected Resources has funded a peer-review of the Navy's exposure model to be conducted by the Center for Independent Experts. The results of this review are scheduled to be available at the end of January, 2009.

Comment 35: One commenter asserts that the Navy's exposure model fails to consider the following important points:

- Possible synergistic effects of using multiple sources in the same exercise, or the combined effects of multiple exercises.
- Indirect effects, such as the potential for mother-calf separation, that can result from short-term disturbance.
- In assuming animals are evenly distributed—the magnifying effects of social structure, whereby impacts on a single animal within a pod, herd, or other unit may affect the entire group.
- In assuming that every whale encountered during subsequent

exercises is essentially a new whale—the cumulative impacts on the breeding, feeding, and other activities of species and stocks.

Response: Though the Navy's model does not quantitatively consider the points listed above (because the quantitative data necessary to include those concepts in a mathematical model do not currently exist), NMFS and the Navy have qualitatively addressed those concerns in their effects analyses in the rule and in the Navy's EIS.

Comment 36: NMFS' (and the Navy's) analysis of marine mammal distribution, habitat abundance, population structure and ecology contains false, misleading or outdated assumptions that tend to both underestimate impacts on species and to impede consideration of reasonable alternatives and mitigation measures. For example, outdated stock assessment data are used as the basis for most density estimates. It also appears that NMFS and the Navy do not consider other sources of published literature. For a number of species, uniform distribution was assumed when calculating density and risk. Although the Navy and NMFS made repeated assurances that this is a conservative approach, it is not. Marine mammals often concentrate in areas with greater density of prey or more favorable topography or currents for migration; thus, assuming a uniform distribution will overestimate presence in some areas and dramatically underestimate it in others.

Another commenter notes that the Navy's analysis of acoustic impacts to marine mammals is through modeling based on abundance estimates which were largely determined from aerial surveys, a difficult way to count marine mammals, especially relatively small animals and those that dive for prolonged periods such as beaked whales—the very animals thought to be most susceptible to anthropogenic ocean noise.

Response: The most current stock assessment reports (Waring *et al.*, 2007) were used to calculate density estimates. As summarized in the proposed rule and described more fully in the Navy's FEIS, the Navy used the best data and methods available to calculate density, including other literature as well as habitat modeling that considered bathymetry, distance from shelf break, sea surface temperature, and Chlorophyll A concentration. All spatial models and density estimates were reviewed by NMFS technical staff. The Navy's model utilizes uniform density, but it also divides the east coast into meaningful sections, such as on-shelf and off-shelf and the different OPAREAS. Using a uniform density is a form of averaging and the commenter has provided no support for why the model would ''overestimate'' sometimes and ''dramatically underestimate'' in others (all else being equal, a uniform distribution should do these two things in equal amounts).

Beaked whale densities in the SE (and seaward of the shelf break in the NE) were derived through the spatial model approach which took environmental and habitat parameters into consideration. These models were built using only shipboard survey data from 1998 through 2005 collected and provided by NMFS. For areas in the NE shoreward of the shelf break, beaked whale density was actually calculated by Palka (Palka, 2005) based on geographic strata provided by Navy. These estimates were developed using data from both shipboard and aerial surveys conducted by the NEFSC. Density data provided by Palka incorporated estimates of g(0) (correction factor that incorporates sightability) as discussed in Palka 2005.

Comment 37: One commenter states that NMFS does not consider the potential for acute synergistic [indirect] effects from sonar training. For example, the agency does not consider the greater susceptibility to vessel strike of animals that have been temporarily harassed or disoriented. The absence of analysis is particularly glaring in light of the 2004 Nowacek *et al.* study, which indicates that mid-frequency sources provoke surfacing and other behavior in North Atlantic right whales that increases the risk of vessel strike.

Response: In the proposed rule, NMFS refers the reader to a conceptual framework that illustrates the variety of avenues of effects that can result from sonar exposure, to include ''risk prone behavior'' resulting somewhat indirectly from attempting to avoid certain received levels. Though we consider the potential for this type of interaction, NMFS does not include detailed analysis of potential indirect effects that have not been empirically demonstrated. Though Nowacek showed that right whales responded to a signal with mid-frequency components (not an actual MFAS signal) in a way that appeared likely to put them at greater risk for ship strike, we do not have evidence that the hypothesized sequence of behaviors has actually led to a ship strike. Additionally, in general and if affected, marine mammals may be affected by (or respond to) sonar in more than one single way when exposed. However, when analyzing impacts, NMFS ''counts'' the most severe response. In the example given by the commenter, NMFS considers the overall possibility of ship strikes resulting from Navy activities, regardless of whether or not they would be preceded by a lesser response.

General Opposition and Other

Comment 38: The Navy should avoid fish spawning grounds and important fish habitat. It should also avoid high-value sea turtle habitat.

Response: These concerns are outside of the purview of the MMPA. Impacts to fish spawning grounds and habitat are dealt with pursuant to the Magnusson Stevens Act (MSA) as it relates to Essential Fish Habitat (EFH). The Navy determined that their activities would not adversely impact EFH; therefore, the Navy determined that a consultation under the MSA was not necessary. Measures to reduce impacts to sea turtles are included in the terms and conditions of the biological opinion that NMFS issued to the Navy (view at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*).

Comment 39: One commenter suggested that no sonar testing should be done in the waters of the Gulf and Atlantic because dead marine life from these tests would go ashore and endanger the tourism industry for the state.

Response: NMFS is aware of 5 cases, worldwide, where science supports the determination that MFAS was a contributing factor in a marine mammal stranding. None of these strandings occurred on the Atlantic coast of the U.S. or in the Gulf of Mexico. Separately, potential adverse effects to the tourism industry are not required to be addressed under the MMPA.

Comment 40: The NRDC urged NMFS to withdraw its proposed rule on AFAST and to revise the document prior to its recirculation for public comment. They suggested NMFS revisit its profoundly flawed analysis of environmental impacts and prescribe mitigation measures that truly result in the least practicable adverse impact on marine species.

Response: NMFS has addressed specific comments related to the effects analysis here and the mitigation measures in the Mitigation Environmental Assessment. We do not believe that the analysis is flawed and we believe that the prescribed measures will result in the least practicable adverse impacts on the affected species or stock. Therefore, NMFS does not intend to withdraw its AFAST rule.

Comment 41: A few commenters expressed general opposition to Navy

activities and NMFS' issuance of an MMPA authorization, because of the danger to marine mammals, and presented several reasons why MFAS was not necessary.

Response: NMFS appreciates the commenters' concern for the marine mammals that live in the area of the proposed activities. However, the MMPA directs NMFS to issue an incidental take authorization if certain findings can be made. Under the MMPA, NMFS must make the decision of whether or not to issue an authorization based on the proposed action that the applicant submits—the MMPA does not contain a mechanism for NMFS to question the need for the action that the applicant has proposed (unless the action is illegal). Similarly, any U.S. citizen (including the Navy) can request and receive an MMPA authorization as long as all of the necessary findings can be made. NMFS has determined that the Navy's AFAST training activities will have a negligible impact on the affected species or stocks and, therefore, we plan to issue the requested MMPA authorization.

Estimated Take of Marine Mammals

As mentioned previously, with respect to the MMPA, NMFS' effects assessments serve four primary purposes: (1) To put forth the permissible methods of taking (*i.e.*, Level B Harassment (behavioral harassment), Level A Harassment (injury), or mortality, including an identification of the number and types of take that could occur by Level A or B harassment or mortality) and to prescribe other means of effecting the least practicable adverse impact on such species or stock and its habitat (*i.e.*, mitigation); (2) to determine whether the specified activity will have a negligible impact on the affected species or stocks of marine mammals (based on the likelihood that the activity will adversely affect the species or stock through effects on annual rates of recruitment or survival); (3) to determine whether the specified activity will have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (however, there are no subsistence communities that would be affected in the AFAST Study Area, so this determination is inapplicable for AFAST); and (4) to prescribe requirements pertaining to monitoring and reporting.

In the Estimated Take of Marine Mammals section of the proposed rule, NMFS related the potential effects to marine mammals from MFAS/HFAS and underwater detonation of explosives, *i.e.*, IEER (discussed in the Potential Effects of Specified Activities on Marine Mammals section) to the MMPA regulatory definitions of Level A and Level B Harassment and quantified (estimated) the effects on marine mammals that could result from the specific activities that the Navy intends to conduct. The subsections of this analysis are discussed individually below.

Definition of Harassment

The Definition of Harassment section of the proposed rule contained the definitions of Level A and Level B Harassments, and a discussion of which of the previously discussed potential effects of MFAS/HFAS or explosive detonations fall into the categories of Level A Harassment (permanent threshold shift (PTS), acoustically mediated bubble growth, behaviorally mediated bubble growth, and physical disruption of tissues resulting from explosive shock wave) or Level B Harassment (temporary threshold shift (TTS), acoustic masking and communication impairment, and behavioral disturbance rising to the level of harassment). See 73 FR 60754, pages 60800–60801. No changes have been made to the discussion contained in this section of the proposed rule.

Acoustic Take Criteria

In the Acoustic Take Criteria section of the proposed rule, NMFS described the development and application of the acoustic criteria for both MFAS/HFAS and explosive detonations (73 FR 60754, pages 60801–60807). No changes have been made to the discussion contained in this section of the proposed rule, with the exception of the issue discussed below.

NMFS received one public comment in which the commenter noted that the acoustic thresholds for TTS and PTS for pinnipeds presented in NMFS' AFAST proposed rule were different from those presented in NMFS' Southern California Range Complex proposed rule. As noted in the updated summary of acoustic thresholds for TTS and PTS below, NMFS has established three separate TTS and PTS thresholds for pinnipeds based on which species are being considered. All of the pinnipeds that are expected to be exposed to MFAS/HFAS in the AFAST Study Area are more closely related to harbor seals (*see* below) and, therefore, only one of the three pinniped criteria is applicable in AFAST.

In the proposed rule, NMFS only listed the single applicable threshold without explaining that two other pinniped TTS and PTS thresholds are used for different taxa (that are present in southern California, but not in the AFAST Study Area). These paragraphs and the summary below serve as a clarification and response to the commenter's comment.

NMFS' TTS criteria (which indicate the received level at which onset TTS (>6dB) is induced) for MFAS/HFAS are as follows:

- Cetaceans—195 dB re 1 μPa²-s (based on mid-frequency cetaceans—no published data exist on auditory effects of noise in low or high frequency cetaceans (Southall *et al.* (2007))
- Harbor Seals (and closely related species, which include all of the species present in the AFAST Study Area)—183 dB re 1 μPa²-s
- Northern Elephant Seals (and closely related species)—204 dB re 1 μPa²-s
- California Sea Lions (and closely related species)—206 dB re 1 μPa²-s

NMFS uses the following acoustic criteria for injury (Level A Harassment):

- Cetaceans—215 dB re 1 μPa²-s (based on mid-frequency cetaceans—no published data exist on auditory effects of noise in low or high frequency cetaceans (Southall *et al.* (2007))
- Harbor Seals (and closely related species)—203 dB re 1 μPa²-s
- Northern Elephant Seals (and closely related species)—224 dB re 1 μPa²-s
- California Sea Lions (and closely related species)—226 dB re 1 μPa²-s

For the behavioral harassment criteria (for all species except harbor porpoises, below), NMFS uses acoustic risk functions developed by NMFS, with input from the Navy, to estimate the probability of behavioral responses to MFAS/HFAS (interpreted as the percentage of the exposed population) that NMFS would classify as harassment for the purposes of the MMPA given exposure to specific received levels of MFA sonar. For harbor porpoises, currently available information suggests a lower threshold level of response for both captive and wild animals and, therefore, NMFS uses a separate 120 dB re 1 μPa step function to estimate take by behavioral harassment (3 FR 60754, pages 60802–60806).

Table 13 in the proposed rule summarizes the acoustic criteria for explosive detonations (73 FR 60754, page 60807).

Estimates of Potential Marine Mammal Exposures and Authorized Take

Information regarding the models used, the assumptions used in the models, and the process of estimating take is available in the Navy's EIS/OEIS for AFAST. Estimating the take that will

result from the proposed activities entails the following general steps:

(1) In order to quantify the types of take described in previous sections that are predicted to result from the Navy's specified activities, the Navy first uses a sound propagation model that predicts the volume of water that will be ensonified to a range of levels of pressure and energy (of the metrics used in the criteria) from MFAS/HFAS and explosive detonations based on several important pieces of information, including:

- Characteristics of the sound sources;
- Sonar source characteristics; include: source level (with horizontal and vertical directivity corrections), source depth, center frequency, source directivity (horizontal/vertical beam width and horizontal/vertical steer direction), and ping spacing;
- Explosive source characteristics include: The net explosive weight, the type of explosive, and the detonation depth;
- Transmission loss (in 36 representative environmental provinces) based on: Seasonal sound speed profiles; seabed geoacoustics; wind speed; and acoustics.

(2) The accumulated energy and maximum received sound pressure level within the waters in which the sonar is operating is sampled over a two dimensional grid. The zone of influence (ZOI) for a given threshold is estimated by summing the areas represented by each grid point for which the threshold is exceeded. For behavioral response, the percentage of animals likely to respond corresponding to the maximum received level is found, and the area of the grid point is multiplied by that percentage to find the adjusted area. Those adjusted area are summed across all grid points to find the overall ZOI for a particular source.

(3) The densities of each marine mammal species, which are specific to certain geographic areas and seasons if data are available, are applied to the summed ZOIs for a particular training event to determine how many times individuals of each species are exposed to levels that exceed the applicable criteria for injury or harassment.

(4) Next, the criteria discussed in the previous section are applied to the estimated exposures to predict the number of exposures that exceed the criteria, *i.e.*, the number of takes by Level B Harassment, Level A Harassment, and mortality.

(5) Last, NMFS and the Navy consider the mitigation measures and model-calculated estimates may be adjusted based on a post-model assessment. For example, in some cases the raw modeled numbers of exposures to levels predicted to result in Level A Harassment from exposure to sonar might indicate that 1 fin whale would be exposed to levels of sonar anticipated to result in PTS—however, a fin whale would need to be within approximately 10 m of the source vessel in order to be exposed to these levels. Because of the mitigation measures (watchstanders and shutdown zone), size of fin whales, and nature of fin whale behavior, it is highly unlikely that a fin whale would be exposed to those levels, and therefore the Navy would not request authorization for Level A Harassment of 1 fin whale. Table 11 contains the Navy's estimated take estimates. The ''takes'' reported in the take table and proposed to be authorized are based on estimates of marine mammal exposures to levels above those indicated in the criteria. Every separate take does not necessarily represent a different individual because some individual marine mammals may be exposed more than once, either within one day and one exercise, or on different days from different exercise types.

(6) Last, the Navy's specified activities have been described based on best estimates of the number of MFAS/HFAS hours that the Navy will conduct. The exact number of hours may vary from year to year, but will not exceed the 5-year total indicated in Table 1 (by multiplying the yearly estimate by 5) by more than 10 percent. NMFS estimates that a 10-percent increase in sonar hours would result in approximately a 10-percent increase in the number of takes (described in Table 6), and we have considered this possibility and the effect of this additional sonar use in our analysis.

Table 6 remains unchanged from Table 11 in the proposed rule (73 FR 60753, page 608090) with the exception of minor modifications and one correction. The number of estimated and authorized Level B behavioral takes of beaked whales increased by a total of 2238 (no increase in modeled TTS takes) because the Navy corrected a calculation related to submarine maintenance. When submarine sonar is used in exercises, the source emits a ping approximately once every 2 hours. However, when maintenance is being conducted, the source emits approximately 60 pings an hour, which will result in more modeled takes than the sub used in an exercise. The Navy originally calculated the submarine sonar takes using the number of pings from an exercise—this has since been corrected. Of note, all of the indicated take increase will occur during sub maintenance, which occurs approximately 50% inshore (potentially at a dock) and 50% at sea, but all of which occurs with a single submarine, not a group of sonar sources such as in the large scale training exercises that have been associated with strandings in certain circumstances in approximately 5 cases outside of U.S. waters. This change in the take numbers did not change NMFS' conclusions regarding the effects of the proposed action.

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	NAVY MODELED EXPOSURE ESTIMATES																		NMFS' Proposed Annual Take Authorization		
	Atlantic Ocean, Offshore of the Southeastern United States									Northeast			Gulf of Mexico			TOTAL					
	VACAPES OPAREA			Cherry Pt OPAREA			Jax/CHASN OPAR			Northeast OPAREA			GOMEX			TOTAL					
Species	PTS	TTS	Dose-Function	PTS	TTS	Dose-Function	PTS	TTS	Dose-Function	PTS	TTS	Dose-Function	PTS	TTS	Dose-Function	PTS	TTS	Dose-Function	Mortality	Level A Harassment	Level B Harassment
North Atlantic right whale*	0	1	45	0	0	30	0	3	363	0	0	224	X	X	X	0	4	662	0	0	666 (0)
Humpback whale*	0	4	403	0	6	686	0	19	2371	0	0	702	0†	1†	10†	0	30	4172	0	0	4202 (0)
Minke whale	0	0	21	0	0	36	0	1	129	0	0	228	X	X	X	0	1	414	0	0	415 (1)
Bryde's whale	X	X	X	X	X	X	0†	1†	10†	X	X	X	0	0	25	0	1	35	0	0	36 (0)
Sei whale*	0†	1†	10†	0†	1†	10†	X	X	X	0	0	1035	X	X	X	0	2	1055	0	0	1057 (0)
Fin whale*	0	1	68	0†	1†	10†	X	X	X	0	0	802	X	X	X	0	2	880	0	0	882 (0)
Blue whale*	X	X	X	X	X	X	X	X	X	0	0	801	X	X	X	0	0	801	0	0	801 (0)
Sperm whale*	0	36	3087	0	4	317	0	17	1517	0	1	4404	0	5	370	0	63	9695	0	0	9758 (0-32)
Kogia spp.	0	5	408	0	8	703	0	26	2476	0	0	423	0	5	330	0	44	4340	0	0	4384 (22 to 44)
Beaked whale	0	8	771	0	5	423	0	19	1731	0	0	1787	0	2	161	0	34	4873	10 over 5 yrs		4907 (17 to 34)
Rough-toothed dolphin	0	2	194	0	4	334	0	13	1177	X	X	X	0	10	974	0	29	2679	0	0	2708 (0-15)
Bottlenose dolphin	3	405	32657	7	738	66340	35	4722	461586	0	2	16113	2	225	24014	47	6092	600710	0	0	606802 (0-3039)
Pantropical spotted dolp.	1	108	8998	2	183	15491	5	580	54555	0	1	9250	5	695	49445	13	1567	137739	0	0	139306 (0-778)
Atlantic spotted dolphin	10	1287	97900	3	551	41887	11	2176	202708	0	4	15141	3	124	14583	27	4142	372219	0	0	376361 (0-2071)
Spinner dolphin	0†	1†	10†	0†	10†	100†	0†	10†	100†	0†	1†	10†	2	289	20624	2	311	20844	0	0	21155 (0-156)
Clymene dolphin	0	51	4299	1	87	7401	2	277	26064	0	0	0	1	114	8145	4	529	45909	0	0	46438 (0-261)
Striped dolphin	8	839	75409	0	1	61	X	X	X	2	10	94213	0	58	4133	10	908	173816	0	0	174724 (0-454)
Common dolphin	4	850	47499	0	1	111	X	X	X	1	10	47989	X	X	X	5	861	95599	0	0	96460 (0-431)
Fraser's dolphin	X	X	X	X	X	X	X	X	X	X	X	X	0	5	341	0	5	341	0	0	346 (0-2)
Risso's dolphin	1	92	7276	1	100	8639	5	585	57169	0	2	18726	0	21	1465	7	800	93275	0	0	94075 (0-400)
Atlantic white-sided dolp.	0†	1†	10†	X	X	X	X	X	X	0	1	20639	X	X	X	0	2	20649	0	0	20651 (0-1)
White-beaked dolphin	X	X	X	X	X	X	X	X	X	0	1	3449	X	X	X	0	1	3449	0	0	3450 (1)
Melon-headed whale	X	X	X	X	X	X	0†	1†	10†	X	X	X	0	23	1620	0	24	1630	0	0	1654 (0)
Pygmy killer whale	0†	1†	10†	0†	1†	10†	0†	1†	10†	0†	1†	10†	0	3	233	0	7	273	0	0	280 (0)
False killer whale	0†	1†	10†	0†	1†	10†	0†	1†	10†	0†	1†	10†	0	7	487	0	11	527	0	0	538 (0)
Killer whale	0†	10†	100†	0†	10†	100†	0†	10†	100†	0†	0†	100†	0	1	62	0	41	462	0	0	503 (0)
Pilot whales	1	159	13220	1	134	12249	7	796	77082	0	12	22604	0	16	1121	9	1117	126276	0	0	127393 (0)
Harbor porpoise	0†	10†	1000†	0†	1†	100†	X	X	X	0	0	152370	X	X	X	0	11	153470	0	0	153481 (0)
Gray Seal	X	X	X	X	X	X	X	X	X	0	31	7828	X	X	X	0	31	7828	0	0	7859 (16-31)
Harbor Seal	X	X	X	X	X	X	X	X	X	0	29	12630	X	X	X	0	29	12630	0	0	12659 (15-29)
Hooded Seal	X	X	X	X	X	X	X	X	X	0	62	15656	X	X	X	0	62	15656	0	0	15718 (31-62)
Harp Seal	X	X	X	X	X	X	X	X	X	0	43	10959	X	X	X	0	43	10959	0	0	11002 (22-43)

Table 6. Navy's estimated exposures to indicated criteria and NMFS proposed take authorization. Though exposures are predicted by the model, NMFS does not anticipate any injury/PTS to occur because of the mitigation measures (as related to certain characteristics of animals, such as size, gregariousness, or group size) and likely avoidance behavior of marine mammals. As discussed in the Estimated Take of Marine Mammals Section, NMFS also anticipates fewer takes by TTS will actually occur than were modeled.

Anticipated TTS occurences are indicated in parentheses in the last column (and are already counted within the broad Level B harassment number that NMFS proposes to authorize)

X - Species is not present or extremely rare in this region, therefore Navy is not requesting takes of this species in this region.

† - Species may be present in small numbers but insufficient data exists to generate density and therefore exposures could not be modeled. In this case the Navy estimated a number of takes to request based on qualitative assessment.

‡ - In the Atlantic pilot whales are often grouped in sighting records due to difficulty of distinguishing between the species. Therefore, in the Atlantic long-finned and short-finned pilot whale takes are combined. There are no confirmed sightings of long-finned pilot whales in the Gulf of Mexico, therefore take numbers are only for short finned pilot whales.

Blue whale: Used fin whale densities to predict exposures in the Northeast.

White-beaked dolphin: Used fall bottlenose estimates in the Northeast as a year-round white-beaked dolphin estimate.

* Threatened or endangered species

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Mortality

Evidence from five beaked whale strandings, all of which have taken place outside of the AFAST Study Area, and have occurred over approximately a decade, suggests that the exposure of beaked whales to MFAS in the presence of certain conditions (*e.g.*, multiple units using tactical sonar, steep bathymetry, constricted channels, strong surface ducts, etc.) may result in strandings, potentially leading to mortality. Although these physical factors believed to contribute to the likelihood of beaked whale strandings are not present on the Atlantic Coast of the U.S. or in the Gulf of Mexico in the aggregate, scientific uncertainty exists regarding what other factors, or combination of factors, may contribute to beaked whale strandings. Accordingly, to allow for scientific uncertainty regarding contributing causes of beaked whale strandings and the exact behavioral or physiological mechanisms that can lead to the ultimate physical effects (stranding and/or death), the Navy has requested authorization for (and NMFS is authorizing) take, by injury or mortality of 10 beaked whales over the course of the 5-yr regulations. Neither NMFS nor the Navy anticipates that marine mammal strandings or mortality will result from the operation of MFAS during Navy exercises within the AFAST Study Area.

Effects on Marine Mammal Habitat

NMFS' AFAST proposed rule included a section that addressed the effects of the Navy's activities on Marine Mammal Habitat (73 FR 60754, page 60810). The analysis preliminarily concluded that the Navy's activities would have minimal effects on marine mammal habitat. No changes have been made to the discussion contained in this section of the proposed rule.

Analysis and Negligible Impact Determination

Pursuant to NMFS' regulations implementing the MMPA, an applicant is required to estimate the number of animals that will be ''taken'' by the specified activities (*i.e.*, takes by harassment only, or takes by harassment, injury, and/or death). This estimate informs the analysis that NMFS must perform to determine whether the activity will have a ''negligible impact'' on the species or stock. Level B (behavioral) harassment occurs at the level of the individual(s) and does not assume any resulting population-level consequences, though there are known avenues through which behavioral disturbance of individuals can result in population-level effects (for example: pink-footed geese (*Anser brachyrhynchus*) in undisturbed habitat gained body mass and had about a 46-percent reproductive success compared with geese in disturbed habitat (being consistently scared off the fields on which they were foraging) which did not gain mass and had a 17-percent reproductive success). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of Level B harassment takes, alone, is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through behavioral harassment, NMFS must consider other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), or any of the other variables mentioned in the first paragraph (if known), as well as the number and nature of estimated Level A takes, the number of estimated mortalities, and effects on habitat. Generally speaking, and especially with other factors being equal, the Navy and NMFS anticipate more severe effects from takes resulting from exposure to higher received levels (though this is in no way a strictly linear relationship throughout species, individuals, or circumstances) and less severe effects from takes resulting from exposure to lower received levels.

In the Analysis and Negligible Impact Determination section of the proposed rule, NMFS addressed the issues identified in the preceding paragraph in combination with additional detailed analysis regarding the severity of the anticipated effects, and including species (or group)-specific discussions, to determine that Navy training, maintenance, and RDT&E activities utilizing MFAS/HFAS and underwater detonations (IEER) will have a negligible impact on the marine mammal species and stocks present in the AFAST Study Area. No changes have been made to the discussion contained in this section of the proposed rule (73 FR 60754, pages 60811–60823).

Subsistence Harvest of Marine Mammals

NMFS has determined that the issuance of these regulations and subsequent LOAs for Navy AFAST exercises would not have an unmitigable adverse impact on the availability of the affected species or stocks for taking for subsistence uses, since there are no such uses in the specified area.

ESA

There are six marine mammal species and six sea turtle species listed as threatened or endangered under the ESA with confirmed or possible occurrence in the study area: Humpback whale, NARW, sei whale, fin whale, blue whale, sperm whale, loggerhead sea turtle, the green sea turtle, hawksbill sea turtle, leatherback sea turtle, olive ridley sea turtle and the Kemp's ridley sea turtle. Pursuant to Section 7 of the ESA, the Navy has consulted with NMFS on this action. NMFS has also consulted internally on the issuance of regulations under section 101(a)(5)(A) of the MMPA for this activity. In a Biological Opinion (BiOp), NMFS concluded that the Navy's activities in the AFAST Study Area and NMFS' issuance of these regulations are not likely to jeopardize the continued existence of threatened or endangered species or destroy or adversely modify any designated critical habitat.

NMFS (the Endangered Species Division) will also issue BiOps and associated incidental take statements (ITSs) to NMFS (the Permits, Conservation, and Recreation Division) to exempt the take (under the ESA) that NMFS authorizes in the LOAs under the MMPA. Because of the difference between the statutes, it is possible that ESA analysis of the applicant's action could produce a take estimate that is different from the takes requested by the applicant (and analyzed for authorization by NMFS under the MMPA process), despite the fact that the same proposed action (*i.e.,* number of sonar hours and explosive detonations) was being analyzed under each statute. When this occurs, NMFS staff coordinate to ensure that the most conservative (lowest) number of takes is authorized. For the Navy's proposed AFAST training, coordination with the Endangered Species Division indicates that they will likely allow for a lower level of take of ESA-listed marine mammals than was requested by the applicant (because their analysis indicates that fewer will be taken than estimated by the applicant). Therefore, the number of authorized takes in NMFS' LOA(s) will reflect the lower take numbers from the ESA consultation, though the specified activities (*i.e.*, number of sonar hours, etc.) will remain the same. Alternately, these regulations indicate the maximum number of takes that may be authorized under the MMPA.

The ITS(s) issued for each LOA will contain implementing terms and conditions to minimize the effect of the marine mammal take authorized through the 2009 LOA (and subsequent LOAs in 2010, 2011, 2012, and 2013). With respect to listed marine mammals, the terms and conditions of the ITSs will be incorporated into the LOAs.

NEPA

NMFS participated as a cooperating agency on the Navy's Final Environmental Impact Statement (FEIS) for AFAST. NMFS subsequently adopted the Navy's EIS for the purpose of complying with the MMPA. Additionally, NMFS prepared an Environmental Assessment (EA) that tiered off the Navy's FEIS. The EA analyzed the environmental effects of several different mitigation alternatives for the issuance of the AFAST rule and subsequent LOAs. A finding of no significant impact was issued for the mitigation EA on January 15, 2009.

Determination

Based on the analysis contained herein and in the proposed rule (and other related documents) of the likely effects of the specified activity on marine mammals and their habitat and dependent upon the implementation of the mitigation measures, NMFS finds that the total taking from Navy AFAST training exercises utilizing MFAS/HFAS and underwater explosives (IEER) over the 5 year period will have a negligible impact on the affected species or stocks and will not result in an unmitigable adverse impact on the availability of marine mammal species or stocks for taking for subsistence uses because no subsistence uses exist in the AFAST Study Area. NMFS has issued regulations for these exercises that prescribe the means of effecting the least practicable adverse impact on marine mammals and their habitat and set forth requirements pertaining to the monitoring and reporting of that taking.

Classification

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

Pursuant to the procedures established to implement section 6 of Executive Order 12866, the Office of Management and Budget has determined that this final rule is significant.

Pursuant to the Regulatory Flexibility Act, the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this final rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The Regulatory Flexibility Act requires Federal agencies to prepare an analysis of a rule's impact on small entities whenever the agency is required to publish a notice of proposed rulemaking. However, a Federal agency may certify, pursuant to 5 U.S.C. section 605(b), that the action will not have a significant economic impact on a substantial number of small entities. The Navy is the entity that will be affected by this rulemaking, not a small governmental jurisdiction, small organization or small business, as defined by the Regulatory Flexibility Act. Any requirements imposed by a Letter of Authorization issued pursuant to these regulations, and any monitoring or reporting requirements imposed by these regulations, will be applicable only to the Navy. Because this action, if adopted, would directly affect the Navy and not a small entity, NMFS concludes the action would not result in a significant economic impact on a substantial number of small entities.

The Assistant Administrator for Fisheries has determined that there is good cause under the Administrative Procedure Act (5 U.S.C. 553(d)(3)) to waive the 30-day delay in effective date of the measures contained in the final rule. Since January 23, 2007, the Navy has been conducting military readiness activities employing mid-frequency active sonar (MFAS) pursuant to a 2-year MMPA National Defense Exemption (NDE). The NDE serves as a bridge to long-term compliance with the MMPA while the Navy prepared its Environmental Impact Statement and pursued the necessary MMPA incidental take authorization for the AFAST exercises. The NDE will expire on January 23, 2009, by which time it is imperative that the regulations and the measures identified in a subsequent LOA become effective. Any delay of these measures would result in either: (1) A suspension of ongoing or planned naval exercises, which would disrupt vital sequential training and certification processes essential to national security; or (2) the Navy's non-compliance with the MMPA (should the Navy conduct exercises without an LOA), thereby resulting in the potential for unauthorized takes of marine mammals upon expiration of the NDE. National security and NMFS' and Navy's preference that the Navy be in compliance with the MMPA after January 23, 2009, dictate that these measures go into effect immediately. The Navy is the entity subject to the regulations and has informed NMFS that it is imperative that these measures be effective on or before January 23, 2009. Finally, as recognized by the President and the United States Supreme Court, the AFAST exercises proposed to be conducted are of paramount interest to the United States. Any delay in the implementation of these measures would raise serious national security implications. Therefore, these measures will become effective upon filing.

List of Subjects in 50 CFR Part 216

Exports, Fish, Imports, Incidental take, Indians, Labeling, Marine mammals, Navy, Penalties, Reporting and recordkeeping requirements, Seafood, Sonar, Transportation.

Dated: January 16, 2009.

James Balsiger,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

■ For reasons set forth in the preamble, 50 CFR Part 216 is amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

■ 1. The authority citation for part 216 continues to read as follows:

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

■ 2. Subpart V is added to part 216 to read as follows:

Subpart V—Taking and Importing Marine Mammals; U.S. Navy's Atlantic Fleet Active Sonar Training (AFAST)

Sec.

216.240 Specified activity and specified geographical region.
216.241 Effective dates and definitions.
216.242 Permissible methods of taking.
216.243 Prohibitions.
216.244 Mitigation.
216.245 Requirements for monitoring and reporting.
216.246 Applications for Letters of Authorization.
216.247 Letters of Authorization.
216.248 Renewal of Letters of Authorization and Adaptive Management.
216.249 Modifications to Letters of Authorization.

Subpart V—Taking and Importing Marine Mammals; U.S. Navy's Atlantic Fleet Active Sonar Training (AFAST)

§ 216.240 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the U.S. Navy for the taking of marine mammals that occurs in the area outlined in paragraph (b) of this section and that occurs incidental to the

activities described in paragraph (c) of this section.

(b) The taking of marine mammals by the Navy is only authorized if it occurs within the AFAST Study Area, which extends east from the Atlantic Coast of the U.S. to 45° W. long. and south from the Atlantic and Gulf of Mexico Coasts to approximately 23° N. lat., excluding the Bahamas (see Figure 1–1 in the Navy's Application).

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the use of the following mid-frequency active sonar (MFAS) sources, high frequency active sonar (HFAS) sources, or explosive sonobuoys for U.S. Navy anti-submarine warfare (ASW), mine warfare (MIW) training, maintenance, or research, development, testing, and evaluation (RDT&E) in the amounts indicated below (+/ − 10 percent):

(1) AN/SQS–53 (hull-mounted sonar)—up to 16070 hours over the course of 5 years (an average of 3214 hours per year).

(2) AN/SQS–56 (hull-mounted sonar)—up to 8420 hours over the course of 5 years (an average of 1684 hours per year).

(3) AN/SQS–56 or 53 (hull mounted sonar in object detection mode)—up to 1080 hours over the course of 5 years (an average of 216 hours per year).

(4) AN/BQQ–10 or 5 (submarine sonar)—up to 49880 pings over the course of 5 years (an average of 9976 pings per year) (an average of 1 ping per two hours during training events, 60 pings per hour for maintenance).

(5) AN/AQS–22 or 13 (helicopter dipping sonar)—up to 14760 dips over the course of 5 years (an average of 2952 dips per year—10 pings per five-minute dip).

(6) SSQ–62 (Directional Command Activated Sonobuoy System (DICASS) sonobuoys)—up to 29265 sonobuoys over the course of 5 years (an average of 5853 sonobuoys per year).

(7) MK–48 (heavyweight torpedoes)—up to 160 torpedoes over the course of 5 years (an average of 32 torpedoes per year).

(8) MK–46 or 54 (lightweight torpedoes)—up to 120 torpedoes over the course of 5 years (an average of 24 torpedoes per year).

(9) AN/SSQ–110A (IEER explosive sonobuoy) and AN/SSQ–125 (AEER sonar sonobuoy)—up to 4360 sonobuoys, between these 2 sources, over the course of 5 years (an average of 872 buoys per year).

(10) AN/SQQ–32 (over the side mine-hunting sonar)—up to 22370 hours over the course of 5 years (an average of 4474 hours per year).

(11) AN/SLQ–25 (NIXIE—towed countermeasure)—up to 1660 hours over the course of 5 years (an average of 332 hours per year).

(12) AN/BQS–15 (submarine navigation)—up to 2250 hours over the course of 5 years (an average of 450 hours per year).

(13) MK–1 or 2 or 3 or 4 (Submarine-fired Acoustic Device Countermeasure (ADC))—up to 1125 ADCs over the course of 5 years (an average of 225 ADCs per year).

(14) Noise Acoustic Emitters (NAE—Sub-fired countermeasure)—up to 635 NAEs over the course of 5 years (an average of 127 NAEs per year).

§ 216.241 Effective dates and definitions.

(a) Regulations are effective January 22, 2009 through January 22, 2014.

(b) The following definitions are utilized in these regulations:

(1) *Uncommon Stranding Event (USE)*—A stranding event that takes place during a major training exercise (MTE) and involves any one of the following:

(i) Two or more individuals of any cetacean species (not including mother/calf pairs), unless of species of concern listed in § 216.241(b)(1)(ii) found dead or live on shore within a 2-day period and occurring within 30 miles of one another.

(ii) A single individual or mother/calf pair of any of the following marine mammals of concern: beaked whale of any species, dwarf or pygmy sperm whales, melon-headed whales, pilot whales, right whales, humpback whales, sperm whales, blue whales, fin whales, or sei whales.

(iii) A group of 2 or more cetaceans of any species exhibiting indicators of distress as defined in § 216.241(b)(3).

(2) *Shutdown*—The cessation of MFAS/HFAS operation or detonation of explosives within 14 nm nm (Atlantic Ocean) or 17 nm (Gulf of Mexico) of any live, in the water, animal involved in a USE.

§ 216.242 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§ 216.106 and 216.247, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals within the area described in § 216.240(b), provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate Letter of Authorization.

(b) The activities identified in § 216.240(c) must be conducted in a manner that minimizes, to the greatest extent practicable, any adverse impacts on marine mammals and their habitat.

(c) The incidental take of marine mammals under the activities identified in § 216.240(c) is limited to the following species, by the identified method of take and the indicated number of times:

(1) Level B Harassment (+/ − 10 percent of the number of takes indicated below):

(i) *Mysticetes:*

(A) North Atlantic right whale (*Eubalaena glacialis*)—3330 (an average of 666 annually).

(B) Humpback whale (*Megaptera novaeangliae*)—21010 (an average of 4202 annually).

(C) Minke whale (*Balaenoptera acutorostrata*)—2075 (an average of 415 annually).

(D) Sei whale (*Balaenoptera borealis*)—5285 (an average of 1057 annually).

(E) Fin whale (*Balaenoptera physalus*)—4410 (an average of 882 annually).

(F) Bryde's whale (*Balaenoptera edeni*)—180 (an average of 36 annually).

(G) Blue whale (*Balaenoptera musculus*)—4005 (an average of 801 annually).

(ii) *Odontocetes:*

(A) Sperm whales (*Physeter macrocephalus*)—48790 (an average of 9758 annually).

(B) Pygmy or dwarf sperm whales (*Kogia breviceps* or *Kogia sima*)—21920 (an average of 4384 annually).

(C) Beaked Whales (Cuvier's, True's, Gervais', Sowerby's, Blainville's, Northern bottlenose whale) (*Ziphius cavirostris, Mesoplodon mirus, M. europaeus, M. bidens, M. densirostris*, Hyperoodon ampullatus)—24535 (an average of 4907 annually).

(D) Rough-toothed dolphin (*Steno bredanensis*)—13540 (an average of 2708 annually).

(E) Bottlenose dolphin (*Tursiops truncatus*)—3034010 (an average of 606802 annually).

(F) Pan-tropical dolphin (*Stenella attenuata*)—696530 (an average of 139306 annually).

(G) Atlantic spotted dolphin (*Stenella frontalis*)—1881805 (an average of 376361 annually).

(H) Spinner dolphin (*Stenella longirostris*)—105775 (an average of 21155 annually).

(I) Clymene dolphin (*Stenella clymene*)—232190 (an average of 46438 annually).

(J) Striped dolphin (*Stenella coeruleoalba*)—873620 (an average of 174274 annually).

(K) Common dolphin (*Delphinus spp.*)—482300 (an average of 96460 annually).

(L) Fraser's dolphin (*Lagenodelphis hosei*)—1730 (an average of 346 annually).

(M) Risso's dolphin (*Grampus griseus*)—470375 (an average of 94075 annually).

(N) Atlantic white-sided dolphin (*Lagenorhynchus acutus*)—103255 (an average of 20651 annually).

(O) White-beaked dophin (*Lagenorhynchus albirostris*)—17250 (an average of 3450 annually).

(P) Melon-headed whale (*Peponocephala electra*)—8270 (an average of 1654 annually).

(Q) Pygmy killer whale (*Feresa attenuata*)—1400 (an average of 280 annually).

(R) False killer whale (*Pseudorca crassidens*)—2690 (an average of 538 annually).

(S) Killer whale (*Orcinus orca*)—2515 (an average of 503 annually).

(T) Pilot whales (Short-finned pilot or long-finned) (*Globicephala macrorynchus* or *G. melas*)—636965 (an average of 127393 annually).

(U) Harbor porpoise (*Phocoena phocoena*)—767405 (an average of 153481 annually).

(iii) *Pinnipeds:*

(A) Gray seal (*Halichoerus grypus*)—39295 (an average of 7859 annually).

(B) Harbor seal (*Phoca vitulina*)—63295 (an average of 12659 annually).

(C) Hooded seal (*Cystophora cristata*)—78590 (an average of 15718 annually).

(D) Harp seal (*Pagophilus groenlandica*)—55010 (an average of 11002 annually).

(2) Level A Harassment and/or mortality of no more than 10 beaked whales (total), of any of the species listed in § 216.242(c)(1)(ii)(C) over the course of the 5-year regulations.

§ 216.243 Prohibitions.

Notwithstanding takings contemplated in § 218.92 and authorized by a Letter of Authorization issued under §§ 216.106 and 216.247, no person in connection with the activities described in § 216.240 may:

(a) Take any marine mammal not specified in § 216.242(c);

(b) Take any marine mammal specified in § 216.242(c) other than by incidental take as specified in § 216.242(c)(1) and (2);

(c) Take a marine mammal specified in § 216.242(c) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of these regulations or a Letter of Authorization issued under §§ 216.106 and 216.247.

§ 216.244 Mitigation.

(a) When conducting training activities identified in § 216.240(c), the mitigation measures contained in the Letter of Authorization issued under §§ 216.106 and 216.247 must be implemented. These mitigation measures include, but are not limited to:

(1) Mitigation Measures for ASW and MIW training:

(i) All lookouts onboard platforms involved in ASW training events shall review the NMFS-approved Marine Species Awareness Training (MSAT) material prior to use of mid-frequency active sonar.

(ii) All Commanding Officers, Executive Officers, and officers standing watch on the Bridge shall review the MSAT material prior to a training event employing the use of mid- or high-frequency active sonar.

(iii) Navy lookouts shall undertake extensive training in order to qualify as a watchstander in accordance with the Lookout Training Handbook (NAVEDTRA, 12968–D).

(iv) Lookout training shall include on-the-job instruction under the supervision of a qualified, experienced watchstander. Following successful completion of this supervised training period, Lookouts shall complete the Personal Qualification Standard program, certifying that they have demonstrated the necessary skills (such as detection and reporting of partially submerged objects).

(v) Lookouts shall be trained in the most effective means to ensure quick and effective communication within the command structure in order to facilitate implementation of mitigation measures if marine mammals are spotted.

(vi) On the bridge of surface ships, there shall always be at least three people on watch whose duties include observing the water surface around the vessel.

(vii) All surface ships participating in ASW exercises shall, in addition to the three personnel on watch noted previously, have at all times during the exercise at least two additional personnel on watch as lookouts.

(viii) Personnel on lookout and officers on watch on the bridge shall have at least one set of binoculars available for each person to aid in the detection of marine mammals.

(ix) On surface vessels equipped with MFAS, pedestal mounted ''Big Eye'' (20 × 110) binoculars shall be present and in good working order.

(x) Personnel on lookout shall employ visual search procedures employing a scanning methodology in accordance with the Lookout Training Handbook (NAVEDTRA 12968–D). Surface lookouts should scan the water from the ship to the horizon and be responsible for all contacts in their sector. In searching the assigned sector, the lookout should always start at the forward part of the sector and search aft (toward the back). To search and scan, the lookout should hold the binoculars steady so the horizon is in the top third of the field of vision and direct the eyes just below the horizon. The lookout should scan for approximately five seconds in as many small steps as possible across the field seen through the binoculars. They should search the entire sector in approximately five-degree steps, pausing between steps for approximately five seconds to scan the field of view. At the end of the sector search, the glasses should be lowered to allow the eyes to rest for a few seconds, and then the lookout should search back across the sector with the naked eye.

(xi) After sunset and prior to sunrise, lookouts shall employ Night Lookouts Techniques in accordance with the Lookout Training Handbook. At night, lookouts should not sweep the horizon with their eyes because this method is not effective when the vessel is moving. Lookouts should scan the horizon in a series of movements that should allow their eyes to come to periodic rests as they scan the sector. When visually searching at night, they should look a little to one side and out of the corners of their eyes, paying attention to the things on the outer edges of their field of vision.

(xii) Personnel on lookout shall be responsible for informing the Officer of the Deck all objects or anomalies sighted in the water (regardless of the distance from the vessel) to the Officer of the Deck, since any object or disturbance (*e.g.*, trash, periscope, surface disturbance, discoloration) in the water may be indicative of a threat to the vessel and its crew or indicative of a marine species that may need to be avoided as warranted.

(xiii) Commanding Officers shall make use of marine mammal detection cues and information to limit interaction with marine mammals to the maximum extent possible consistent with safety of the ship.

(xiv) All personnel engaged in passive acoustic sonar operation (including aircraft, surface ships, or submarines) shall monitor for marine mammal vocalizations and report the detection of any marine mammal to the appropriate watch station for dissemination and appropriate action.

(xv) Units shall use training lookouts to survey for marine mammals prior to commencement and during the use of active sonar.

(xvi) During operations involving sonar, personnel shall utilize all available sensor and optical systems (such as Night Vision Goggles) to aid in the detection of marine mammals.

(xvii) Navy aircraft participating in exercises at sea shall conduct and maintain, when operationally feasible and safe, surveillance for marine mammals as long as it does not violate safety constraints or interfere with the accomplishment of primary operational duties.

(xviii) Aircraft with deployed sonobuoys shall use only the passive capability of sonobuoys when marine mammals are detected within 200 yards (182 m) of the sonobuoy.

(xix) Marine mammal detections shall be reported immediately to assigned Aircraft Control Unit (if participating) for further dissemination to ships in the vicinity of the marine mammals. This action shall occur when it is reasonable to conclude that the course of the ship will likely close the distance between the ship and the detected marine mammal.

(xx) Safety Zones—When marine mammals are detected by any means (aircraft, shipboard lookout, or acoustically) the Navy shall ensure that sonar transmission levels are limited to at least 6 dB below normal operating levels if any detected marine mammals are within 1000 yards (914 m) of the sonar dome (the bow).

(A) Ships and submarines shall continue to limit maximum transmission levels by this 6-dB factor until the marine mammal has been seen to leave the area, has not been detected for 30 minutes, or the vessel has transited more than 2,000 yards (1828 m) beyond the location of the last detection.

(B) Should a marine mammal be detected within or closing to inside 457 m (500 yd) of the sonar dome, active sonar transmissions shall be limited to at least 10 dB below the equipment's normal operating level. Ships and submarines shall continue to limit maximum ping levels by this 10-dB factor until the marine mammal has been seen to leave the area, has not been detected for 30 minutes, or the vessel has transited more than 2000 yards (1828 m) beyond the location of the last detection.

(C) Should the marine mammal be detected within or closing to inside 183 m (200 yd) of the sonar dome, active sonar transmissions shall cease. Sonar shall not resume until the marine mammal has been seen to leave the area, has not been detected for 30 minutes, or the vessel has transited more than 2,000 yards (1828 m) beyond the location of the last detection.

(D) If the need for power-down should arise as detailed in ''Safety Zones'' in paragraph (a)(1)(xx) of this section, Navy shall follow the requirements as though they were operating at 235 dB—the normal operating level (*i.e.*, the first power-down shall be to 229 dB, regardless of at what level above 235 sonar was being operated).

(xxi) Prior to startup or restart of active sonar, operators shall check that the Safety Zone radius around the sound source is clear of marine mammals.

(xxii) Sonar levels (generally)—The Navy shall operate sonar at the lowest practicable level, not to exceed 235 dB, except as required to meet tactical training objectives.

(xxiii) Helicopters shall observe/survey the vicinity of an ASW Operation for 10 minutes before the first deployment of active (dipping) sonar in the water.

(xxiv) Helicopters shall not dip their sonar within 200 yards (183 m) of a marine mammal and shall cease pinging if a marine mammal closes within 200 yards of the helicopter dipping sonar (183 m) after pinging has begun.

(xxv) Submarine sonar operators shall review detection indicators of close-aboard marine mammals prior to the commencement of ASW training activities involving active sonar.

(xxvi) Night vision devices shall be available to all ships and air crews, for use as appropriate.

(xxvii) Dolphin bowriding—If, after conducting an initial maneuver to avoid close quarters with dolphins, the ship concludes that dolphins are deliberately closing in on the ship to ride the vessel's bow wave, no further mitigation actions would be necessary because dolphins are out of the main transmission axis of the active sonar while in the shallow-wave area of the vessel bow.

(xxviii) TORPEXs conducted in the northeast North Atlantic right whale critical habitat (as designated in 50 CFR Part 226) shall implement the following measures.

(A) All torpedo-firing operations shall take place during daylight hours.

(B) During the conduct of each test, visual surveys of the test area shall be conducted by all vessels and aircraft involved in the exercise to detect the presence of marine mammals. Additionally, trained observers shall be placed on the submarine, spotter aircraft, and the surface support vessel. All participants shall report sightings of any marine mammals, including negative reports, prior to torpedo firings. Reporting requirements shall be outlined in the test plans and procedures written for each individual exercise, and shall be emphasized as part of pre-exercise briefings conducted with all participants.

(C) Observers shall receive NMFS-approved training in field identification, distribution, and relevant behaviors of marine mammals of the western north Atlantic. Observers shall fill out Standard Sighting Forms and the data shall be housed at the Naval Undersea Warfare Center Division Newport (NUWCDIVNPT). Any sightings of North Atlantic right whales shall be immediately communicated to the Sighting Advisory System (SAS). All platforms shall have onboard a copy of:

(*1*) The Guide to Marine Mammals and Turtles of the U.S. Atlantic and Gulf of Mexico (Wynne and Schwartz 1999);

(*2*) The NMFS Critical Sightings Program placard;

(*3*) Right Whales, Guidelines to Mariners placard.

(D) In addition to the visual surveillance discussed above, dedicated aerial surveys shall be conducted utilizing a fixed-wing aircraft. An aircraft with an overhead wing (*i.e.*, Cessna Skymaster or similar) shall be used to facilitate a clear view of the test area. Two trained observers, in addition to the pilot, shall be embarked on the aircraft. Surveys shall be conducted at an approximate altitude of 1000 ft (305 m) flying parallel track lines at a separation of 1 nmi (1.85 km), or as necessary to facilitate good visual coverage of the sea surface. While conducting surveillance, the aircraft shall maintain an approximate speed of 100 knots (185 km/hr). Since factors that affect visibility are highly dependent on the specific time of day of the survey, the flight operator will have the flexibility to adjust the flight pattern to reduce glare and improve visibility. The entire test site shall be surveyed initially, but once preparations are being made for an actual test launch, survey effort shall be concentrated over the vicinity of the individual test location. Further, for approximately ten minutes immediately prior to launch, the aircraft shall racetrack back and forth between the launch vessel and the target vessel.

(E) Commencement of an individual torpedo test scenario shall not occur until observers from all vessels and aircraft involved in the exercise have reported to the Officer in Tactical Command (OTC) and the OTC has declared that the range is clear of marine mammals. Should marine mammals be present within or seen moving toward the test area, the test shall be either delayed or moved as

required to avoid interference with the animals.

(F) The TORPEX shall be suspended if the Beaufort Sea State exceeds 3 or if visibility precludes safe operations.

(G) Vessel speeds:

(*1*) During transit through the northeastern North Atlantic right whale critical habitat, surface vessels and submarines shall maintain a speed of no more than 10 knots (19 km/hr) while not actively engaged in the exercise procedures.

(*2*) During TORPEX operations, a firing vessel should, where feasible, not exceed 10 knots. When a submarine is used as a target, vessel speeds should, where feasible, not exceed 18 knots. However, on occasion, when surface vessels are used as targets, the vessel may exceed 18 kts in order to fully test the functionality of the torpedoes. This increased speed would occur for a short period of time (*e.g.*, 10–15 minutes) to evade the torpedo when fired upon.

(H) In the event of an animal strike, or if an animal is discovered that appears to be in distress, the Navy shall immediately report the discovery through the appropriate Navy chain of Command.

(xxix) The Navy shall abide by the following additional measures:

(A) The Navy shall avoid planning major exercises in the specified planning awareness areas (PAAs—as depicted in NMFS' ''Environmental Assessment of Mitigation Alternatives for Issuance of Incidental Take Regulations to U.S. Navy for Atlantic Fleet Active Sonar Training (AFAST)'') where feasible. Should national security require the conduct of more than four major exercises (C2X, JTFEX, SEASWITI, or similar scale event) in these areas (meaning all or a portion of the exercise) per year the Navy shall provide NMFS with prior notification and include the information in any associated after-action or monitoring reports.

(B) The Navy shall conduct no more than one of the four above-mentioned major exercises (COMPTUEX, JTFEX, SEASWITI or similar scale event) per year in the Gulf of Mexico to the extent operationally feasible. If national security needs require more than one major exercise to be conducted in the Gulf of Mexico PAAs, the Navy shall provide NMFS with prior notification and include the information in any associated after-action or monitoring reports.

(C) The Navy shall include the PAAs in the Navy's Protective Measures Assessment Protocol (PMAP) (implemented by the Navy for use in the protection of the marine environment) for unit level situational awareness (*i.e.*, exercises other than COMPTUEX, JTFEX, SEASWITI) and planning purposes.

(D) Helicopter Dipping Sonar—Unless otherwise dictated by national security needs, the Navy shall minimize helicopter dipping sonar activities within the southeastern areas of North Atlantic right whale critical habitat (as designated in 50 CFR part 226) from November 15–April 15.

(E) Object Detection Exercises—The Navy shall implement the following measures regarding object detection activities in the southeastern areas of the North Atlantic right whale critical habitat:

(*1*) The Navy shall reduce the time spent conducting object detection exercises in the NARW critical habitat;

(*2*) Prior to conducting surface ship object detection exercises in the southeastern areas of the North Atlantic right whale critical habitat during the time of November 15–April 15, ships shall contact FACSFACJAX to obtain the latest North Atlantic right whale sighting information. FACSFACJAX shall advise ships of all reported whale sightings in the vicinity of the critical habitat and associated areas of concern (which extend 9 km (5 NM) seaward of the designated critical habitat boundaries). To the extent operationally feasible, ships shall avoid conducting training in the vicinity of recently sighted North Atlantic right whales. Ships shall maneuver to maintain at least 500 yards separation from any observed whale, consistent with the safety of the ship.

(xxx) The Navy shall abide by the letter of the ''Stranding Response Plan for Major Navy Training Exercises in the AFAST Study Area'' (available at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*), to include the following measures:

(A) Shutdown Procedures—When an Uncommon Stranding Event (USE—defined in § 216.241) occurs during a Major Training Exercise (MTE, including SEASWITI, IAC, Group Sails, JTFEX, or COMPTUEX) in the AFAST Study Area, the Navy shall implement the procedures described below.

(*1*) The Navy shall implement a Shutdown (as defined § 216.241) when advised by a NMFS Office of Protected Resources Headquarters Senior Official designated in the AFAST Stranding Communication Protocol that a USE involving live animals has been identified and that at least one live animal is located in the water. NMFS and Navy shall communicate, as needed, regarding the identification of the USE and the potential need to implement shutdown procedures.

(*2*) Any shutdown in a given area shall remain in effect in that area until NMFS advises the Navy that the subject(s) of the USE at that area die or are euthanized, or that all live animals involved in the USE at that area have left the area (either of their own volition or herded).

(*3*) If the Navy finds an injured or dead animal of any species other than North Atlantic right whale floating at sea during an MTE, the Navy shall notify NMFS immediately or as soon as operational security considerations allow. The Navy shall provide NMFS with species or description of the animal(s), the condition of the animal(s) including carcass condition (if the animal(s) is/are dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available). Based on the information provided, NMFS shall determine if, and advise the Navy whether a modified shutdown is appropriate on a case-by-case basis.

(*4*) If the Navy finds an injured (or entangled) North Atlantic right whale floating at sea during an MTE, the Navy shall implement shutdown procedures (14 or 17 nm, as defined below) around the animal immediately (without waiting for notification from NMFS). The Navy shall then notify NMFS (pursuant to the AFAST Communication Protocol) immediately or as soon as operational security considerations allow. The Navy shall provide NMFS with species or description of the animal(s), the condition of the animal(s) including carcass condition (if the animal(s) is/are dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available). Subsequent to the discovery of the injured whale, any Navy platforms in the area shall report any North Atlantic right whale sightings to NMFS (or to a contact that can alert NMFS as soon as possible). Based on the information provided, NMFS may initiate/organize an aerial survey (by requesting the Navy's assistance pursuant to the memorandum of agreement (MOA) (see (a)(1)(xxx)(C) of this section) or by other available means) to see if other North Atlantic right whales are in the vicinity. Based on the information provided by the Navy and, if necessary, the outcome of the aerial surveys, NMFS shall determine whether a continued shutdown is appropriate on a case-by-case basis. Though it will be determined on a case-by-case basis after Navy/NMFS discussion of the situation, NMFS anticipates that the shutdown will continue within 14 or 17 nm of a

live, injured/entangled North Atlantic right whale until the animal dies or has not been seen for at least 3 hours (either by NMFS staff attending the injured animal or Navy personnel monitoring the area around where the animal was last sighted).

(*5*) If the Navy finds a dead North Atlantic right whale floating at sea during an MTE, the Navy shall notify NMFS (pursuant to AFAST Stranding Communication Protocol) immediately or as soon as operational security considerations allow. The Navy shall provide NMFS with species or description of the animal(s), the condition of the animal(s) (including carcass condition if the animal(s) is/are dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available). Subsequent to the discovery of the dead whale, if the Navy is operating sonar in the area they shall use increased vigilance (in looking for North Atlantic right whales) and all platforms in the area shall report sightings of North Atlantic right whales to NMFS as soon as possible. Based on the information provided, NMFS may initiate/organize an aerial survey (by requesting the Navy's assistance pursuant to the MOA (see (a)(1)(xxx)(C) of this section) or by other available means) to see if other North Atlantic right whales are in the vicinity. Based on the information provided by the Navy and, if necessary, the outcome of the aerial surveys, NMFS will determine whether any additional mitigation measures are necessary on a case-by-case basis.

(*6*) In the event, following a USE, that: (a) Qualified individuals are attempting to herd animals back out to the open ocean and animals are not willing to leave, or (b) animals are seen repeatedly heading for the open ocean but turning back to shore, NMFS and the Navy should coordinate (including an investigation of other potential anthropogenic stressors in the area) to determine if the proximity of MFAS/HFAS training activities or explosive detonations, though farther than 14 or 17 nm from the distressed animal(s), is likely decreasing the likelihood that the animals return to the open water. If so, NMFS and the Navy shall further coordinate to determine what measures are necessary to further minimize that likelihood and implement those measures as appropriate.

(B) Within 72 hours of NMFS notifying the Navy of the presence of a USE, the Navy shall provide available information to NMFS (per the AFAST Communication Protocol) regarding the location, number and types of acoustic/explosive sources, direction and speed of units using MFAS/HFAS, and marine mammal sightings information associated with training activities occurring within 80 nm (148 km) and 72 hours prior to the USE event. Information not initially available regarding the 80 nm (148 km), 72 hours, period prior to the event shall be provided as soon as it becomes available. The Navy shall provide NMFS investigative teams with additional relevant unclassified information as requested, if available.

(C) Memorandum of Agreement (MOA)—The Navy and NMFS shall develop a MOA, or other mechanism consistent with Federal fiscal law requirements (and all other applicable laws), that will establish a framework whereby the Navy can (and provide the Navy examples of how they can best) assist NMFS with stranding investigations in certain circumstances. This document shall be finalized in 2009 (unless NMFS notifies the Navy that a delay is needed).

(2) Mitigation for IEER/AEER—The following are mitigation measures for use with Extended Echo Ranging/Improved Extended Echo Ranging (EER/IEER) and Advanced Extended Echo Ranging given an explosive source generates the acoustic wave used in this sonobuoy.

(i) Navy crews shall conduct visual reconnaissance of the drop area prior to laying their intended sonobuoy pattern. This search should be conducted below 500 yards (457 m) at a slow speed, if operationally feasible and weather conditions permit. In dual aircraft training activities, crews are allowed to conduct coordinated area clearances.

(ii) For IEER (AN/SSQ–110A), Navy crews shall conduct a minimum of 30 minutes of visual and acoustic monitoring of the search area prior to commanding the first post (source/receiver sonobuoy pair) detonation. This 30-minute observation period may include pattern deployment time.

(iii) For any part of the briefed pattern where a post (source/receiver sonobuoy pair) will be deployed within 1,000 yards (914 m) of observed marine mammal activity, deploy the receiver ONLY and monitor while conducting a visual search. When marine mammals are no longer detected within 1,000 yards (914 m) of the intended post position, co-locate the explosive source sonobuoy (AN/SSQ–110A) (source) with the receiver.

(iv) When operationally feasible, Navy crews shall conduct continuous visual and aural monitoring of marine mammal activity. This is to include monitoring of own-aircraft sensors from first sensor placement to checking off station and out of communication range of these sensors.

(v) *Aural Detection:* If the presence of marine mammals is detected aurally, then that should cue the aircrew to increase the diligence of their visual surveillance. Subsequently, if no marine mammals are visually detected, then the Navy crew may continue multi-static active search.

(vi) *Visual Detection:*

(A) If marine mammals are visually detected within 1,000 yards (914 m) of the explosive source sonobuoy (AN/SSQ–110A) intended for use, then that payload shall not be detonated.

(B) Navy Aircrews may utilize this post once the marine mammals have not been re-sighted for 30 minutes, or are observed to have moved outside the 1,000 yards (914 m) safety buffer.

(C) Navy Aircrews may shift their multi-static active search to another post, where marine mammals are outside the 1,000 yards (914 m) safety buffer.

(vii) For IEER (AN/SSQ–110A), Navy Aircrews shall make every attempt to manually detonate the unexploded charges at each post in the pattern prior to departing the operations area by using the ''Payload 1 Release'' command followed by the ''Payload 2 Release'' command. Aircrews shall refrain from using the ''Scuttle'' command when two payloads remain at a given post. Aircrews shall ensure that a 1,000 yard (914 m) safety buffer, visually clear of marine mammals, is maintained around each post as is done during active search operations.

(viii) Navy Aircrews shall only leave posts with unexploded charges in the event of a sonobuoy malfunction, an aircraft system malfunction, or when an aircraft must immediately depart the area due to issues such as fuel constraints, inclement weather, and in-flight emergencies. In these cases, the sonobuoy will self-scuttle using the secondary or tertiary method.

(ix) The Navy shall ensure all payloads are accounted for. Explosive source sonobuoys (AN/SSQ–110A) that cannot be scuttled shall be reported as unexploded ordnance via voice communications while airborne, then upon landing via naval message.

(x) Marine mammal monitoring shall continue until out of own-aircraft sensor range.

(3) Mitigation Measures Related to Vessel Transit and North Atlantic Right Whales:

(i) Mid-Atlantic, Offshore of the Eastern United States:

(A) All Navy vessels are required to use extreme caution and operate at a slow, safe speed consistent with mission

and safety during the months indicated below and within a 37 km (20 nm) arc (except as noted) of the specified associated reference points:

(*1*) South and East of Block Island (37 km (20 NM) seaward of line between 41–4.49° N. lat. 071–51.15° W. long. and 41–18.58° N. lat. 070–50.23° W. long): Sept–Oct and Mar–Apr.

(*2*) New York/New Jersey (40–30.64° N. lat. 073–57.76° W. long.): Sep–Oct and Feb–Apr.

(*3*) Delaware Bay (Philadelphia) (38–52.13° N. lat. 075–1.93° W. long.): Oct–Dec and Feb–Mar.

(*4*) Chesapeake Bay (Hampton Roads and Baltimore) (37–1.11° N. lat. 075–57.56° W. long.): Nov–Dec and Feb–Apr.

(*5*) North Carolina (34–41.54° N. lat. 076–40.20° W. long.): Dec–Apr.

(*6*) South Carolina (33–11.84° N. lat. 079–8.99° W. long. and 32–43.39° N. lat. 079–48.72° W. long.): Oct–Apr.

(B) During the months indicated in paragraph (a)(3)(i)(A) of this section, Navy vessels shall practice increased vigilance with respect to avoidance of vessel-whale interactions along the mid-Atlantic coast, including transits to and from any mid-Atlantic ports not specifically identified in paragraph (a)(3)(i)(A) of this section.

(C) All surface units transiting within 56 km (30 NM) of the coast in the mid-Atlantic shall ensure at least two watchstanders are posted, including at least one lookout who has completed required MSAT training.

(D) Navy vessels shall not knowingly approach any whale head on and shall maneuver to keep at least 457 m (1,500 ft) away from any observed whale, consistent with vessel safety.

(ii) Southeast Atlantic, Offshore of the Eastern United States—for the purposes of the measures below (within this paragraph), the ''southeast'' encompasses sea space from Charleston, South Carolina, southward to Sebastian Inlet, Florida, and from the coast seaward to 148 km (80 NM) from shore. North Atlantic right whale critical habitat is the area from 31–15° N. lat. to 30–15° N. lat. extending from the coast out to 28 km (15 NM), and the area from 28–00° N. lat. to 30–15° N. lat. from the coast out to 9 km (5 NM). All mitigation measures described here that apply to the critical habitat apply from November 15–April 15 and also apply to an associated area of concern which extends 9 km (5 NM) seaward of the designated critical habitat boundaries.

(A) Prior to transiting or training in the critical habitat or associated area of concern, ships shall contact Fleet Area Control and Surveillance Facility, Jacksonville, to obtain latest whale sighting and other information needed to make informed decisions regarding safe speed and path of intended movement. Subs shall contact Commander, Submarine Group Ten for similar information.

(B) The following specific mitigation measures apply to activities occurring within the critical habitat and an associated area of concern which extends 9 km (5 NM) seaward of the designated critical habitat boundaries:

(*1*) When transiting within the critical habitat or associated area of concern, vessels shall exercise extreme caution and proceed at a slow safe speed. The speed shall be the slowest safe speed that is consistent with mission, training and operations.

(*2*) Speed reductions (adjustments) are required when a whale is sighted by a vessel or when the vessel is within 9 km (5 NM) of a reported new sighting less then 12 hours old. Circumstances could arise where, in order to avoid North Atlantic right whale(s), speed reductions could mean vessel must reduce speed to a minimum at which it can safely keep on course or vessels could come to an all stop.

(*3*) Vessels shall avoid head-on approaches to North Atlantic right whale(s) and shall maneuver to maintain at least 457 m (500 yd) of separation from any observed whale if deemed safe to do so. These requirements do not apply if a vessel's safety is threatened, such as when a change of course would create an imminent and serious threat to a person, vessel, or aircraft, and to the extent vessels are restricted in the ability to maneuver.

(*4*) Ships shall not transit through the critical habitat or associated area of concern in a North-South direction.

(*5*) Ships, surfaced subs, and aircraft shall report any whale sightings to Fleet Area Control and Surveillance Facility, Jacksonville, by the quickest and most practicable means. The sighting report shall include the time, latitude/longitude, direction of movement and number and description of whale (*i.e.*, adult/calf).

(iii) Northeast Atlantic, Offshore of the Eastern United States:

(A) Prior to transiting the Great South Channel or Cape Cod Bay critical habitat areas, ships shall obtain the latest North Atlantic right whale sightings and other information needed to make informed decisions regarding safe speed. The Great South Channel critical habitat is defined by the following coordinates: 41–00° N. lat., 69–05° W. long.; 41–45° N. lat, 69–45° W. long; 42–10° N. lat., 68–31° W. long.; 41–38° N. lat., 68–13° W. long. The Cape Cod Bay critical habitat is defined by the following coordinates: 42–04.8° N. lat., 70–10° W. long.; 42–12° N. lat., 70–15° W. long.; 42–12° N. lat., 70–30° W. long.; 41–46.8° N. lat., 70–30° W. long.

(B) Ships, surfaced subs, and aircraft shall report any North Atlantic right whale sightings (if the whale is identifiable as a right whale) off the northeastern U.S. to Patrol and Reconnaissance Wing (COMPATRECONWING). The report shall include the time of sighting, lat/long, direction of movement (if apparent) and number and description of the whale(s).

(C) Vessels or aircraft that observe whale carcasses shall record the location and time of the sighting and report this information as soon as possible to the cognizant regional environmental coordinator. All whale strikes must be reported. This report shall include the date, time, and location of the strike; vessel course and speed; operations being conducted by the vessel; weather conditions, visibility, and sea state; description of the whale; narrative of incident; and indication of whether photos/videos were taken. Navy personnel are encouraged to take photos whenever possible.

(D) Specific mitigation measures related to activities occurring within the critical habitat include the following:

(*1*) Vessels shall avoid head-on approaches to North Atlantic right whale(s) and shall maneuver to maintain at least 457 m (500 yd) of separation from any observed whale if deemed safe to do so. These requirements do not apply if a vessel's safety is threatened, such as when change of course would create an imminent and serious threat to person, vessel, or aircraft, and to the extent vessels are restricted in the ability to maneuver.

(*2*) When transiting within the critical habitat or associated area of concern, vessels shall use extreme caution and operate at a safe speed so as to be able to avoid collisions with North Atlantic right whales and other marine mammals, and stop within a distance appropriate to the circumstances and conditions.

(*3*) Speed reductions (adjustments) are required when a whale is sighted by a vessel or when the vessel is within 9 km (5 NM) of a reported new sighting less than one week old.

(*4*) Ships transiting in the Cape Cod Bay and Great South Channel critical habitats shall obtain information on recent whale sightings in the vicinity of the critical habitat. Any vessel operating in the vicinity of a North Atlantic right whale shall consider additional speed

reductions as per Rule 6 of International Navigational Rules.

§ 216.245 Requirements for monitoring and reporting.

(a) As outlined in the AFAST Stranding Communication Plan, the Navy must notify NMFS immediately (or as soon as clearance procedures allow) if the specified activity identified in § 216.240(c) is thought to have resulted in the mortality or injury of any marine mammals, or in any take of marine mammals not identified in § 216.242(c).

(b) The Navy must conduct all monitoring and required reporting under the Letter of Authorization, including abiding by the AFAST Monitoring Plan, which is incorporated herein by reference.

(c) The Navy shall complete an Integrated Comprehensive Monitoring Program (ICMP) Plan in 2009. This planning and adaptive management tool shall include:

(1) A method for prioritizing monitoring projects that clearly describes the characteristics of a proposal that factor into its priority.

(2) A method for annually reviewing, with NMFS, monitoring results, Navy R&D, and current science to use for potential modification of mitigation or monitoring methods.

(3) A detailed description of the Monitoring Workshop to be convened in 2011 and how and when Navy/NMFS will subsequently utilize the findings of the Monitoring Workshop to potentially modify subsequent monitoring and mitigation.

(4) An adaptive management plan.

(5) A method for standardizing data collection for AFAST and across Range Complexes

(d) General Notification of Injured or Dead Marine Mammals—Navy personnel shall ensure that NMFS (regional stranding coordinator) is notified immediately (or as soon as clearance procedures allow) if an injured or dead marine mammal is found during or shortly after, and in the vicinity of, any Navy training exercise utilizing MFAS, HFAS, or underwater explosive detonations. The Navy shall provide NMFS with species or description of the animal(s), the condition of the animal(s) (including carcass condition if the animal is dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available). The Navy shall consult the Stranding Response Plan to obtain more specific reporting requirements for specific circumstances.

(e) Annual AFAST Monitoring Plan Report—The Navy shall submit a report annually on October 1 describing the implementation and results (through August 1 of the same year) of the AFAST Monitoring Plan. Data collection methods will be standardized across range complexes to allow for comparison in different geographic locations. Although additional information will also be gathered, the marine mammal observers (MMOs) collecting marine mammal data pursuant to the AFAST Monitoring Plan shall, at a minimum, provide the same marine mammal observation data required in the data required in § 216.245(f)(1). The AFAST Monitoring Plan Report may be provided to NMFS within a larger report that includes the required Monitoring Plan Reports from AFAST and multiple Range Complexes.

(f) Annual AFAST Exercise Report—The Navy shall submit an Annual AFAST Exercise Report on October 1 of every year (covering data gathered through August 1 of the same year). This report shall contain information identified in subsections § 216.245(f)(1) through (f)(5).

(1) MFAS/HFAS Major Training Exercises—This section shall contain the following information for the major training exercises for reporting (MTERs), which include the Southeastern ASW Integrated Training Initiative (SEASWITI), Integrated ASW Course (IAC), Composite Training Unit Exercises (COMPTUEX), and Joint Task Force Exercises (JTFEX) conducted in the AFAST Study Area:

(i) *Exercise Information (for each MTER)*:

(A) Exercise designator;

(B) Date that exercise began and ended;

(C) Location;

(D) Number and types of active sources used in the exercise;

(E) Number and types of passive acoustic sources used in exercise;

(F) Number and types of vessels, aircraft, etc., participating in exercise;

(G) Total hours of observation by watchstanders;

(H) Total hours of all active sonar source operation;

(I) Total hours of each active sonar source (along with explanation of how hours are calculated for sources typically quantified in alternate way (buoys, torpedoes, etc.));

(J) Wave height (high, low, and average during exercise).

(ii) *Individual marine mammal sighting info (for each sighting in each MTER):*

(A) Location of sighting;

(B) Species (if not possible—indication of whale/dolphin/pinniped);

(C) Number of individuals;

(D) Calves observed (y/n);

(E) Initial Detection Sensor;

(F) Indication of specific type of platform observation made from (including, for example, what type of surface vessel, *i.e.*, FFG, DDG, or CG);

(G) Length of time observers maintained visual contact with marine mammal;

(H) Wave height (in feet);

(I) Visibility;

(J) Sonar source in use (y/n);

(K) Indication of whether animal is < 200 yd, 200–500 yd, 500–1000 yd, 1000–2000 yd, or > 2000 yd from sonar source in paragraph (f)(1)(ii)(J) of this section;

(L) Mitigation Implementation—Whether operation of sonar sensor was delayed, or sonar was powered or shut down, and how long the delay was;

(M) If source in use (*i.e.*, in paragraph (f)(1)(ii)(J) of this section) is hullmounted, true bearing of animal from ship, true direction of ship's travel, and estimation of animal's motion relative to ship (opening, closing, parallel);

(N) Observed behavior—Watchstanders shall report, in plain language and without trying to categorize in any way, the observed behavior of the animals (such as animal closing to bow ride, paralleling course/speed, floating on surface and not swimming, etc.).

(iii) An evaluation (based on data gathered during all of the MTERs) of the effectiveness of mitigation measures designed to avoid exposing marine mammals to MFAS. This evaluation shall identify the specific observations that support any conclusions the Navy reaches about the effectiveness of the mitigation.

(2) ASW Summary—This section shall include the following information as summarized from both MTERs and non-major training exercises:

(i) Total annual hours of each type of sonar source (along with explanation of how hours are calculated for sources typically quantified in alternate way (buoys, torpedoes, etc.)).

(ii) Cumulative Impact Report—To the extent practicable, the Navy, in coordination with NMFS, shall develop and implement a method of annually reporting non-major (i.e., other than MTERs) training exercises utilizing hull-mounted sonar. The report shall present an annual (and seasonal, where practicable) depiction of non-major training exercises geographically across the AFAST Study Area. To the extent practicable, this report will also include the total number of sonar hours (from helicopter dipping sonar and object detection exercises) conducted within

the southern NARW critical habitat plus 5 nm buffer area. The Navy shall include (in the AFAST annual report) a brief annual progress update on the status of the development of an effective and unclassified method to report this information until an agreed-upon (with NMFS) method has been developed and implemented.

(3) IEER/AEER Summary—This section shall include an annual summary of the following IEER and AEER information:

(i) Total number of IEER and AEER events conducted in the AFAST Study Area;

(ii) Total expended/detonated rounds (buoys);

(iii) Total number of self-scuttled IEER rounds.

(g) Sonar Exercise Notification—The Navy shall submit to the NMFS Office of Protected Resources (specific contact information to be provided in LOA) either an electronic (preferably) or verbal report within fifteen calendar days after the completion of any MTER indicating:

(1) Location of the exercise;

(2) Beginning and end dates of the exercise;

(3) Type of exercise (*e.g.*, COMPTUEX or SEASWITI).

(h) AFAST 5-yr Comprehensive Report—The Navy shall submit to NMFS a draft report that analyzes and summarizes all of the multi-year marine mammal information gathered during ASW, MIW and IEER/AEER exercises for which annual reports are required (Annual AFAST Exercise Reports and AFAST Monitoring Plan Reports). This report will be submitted at the end of the fourth year of the rule (November 2012), covering activities that have occurred through June 1, 2012.

(i) *Comprehensive National ASW Report*—By June, 2014, the Navy shall submit a draft National Report that analyzes, compares, and summarizes the active sonar data gathered (through January 1, 2014) from the watchstanders and pursuant to the implementation of the Monitoring Plans for AFAST, SOCAL, the HRC, the Marianas Range Complex, the Northwest Training Range, the Gulf of Alaska, and the East Coast Undersea Warfare Training Range.

(j) The Navy shall respond to NMFS comments and requests for additional information or clarification on the AFAST Comprehensive Report, the Comprehensive National ASW report, the Annual AFAST Exercise Report, or the Annual AFAST Monitoring Plan Report (or the multi-Range Complex Annual Monitoring Plan Report, if that is how the Navy chooses to submit the information) if submitted within 3 months of receipt. These reports will be considered final after the Navy has addressed NMFS' comments or provided the requested information, or three months after the submittal of the draft if NMFS does not comment by then.

(k) In 2011, the Navy shall convene a Monitoring Workshop in which the Monitoring Workshop participants will be asked to review the Navy's Monitoring Plans and monitoring results and make individual recommendations (to the Navy and NMFS) of ways of improving the Monitoring Plans. The recommendations shall be reviewed by the Navy, in consultation with NMFS, and modifications to the Monitoring Plan shall be made, as appropriate.

§ 216.246 Applications for Letters of Authorization.

To incidentally take marine mammals pursuant to the regulations in this subpart, the U.S. citizen (as defined by § 216.103) conducting the activity identified in § 216.240(c) (the U.S. Navy) must apply for and obtain either an initial Letter of Authorization in accordance with § 216.247 or a renewal under § 216.248.

§ 216.247 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the period of validity of this subpart, but must be renewed annually subject to annual renewal conditions in § 216.248.

(b) Each Letter of Authorization will set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact on the species, its habitat, and on the availability of the species for subsistence uses (*i.e.*, mitigation); and

(3) Requirements for mitigation, monitoring and reporting.

(c) Issuance and renewal of the Letter of Authorization will be based on a determination that the total number of marine mammals taken by the activity as a whole will have no more than a negligible impact on the affected species or stock of marine mammal(s).

§ 216.248 Renewal of Letters of Authorization and Adaptive Management.

(a) A Letter of Authorization issued under §§ 216.106 and 216.247 for the activity identified in § 216.240(c) will be renewed annually upon:

(1) Notification to NMFS that the activity described in the application submitted under § 216.246 will be undertaken and that there will not be a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming 12 months;

(2) Timely receipt (by the dates indicated in these regulations) of the monitoring reports required under § 216.245(c) through (j); and

(3) A determination by the NMFS that the mitigation, monitoring and reporting measures required under § 216.244 and the Letter of Authorization issued under §§ 216.106 and 216.247, were undertaken and will be undertaken during the upcoming annual period of validity of a renewed Letter of Authorization.

(b) If a request for a renewal of a Letter of Authorization issued under §§ 216.106 and 216.248 indicates that a substantial modification, as determined by NMFS, to the described work, mitigation or monitoring undertaken during the upcoming season will occur, the NMFS will provide the public a period of 30 days for review and comment on the request. Review and comment on renewals of Letters of Authorization are restricted to:

(1) New cited information and data indicating that the determinations made in this document are in need of reconsideration, and

(2) Proposed changes to the mitigation and monitoring requirements contained in these regulations or in the current Letter of Authorization.

(c) A notice of issuance or denial of a renewal of a Letter of Authorization will be published in the **Federal Register**.

(d) NMFS, in response to new information and in consultation with the Navy, may modify the mitigation or monitoring measures in subsequent LOAs if doing so creates a reasonable likelihood of more effectively accomplishing the goals of mitigation and monitoring set forth in the preamble of these regulations. Below are some of the possible sources of new data that could contribute to the decision to modify the mitigation or monitoring measures:

(1) Results from the Navy's monitoring from the previous year (either from AFAST or other locations).

(2) Findings of the Monitoring Workshop that the Navy will convene in 2011 (section 216.245(l)).

(3) Compiled results of Navy funded research and development (R&D) studies (presented pursuant to the ICMP (§ 216.245(d))).

(4) Results from specific stranding investigations (either from the AFAST Study Area or other locations, and involving coincident MFAS/HFAS or explosives training or not involving coincident use).

(5) Results from the Long Term Prospective Study described in the preamble to these regulations.

(6) Results from general marine mammal and sound research (funded by the Navy (described below) or otherwise).

§ 216.249 Modifications to Letters of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the Letter of Authorization by NMFS, issued pursuant to §§ 216.106 and 216.247 and subject to the provisions of this subpart shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under § 216.248, without modification (except for the period of validity), is not considered a substantive modification.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 216.242(c), a Letter of Authorization issued pursuant to §§ 216.106 and 216.247 may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the **Federal Register** within 30 days subsequent to the action.

[FR Doc. E9–1706 Filed 1–22–09; 4:15 pm]

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Federal Register

Tuesday,
January 27, 2009

Part IV

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 447 and 457

Medicaid Program; Premiums and Cost Sharing; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 447 and 457

[CMS–2244–F2]

RIN 0938–A047

Medicaid Program; Premiums and Cost Sharing

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule; delay of effective date and reopening of comment period.

SUMMARY: In accordance with the memorandum of January 20, 2009, from the Assistant to the President and Chief of Staff, entitled ''Regulatory Review Plan,'' this action temporarily delays for 60 days the effective date of the final rule entitled ''Medicaid Program; Premiums and Cost Sharing'' (73 FR 71828). The temporary 60-day delay in effective date is necessary to give Department officials the opportunity for further review and consideration of new regulations. In addition, this action reopens the comment period on the policies set out in the November 25, 2008 final rule.

DATES: *Effective Date.* This action is effective January 23, 2009. The effective date of the rule amending 42 CFR parts 447 and 457 published in the November 25, 2008 **Federal Register** (73 FR 71828) is delayed 60 days until March 27, 2009.

Comment Period. To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on February 26, 2009.

ADDRESSES: In commenting, please refer to file code CMS–2244–F2. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' and enter the filecode to find the document accepting comments.

2. *By regular mail.* You may mail written comments (one original and two copies) to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, *Attention:* CMS–2244–F2, P.O. Box 8010, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments (one original and two copies) to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, *Attention:* CMS–2244–F2, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–8010.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to either of the following addresses:

a. Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

FOR FURTHER INFORMATION CONTACT: Christine Gerhardt, (410) 786–0693.

SUPPLEMENTARY INFORMATION:

I. Background

On November 25, 2008, we published a final rule entitled ''Medicaid Program; Premiums and Cost Sharing'' in the **Federal Register** to implement and interpret the provisions of sections 6041, 6042, and 6043 of the Deficit Reduction Act of 2005 (DRA), and section 405(a)(1) of the Tax Relief and Health Care Act of 2006 (TRHCA) (73 FR 71828). The DRA was amended by the TRHCA which revised sections 6041, 6042, and 6043 of the DRA including limitations on cost sharing for individuals with family incomes at or below 100 percent of the federal poverty line. These sections amended the Social Security Act (the Act) by adding a new section 1916A to provide State Medicaid agencies with increased flexibility to impose premium and cost sharing requirements on certain Medicaid recipients. The DRA provisions also specifically address cost sharing for non-preferred drugs and non-emergency care furnished in a hospital emergency department.

The November 25, 2008 final rule integrated into CMS regulations the statutory flexibility to impose premiums and cost sharing that was added by the DRA. In addition, in the November 25, 2008 final rule, we responded to public comments on the February 22, 2008 proposed rule (73 FR 9727).

II. Provisions of This Action

This action delays the effective date of the November 25, 2008 final rule and reopens the comment period on the policies set out in the final rule. The effective date of the November 25, 2008 final rule, which would have been January 26, 2009, is now March 27, 2009. The 60-day delay in the effective date is necessary to give the public the opportunity to submit additional comments on the policies set forth in the November 25, 2008 final rule, and to provide an opportunity for CMS to consider all additional public comments.

III. Waiver of Proposed Rulemaking and Delay in Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a notice such as this take effect, in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). We also ordinarily provide a 30-day delay in the effective date of the provisions of a notice in accordance with section 553(d) of the APA (5 U.S.C. 553(d)). However, we can waive both the notice and comment procedure and the 30-day delay in effective date if the Secretary finds, for good cause, that it is impracticable, unnecessary or contrary to the public interest to follow the notice and comment procedure or to comply with the 30-day delay in the effective date, and incorporates a statement of the finding and the reasons in the notice.

This action delays the effective date of the November 25, 2008 final rule that was promulgated through notice and comment rulemaking. A delay in effective date and reopening of the comment period is necessary to ensure that we have the opportunity to receive additional public comments to fully inform our decisions before the policies contained in the final rule become effective. Moreover, we believe it would be contrary to the public interest for the November 25, 2008 final rule to become

effective until we are certain that all public comments, including any additional comments that are submitted in the reopened comment period, are considered. To do otherwise could potentially result in uncertainty and confusion as to the finality of the final rule. For the reasons stated above, we find that both notice and comment and the 30-day delay in effective date for this action are unnecessary. Therefore, we find there is good cause to waive notice and comment procedures and the 30-day delay in effective date for this action.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: January 22, 2009.

Approved:

Charles Johnson,

Acting Secretary.

[FR Doc. E9–1771 Filed 1–23–09; 11:15 am]

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Federal Register

Tuesday,
January 27, 2009

Part V

The President

Executive Order 13491—Ensuring Lawful Interrogations

Executive Order 13492—Review and Disposition of Individuals Detained at the Guantánamo Bay Naval Base and Closure of Detention Facilities

Executive Order 13493—Review of Detention Policy Options

Federal Register
Vol. 74, No. 16
Tuesday, January 27, 2009

Presidential Documents

Title 3—

The President

Executive Order 13491 of January 22, 2009

Ensuring Lawful Interrogations

By the authority vested in me by the Constitution and the laws of the United States of America, in order to improve the effectiveness of human intelligence-gathering, to promote the safe, lawful, and humane treatment of individuals in United States custody and of United States personnel who are detained in armed conflicts, to ensure compliance with the treaty obligations of the United States, including the Geneva Conventions, and to take care that the laws of the United States are faithfully executed, I hereby order as follows:

Section 1. *Revocation.* Executive Order 13440 of July 20, 2007, is revoked. All executive directives, orders, and regulations inconsistent with this order, including but not limited to those issued to or by the Central Intelligence Agency (CIA) from September 11, 2001, to January 20, 2009, concerning detention or the interrogation of detained individuals, are revoked to the extent of their inconsistency with this order. Heads of departments and agencies shall take all necessary steps to ensure that all directives, orders, and regulations of their respective departments or agencies are consistent with this order. Upon request, the Attorney General shall provide guidance about which directives, orders, and regulations are inconsistent with this order.

Sec. 2. *Definitions.* As used in this order:

(a) ''Army Field Manual 2–22.3'' means FM 2–22.3, Human Intelligence Collector Operations, issued by the Department of the Army on September 6, 2006.

(b) ''Army Field Manual 34–52'' means FM 34–52, Intelligence Interrogation, issued by the Department of the Army on May 8, 1987.

(c) ''Common Article 3'' means Article 3 of each of the Geneva Conventions.

(d) ''Convention Against Torture'' means the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, December 10, 1984, 1465 U.N.T.S. 85, S. Treaty Doc. No. 100–20 (1988).

(e) ''Geneva Conventions'' means:

(i) the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, August 12, 1949 (6 UST 3114);

(ii) the Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, August 12, 1949 (6 UST 3217);

(iii) the Convention Relative to the Treatment of Prisoners of War, August 12, 1949 (6 UST 3316); and

(iv) the Convention Relative to the Protection of Civilian Persons in Time of War, August 12, 1949 (6 UST 3516).

(f) ''Treated humanely,'' ''violence to life and person,'' ''murder of all kinds,'' ''mutilation,'' ''cruel treatment,'' ''torture,'' ''outrages upon personal dignity,'' and ''humiliating and degrading treatment'' refer to, and have the same meaning as, those same terms in Common Article 3.

(g) The terms ''detention facilities'' and ''detention facility'' in section 4(a) of this order do not refer to facilities used only to hold people on a short-term, transitory basis.

Sec. 3. *Standards and Practices for Interrogation of Individuals in the Custody or Control of the United States in Armed Conflicts.*

(a) **Common Article 3 Standards as a Minimum Baseline.** Consistent with the requirements of the Federal torture statute, 18 U.S.C. 2340–2340A, section 1003 of the Detainee Treatment Act of 2005, 42 U.S.C. 2000dd, the Convention Against Torture, Common Article 3, and other laws regulating the treatment and interrogation of individuals detained in any armed conflict, such persons shall in all circumstances be treated humanely and shall not be subjected to violence to life and person (including murder of all kinds, mutilation, cruel treatment, and torture), nor to outrages upon personal dignity (including humiliating and degrading treatment), whenever such individuals are in the custody or under the effective control of an officer, employee, or other agent of the United States Government or detained within a facility owned, operated, or controlled by a department or agency of the United States.

(b) **Interrogation Techniques and Interrogation-Related Treatment.** Effective immediately, an individual in the custody or under the effective control of an officer, employee, or other agent of the United States Government, or detained within a facility owned, operated, or controlled by a department or agency of the United States, in any armed conflict, shall not be subjected to any interrogation technique or approach, or any treatment related to interrogation, that is not authorized by and listed in Army Field Manual 2–22.3 (Manual). Interrogation techniques, approaches, and treatments described in the Manual shall be implemented strictly in accord with the principles, processes, conditions, and limitations the Manual prescribes. Where processes required by the Manual, such as a requirement of approval by specified Department of Defense officials, are inapposite to a department or an agency other than the Department of Defense, such a department or agency shall use processes that are substantially equivalent to the processes the Manual prescribes for the Department of Defense. Nothing in this section shall preclude the Federal Bureau of Investigation, or other Federal law enforcement agencies, from continuing to use authorized, non-coercive techniques of interrogation that are designed to elicit voluntary statements and do not involve the use of force, threats, or promises.

(c) **Interpretations of Common Article 3 and the Army Field Manual.** From this day forward, unless the Attorney General with appropriate consultation provides further guidance, officers, employees, and other agents of the United States Government may, in conducting interrogations, act in reliance upon Army Field Manual 2–22.3, but may not, in conducting interrogations, rely upon any interpretation of the law governing interrogation—including interpretations of Federal criminal laws, the Convention Against Torture, Common Article 3, Army Field Manual 2–22.3, and its predecessor document, Army Field Manual 34–52—issued by the Department of Justice between September 11, 2001, and January 20, 2009.

Sec. 4. *Prohibition of Certain Detention Facilities, and Red Cross Access to Detained Individuals.*

(a) **CIA Detention.** The CIA shall close as expeditiously as possible any detention facilities that it currently operates and shall not operate any such detention facility in the future.

(b) **International Committee of the Red Cross Access to Detained Individuals.** All departments and agencies of the Federal Government shall provide the International Committee of the Red Cross with notification of, and timely access to, any individual detained in any armed conflict in the custody or under the effective control of an officer, employee, or other agent of the United States Government or detained within a facility owned, operated, or controlled by a department or agency of the United States Government, consistent with Department of Defense regulations and policies.

Sec. 5. *Special Interagency Task Force on Interrogation and Transfer Policies.*

(a) **Establishment of Special Interagency Task Force.** There shall be established a Special Task Force on Interrogation and Transfer Policies (Special Task Force) to review interrogation and transfer policies.

(b) **Membership.** The Special Task Force shall consist of the following members, or their designees:

(i) the Attorney General, who shall serve as Chair;

(ii) the Director of National Intelligence, who shall serve as Co-Vice-Chair;

(iii) the Secretary of Defense, who shall serve as Co-Vice-Chair;

(iv) the Secretary of State;

(v) the Secretary of Homeland Security;

(vi) the Director of the Central Intelligence Agency;

(vii) the Chairman of the Joint Chiefs of Staff; and

(viii) other officers or full-time or permanent part-time employees of the United States, as determined by the Chair, with the concurrence of the head of the department or agency concerned.

(c) **Staff.** The Chair may designate officers and employees within the Department of Justice to serve as staff to support the Special Task Force. At the request of the Chair, officers and employees from other departments or agencies may serve on the Special Task Force with the concurrence of the head of the department or agency that employ such individuals. Such staff must be officers or full-time or permanent part-time employees of the United States. The Chair shall designate an officer or employee of the Department of Justice to serve as the Executive Secretary of the Special Task Force.

(d) **Operation.** The Chair shall convene meetings of the Special Task Force, determine its agenda, and direct its work. The Chair may establish and direct subgroups of the Special Task Force, consisting exclusively of members of the Special Task Force, to deal with particular subjects.

(e) **Mission.** The mission of the Special Task Force shall be:

(i) to study and evaluate whether the interrogation practices and techniques in Army Field Manual 2–22.3, when employed by departments or agencies outside the military, provide an appropriate means of acquiring the intelligence necessary to protect the Nation, and, if warranted, to recommend any additional or different guidance for other departments or agencies; and

(ii) to study and evaluate the practices of transferring individuals to other nations in order to ensure that such practices comply with the domestic laws, international obligations, and policies of the United States and do not result in the transfer of individuals to other nations to face torture or otherwise for the purpose, or with the effect, of undermining or circumventing the commitments or obligations of the United States to ensure the humane treatment of individuals in its custody or control.

(f) **Administration.** The Special Task Force shall be established for administrative purposes within the Department of Justice and the Department of Justice shall, to the extent permitted by law and subject to the availability of appropriations, provide administrative support and funding for the Special Task Force.

(g) **Recommendations.** The Special Task Force shall provide a report to the President, through the Assistant to the President for National Security Affairs and the Counsel to the President, on the matters set forth in subsection (d) within 180 days of the date of this order, unless the Chair determines that an extension is necessary.

(h) **Termination.** The Chair shall terminate the Special Task Force upon the completion of its duties.

Sec. 6. *Construction with Other Laws.* Nothing in this order shall be construed to affect the obligations of officers, employees, and other agents of the United States Government to comply with all pertinent laws and treaties of the United States governing detention and interrogation, including but not limited to: the Fifth and Eighth Amendments to the United States Constitution; the Federal torture statute, 18 U.S.C. 2340–2340A; the War Crimes Act, 18 U.S.C. 2441; the Federal assault statute, 18 U.S.C. 113; the Federal maiming statute, 18 U.S.C. 114; the Federal ''stalking'' statute, 18 U.S.C. 2261A; articles 93, 124, 128, and 134 of the Uniform Code of Military Justice, 10 U.S.C. 893, 924, 928, and 934; section 1003 of the Detainee Treatment Act of 2005, 42 U.S.C. 2000dd; section 6(c) of the Military Commissions Act of 2006, Public Law 109–366; the Geneva Conventions; and the Convention Against Torture. Nothing in this order shall be construed to diminish any rights that any individual may have under these or other laws and treaties. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.

THE WHITE HOUSE,
January 22, 2009.

[FR Doc. E9–1885
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Billing code 3195–W9–P

Presidential Documents

Executive Order 13492 of January 22, 2009

Review and Disposition of Individuals Detained At the Guantánamo Bay Naval Base and Closure of Detention Facilities

By the authority vested in me as President by the Constitution and the laws of the United States of America, in order to effect the appropriate disposition of individuals currently detained by the Department of Defense at the Guantánamo Bay Naval Base (Guantánamo) and promptly to close detention facilities at Guantánamo, consistent with the national security and foreign policy interests of the United States and the interests of justice, I hereby order as follows:

Section 1. *Definitions.* As used in this order:

(a) ''Common Article 3'' means Article 3 of each of the Geneva Conventions.

(b) ''Geneva Conventions'' means:

(i) the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, August 12, 1949 (6 UST 3114);

(ii) the Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, August 12, 1949 (6 UST 3217);

(iii) the Convention Relative to the Treatment of Prisoners of War, August 12, 1949 (6 UST 3316); and

(iv) the Convention Relative to the Protection of Civilian Persons in Time of War, August 12, 1949 (6 UST 3516).

(c) ''Individuals currently detained at Guantánamo'' and ''individuals covered by this order'' mean individuals currently detained by the Department of Defense in facilities at the Guantánamo Bay Naval Base whom the Department of Defense has ever determined to be, or treated as, enemy combatants.

Sec. 2. *Findings.*

(a) Over the past 7 years, approximately 800 individuals whom the Department of Defense has ever determined to be, or treated as, enemy combatants have been detained at Guantánamo. The Federal Government has moved more than 500 such detainees from Guantánamo, either by returning them to their home country or by releasing or transferring them to a third country. The Department of Defense has determined that a number of the individuals currently detained at Guantánamo are eligible for such transfer or release.

(b) Some individuals currently detained at Guantánamo have been there for more than 6 years, and most have been detained for at least 4 years. In view of the significant concerns raised by these detentions, both within the United States and internationally, prompt and appropriate disposition of the individuals currently detained at Guantánamo and closure of the facilities in which they are detained would further the national security and foreign policy interests of the United States and the interests of justice. Merely closing the facilities without promptly determining the appropriate disposition of the individuals detained would not adequately serve those interests. To the extent practicable, the prompt and appropriate disposition of the individuals detained at Guantánamo should precede the closure of the detention facilities at Guantánamo.

(c) The individuals currently detained at Guantánamo have the constitutional privilege of the writ of habeas corpus. Most of those individuals

have filed petitions for a writ of habeas corpus in Federal court challenging the lawfulness of their detention.

(d) It is in the interests of the United States that the executive branch undertake a prompt and thorough review of the factual and legal bases for the continued detention of all individuals currently held at Guantánamo, and of whether their continued detention is in the national security and foreign policy interests of the United States and in the interests of justice. The unusual circumstances associated with detentions at Guantánamo require a comprehensive interagency review.

(e) New diplomatic efforts may result in an appropriate disposition of a substantial number of individuals currently detained at Guantánamo.

(f) Some individuals currently detained at Guantánamo may have committed offenses for which they should be prosecuted. It is in the interests of the United States to review whether and how any such individuals can and should be prosecuted.

(g) It is in the interests of the United States that the executive branch conduct a prompt and thorough review of the circumstances of the individuals currently detained at Guantánamo who have been charged with offenses before military commissions pursuant to the Military Commissions Act of 2006, Public Law 109–366, as well as of the military commission process more generally.

Sec. 3. *Closure of Detention Facilities at Guantánamo.* The detention facilities at Guantánamo for individuals covered by this order shall be closed as soon as practicable, and no later than 1 year from the date of this order. If any individuals covered by this order remain in detention at Guantánamo at the time of closure of those detention facilities, they shall be returned to their home country, released, transferred to a third country, or transferred to another United States detention facility in a manner consistent with law and the national security and foreign policy interests of the United States.

Sec. 4. *Immediate Review of All Guantánamo Detentions.*

(a) **Scope and Timing of Review.** A review of the status of each individual currently detained at Guantánamo (Review) shall commence immediately.

(b) **Review Participants.** The Review shall be conducted with the full cooperation and participation of the following officials:

(1) the Attorney General, who shall coordinate the Review;

(2) the Secretary of Defense;

(3) the Secretary of State;

(4) the Secretary of Homeland Security;

(5) the Director of National Intelligence;

(6) the Chairman of the Joint Chiefs of Staff; and

(7) other officers or full-time or permanent part-time employees of the United States, including employees with intelligence, counterterrorism, military, and legal expertise, as determined by the Attorney General, with the concurrence of the head of the department or agency concerned.

(c) **Operation of Review.** The duties of the Review participants shall include the following:

(1) **Consolidation of Detainee Information.** The Attorney General shall, to the extent reasonably practicable, and in coordination with the other Review participants, assemble all information in the possession of the Federal Government that pertains to any individual currently detained at Guantánamo and that is relevant to determining the proper disposition of any such individual. All executive branch departments and agencies shall promptly comply with any request of the Attorney General to provide information in their possession or control pertaining to any such individual. The Attorney General may seek further information relevant to the Review from any source.

(2) **Determination of Transfer.** The Review shall determine, on a rolling basis and as promptly as possible with respect to the individuals currently detained at Guantánamo, whether it is possible to transfer or release the individuals consistent with the national security and foreign policy interests of the United States and, if so, whether and how the Secretary of Defense may effect their transfer or release. The Secretary of Defense, the Secretary of State, and, as appropriate, other Review participants shall work to effect promptly the release or transfer of all individuals for whom release or transfer is possible.

(3) **Determination of Prosecution.** In accordance with United States law, the cases of individuals detained at Guantánamo not approved for release or transfer shall be evaluated to determine whether the Federal Government should seek to prosecute the detained individuals for any offenses they may have committed, including whether it is feasible to prosecute such individuals before a court established pursuant to Article III of the United States Constitution, and the Review participants shall in turn take the necessary and appropriate steps based on such determinations.

(4) **Determination of Other Disposition.** With respect to any individuals currently detained at Guantánamo whose disposition is not achieved under paragraphs (2) or (3) of this subsection, the Review shall select lawful means, consistent with the national security and foreign policy interests of the United States and the interests of justice, for the disposition of such individuals. The appropriate authorities shall promptly implement such dispositions.

(5) **Consideration of Issues Relating to Transfer to the United States.** The Review shall identify and consider legal, logistical, and security issues relating to the potential transfer of individuals currently detained at Guantánamo to facilities within the United States, and the Review participants shall work with the Congress on any legislation that may be appropriate.

Sec. 5. *Diplomatic Efforts.* The Secretary of State shall expeditiously pursue and direct such negotiations and diplomatic efforts with foreign governments as are necessary and appropriate to implement this order.

Sec. 6. *Humane Standards of Confinement.* No individual currently detained at Guantánamo shall be held in the custody or under the effective control of any officer, employee, or other agent of the United States Government, or at a facility owned, operated, or controlled by a department or agency of the United States, except in conformity with all applicable laws governing the conditions of such confinement, including Common Article 3 of the Geneva Conventions. The Secretary of Defense shall immediately undertake a review of the conditions of detention at Guantánamo to ensure full compliance with this directive. Such review shall be completed within 30 days and any necessary corrections shall be implemented immediately thereafter.

Sec. 7. *Military Commissions.* The Secretary of Defense shall immediately take steps sufficient to ensure that during the pendency of the Review described in section 4 of this order, no charges are sworn, or referred to a military commission under the Military Commissions Act of 2006 and the Rules for Military Commissions, and that all proceedings of such military commissions to which charges have been referred but in which no judgment has been rendered, and all proceedings pending in the United States Court of Military Commission Review, are halted.

Sec. 8. *General Provisions.*

(a) Nothing in this order shall prejudice the authority of the Secretary of Defense to determine the disposition of any detainees not covered by this order.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
January 22, 2009.

[FR Doc. E9–1893
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Billing code 3195–W9–P

Presidential Documents

Executive Order 13493 of January 22, 2009

Review of Detention Policy Options

By the authority vested in me as President by the Constitution and the laws of the United States of America, in order to develop policies for the detention, trial, transfer, release, or other disposition of individuals captured or apprehended in connection with armed conflicts and counterterrorism operations that are consistent with the national security and foreign policy interests of the United States and the interests of justice, I hereby order as follows:

Section 1. *Special Interagency Task Force on Detainee Disposition.*

(a) **Establishment of Special Interagency Task Force.** There shall be established a Special Task Force on Detainee Disposition (Special Task Force) to identify lawful options for the disposition of individuals captured or apprehended in connection with armed conflicts and counterterrorism operations.

(b) **Membership.** The Special Task Force shall consist of the following members, or their designees:

(i) the Attorney General, who shall serve as Co-Chair;

(ii) the Secretary of Defense, who shall serve as Co-Chair;

(iii) the Secretary of State;

(iv) the Secretary of Homeland Security;

(v) the Director of National Intelligence;

(vi) the Director of the Central Intelligence Agency;

(vii) the Chairman of the Joint Chiefs of Staff; and

(viii) other officers or full-time or permanent part-time employees of the United States, as determined by either of the Co-Chairs, with the concurrence of the head of the department or agency concerned.

(c) **Staff.** Either Co-Chair may designate officers and employees within their respective departments to serve as staff to support the Special Task Force. At the request of the Co-Chairs, officers and employees from other departments or agencies may serve on the Special Task Force with the concurrence of the heads of the departments or agencies that employ such individuals. Such staff must be officers or full-time or permanent part-time employees of the United States. The Co-Chairs shall jointly select an officer or employee of the Department of Justice or Department of Defense to serve as the Executive Secretary of the Special Task Force.

(d) **Operation.** The Co-Chairs shall convene meetings of the Special Task Force, determine its agenda, and direct its work. The Co-Chairs may establish and direct subgroups of the Special Task Force, consisting exclusively of members of the Special Task Force, to deal with particular subjects.

(e) **Mission.** The mission of the Special Task Force shall be to conduct a comprehensive review of the lawful options available to the Federal Government with respect to the apprehension, detention, trial, transfer, release, or other disposition of individuals captured or apprehended in connection with armed conflicts and counterterrorism operations, and to identify such options as are consistent with the national security and foreign policy interests of the United States and the interests of justice.

(f) **Administration.** The Special Task Force shall be established for administrative purposes within the Department of Justice, and the Department of Justice shall, to the extent permitted by law and subject to the availability of appropriations, provide administrative support and funding for the Special Task Force.

(g) **Report.** The Special Task Force shall provide a report to the President, through the Assistant to the President for National Security Affairs and the Counsel to the President, on the matters set forth in subsection (d) within 180 days of the date of this order unless the Co-Chairs determine that an extension is necessary, and shall provide periodic preliminary reports during those 180 days.

(h) **Termination.** The Co-Chairs shall terminate the Special Task Force upon the completion of its duties.

Sec. 2. *General Provisions.*

(a) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(b) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
January 22, 2009.

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Ensuring that the compensation and other emoluments attached to the office of Secretary of the Interior are those which were in effect on January 1, 2005. (Jan. 16, 2009; 123 Stat. 3)

A cumulative List of Public Laws for the second session of the 110th Congress will be published in the **Federal Register** on January 30, 2009.

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